



**MEETING AGENDA  
OCTOBER 26, 2015**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF SEPTEMBER 24, 2015
3. REPORT OF EXECUTIVE DIRECTOR
4. RESOLUTION IN REGARD TO DELEGATION OF AUTHORITY
5. RULEMAKING
  - A. ADOPTION: SGC-35-15-00001-P VIDEO LOTTERY GAMING FACILITY HOURS
  - B. PROPOSED AMENDMENT: POST RACE TESTING OF CLAIMED HORSES
6. ADJUDICATIONS
  - A. IN THE MATTER OF 1 FIRST STOP DELI, INC.
  - B. IN THE MATTER OF KUNAL & RUNHIT
  - C. IN THE MATTER OF NIAGARA DELI & GRILL
7. OLD BUSINESS/NEW BUSINESS
  - A. OLD BUSINESS
    1. CONTINUATION: LASIX FORUM DISCUSSION
  - B. NEW BUSINESS

8. SCHEDULING OF NEXT MEETING

9. ADJOURNMENT

###

**NEW YORK STATE  
GAMING COMMISSION MEETING**

**MINUTES**

**MEETING of SEPTEMBER 24, 2015**

**BROOKLYN, NEW YORK**

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

**1. Call to Order**

The meeting was called to order at 12:35 p.m. by Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Commissioners John Crotty, Peter Moschetti, