



**MEETING AGENDA
FEBRUARY 29, 2016**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF JANUARY 26, 2016
3. REPORT OF EXECUTIVE DIRECTOR
4. RULEMAKING
 - A. ADOPTION: SGC-52-15-00005-P LOTTERY SUBSCRIPTION PROGRAM
 - B. ADOPTION: SGC-52-15-00006-P LOTTERY PRIZE PAYMENT
 - C. ADOPTION: SGC-52-15-00007-P BAN THE USE OF STANOZOLOL
 - D. ADOPTION: SGC-52-15-00008-P SUSPENSION AND REVOCATION OF A LOTTERY AGENT'S LICENSE
 - E. ADOPTION: SGC-01-16-00006-EP PLAN OF OPERATION FOR THE JOCKEY INJURY COMPENSATION FUND
 - F. PROPOSED: RULEMAKING PROBLEM GAMING, PREVENTION AND OUTREACH
 - G. PROPOSED: RULEMAKING SELF-EXCLUSION
5. ADJUDICATIONS
 - A. IN THE MATTER OF JOSEPH D'AGOSTINO
 - B. IN THE MATTER OF "BEAUTYINTHEPULPIT"
6. OLD BUSINESS/NEW BUSINESS

7. SCHEDULING OF NEXT MEETING

8. ADJOURNMENT

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NEW YORK STATE
GAMING COMMISSION

MINUTES

MEETING of JANUARY 26, 2016

NEW YORK, NEW YORK

A meeting of the N.Y.S. Gaming Commission was conducted in New York, New York.

1. Call to Order

Executive Director Robert Williams called the meeting to order at 1:02 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Commissioners John Crotty, John Poklemba, Barry Sample and Todd Snyder. Commissioner Crotty was unanimously elected as presiding officer for the meeting.

2. Consideration of the Minutes from December 21, 2015

The Commission considered previously circulated draft minutes of the meeting conducted on December 21, 2015. The minutes were then accepted as circulated.

3. Report of the Executive Director

Executive Director Williams provided a brief report on the Jockey Injury Compensation Fund, the proposal by Nassau Regional Off-Track Betting Corporation to site a video lottery gaming facility at Belmont Park, the recent Powerball jackpot and a staff initiative to further research into Lasix use.

4. Rulemaking

a. Re-Proposal: SGC-39-15-00005-P, Thoroughbred Restricted Time Periods for Various Drugs

The Commission considered re-proposal of a previously proposed regulation, with amendments to reflect industry comment. Specifically, the Commission's existing rules permit the topical use of DMSO on race day. The Commission had proposed to replace this restriction with a new restricted time period limiting topical use administration to 48 hours while reducing the restricted time period for other administrations from one week to 48 hours. The new proposal will

allow topical race day DMSO administration while restricting oral and intravenous DMSO administrations to 48 hours before racing. The re-proposal will trigger new rulemaking publication and comment period.

ON A MOTION BY: Commissioner Poklemba
APPROVED: 4-0

b. **Adoption: SGC-46-15-00004-P, To Require Claimant to Indicate on Claim Form Whether Commission at Claimant's Expense Shall Test a Claimed Horse for Drug Use**

The Commission considered adoption of a proposed regulation in relation to the cost and frequency of post-race testing of claimed horses to determine whether an impermissible drug or other substance was administered to the horse.

ON A MOTION BY: Commissioner Snyder
APPROVED: 4-0

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

The Commission considered adoption of a proposed regulation that would require specific minimum penalties for multiple medication violations.

ON A MOTION BY: Commissioner Sample
APPROVED: 4-0

d. **Adoption: SGC-48-15-00006-P, Per Se Thresholds and Related Rule Amendments for Cobalt, Ketoprofen, Isoflupredone and Albuterol**

The Commission considered adoption of a proposed regulation that would regulate the use of certain substances with *per se* thresholds and restricted time periods. Specifically, the proposal would add thresholds for albuterol and isoflupredone, lower the threshold for ketaprofen and establish two thresholds for cobalt.

ON A MOTION BY: Commissioner Poklemba
APPROVED: 4-0

5. Adjudications

- a. **In the Matter of Ben S. Joseph.** The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 4-0 vote, to modify the Hearing Officer's recommendation, sustaining the applicant's license suspension, but conditioning his return upon not failing any random drug and alcohol testing for a period of not less than one year following reinstatement.
- b. **In the Matter of Jerome Palumbo.** The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had remanded the case to the Hearing Officer to reconsider the record in light of the appropriate standard, preponderance of the evidence.
- c. **In the Matter of Roy Sedlacek.** The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 4-0 vote, to accept the Hearing Officer's recommendation.

6. Old Business/New Business

a. **Old Business.**

- (1) **Discussion of the Staff Report in Regard to Allegations Advanced by the People for the Ethical Treatment of Animals in Regard to the Practices of KDE Equine, LLC et al.** The Commission was provided a status report by staff on the nine regulatory measures for Commission consideration proposed in the Report. Equine Medical Director Scott Palmer and Assistant Counsel Rick Goodell outlined their communications with the racing industry regarding the proposals, the issues and concerns raised by the industry thus far and potential modifications to the proposals.
- (2) **Use of Whip Research.** The Commission considered research regarding the use of the whip in other jurisdiction and received a presentation regard whip use from Thomas M. Kennedy of Kennedy, Jennik & Murray, who serves as outside counsel to The Jockeys' Guild, Mindy Coleman, the Guild's general counsel and Jeff Johnston, a Regional Guild Manager.

b. **New Business.** No new business was offered for discussion.

7. **Scheduling of Next Meeting**

It was announced that the next meeting date would be February 22, 2015.

8. **Adjournment**

The meeting was adjourned at 2:25 p.m.

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Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

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

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

To: Commissioners

From: Edmund C. Burns

Date: February 10, 2016

Re: Adoption of Proposed Rulemaking on Lottery Subscriptions
(amendments to 9 NYCRR §§ 5005.1, 5005.2, 5005.3, 5005.4, 5005.5, 5005.6, 5005.7 and 5005.8)

For the Commission's consideration for adoption are the proposed revisions to the Commission's lottery rules that regulate lottery subscriptions.

The Commission proposed this rulemaking on September 9, 2013. The proposal was published in the December 30, 2015 *State Register*. A copy of that notice is attached. The public comment period ends on February 16, 2016. No comments have been received to date. Staff will advise the Commission if any comments are received.

The amendments would update the subscription program by allowing the use of newer technologies and addressing limitations imposed by older, outdated processes. These proposed revisions would:

- allow a paper or electronic application;
- make the provision of a Social Security number optional;
- eliminate the requirement that a group application contain the names, addresses and Social Security numbers of each group member;
- make the 10-member maximum group size apply only to mail applications;
- modify the definition of a group to mean two or more individuals whose combined qualifications meet that of an individual subscriber;
- make the requirement of New York State address applicable to mail applications only;
- make subscription prizes that are less than the threshold amount for Federal tax reporting payable to a credit account, which may be used to purchase additional wagers or may be cashed out;

- eliminate a 12-day-lead-time requirement for renewals; and
 - make other technical and clarifying amendments
- 

attachments

cc: Robert Williams, Executive Director
Gardner Gurney, Director, Division of Lottery

ment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lottery Subscription Program

I.D. No. SGC-52-15-00005-P

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

Proposed Action: This rule is proposed pursuant to 5-Year Review of Existing Rules. Amendment of sections 5005.1(b), (c), 5005.2(b), 5005.3(b), 5005.4, 5005.5, 5005.6, 5005.7 and 5005.8 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 104; Tax Law, sections 1601, 1604, 1612 and 1617

Subject: Lottery subscription program.

Purpose: To better serve customers needs and preferences.

Text of proposed rule: Subdivisions (b) and (c) of section 5005.1 are amended to read as follows:

§ 5005.1. Subscription program.

(b) Entry into a subscription program will require the completion and submission of either a paper or electronic version of

- (1) a subscription application form; or
- (2) a subscription renewal [application] form.

The subscriber may [be required to] provide the subscriber's social security number on the respective application form so that prizes requiring Federal reporting or withholding may be automatically sent to the winning subscriber. An application for a group subscription [may] must contain the names[,] and addresses[,] and social security numbers] of each group member.

(c) By providing the social security number, the subscriber is authorizing the commission to retain and use the number for the purpose of tax reporting and any other lawful purpose of the commission. No group may exceed 10 members if such group's application was made by mail.

Subdivisions (b), (e), (g), (h), (i), (k), (l), (n), (p) and (q) of section 5005.2 are amended to read as follows:

§ 5005.2. Subscription definitions.

(b) Confirmation [letter] means the paper or electronic correspondence sent to a subscriber from the commission confirming the game(s), game characters for each game panel played, the type of plan, the effective date and the expiration date.

(e) Game numbers means the numbers selected for each of the game panels played on an application [form].

(g) Group means two or more individuals sharing a game subscription whose [individual] combined qualifications meet that of an individual subscriber.

(h) Group representative means the individual designated on a group application [form] as the person selected by the group subscribers to act on behalf of the group in handling any communications and prize payments related to the subscription.

(i) Plan means the game(s) played, the number of consecutive [games] drawings played and the duration of the subscription as determined by the number of weeks selected by the subscriber.

(k) Subscriber means either the individual or the group identified on an application [form] as the person(s) entitled to [the winning] any prize the individual or group may win.

(l) Subscriber identifying information means the name, address, subscription number and, taxpayer identification number (if provided) of the subscriber or each member of a group.

(n) Subscription file means a file maintained by the commission or the commission's contractors containing subscription information and used in the [prize] determination [process] of sales and prizes.

(p) Valid Subscription Entry means one that includes the following: Subscriber identifying information (as defined herein), [selected payment option,] game characters entered on the appropriate commission or contractor computer [file] system that is the official record of subscription entry.

(q) Valid Group Subscription Entry means one that includes the following: Subscriber identifying information for each member of the group, [selected payment option,] game numbers entered on the appropriate commission or contractor computer [file] system, which is the official record of group subscription entry.

Subdivision (b) of section 5005.3 is amended to read as follows:

§ 5005.3. Subscription costs.

(b) A subscription may be for one[, two, or three] or more game panels[, or a greater number of game panels] as may be determined by the commission.

Subdivisions (a) and (b) of section 5005.4 are amended to read as follows:

§ 5005.4. Subscription application requirements.

(a) To be accepted for entry without changes, a subscription application must meet the following requirements:

(1) Each game panel must contain the required amount of unduplicated game numbers selected from the numbers available for the game that the applicant indicates on his or her application [form]. If a game panel submitted by an applicant contains no game numbers or fewer than the required amount of game numbers, the Quick Pick option may be used to randomly select game numbers. If an applicant submits an application with more than the required amount of game numbers circled in a game panel, the commission may select the required number of game numbers consecutively from among such selected numbers. All other numbers may be disregarded.

(b) An application may be rejected for any of the following reasons:

- (1) If the application is illegible in whole or in part;
- (2) If the application includes a form of payment that is not acceptable to the commission;
- (3) If the applicant is under the age of 18; or
- (4) If the applicant does not submit a New York State address for a subscription submitted through the U.S. Mail.

Subdivisions (a) and (b) of section 5005.5 is amended to read as follows:

§ 5005.5. Valid subscription entry.

To be a valid entry, a subscription must meet the following requirements:

(a) To be eligible to win a prize, an application [form], including the subscriber identification information, [lump sum option (if selected),] and the game numbers must be entered into the Division's subscription file to create the official record of subscription entry.

(b) A confirmation [letter] (paper or electronic) shall be issued by the commission to the subscriber confirming a valid subscription entry has been received.

Subdivisions (a), (b), (c), (d), and (e) of section 5005.6 are amended to read as follows:

§ 5005.6. Payment of subscription prizes.

(a) Prizes that [exceed \$1 and] are less than the threshold withholding amount for Federal tax reporting will be [remitted to an] placed into the player account created prior to purchase of the player's first subscription. Such prizes may be used to purchase additional subscriptions or the player may request a cash-out and receive payment for any unpaid prizes. Payment will be made to the individual subscriber or group representative whose name appears on the application.

(b) Prizes that meet or exceed the threshold amount for Federal withholding for an individual will be remitted to the individual subscriber whose name appears on the application [form] minus the required withholding amount.

(c) Prizes that are greater than \$1 will be remitted to an individual subscriber whose name appears on the application form. Prizes equal to or less than \$1 will be credited to the subscriber's account to reduce the cost of subscription renewal, or in the event the subscriber chooses not to renew

such subscriber's subscription, the prize winning(s) in the account will be remitted to the subscriber.

(d) For payment of a prize that does not meet the threshold amount for Federal tax reporting to a group subscriber, payment will be made in one payment in the name of the group and the group representative as indicated on the application form, and remitted to the group representative.]

([e]/c) For payment of a prize that meets or exceeds the threshold amount for Federal withholding to a group subscriber, a payment representing [an equal] *the designated* share of the prize will be remitted to each individual member of the group. If the subscription or renewal application does not show the taxpayer identification number (social security number or Federal employer identification number) of each group member, the division will withhold appropriate income taxes in accordance with the applicable back-up withholding rules.

Subdivisions (c) section 5005.7 are amended to read as follows:

§ 5005.7. Subscription disputes.

(c) If there is a discrepancy between the information set forth on an application [form] and the information set forth in a confirmation letter, the subscriber may ask the commission, by written or electronic communication, to resolve the discrepancy. After such a report is received by the commission, the commission shall resolve the discrepancy as soon as possible and issue a revised confirmation letter. Resolution may include, but is not limited to, cancellation of the subscription. No change in the subscription shall be effective until a revised confirmation letter is issued. No request to resolve a discrepancy shall be accepted after the effective date in the confirmation letter issued.

Subdivisions (a) and (b) of section 5005.8 are amended to read as follows:

§ 5005.8. Subscription miscellaneous.

(a) [Furthermore, the] *The* commission, pursuant to the commission's statutory authority, may from time to time add games to the commission's subscription program [(including but not limited to Mega-Millions)].

(b) A subscription renewal must be processed [at least 12 business days] prior to the expiration date of a current subscription in order to avoid a lapse in the subscription. A renewal application [form] containing current subscription number, games, game numbers, plan, effective date and expiration date will be sent to the subscriber either electronically or by mail. The commission will make reasonable efforts to process renewal applications to assure no interruptions; however, the commission shall not be responsible for an interruption if a renewal application is not processed in sufficient time.

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

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

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

Five-Year Review of Existing Rules An assessment of public comments is not attached because no comments were received. Not applicable.

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law Sections 1601, 1604, 1612, and Racing, Pari-Mutuel Wagering and Breeding Law Section 104, the following amendments shall take effect upon publication in the State Register. Section 1601 of the Tax Law states the purpose of Article 34 of the Tax Law is to carry out the constitutional mandate to establish a lottery operated by the State. Section 1604 of the Tax Law provides for the Lottery's authority to promulgate rules and regulations governing the Lottery. Subdivision 19 of Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Gaming Commission to promulgate rules and regulations necessary to carry out its responsibilities.

2. Legislative objectives: The Lottery's purpose is to generate revenue for the support of education in the State through the operation of Lottery games. Amendment of these regulations forwards such purpose by better reflecting player preferences and updating the regulations to reflect use of electronic mediums.

3. Needs and benefits: The Division of Lottery offers a subscription program, which permits a customer to play the same number selections for a period of consecutive drawings over a set period. The proposed revision to the regulations will better serve customer needs and preferences and reflect the use of electronic technology. The revisions include: paper or electronic applications; eliminate the requirement that a group application contain the names, addresses and social security numbers of each group member; make 10-member maximum group size apply only to mail applications; modify definition of group to mean two or more individuals

whose combined qualifications meet that of an individual subscriber; make requirement of NYS address applicable to applications sent by postal mail; make subscription prizes that are less than the threshold amount for Federal tax reporting payable to a credit account, which may be used to purchase additional wagers or may be cashed out; eliminate 12 -day-lead time for renewals; and various technical changes.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing subscription program are expected to be sufficient to support these amendments.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations which duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending the subscription regulations is to continue the currently effective subscription program regulations and prevent the Lottery from providing greater convenience to its players and updating the regulations to reflect use of electronic mediums.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the Federal government.

10. Compliance schedule: The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

Rural Area Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Manner in Which Prize Payments Are Made

I.D. No. SGC-52-15-00006-P

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

Proposed Action: This rule is proposed pursuant to 5-Year Review of Existing Rules. Amendment of section 5002.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 104; Tax Law, sections 1601, 1604, 1612 and 1617

Subject: Manner in which prize payments are made.

Purpose: To better reflect customer and retailer preferences and the administrative needs of the Commission.

Text of proposed rule: Section 5002.5 is amended to read as follows:

§ 5002.5. Manner of payment.

(a) [Cash payment.]

[(1) A prize payable on a winning instant game ticket having a value of \$25 or less may be obtained in cash from the lottery sales agent who sold the ticket.]

[(2) A prize payable on a winning instant game ticket having a value of \$100 may be obtained in cash from any lottery sales agent.]

[(3) A prize payable on a winning computerized game ticket having a



Gaming Commission

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John A. Crotty, Commissioner

Peter J. Moschetti, Jr.,

Commissioner

John J. Poklemba, Commissioner

Barry Sample, Commissioner

Todd R. Snyder, Commissioner

Robert Williams, Executive Director

Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: February 10, 2016

Re: Adoption of Proposed Rulemaking on Lottery Prize Payment Manner
(amendment to 9 NYCRR § 5002.5)

For the Commission's consideration for adoption are the proposed revisions to the Commission's lottery rules that regulate the manner of lottery prize payments.

The Commission proposed this rulemaking on September 9, 2013. The proposal was published in the December 30, 2015 *State Register*. A copy of that notice is attached. The public comment period ends on February 16, 2016. No comments have been received to date. Staff will advise the Commission if any comments are received.

The amendments would add flexibility in the manner in which lottery prize payments are made. Current regulations are inconsistent, differing among ticket formats. This rule proposal would simplify payment and allow the Commission to offer alternative means of payment. Under the proposal, prizes of \$600 or less would be paid at retailer locations or Commission offices. If those participating in the lottery subscription program win a prize, the prize would be credited to the subscription account if the prize were \$600 or less or would be paid by check or alternative method of payment if the prize exceeded \$600.

attachment

cc: Robert Williams, Executive Director
Gardner Gurney, Director, Division of Lottery

such subscriber's subscription, the prize winning(s) in the account will be remitted to the subscriber.

(d) For payment of a prize that does not meet the threshold amount for Federal tax reporting to a group subscriber, payment will be made in one payment in the name of the group and the group representative as indicated on the application form, and remitted to the group representative.]

([e]/c) For payment of a prize that meets or exceeds the threshold amount for Federal withholding to a group subscriber, a payment representing [an equal] *the designated* share of the prize will be remitted to each individual member of the group. If the subscription or renewal application does not show the taxpayer identification number (social security number or Federal employer identification number) of each group member, the division will withhold appropriate income taxes in accordance with the applicable back-up withholding rules.

Subdivisions (c) section 5005.7 are amended to read as follows:

§ 5005.7. Subscription disputes.

(c) If there is a discrepancy between the information set forth on an application [form] and the information set forth in a confirmation letter, the subscriber may ask the commission, by written or electronic communication, to resolve the discrepancy. After such a report is received by the commission, the commission shall resolve the discrepancy as soon as possible and issue a revised confirmation letter. Resolution may include, but is not limited to, cancellation of the subscription. No change in the subscription shall be effective until a revised confirmation letter is issued. No request to resolve a discrepancy shall be accepted after the effective date in the confirmation letter issued.

Subdivisions (a) and (b) of section 5005.8 are amended to read as follows:

§ 5005.8. Subscription miscellaneous.

(a) [Furthermore, the] *The* commission, pursuant to the commission's statutory authority, may from time to time add games to the commission's subscription program [(including but not limited to Mega-Millions)].

(b) A subscription renewal must be processed [at least 12 business days] prior to the expiration date of a current subscription in order to avoid a lapse in the subscription. A renewal application [form] containing current subscription number, games, game numbers, plan, effective date and expiration date will be sent to the subscriber either electronically or by mail. The commission will make reasonable efforts to process renewal applications to assure no interruptions; however, the commission shall not be responsible for an interruption if a renewal application is not processed in sufficient time.

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

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

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

Five-Year Review of Existing Rules An assessment of public comments is not attached because no comments were received. Not applicable.

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law Sections 1601, 1604, 1612, and Racing, Pari-Mutuel Wagering and Breeding Law Section 104, the following amendments shall take effect upon publication in the State Register. Section 1601 of the Tax Law states the purpose of Article 34 of the Tax Law is to carry out the constitutional mandate to establish a lottery operated by the State. Section 1604 of the Tax Law provides for the Lottery's authority to promulgate rules and regulations governing the Lottery. Subdivision 19 of Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Gaming Commission to promulgate rules and regulations necessary to carry out its responsibilities.

2. Legislative objectives: The Lottery's purpose is to generate revenue for the support of education in the State through the operation of Lottery games. Amendment of these regulations forwards such purpose by better reflecting player preferences and updating the regulations to reflect use of electronic mediums.

3. Needs and benefits: The Division of Lottery offers a subscription program, which permits a customer to play the same number selections for a period of consecutive drawings over a set period. The proposed revision to the regulations will better serve customer needs and preferences and reflect the use of electronic technology. The revisions include: paper or electronic applications; eliminate the requirement that a group application contain the names, addresses and social security numbers of each group member; make 10-member maximum group size apply only to mail applications; modify definition of group to mean two or more individuals

whose combined qualifications meet that of an individual subscriber; make requirement of NYS address applicable to applications sent by postal mail; make subscription prizes that are less than the threshold amount for Federal tax reporting payable to a credit account, which may be used to purchase additional wagers or may be cashed out; eliminate 12 -day-lead time for renewals; and various technical changes.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing subscription program are expected to be sufficient to support these amendments.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations which duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending the subscription regulations is to continue the currently effective subscription program regulations and prevent the Lottery from providing greater convenience to its players and updating the regulations to reflect use of electronic mediums.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the Federal government.

10. Compliance schedule: The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

Rural Area Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal amends the subscription regulations in the interest of customer convenience and preferences; and to recognize electronic technology.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Manner in Which Prize Payments Are Made

I.D. No. SGC-52-15-00006-P

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

Proposed Action: This rule is proposed pursuant to 5-Year Review of Existing Rules. Amendment of section 5002.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 104; Tax Law, sections 1601, 1604, 1612 and 1617

Subject: Manner in which prize payments are made.

Purpose: To better reflect customer and retailer preferences and the administrative needs of the Commission.

Text of proposed rule: Section 5002.5 is amended to read as follows:

§ 5002.5. Manner of payment.

(a) [Cash payment.]

[(1) A prize payable on a winning instant game ticket having a value of \$25 or less may be obtained in cash from the lottery sales agent who sold the ticket.]

[(2) A prize payable on a winning instant game ticket having a value of \$100 may be obtained in cash from any lottery sales agent.]

[(3) A prize payable on a winning computerized game ticket having a

value of up to and including \$600 may be obtained in cash from any lottery sales agent participating in the computer network from which such ticket was sold.]

[(b) Check payment.]

[(1) Any prize over \$600 shall be payable only by check.]

[(2)] Any prize may be claimed by mailing a completed prize claim form to the commission at the address announced by the commission for such purpose. [Any prize paid by mail shall be payable only by check.]

(b) [(3)] Any prize paid at an office of the commission, or by an agent designated by the commission to pay prizes of more than \$600 each on behalf of the commission, shall be [payable only] paid by check or by any alternative method of payment determined by the commission (such as a commission-issued debit card).

(c) Any prize of \$600 or less may be claimed at any lottery retailer location and the prize shall be paid in cash or by any alternative method of payment determined by the commission (such as a commission-issued debit card). Any prize of more than \$600 must be claimed directly from the commission or an agent designated by the commission, pursuant to subdivisions (a) or (b) of this Part.

(d) [(4)] Any [lotto subscription] prize won by a subscriber through a subscription pursuant to Part 5005 of this Chapter shall be payable [only by check] as follows:

(1) by check or alternative method of payment determined by the commission (such as a commission-issued debit card), if the prize is more than \$600; or

(2) the prize amount shall be made available in the subscriber's player account, if the prize is \$600 or less.

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

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

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

Five-Year Review of Existing Rules An assessment of public comments is not attached because no comments were received. Not applicable.

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law Sections 1601, 1604, 1612, and Racing, Pari-Mutuel Wagering and Breeding Law Section 104, the following amendments shall take effect upon publication in the State Register. Section 1601 of the Tax Law states the purpose of Article 34 of the Tax is to carry out the constitutional mandate to establish a lottery operated by the State. Section 1604 of the Tax Law provides for the Lottery's authority to promulgate rules and regulations governing the Lottery. Subdivision 19 of Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Gaming Commission to promulgate rules and regulations necessary to carry out its responsibilities.

2. Legislative objectives: The Lottery's purpose is to generate revenue for the support of education in the State through the operation of Lottery games. Amendment of these regulations forwards such purpose by offering alternative means of prize payment to players in the interest of player convenience.

3. Needs and benefits: The Division of Lottery proposes amendments to its regulations to add flexibility in the manner in which prize payments are made and to bring consistency to prize payments provisions for instant games and draw games. The amendments would simplify the rules and allow the Commission in the future to offer an alternative means of payment, such as debit card. Prizes won by those participating in the Lottery subscription program would be credited to the subscription account for future subscription purchases or remitted to the subscriber at his or her request, if the prize was less than the threshold withholding amount for Federal tax reporting.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the Lottery and the manner in which prize payments are made are expected to be sufficient to support these amendments.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations which duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending these prize payment regulations is to continue the current prize payment methods and prevent the Lottery from providing greater convenience to its players and better serve player needs and preferences.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by Federal government.

10. Compliance schedule: The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

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

Prohibiting the Administration of Stanozolol to Racehorses

I.D. No. SGC-52-15-00007-P

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

Proposed Action: Amendment of sections 4043.15 and 4120.12 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

Subject: Prohibiting the administration of stanozolol to racehorses.

Purpose: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text of proposed rule: Section 4043.15 of 9 NYCRR would be amended as follows:

§ 4043.15. Anabolic steroids.

(a) Anabolic steroids shall not be administered except [that the] as permitted by subdivision (d) of this section. A violation of this section may be established by a finding by the laboratory conducting tests for the commission that an anabolic steroid was present in a blood sample taken from such horse, except for the following substances [may be administered during permitted time frames and] at concentrations that [on race day] are less than these thresholds:

* * *

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

[(4)] (3) Testosterone:

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

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

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

* * *

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

* * *

Section 4120.12 of 9 NYCRR would be amended as follows:

§ 4120.12. Anabolic steroids.

(a) Anabolic steroids shall not be administered except [that the] as permitted by subdivision (d) of this section. A violation of this section may be established by a finding by the laboratory conducting tests for the com-



Gaming Commission

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

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

To: Commissioners

From: Edmund C. Burns

Date: February 10, 2016

Re: Adoption of Proposed Rulemaking to Ban the Use of Stanozolol
(9 NYCRR §§ 4043.15 and 4120.12)

For Commission's consideration for adoption are the proposed revisions to the Commission's horse racing rules that strictly regulate the use of anabolic steroids in racehorses.

The Commission proposed this rulemaking on September 24, 2015. The proposal was published in the December 30, 2015 *State Register*. A copy of that notice is attached.

These proposed revisions would discontinue the permissive presence at threshold amounts of stanozolol, the only anabolic steroid that is neither endogenous to a horse nor already banned by the Commission. This proposal phases out a permissible threshold amount, for the anabolic steroid stanozolol, that was initially included as an exception to the general ban on anabolic steroids only because of the long clearance time (many months) of this exogenous drug. As some horses may have been lawfully administered this drug well before racing, and comply with the current permissive threshold, staff recommends that the proposed ban on any amount of stanozolol be scheduled to take effect six months after the adoption of the rule change.

The public comment period ends on February 16, 2016. The Commission received one public comment to date with respect to the proposal. One veterinarian stated that stanozolol "is a useful tool in equine veterinary medicine" and that "[u]sed appropriately, it is a medicine. Used inappropriately, it is a drug." The commenter suggested that stanozolol should be allowed and that horses should be tested "for appropriate use." Staff will advise the Commission if any further comments are received.

This proposal, which is consistent with national rulemaking proposals and with the Commission's intended prohibition of any administration of an anabolic steroid to a horse that is actively racing, continues to permit the use of the endogenous anabolic steroids, which have a much shorter clearance time, to provide efficacious therapy while a horse is restricted from racing on the Veterinarian's List.



Commissioners
February 10, 2016
Page 2

attachments

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

value of up to and including \$600 may be obtained in cash from any lottery sales agent participating in the computer network from which such ticket was sold.]

[(b) Check payment.]

[(1) Any prize over \$600 shall be payable only by check.]

[(2)] Any prize may be claimed by mailing a completed prize claim form to the commission at the address announced by the commission for such purpose. [Any prize paid by mail shall be payable only by check.]

(b) [(3)] Any prize paid at an office of the commission, or by an agent designated by the commission to pay prizes of more than \$600 each on behalf of the commission, shall be [payable only] paid by check or by any alternative method of payment determined by the commission (such as a commission-issued debit card).

(c) Any prize of \$600 or less may be claimed at any lottery retailer location and the prize shall be paid in cash or by any alternative method of payment determined by the commission (such as a commission-issued debit card). Any prize of more than \$600 must be claimed directly from the commission or an agent designated by the commission, pursuant to subdivisions (a) or (b) of this Part.

(d) [(4)] Any [lotto subscription] prize won by a subscriber through a subscription pursuant to Part 5005 of this Chapter shall be payable [only by check] as follows:

(1) by check or alternative method of payment determined by the commission (such as a commission-issued debit card), if the prize is more than \$600; or

(2) the prize amount shall be made available in the subscriber's player account, if the prize is \$600 or less.

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

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

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

Five-Year Review of Existing Rules An assessment of public comments is not attached because no comments were received. Not applicable.

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law Sections 1601, 1604, 1612, and Racing, Pari-Mutuel Wagering and Breeding Law Section 104, the following amendments shall take effect upon publication in the State Register. Section 1601 of the Tax Law states the purpose of Article 34 of the Tax is to carry out the constitutional mandate to establish a lottery operated by the State. Section 1604 of the Tax Law provides for the Lottery's authority to promulgate rules and regulations governing the Lottery. Subdivision 19 of Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Gaming Commission to promulgate rules and regulations necessary to carry out its responsibilities.

2. Legislative objectives: The Lottery's purpose is to generate revenue for the support of education in the State through the operation of Lottery games. Amendment of these regulations forwards such purpose by offering alternative means of prize payment to players in the interest of player convenience.

3. Needs and benefits: The Division of Lottery proposes amendments to its regulations to add flexibility in the manner in which prize payments are made and to bring consistency to prize payments provisions for instant games and draw games. The amendments would simplify the rules and allow the Commission in the future to offer an alternative means of payment, such as debit card. Prizes won by those participating in the Lottery subscription program would be credited to the subscription account for future subscription purchases or remitted to the subscriber at his or her request, if the prize was less than the threshold withholding amount for Federal tax reporting.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the Lottery and the manner in which prize payments are made are expected to be sufficient to support these amendments.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations which duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending these prize payment regulations is to continue the current prize payment methods and prevent the Lottery from providing greater convenience to its players and better serve player needs and preferences.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by Federal government.

10. Compliance schedule: The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal amends prize payment regulations in the interest of customer convenience and preferences.

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

Prohibiting the Administration of Stanozolol to Racehorses

I.D. No. SGC-52-15-00007-P

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

Proposed Action: Amendment of sections 4043.15 and 4120.12 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

Subject: Prohibiting the administration of stanozolol to racehorses.

Purpose: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text of proposed rule: Section 4043.15 of 9 NYCRR would be amended as follows:

§ 4043.15. Anabolic steroids.

(a) Anabolic steroids shall not be administered except [that the] as permitted by subdivision (d) of this section. A violation of this section may be established by a finding by the laboratory conducting tests for the commission that an anabolic steroid was present in a blood sample taken from such horse, except for the following substances [may be administered during permitted time frames and] at concentrations that [on race day] are less than these thresholds:

* * *

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

[(4)] (3) Testosterone:

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

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

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

* * *

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

* * *

Section 4120.12 of 9 NYCRR would be amended as follows:

§ 4120.12. Anabolic steroids.

(a) Anabolic steroids shall not be administered except [that the] as permitted by subdivision (d) of this section. A violation of this section may be established by a finding by the laboratory conducting tests for the com-

mission that an anabolic steroid was present in a blood sample taken from such horse, except for the following substances [may be administered during permitted time frames and] at concentrations that [on race day] are less than these thresholds:

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

[(4)] (3) Testosterone:
 (i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 2,000 pg/ml in plasma.
 [(5)] (4) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19), 301(1, 2) and 902(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and is directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public's confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

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

3. Needs and benefits. This rule making is necessary to prohibit the administration of the anabolic steroid stanozolol to race horses, such that the presence of only endogenous anabolic steroids will be permitted under the Commission's rules, in order to enhance the safety and integrity of horse racing.

The current rule that strictly regulates the presence of anabolic steroids in racehorses permits the presence of three endogenous substances, which occur naturally in horses, and one exogenous substance that is present only when administered to a horse. See 9 NYCRR §§ 4043.15 (thoroughbred) and 4120.12 (harness). This rule provides a threshold concentration for the three endogenous anabolic steroids, to distinguish the naturally occurring level of such substances from illegal supplemental administrations. This rule also provides a threshold concentration for stanozolol, an exogenous substance, with a threshold that was included originally in such rule because stanozolol persists in the horse's bodily system for several months. The Commission did not want to exclude from racing the racehorses that had been lawfully treated with stanozolol before the adoption of this regulation.

This proposal would discontinue the permissive presence at threshold amounts of stanozolol, the only anabolic steroid that is neither endogenous to a horse nor already banned by the Commission. The proposal would phase out the permissive threshold for stanozolol with an effective date of six months after the final adoption of this rule making proposal. As some horses may have been lawfully administered this drug well before racing, and in compliance with the current permissive threshold, staff recommends that the proposed ban on any amount of stanozolol be scheduled to take effect in this manner to avoid excluding horses whose owners and trainers had treated the horse in compliance with existing rules.

This proposal is consistent with national rulemaking proposals and with the Commission's intended prohibition of any administration of an anabolic steroid to a horse that is actively racing.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. There is no cost caused to the regulated parties by not administering the anabolic steroid stanozolol.

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

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

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

6. Paperwork: There will be no additional paperwork.

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

8. Alternatives: The Commission considered not eliminating the permissive stanozolol threshold but rejected this because no purpose is served by not phasing out the undesirable practice of intentionally administering this drug.

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

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

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

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

This proposal would discontinue the permissive presence at threshold amounts of the drug stanozolol, the only anabolic steroid that is neither endogenous to a racehorse nor already banned by the Commission. There is no valid reason to administer this substance to a healthy racehorse, and there are better alternatives that are permitted for horses that are sick or injured. As some horses may have been lawfully administered this drug in compliance with the current permissive threshold, and the drug does not dissipate for several months, the proposed ban will take effect six months after the adoption of the rule change.

This rule will serve to enhance the health and safety of racehorses and the integrity of racing. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Suspension and Revocation of a Lottery Agent's License

I.D. No. SGC-52-15-00008-P

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

Proposed Action: Amendment of section 5001.19 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19); Tax Law, sections 1601, 1604, 1605 and 1607

Subject: Suspension and revocation of a lottery agent's license.

Purpose: To revise the rules for the procedure and grounds for suspension and revocation of a lottery license for sales agents.

Text of proposed rule: Section 5001.19 of Title 9 of the NYCRR is amended to read as follows:

§ 5001.19. Suspension and revocation of license.

(a) At the discretion of the commission, the agent's license may be suspended or revoked or have such license renewal rejected for any of the reasons set forth in section 1607 of the Tax Law or for any of the following reasons, or any combination thereof:

[(1) failure to account for lottery tickets received or the proceeds of lottery tickets or failure to comply with instructions of the commission concerning licensed activity;]



Gaming Commission

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John A. Crotty, Commissioner

Peter J. Moschetti, Jr.,

Commissioner

John J. Poklemba, Commissioner

Barry Sample, Commissioner

Todd R. Snyder, Commissioner

Robert Williams, Executive Director

Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: February 10, 2016

Re: Adoption of Proposed Rulemaking on Grounds for Suspension and Revocation of Lottery License (amendment to 9 NYCRR § 5001.19)

For the Commission's consideration for adoption are the proposed revisions to the Commission's lottery rules that regulate the grounds for suspension and revocation of lottery sale agent licenses.

The Commission proposed this rulemaking on November 24, 2014. The proposal was published in the December 30, 2015 *State Register*. A copy of that notice is attached.

Current regulations require a sales agent, as a condition of licensing, to comply with the licensing agreement and any rules, regulations, procedures, policies and instructions promulgated or issued by the commission. 9 NYCRR § 5001.10(a). The lottery sales agent license agreement contains an obligation of the agent to achieve the level of sales required by the lottery. Thus, maintaining sufficient sales is currently a condition of licensing. The proposed amendments would make explicit that failure to meet such obligations is a grounds for suspension or revocation of a sales agent license. The amendments would add other grounds for suspension or revocation, including violation of the licensing agreement, violation of the conditions of licensing and noncooperation with or frustration of a Commission investigation.

To protect the sales agent, the amendments would require the Commission to notify the sales agent of a sales deficiency in writing and set forth a time in which the sales agent could show satisfactory improvement. The amendment would also allow the sales agent to raise, as an affirmative defense to a suspension or revocation based on insufficient sales, that the agent's sales performance is reasonably excused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate. Examples are extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances. Other revisions are proposed to eliminate duplication of statute, align the provisions for winding up terminated sales agent licenses with preferred practice and make stylistic changes.

The public comment period ends on February 16, 2016. One comment was received to date. The New York Association of Convenience Stores urges the Commission to add "actions by state and

local governments” to the list of enumerated unforeseen circumstances that might be grounds for an affirmative defense by a sales agent. The Association explains that government action, such as allowing nearby gaming facilities, road construction and increased taxes on items offered at convenience stores might drive patronage down in ways in which a store owner might not be able to mitigate. The Association also urges removing the requirement for a sales agent to take reasonable steps to mitigate.

Staff believes that the proposed language, which includes “other events or circumstances” among the enumerated factors beyond the sales agent’s control provides sufficiently broad language to cover exceptional circumstances and allow a sales agent challenging a suspension or revocation on such grounds the ability to state the sales agent’s case. Staff recommends not eliminating the duty to mitigate. The scope of a duty to mitigate will vary with the fact-specific circumstances, but eliminating a mitigation requirement would allow a sales agent to be not diligent in using best sales efforts in the wake of an unforeseen circumstance (such as a severe weather event), contrary to the policy goals of maintaining a robust sales culture.

Staff will advise the Commission if any further comments are received.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
Gardner Gurney, Director, Division of Lottery

mission that an anabolic steroid was present in a blood sample taken from such horse, except for the following substances [may be administered during permitted time frames and] at concentrations that [on race day] are less than these thresholds:

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

[(4)] (3) Testosterone:
 (i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 2,000 pg/ml in plasma.
 [(5)] (4) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19), 301(1, 2) and 902(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and is directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public's confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

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

3. Needs and benefits. This rule making is necessary to prohibit the administration of the anabolic steroid stanozolol to race horses, such that the presence of only endogenous anabolic steroids will be permitted under the Commission's rules, in order to enhance the safety and integrity of horse racing.

The current rule that strictly regulates the presence of anabolic steroids in racehorses permits the presence of three endogenous substances, which occur naturally in horses, and one exogenous substance that is present only when administered to a horse. See 9 NYCRR §§ 4043.15 (thoroughbred) and 4120.12 (harness). This rule provides a threshold concentration for the three endogenous anabolic steroids, to distinguish the naturally occurring level of such substances from illegal supplemental administrations. This rule also provides a threshold concentration for stanozolol, an exogenous substance, with a threshold that was included originally in such rule because stanozolol persists in the horse's bodily system for several months. The Commission did not want to exclude from racing the racehorses that had been lawfully treated with stanozolol before the adoption of this regulation.

This proposal would discontinue the permissive presence at threshold amounts of stanozolol, the only anabolic steroid that is neither endogenous to a horse nor already banned by the Commission. The proposal would phase out the permissive threshold for stanozolol with an effective date of six months after the final adoption of this rule making proposal. As some horses may have been lawfully administered this drug well before racing, and in compliance with the current permissive threshold, staff recommends that the proposed ban on any amount of stanozolol be scheduled to take effect in this manner to avoid excluding horses whose owners and trainers had treated the horse in compliance with existing rules.

This proposal is consistent with national rulemaking proposals and with the Commission's intended prohibition of any administration of an anabolic steroid to a horse that is actively racing.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. There is no cost caused to the regulated parties by not administering the anabolic steroid stanozolol.

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

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

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

6. Paperwork: There will be no additional paperwork.

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

8. Alternatives: The Commission considered not eliminating the permissive stanozolol threshold but rejected this because no purpose is served by not phasing out the undesirable practice of intentionally administering this drug.

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

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

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

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

This proposal would discontinue the permissive presence at threshold amounts of the drug stanozolol, the only anabolic steroid that is neither endogenous to a racehorse nor already banned by the Commission. There is no valid reason to administer this substance to a healthy racehorse, and there are better alternatives that are permitted for horses that are sick or injured. As some horses may have been lawfully administered this drug in compliance with the current permissive threshold, and the drug does not dissipate for several months, the proposed ban will take effect six months after the adoption of the rule change.

This rule will serve to enhance the health and safety of racehorses and the integrity of racing. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Suspension and Revocation of a Lottery Agent's License

I.D. No. SGC-52-15-00008-P

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

Proposed Action: Amendment of section 5001.19 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19); Tax Law, sections 1601, 1604, 1605 and 1607

Subject: Suspension and revocation of a lottery agent's license.

Purpose: To revise the rules for the procedure and grounds for suspension and revocation of a lottery license for sales agents.

Text of proposed rule: Section 5001.19 of Title 9 of the NYCRR is amended to read as follows:

§ 5001.19. Suspension and revocation of license.

(a) At the discretion of the commission, the agent's license may be suspended or revoked or have such license renewal rejected for any of the reasons set forth in section 1607 of the Tax Law or for any of the following reasons, or any combination thereof:

[(1) failure to account for lottery tickets received or the proceeds of lottery tickets or failure to comply with instructions of the commission concerning licensed activity;]

[(2) conviction of any offense as defined in the Penal Law;]

[(3)](1) failure to file any returns or reports or to keep records or to pay any fee or tax as may be required by this Part [in or pursuant to the acts];

[(4) fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the Lottery;]

[(5) failure to furnish a surety or other bond in such amount as may be required by the commission;]

[(6) the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, and public convenience is adequately served by other licensees;]

[(7)](2) a material change since issuance of the license with respect to any matter required to be considered by the commission as provided in [either the acts or] this Part;

(3) *failure to sell a sufficient number of lottery tickets required by the licensing agreement between the agent and the commission, when the commission has notified the agent of such insufficiency in writing and the agent fails to make satisfactory improvements, in the discretion of the commission, within the time set forth in the notice of insufficiency;*

[(8)](4) [when the agent violates] *violation of any of the provisions of the acts, rules and regulations of the [division] commission, the licensing agreement between the agent and the commission or any of the conditions of licensing set forth in section 5000.10 of this Part, or failure to follow procedures, policies or instructions of the commission;*

[(9)](5) [whenever] *failure of the agent [does not] to display commission point-of-sale material in a manner readily available to the public;*

[(10)](6) [whenever] *finding by the commission [finds] that the agent's experience, character[,] and general fitness are such that the agent's participation as a lottery sales agent is inconsistent with public interest or convenience or for any other reason within the discretion of the commission; [or]*

[(11)](7) *failure to notify the commission, in writing, within a reasonable time of any arrest, indictment, or service of a summons, or conviction for any felony whether within or without the State of New York, or within or without the United States, occurring during the term of the license or the renewal thereof; or*

(8) *failure to cooperate with an investigation of the commission, attempt to frustrate or obstruct such an investigation or provision of false or misleading information to the commission during the course of such an investigation.*

(b) *An agent may establish, as an affirmative defense to a suspension or revocation based upon insufficient sales, whether under paragraph (3) of subdivision (a) of this section or otherwise, that such agent's failure to sell a sufficient number of tickets was caused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate, such as extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances and that nevertheless, despite such mitigation, reasonably excuse such agent's sales performance.*

(c) *If the commission orders the temporary suspension of a sales agent's license pending any prosecution, investigation or hearing, the sales agent shall permit the commission to retrieve lottery equipment, tickets and other material provided by the commission that may be in the sales agent's possession. Failure to cooperate in the commission's retrieval effort shall constitute separate grounds for suspension or revocation of the sales agent's license. A sales agent under a temporary suspension shall continue to remit amounts owed to the commission when required during such temporary suspension.*

[(b)](d) Upon termination of an agent's license for any reason, the agent shall [go to the agent's assigned bank on a date designated by the commission for the purpose of rendering the agent's final lottery accounting. Surrender] *comply with the commission's instructions in regard to payment of remaining amounts owed by the agent and surrender of the agent's license, lottery equipment, tickets and other material provided by the commission [shall be as prescribed by the commission. Upon failure of any agent to settle such agent's accounts on or before the designated date,]. If the agent fails to comply with such instructions, the commission may take steps to impose such penalties and exercise such enforcement powers as may be provided for by law, including referral of the debt for collection or further action. The sales agent may be liable in the amount of the debt, plus any collection costs, penalties, interest and attorney fees to which the commission may be entitled.*

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

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

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

Regulatory Impact Statement

1. **Statutory authority:** The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601, 1604, 1605 and 1607, and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1605 authorizes the licensing of lottery sales agents and sets forth criteria for licensing, while Tax Law Section 1607 establishes that a lottery license may be suspended or revoked.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. **Legislative objectives:** To refine a current rule that sets forth grounds for suspension and revocation of a lottery sales agent license.

3. **Needs and benefits:** This rulemaking will refine 9 NYCRR Section 5001.19 of the Commission's regulations, which sets forth grounds for suspension and revocation of licenses issued to lottery sales agents. Amendments to Section 5001.19 are proposed to eliminate duplication of Tax Law Section 1607, to make non-substantive and stylistic corrections to the text of the rule and to make explicit additional grounds for suspension or revocation of a sales agent license. Overall, the rulemaking will benefit sales agents by providing a more complete and detailed description of the grounds for license suspension and revocation, which the Commission hopes will limit the instances in which agents engage in such conduct. By clarifying the Commission's authority to discipline agents under such circumstances, the Commission's ability to suspend or revoke the license of an unsuitable agent is also improved.

The amendments will revise Section 5001.19 of the Commission's regulations to provide that an agent's failure to meet minimally acceptable sales levels as determined by the Commission for that particular agent is grounds for suspension or revocation of the agent's license. Section 5001.10(a) of the Commission's current regulations requires a sales agent, as a condition of licensing, to comply with the licensing agreement and any rules, regulations, procedures, policies and instructions promulgated or issued by the Commission. The lottery sales agent licensing agreement contains an obligation of the agent to achieve the level of sales required by the Commission. Thus, maintaining sufficient sales is currently a condition of licensing. The proposed amendments would make explicit that failure to meet this condition is grounds for suspension or revocation of an agent license.

To protect the sales agent, the amendments would require the Commission to notify the sales agent of a sales deficiency in writing and set forth a time in which the sales agent could show satisfactory improvement. The amendment would also allow the sales agent to raise, as an affirmative defense to a suspension or revocation based on insufficient sales, that the agent's sales performance is reasonably excused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate. Examples are extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances.

The amendments also make explicit a rule that failure to cooperate with an investigation of the Gaming Commission, or any attempt to frustrate or obstruct an investigation by the Gaming Commission, is grounds for suspension or revocation. This amendment is necessary to ensure that sales agents cooperate with investigations conducted by the Commission to ensure the highest integrity of sales agents and lottery games.

New subdivision (c) of Section 5001.19 incorporates an existing provision of the sales agent licensing agreement requiring the agent to allow the Commission to retrieve lottery equipment, tickets and other material provided by the Commission that may be in the agent's possession if the Commission orders the temporary suspension of the sales agent's license pending any prosecution, investigation or hearing. The rule will require a sales agent under temporary suspension to continue to remit amounts owed to the Commission when required during such temporary suspension. Subdivision (c) will also provide that failure to cooperate in the Commission's retrieval effort shall constitute separate grounds for suspension or revocation of the agent's license. These provisions will limit loss of revenue resulting from the Commission's inability to recover amounts owed by the agent, lottery tickets, equipment or signage that can be used by other sales agents.

Revised subdivision (d) of Section 5001.19 updates procedures for winding up terminated sales agent licenses to align such procedures with

preferred practice. Upon termination of an agent's license for any reason, the rule will require the agent to comply with the commission's instructions in regard to payment of remaining amounts owed by the agent and surrender of the agent's license, lottery equipment, tickets and other material provided by the commission. Revised subdivision (d) will further state that the Commission may take steps to impose penalties and exercise enforcement powers as may be provided for by law, including referral of the debt for collection. The sales agent may be liable in the amount of the debt, plus any collection costs, penalties, interest and attorney fees to which the Commission may be entitled. Therefore, this rule decreases the risk of lost revenue when an agent's license is revoked.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. A lottery sales agent is already required, as a condition of licensing, to comply with the licensing agreement and the Commission's instructions regarding licensed activity. This rulemaking will make explicit the Commission's authority to suspend or revoke an agent that violates such conditions of licensing.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Commission's experience operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: No other alternatives were considered.

9. Federal standards: There are no relevant standards imposed by the federal government.

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

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

This rulemaking will make explicit the Commission's authority to suspend or revoke the license of an agent that violates existing conditions of licensing. While an agent is required to achieve the level of sales required by the Commission for such agent, the amendments are helpful to small businesses that hold lottery licenses because the Commission will be required to notify an underperforming sales agent of any sales deficiency in writing and set forth a reasonable time in which the sales agent can show satisfactory improvement. The revised regulation will permit a small business facing possible disciplinary action for sales deficiency to argue that its performance is reasonably excused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate. Overall, the rulemaking will benefit sales agents, including small businesses, by providing a more complete and detailed description of the grounds for license suspension and revocation, which the Commission hopes will limit the instances in which agents engage in such conduct. There will be no new reporting, record keeping or other compliance requirements imposed upon small businesses or local governments or rural areas. The proposed rulemaking will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rule making.

Department of Health

EMERGENCY RULE MAKING

Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

I.D. No. HLT-52-15-00004-E

Filing No. 1068

Filing Date: 2015-12-10

Effective Date: 2015-12-10

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

Action taken: Amendment of Parts 487 and 488 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a--460-g, 461 and 461-a--461-h

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations, as a "state oversight agency" of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center Chapter 501 which took effect on June 30, 2013, and the Justice Center becomes operational.

Among the facilities covered by Chapter 501 are adult homes and enriched housing programs having a capacity of eighty or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the mental hygiene law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds. Given the effective date of Chapter 501, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such adult homes and enriched housing programs for an additional period likely extending several months. Absent emergency promulgation, such persons would be denied initial coordinated protections for several additional months, creating an unacceptable risk to residents. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will be implemented subsequently, as required by the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to Sections 20, 34, 131-o, 460, 460-a—460-g, 461, 461-a—461-h of the Social Services Law; and L. 1997, ch.436; and and L. 2012, ch. 501.

Subject: Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

Purpose: Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions specific to facilities subject to the Justice Center of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian," "facility subject to the Justice Center," "psychological abuse," "Department," and "unlawful use or administration of a controlled substance" at sections 487.2(d)(1)-(13) and 488.2(c)(1)-13;

- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;

- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;



Gaming Commission

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John A. Crotty, Commissioner

Peter J. Moschetti, Jr.,

Commissioner

John J. Poklemba, Commissioner

Barry Sample, Commissioner

Todd R. Snyder, Commissioner

Robert Williams, Executive Director

Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: February 10, 2016

Re: Adoption of Proposed Rulemaking for Jockey Injury Compensation Fund Assessments
(9 NYCRR Part 4046)

The Commission adopted an emergency rule effective December 22, 2015 to set forth a process for developing a subsequent-year assessment plan for the Jockey Injury Compensation Fund (“JICF”). JICF is a statutorily created not-for-profit corporation charged with securing workers’ compensation insurance “for the benefit of all jockeys, apprentice jockeys and exercise persons” licensed to participate in New York Thoroughbred racing. Racing, Pari-Mutuel Wagering and Breeding Law §§ 221(1), 221(6). After the rule adoption, the JICF submitted a plan for 2016, which the Commission approved. (The emergency rule provided specifically that an approved plan would supersede any commission-imposed one. See Rule 4046.4.)

At the same time, the Commission proposed the JICF assessment rule for standard adoption as a Commission rule. Because JICF has failed in both 2014 and 2015 to meet its November 15 statutory deadline for submitting a plan for the subsequent year, see Racing, Pari-Mutuel Wagering and Breeding Law § 221(8)(a), the Commission may consider adopting the proposed rule as a standard rule in order to provide a standing structure for the Commission imposition of a default subsequent-year assessment plan, in the event JICF fails to meet the deadline to submit its own plan for Commission approval. See Racing, Pari-Mutuel Wagering and Breeding Law § 221(8)(b) (directing the Commission, in the event JICF fails to submit a plan, to “adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the [Commission] or superseded by a plan submitted by the fund and approved by the [Commission].”)

The text of the proposed rule is set forth in the attached excerpt from the January 6, 2016 *State Register*.

One public comment has been received. Assemblywoman Carrie Woerner, who represents a constituency in Saratoga and Washington Counties, wrote on December 22, 2015 that the Commission should approve the plan JICF submitted in lieu of the plan contemplated pursuant to the

Commissioners
February 10, 2016
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Commission's emergency rule. The Commission did approve a JICF plan, on December 30, 2015, as Assemblywoman Woerner had advocated.

The public comment period ends on February 22, 2016. Staff will advise the Commission if any further comments are received.



attachments

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

measures identified for trout would not be practical or enforceable. Water temperatures can fluctuate substantially on a daily basis from spring through fall, and values above and below 70F can occur on the same day. Additionally, prohibiting removal of fish from the water in January and February is not necessary to facilitate survival; but guidelines should continue to encourage anglers to minimize the time fish are out of the water for hook removal.

Comment: If the definition of Catch and Release means that you are supposed to immediately release Black Bass during the C&R season, then I strongly oppose.

Response: The definition of Catch and Release does allow for the measuring, weighing and photographing of the fish as long as the fish is not removed for an extended period of time, and the fish is caught "in season." This applies to all species with a "catch and release only" season, including black bass.

New York State Gaming Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Plan of Operation for the Jockey Injury Compensation Fund

I.D. No. SGC-01-16-00006-EP

Filing No. 1109

Filing Date: 2015-12-22

Effective Date: 2015-12-22

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

Proposed Action: Addition of Part 4046 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19) and 221(8)(b)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The New York State Gaming Commission (the "Commission") has determined that immediate adoption of these rules is necessary for the preservation of the public health, safety or general welfare. Racing, Pari-Mutuel Wagering and Breeding Law section 221(6) requires the New York Jockey Injury Compensation Fund, Inc. ("JICF") to secure workers' compensation coverage on a blanket basis for the benefit of all jockeys, apprentice jockeys and exercise persons licensed pursuant to the Thoroughbred racing licensing provisions contained in Article II of the Racing, Pari-Mutuel Wagering and Breeding Law. In order to pay the costs of such insurance, JICF is directed, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 221(7), to ascertain the total funding necessary and establish the sums that are to be paid by all owners and trainers licensed or required to be licensed. JICF is required, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(a), to submit, not later than November 15 of each year, an amendment to the JICF plan of operation relating to the assessment of the costs of insurance for the subsequent year. If JICF fails to submit a suitable amendments to the plan of operation, the Commission is directed, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(b), to adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the procurement and funding of the required workers' compensation insurance.

The immediate adoption of these rules is necessary to ensure continuity of workers' compensation insurance for jockeys, apprentice jockeys and exercise persons upon expiration of the current workers' compensation insurance policy on December 31, 2015. The rules provide for the Commission to direct the acceptance of a proposed workers' compensation insurance policy and plan for the collection of money to pay for the costs of such insurance, thereby protecting the insured persons' health and safety in the event a suitable JICF plan, which was due to have been submitted on or before November 15, 2015, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(a), is not submitted.

Subject: Plan of operation for the Jockey Injury Compensation Fund.

Purpose: To effectuate the provisions of the Jockey Injury Compensation Fund in the absence of a plan of operation for 2016.

Text of emergency/proposed rule: A new Part 4046 is added to 9 NYCRR, to read as follows:

PART 4046

Jockey Injury Compensation Fund

§ 4046.1. Definitions.

The following definitions apply to this Part:

- (a) Finger Lakes means Finger Lakes Racing Association, Inc.
- (b) Injury incident means an incident that results in the filing of a claim against the policy held by the JICF.
- (c) JICF means The Jockey Injury Compensation Fund, Inc.
- (d) NYRA means The New York Racing Association, Inc.
- (e) Submission deadline means the deadline set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(a) for JICF to submit an amendment to a plan of operation relating to the assessment of costs of insurance for the subsequent year.
- (f) Subsequent-year plan means an amendment to a plan of operation relating to the assessment of costs of insurance for the subsequent year.

§ 4046.2. Civil penalty for failure to submit plan for subsequent year.

In the event that JICF has failed to submit, by the submission deadline, a subsequent-year plan, the commission may assess to JICF, as compensation for the administrative burden of performing the JICF's statutory work, a civil penalty equal to actual commission costs incurred, which amount shall not exceed the maximum set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 116.

§ 4046.3. Workers' compensation insurance carrier.

In the event that JICF has failed to submit, by the submission deadline, a subsequent-year plan, the commission shall order JICF to accept the offer of an insurance carrier to provide workers' compensation insurance, as required by section 221 of the Racing, Pari-Mutuel Wagering and Breeding Law and the Workers' Compensation Law, to JICF for the subsequent year, as selected by the commission in the commission's sole and absolute discretion, and JICF shall bind such coverage. Such policy shall remain in effect unless superseded by a plan submitted by the JICF and approved by the commission.

§ 4046.4. Premium assessment.

In the event that JICF has failed to submit, by the submission deadline, a subsequent-year plan, each thoroughbred owner and trainer shall pay as follows, unless such assessment is modified by the commission or superseded by a plan submitted by JICF and approved by the commission:

- (a) Assessments.
 - (1) Owners. For purposes of this part, an owner is the person whose account would be debited or credited when a horse runs. In the case of multiple ownership, the owner for purposes of this part is the managing partner. Each thoroughbred owner licensed or required to be licensed pursuant to section 220 of the Racing, Pari-Mutuel Wagering and Breeding Law in such subsequent year shall pay to JICF, through the horsemen's bookkeeper at the applicable track, a percentage of purses earned, the maximum of which is set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 221(7).

- (2) Trainers. Each thoroughbred trainer licensed or required to be licensed pursuant to section 220 of the Racing, Pari-Mutuel Wagering and Breeding Law in such subsequent year shall pay to JICF, through the horsemen's bookkeeper at the applicable track:
 - (i) an amount the commission determines per-stall, per-day for each stall allotted and accepted, which amount may vary for stalls used at Finger Lakes and NYRA. A per-stall charge is not rent for a stall; and
 - (ii) an amount the commission determines per injury incident for a worker performing services for such trainer or the owner of the horse being trained by such trainer.

- (3) Owners/Trainers. A person licensed as both an owner and trainer shall pay both the owner charge as set forth in paragraph (1) of this subdivision and the trainer charge as set forth in paragraph (2) of this subdivision.

- (4) Private Trainers. A private trainer, from whose payroll exercise riders are compensated, shall be responsible for the owner assessment set forth in paragraph (1) of this subdivision as well as the stall charge set forth in paragraph (2) of this subdivision.

- (5) Shippers. Those horsemen stabling horses off the grounds of the track who have daily access to and use of the track facilities shall pay the stall assessments set forth in paragraph (2) of this subdivision as if the equivalent number of stalls at the track had been used.

(b) Premium charges due.

- (1) Stall charges shall be due on the last day of each month.
- (2) JICF shall provide horsemen with track addresses to which horsemen shall be required to send their payments required by this part.

§ 4046.5. Plan of operation remains in effect.

In the event that a subsequent-year plan is put into effect by this Part, all other elements other than assessment of the most recently approved JICF plan of operation, including those described in Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(c), remain in effect.

§ 4046.6. Risk Management.

JICF shall engage, on or before March 1, 2016, a risk management consultant acceptable to the commission, at the sole cost and expense of JICF. Such consultant shall review past and current claims and losses and make recommendations to JICF and the commission, on or before September 30, 2016, for JICF risk management practices and controls.

§ 4046.7. Notice.

JICF shall publish this Part in one or more trade publications likely to be obtained by owners and trainers, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(a), at the sole cost and expense of JICF, as soon as practicable.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 20, 2016.

Text of rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 221(8)(b) grants rule making authority to the Commission to adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of Article II of the Racing, Pari-Mutuel Wagering and Breeding Law concerning a plan of operation for the New York jockey Injury Compensation Fund, Inc. ("JICF").

2. **LEGISLATIVE OBJECTIVES:** This emergency rule making carries out the legislative objectives and implements the requirements of Racing, Pari-Mutuel Wagering and Breeding Law section 221(8).

3. **NEEDS AND BENEFITS:** This rule making is necessary to establish a default plan in the event that JICF fails to submit a suitable amendment to its plan of operation to accept an offer of workers' compensation insurance coverage and provide for the collection of money to pay for the costs of such insurance, thereby enabling workers' compensation insurance coverage for jockeys, apprentice jockeys and exercise persons to continue uninterrupted.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Thoroughbred owners and trainers will bear the costs of maintaining statutorily-required workers' compensation insurance of jockeys, apprentice jockeys and exercise riders, as they would if JICF submits a suitable amendment to its plan of operation to secure such insurance coverage and provide for the payment of money to cover the costs of such insurance.

(b) Costs to the regulating agency, the State, and local government: The rule provides for a civil penalty to JICF to compensate the Commission for the costs of developing a workers' compensation insurance plan, should the Commission need to do so in the absence of a JICF-submitted suitable plan. The rules will not impose any additional costs on local government.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. **PAPERWORK:** The rules are not expected to impose any significant paperwork requirements for regulated parties beyond those already present when JICF submits a suitable amendment to its plan of operation to provide for workers' compensation insurance.

6. **LOCAL GOVERNMENT:** The rules do not impose any mandatory program, service, duty, or responsibility upon local government because ensuring the provision of worker's compensation insurance to jockeys, apprentice jockeys and exercise persons is strictly a matter of State law.

7. **DUPLICATION:** The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Commission is required to create these rules pursuant to Racing Law section 221(8)(b). Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable

to the provision of workers' compensation insurance to jockeys, apprentice jockeys and exercise persons, because the provision of such insurance is solely in accordance with New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that affected parties will be able to achieve compliance with the rules on January 1, 2016, which is when the next worker's compensation insurance policy covering jockeys, apprentice jockeys and exercise persons will take effect.

Regulatory Flexibility Analysis

1. **EFFECT OF THE RULE:** The rules will provide for continuity of workers' compensation insurance for thoroughbred racing jockeys, apprentice jockeys and exercise persons. Such insurance is required by law. Many trainers or thoroughbred racing stables are small businesses.

2. **COMPLIANCE REQUIREMENTS:** All Thoroughbred racing owners and trainers are required to pay the costs of workers' compensation insurance for jockeys, apprentice jockeys and exercise persons required by law, either through a Commission-imposed plan pursuant to these rules or through an approved plan submitted by JICF.

3. **PROFESSIONAL SERVICES:** The rules will not require small businesses or local governments to obtain professional services.

4. **COMPLIANCE COSTS:** The rules will require not impose any compliance costs on small businesses dissimilar from those that would be imposed through an approved plan submitted by JICF. The rules will not impose any compliance costs on local governments.

5. **ECONOMIC AND TECHNOLOGICAL FEASIBILITY:** The rules will not impose any technological requirements on small businesses or local governments.

6. **MINIMIZING ADVERSE IMPACT:** The rules will not have an adverse economic impact on small businesses or local governments. Workers' compensation insurance for thoroughbred jockeys, apprentice jockeys and exercise persons must be provided, whether through a plan imposed by these rules or through an approved plan submitted by JICF.

7. **SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:** The rules went into effect upon filing. Small businesses will have the opportunity to participate in the rule making process during the public comment period that will open upon publication of these rules as proposed rules.

Rural Area Flexibility Analysis

The rules apply to Finger Lakes racetrack, which is located in Ontario County, a "rural area" as that term is defined in Executive Law section 481(7). A rural flexibility analysis is not attached because the rules do not impose any adverse impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

The Commission has no reason to believe that these rules will have any adverse impact on any jobs or employment opportunities. The rules ensure the continuity of statutorily-required workers' compensation insurance for jockeys, apprentice jockeys and exercise persons. Therefore, the rules will not impact jobs and employment and a full Job Impact Statement is not necessary.

NOTICE OF ADOPTION

Reporting Requirements for a Race Horse That Has Been Castrated and Is Classified As a Gelding

I.D. No. SGC-44-15-00019-A

Filing No. 1108

Filing Date: 2015-12-22

Effective Date: 2016-01-06

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

Action taken: Addition of sections 4007.7 and 4106.10; and amendment of sections 4105.13 and 4106.1 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 301

Subject: Reporting requirements for a race horse that has been castrated and is classified as a gelding.

Purpose: To ensure that the betting public is properly informed that a race horse that was previously an intact male has been castrated.

Text or summary was published in the November 4, 2015 issue of the Register, I.D. No. SGC-44-15-00019-P.

Final rule as compared with last published rule: No changes.

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



Gaming Commission

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

www.gaming.ny.gov

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

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

To: Commissioners

From: Edmund C. Burns

Date: February 23, 2016

Re: Proposed Rulemaking for Casino Problem Gambling and Self-Exclusion (9 NYCRR Parts §§ 5323 and 5324).

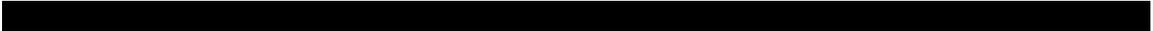
For Commission consideration are proposed regulations for casinos in regard to problem gambling and patron self-exclusion.

Proposed Part 5323 seeks to promote best responsible gaming practices. The rules prescribe the contents of a problem gambling plan that each gaming facility license applicant must submit to the Commission, including goals, procedures and a timetable for implementation as well as identifying an individual responsible for implementing and maintaining the plan. The rules require that the gaming facility's problem gambling plan identify policies and procedures that would be implemented to combat problem gambling, including an employee training program. Quarterly and annual reporting to the Commission would be required in regard to the gaming facility licensee's problem gambling plan progress and results. The rules set forth procedures and restrictions on gaming facility advertising and signage, including the content and placement of gambling assistance messages.

Proposed Part 5324 sets forth a process by which a person can request to be excluded from participation in gaming activities. The rules require that a person file a request for self-exclusion, which includes the length of exclusion sought (one year, five years or lifetime) and release any claims that could arise from a failure by the State, Commission or gaming facility licensee to withhold or restore gaming privileges or from confiscation of the individual's winnings. The rules require the Commission to maintain an official list of self-excluded persons and to notify promptly a gaming facility licensee's agents of any additions to or deletions from such list. The rules prescribe that a self-excluded person may not collect winnings or recover losses during the period of exclusion. A gaming facility licensee would be required to establish procedures and training for its employees to identify and manage any self-excluded persons found to be present on the gaming floor or involved in gaming related activities.

Pre-proposal comments have been solicited from the three gaming facility licensees and the New York Council on Problem Gambling. Feedback from that process has been incorporated into the proposed rules.

The text of the proposed rules is attached.



attachment

cc: Robert Williams, Executive Director
Chris Palmer, Acting Director, Division of Gaming

Section 5300.1 of Title 9 of the NYCRR would be amended to read as follows:

§ 5300.1. Definitions.

(f) *Excluded person* means a person who is excluded from a gaming facility pursuant to Part 5324 of this Subchapter.

{Sections 5300.1(f) through (m) are redesignated as (g) through (n)}

Title 9 of the NYCRR would be amended to add new Parts 5323 and 5324, to read as follows:

PART 5323

Problem Gambling Prevention and Outreach

Section	
5323.1	Purpose, scope and applicability
5323.2	Problem gambling plan
5323.3	Employee training program
5323.4	Reports
5323.5	Signage requirements
5323.6	Advertising

§ 5323.1. Purpose, scope and applicability.

The purpose of this Part is to establish standards, criteria and procedures by which the commission and gaming facility licensees maximize the effectiveness of a problem gambling prevention and outreach program established pursuant to section 5323.2 of this Part for individuals, families and communities, as well as promote best responsible gaming practices in all aspects of gaming facility activities and use principles of responsible gaming in introducing new and emerging technologies.

§ 5323.2. Problem gambling plan.

(a) At least 90 days prior to projected issuance of an operation certificate, a gaming facility licensee shall submit for commission review and approval a problem gambling plan.

(b) A problem gambling plan shall include the following:

- (1) the goals of the plan, including procedures and timetables to implement the plan;
- (2) identification of the individual who will be responsible for implementation and maintenance of the plan;
- (3) policies and procedures that clearly illustrate:
 - (i) the commitment of the gaming facility licensee to train appropriate employees;
 - (ii) the duties and responsibilities of the employees designated to implement or participate in the problem gambling plan;

(iii) procedures for compliance with the self-exclusion program set forth in Part 5324 of this Subchapter;

(iv) procedures to identify patrons and employees exhibiting suspected or known problem gambling behavior;

(v) procedures to limit or prevent loyalty and other rewards and marketing programs for patrons exhibiting suspected or known problem gambling behavior;

(vi) procedures for providing information to individuals and responding to patron/employee requests for information in regard to the self-exclusion program and any community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat or monitor problem gamblers and to counsel family members;

(vii) the provision of printed material to educate patrons and employees about problem gambling and to inform them about the self-exclusion program set forth in Part 5324 of this Subchapter and treatment services available to problem gamblers and their families. The gaming facility licensee shall provide examples of the materials to be used as part of its problem gambling plan, including brochures and other printed material and a description of how the material will be disseminated;

(viii) advertising and other marketing and outreach to educate the general public about problem gambling and the self-exclusion program set forth in Part 5324 of this Subchapter;

(ix) an employee training program as set forth in section 5323.3 of this Part, including sample training materials to be used and a plan for periodic reinforcement training and a certification process established by the gaming facility applicant to verify that each employee has completed the training required by the plan;

(x) procedures to prevent underage gambling;

(xi) procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling; and

(xii) a signage plan containing information on gambling treatment and on the self-exclusion program set forth in Part 5324 of this Subchapter. The gaming facility licensee shall provide examples of the language and graphics to be used on the signs as part of the problem gambling plan. Additionally, the signage plan shall include posting of signs on appropriate languages other than English, depending upon the patron demographics in a facility.

(4) a list of community, public and private treatment services, gamblers anonymous programs and similar treatment therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members and procedures for making such list available upon request; and

(5) any other information, documents and policies and procedures as the commission may request.

(c) Each gaming facility licensee shall submit to the commission for review and approval any amendments to such gaming facility licensee's problem gambling plan at least 30 days prior to the intended implementation of such amendment. The gaming facility licensee may implement a

proposed amendment on the 30th calendar day following the filing of such amendment with the commission, unless the commission provides notice pursuant to subdivision (d) of this section objecting to such amendment.

(d) If during the 30-day review period the commission determines that any amendment is inconsistent with the intent of this Part, the commission shall, by delivering written notice to the gaming facility licensee, object to such amendment. Such objection notice shall:

- (1) specify the nature of the objection and, when possible, an acceptable alternative; and
- (2) direct that such amendment not be implemented.

(e) When an amendment has been objected to pursuant to subdivision (d) of this section, the gaming facility licensee may submit a revised amendment for review pursuant to subdivision (c) of this section.

§ 5323.3. Employee training program.

(a) The employee training program required pursuant to subparagraph (viii) of paragraph (3) of subdivision (b) of section 5323.2 shall include instruction in the following:

- (1) characteristics and symptoms of problem gambling behavior;
- (2) the relationship of problem gambling to other addictive behavior;
- (3) techniques to be used when problem gambling is suspected or identified;
- (4) techniques to be used to discuss problem gambling with patrons and advise patrons in regard to community, public and private treatment services;
- (5) procedures designed to prevent serving alcohol to visibly intoxicated patrons;
- (6) procedures designed to prevent persons from gambling after having been determined to be visibly intoxicated;
- (7) procedures for the dissemination of written materials to patrons explaining the self-exclusion program as set forth in Part 5324 of this Subchapter;
- (8) procedures for removing an excluded person, as defined in section 5300.1 of this Subchapter, an underage individual or a person on the self-exclusion list from a gaming facility, including, if necessary, procedures that include obtaining the assistance of appropriate law enforcement personnel;
- (9) procedures to prevent an excluded person or a person on the self-exclusion list from being mailed any advertisement, promotion or other target mailing as soon as practicable after receiving notice from the commission that the person has been placed on the excluded person or self-exclusion list;
- (10) procedures to prevent an individual under 21 years of age from receiving any advertisement, promotion or other target mailing;

(11) procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from directly accessing or receiving complimentary services, or other like benefits; and

(12) procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from cashing checks or vouchers that require ID on gaming facility premises.

(b) Training and training materials shall be reviewed annually to be updated, if applicable, to include new or revised information on responsible and problem gambling or empirical research.

(c) Training for employees shall be conducted by a person with specialized knowledge, skill, training and experience in responsible gaming training programs as part of the employee's orientation.

(d) Employees who have received training shall be acknowledged by the gaming facility licensee upon completion of training.

(e) Employees are required to receive periodic reinforcement training at no less than once every 12 months, starting with the year following the year in which the employee was hired. The gaming facility licensee shall retain a record of the date of the reinforcement trainings.

(f) Employees shall report suspected or identified problem gamblers to a designated casino key employee or other designated supervisory employee.

(g) Gaming facility licensees may collaborate with a person with specialized knowledge, skill, training and experience in responsible gaming employee training programs to develop an in-house or Internet-based employee training program to provide the training and reinforcement training required under this Part.

§ 5323.4. Reports.

(a) Each gaming facility licensee shall submit to the commission quarterly updates and an annual summary of its problem gambling plan and goals.

(b) The quarterly updates and annual summary must contain, at a minimum, detailed information in regard to:

(1) employee training, including the dates of live or Internet-based new-hire and annual reinforcement problem gambling training, the individual or group who conducted the training, the number of employees who completed the new hire problem gambling training and the number of employees who completed the annual reinforcement problem gambling training;

(2) an estimated amount of printed materials provided to patrons in regard to problem gambling, the self-exclusion program, responsible gambling and available treatment services;

(3) the annual dollar amount spent on the problem gambling plan for employee training, printed materials and outreach including information on sponsorships, memberships and other problem-gambling-related expenditures; and

(4) additional information including:

- (i) the number of underage individuals who were denied access to the gaming floor;
- (ii) the number of self-excluded individuals who were discovered on the gaming floor at the gaming facility;
- (iii) the number of signs within the gaming facility that contain the approved problem gambling statement and helpline number; and
- (iv) a summary of any additional employee training, problem gambling related conferences or problem gambling awareness events conducted by the gaming facility licensee or in which employees of the gaming facility licensee participated.

§ 5323.5. Signage.

Each gaming facility licensee shall post signs in a size as approved in writing by the commission that include the problem gambling assistance message as set forth in section § 5323.6 of this Part at each of the following locations:

- (a) within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by the commission;
- (b) above or below the cash-dispensing opening on all automated teller machines, automated gaming voucher and coupon redemption machines and other machines that dispense cash to patrons at the gaming facility;
- (c) on all gaming devices;
- (d) in all gaming facility employee break areas;
- (e) in the player club location or locations;
- (f) in or near cage areas; and
- (g) in any other location, as the commission may require.

§ 5323.6. Advertising.

(a) Advertisements used by a gaming facility licensee shall comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1363 and with advertising guidelines issued by the National Council on Problem Gambling.

(b) Advertisements shall contain a problem gambling assistance message comparable to one of the following:

- (1) If you or someone you know has a gambling problem, help is available. Call (877-8-HOPENY) or text HOPENY (46769);
- (2) Gambling Problem? Call (877-8-HOPENY) or text HOPENY (46769); or
- (3) any other message approved in writing by the commission.

(c) Unless otherwise approved in writing by the commission, the problem gambling assistance message shall meet the following requirements:

(1) for signs, direct mail marketing materials, posters and other print advertisements, the height of the font used for the problem gambling assistance message must be the greater of:

- (i) the same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; and
- (ii) two percent of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement;

(2) for billboards, the height of the font used for the problem gambling assistance message must be at least five percent of the height or width, whichever is greater, of the face of the billboard;

(3) for video and television, the problem gambling assistance message must be visible for either:

(i) the entire time the video or television advertisement is displayed, in which case the height of the font used for the problem gambling assistance message must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; or

(ii) from the first time a table game, table game device, slot machine, associated equipment or gaming facility name is displayed or orally referenced, and on a dedicated screenshot visible for at least the last three seconds of the video or television advertisement. If the gaming facility licensee elects to use this option, the height of the font used for the problem gambling assistance message displayed:

(a) during the advertisement must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; and

(b) on the dedicated screen shot must be at least eight percent of the height or width, whichever is greater, of the image that will be displayed;

(4) for websites, including social media sites and mobile phone applications:

(i) the problem gambling assistance message must be posted on each webpage or profile page and on any gaming-related advertisement posted on the webpage or profile page;

(ii) the height of the font used for the problem gambling assistance message must be at least the same size as the majority of the text used in the webpage or profile page; and

(iii) for advertisements posted on the webpage or profile page, the height of the font used for the problem gambling assistance message must comply with subparagraph (ii) of this paragraph.

PART 5324

Self-Exclusion

Section

5324.1 Request for self-exclusion

5324.2 Self-exclusion list

- 5324.3 Duties of gaming facility licensees
- 5324.4 Removal from self-exclusion list
- 5324.5 Exceptions for individuals on the self-exclusion list
- 5324.6 Disclosure of information related to persons on the self-exclusion list

§ 5324.1. Request for self-exclusion.

As set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1344, the commission shall provide for the establishment of a list of persons who have chosen voluntarily to be excluded from participation in all gaming activities and to be prohibited from collecting any winnings or recovering any losses at gaming facilities. For purposes of this Part, the term “gaming facility” shall mean any room, premises or designated gaming area where gaming is conducted.

(a) A person requesting placement on the self-exclusion list shall submit to the commission a request for self-exclusion from gaming activities. The submission may be made by appearing at the commission’s Schenectady office during regular business hours or at designated commission offices. Persons who are unable to travel to a commission office due to employment, financial or medical reasons may request, in writing, a reasonable accommodation in a manner or at a site and time designated at the sole discretion of the commission secretary. Nothing in this section shall require that an accommodation be granted.

(b) A request for self-exclusion from gaming activities shall include the following identifying information:

- (1) name, including any aliases or nicknames;
- (2) date of birth;
- (3) address of current residence;
- (4) telephone number;
- (5) social security number, when voluntarily provided in accordance with section seven of the Privacy Act of 1974 (5 U.S.C. § 552a) or Article 6-A of the N.Y. Public Officers Law (Personal Privacy Protection Law);
- (6) height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person; and
- (7) a copy of a current government-issued photo identification such as a driver’s license or passport.

(c) Any person requesting self-exclusion pursuant to this Part shall be required to have his or her photograph taken by the commission upon submission of the request.

(d) A self-excluded person shall update any of the information provided in subdivision (b) of this section within 30 days of any change.

(e) The length of self-exclusion requested by a person shall be one of the following:

- (1) one year;

(2) five years; or

(3) lifetime.

(f) Each person requesting self-exclusion shall provide:

(1) a waiver and release that shall release and forever discharge the State of New York, the commission and its employees and agents and all gaming facility licensees and their employees and agents, from any liability to the person requesting self-exclusion and his or her heirs, administrators, executors and assigns for any harm, monetary or otherwise, that may arise out of or by reason of any act or omission relating to the request for self-exclusion or request for removal from the self-exclusion list, including:

(i) the processing or enforcement of the self-exclusion request;

(ii) the failure of a gaming facility licensee to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person;

(iii) permitting a self-excluded person to engage in gaming activity in a gaming facility while on the list of self-excluded persons; and

(iv) disclosure of the information contained in the self-exclusion request or list, except for a willfully unlawful disclosure of such information; and

(2) the signature of the person submitting the request for self-exclusion, indicating acknowledgment of the following statement:

“I voluntarily request exclusion from all casino gaming activities at all licensed New York gaming facilities. I certify that the information that I have provided above is true and accurate, and that I have read and understand and agree to the waiver and release included with this request for self-exclusion. I am aware that my signature below authorizes the Commission to direct all New York gaming facility licensees to restrict my gaming activities in accordance with this request and, unless I have requested to be excluded for life, until such time as the Commission removes my name from the self-exclusion list. I am aware and agree that during any period of self-exclusion, I shall not collect any winnings or recover any losses resulting from any gaming activity at all licensed gaming facilities, and that any money or thing of value obtained by me from, or owed to me by, a gaming facility licensee as a result of wagers made by me while on the self-exclusion list shall be subject to forfeiture.”;

(g) The commission shall document a description of the type of identification credentials examined containing the signature of a person requesting self-exclusion, and whether said credentials included a photograph or general physical description of the person.

(h) The commission shall document the signature of the commission employee authorized to accept a self-exclusion request, indicating that the signature of the person on the request for self-exclusion appears to agree with that contained on the requester’s identification credentials and that any photograph or physical description of the person appears to agree with the requester’s actual appearance.

(i) Each self-excluded person shall acknowledge that no gaming facility shall allow such person to redeem any points or complimentaries earned by such person as of the time such person completes the request for placement on the self-exclusion list. Points or complimentaries refer to credits earned by a person under the terms of a licensee's marketing program and shall include, without limitation, food vouchers or coupons, chip or free play vouchers or coupons, hotel complimentaries or any other such noncash benefit owing to such person. The terms and conditions of the player club shall remain in effect during the period of self-exclusion.

(j) Each person requesting self-exclusion for one or five years shall be advised that if such person is found violating the rules set forth in this Part, in addition to any other penalty that may otherwise be imposed, the commission shall revise the start date of such person's self-exclusion period to correspond with the date such violation occurred.

§ 5324.2. Self-exclusion list.

(a) The commission shall maintain the official self-exclusion list and notify each gaming facility licensee of additions to or deletions from the list within five business days of the verification of the information received pursuant to section 5324.1 of this Part.

(b) The notice that the commission provides to gaming facility licensees shall include the information provided pursuant to subdivision (b) of section 5324.1 of this Part and a copy of the photograph taken by the commission pursuant to subdivision (c) of section 5324.1 of this Part.

(c) A gaming facility licensee shall maintain a current copy of the self-exclusion list and ensure that all appropriate employees and agents of the gaming facility licensee are promptly notified of any addition to or deletion from the list within three business days after the day notice is provided to each gaming facility licensee.

(d) Gaming facility licensees, employees or agents thereof may not disclose the name of, or any information about, a person who has requested self-exclusion to anyone other than employees and agents of the gaming facility licensee whose duties and functions require access to the information. Notwithstanding anything to the contrary in this subdivision, a gaming facility licensee may disclose the identity of a self-excluded person to appropriate employees of other gaming facility licensees in the State of New York or affiliated gaming entities in other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs.

(e) A self-excluded person shall not collect in any manner any winnings or recover any losses arising as a result of any gaming activity for the period of time that such person is on the commission's self-exclusion list, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1345(1).

(f) Winnings of a self-excluded person shall be subject to forfeiture and deposited into the commercial gaming revenue fund, subject to the requirements of Racing, Pari-Mutuel Wagering and Breeding Law 1345(3).

(g) For the purposes of this section, winnings issued to, found on or about, or redeemed by, a self-excluded person shall be presumed to constitute winnings subject to remittance to the commission.

§ 5324.3. Duties of gaming facility licensees.

(a) A gaming facility licensee shall train its employees and establish procedures to:

(1) identify a self-excluded person when present on the gaming floor, in areas off the gaming floor where gaming activity is conducted or engaging in gaming-related activities and, upon identification, immediately notify, unless section 5324.5 of this Part applies, the following persons:

- (i) employees of the gaming facility licensee whose duties include the removal of self-excluded persons;
- (ii) the commission's designated staff at the licensed facility; and
- (iii) if the gaming facility licensee deems appropriate, a law enforcement agency;

(2) refuse wagers from and deny gaming privileges to a self-excluded person;

(3) deny gaming-related activities including casino credit, check-cashing privileges, player club membership, complimentary goods and services, redemption of any previously earned complimentary goods and services, gaming junket participation and other similar privileges and benefits to a self-excluded person;

(4) ensure that self-excluded persons do not receive, either from the gaming facility licensee or any agent thereof, gaming junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities at its licensed facility;

(5) comply with section 5324.2 of this Part; and

(6) make available to patrons written materials explaining the self-exclusion program and resources for treatment and assistance.

(b) A gaming facility licensee shall submit amendments to the procedures and training materials required under subdivision (a) of this section to the commission for review and approval at least 30 days prior to the intended implementation date of such amendments. Such gaming facility licensee may implement the amendments on the 30th calendar day following the submission of such amendments unless such gaming facility licensee receives a notice under subdivision (d) of this section objecting to such amendments.

(c) If during the 30-day review period the commission determines that an amendment is inconsistent with the intent of this Part, the commission shall, by written notice to the gaming facility licensee, object to such amendment. The objection shall:

- (1) specify the nature of the objection and, when possible, an acceptable alternative; and
- (2) direct that the amendments not be implemented until approved by the commission.

(d) When amendments to procedures and training materials have been objected to pursuant to subdivision (c) of this section, a gaming facility licensee may submit revised amendments in accordance with subdivision (b) of this section.

(e) Each gaming facility licensee shall post signs within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by the commission indicating that a person who is on the self-exclusion list will be subject to arrest for trespassing pursuant to Penal Law sections 140.10, 140.15 and 140.17 if such person is on the gaming floor, in areas off the gaming floor where gaming activity is conducted or engaging in gaming-related activities in the gaming

facility. The text and font size of such signs shall be submitted to the commission for review and approval.

§ 5324.4. Removal from self-exclusion list.

For a person who is self-excluded for one year or five years, upon the conclusion of such period of self-exclusion, such person shall be removed from the self-exclusion list unless such person requests in writing, no later than 30 days prior to the expiration of such self-exclusion period, that the commission extend the term of such self-exclusion.

§ 5324.5. Exceptions for individuals on the self-exclusion list.

The prohibition against allowing self-excluded persons to be on the gaming floor or in areas off the gaming floor where gaming activity is conducted shall not apply to a person who is on the self-exclusion list, if all of the following apply:

- (a) the individual is carrying out the duties of employment or incidental activities related to employment;
- (b) the gaming facility licensee's security department has received prior notice, unless it was impracticable to have done so;
- (c) access to the gaming floor or areas off the gaming floor where gaming activity is conducted is limited to the time necessary to complete the individual's assigned duties; and
- (d) the individual does not otherwise engage in gaming activities.

§ 5324.6. Disclosure of information related to persons on the self-exclusion list.

- (a) Information furnished to or obtained by the commission pursuant to this Part shall be deemed confidential and not be disclosed as disclosure would constitute an unwarranted invasion of personal privacy under the provisions of the Public Officers Law section 89(2);
- (b) The commission may periodically release to the public demographics and general information in regard to the self-exclusion list, such as the total number of persons on the list, gender breakdown and age range.
- (c) The commission may make selected data available, upon request, for the limited purpose of assisting in the proper administration of responsible gaming programs.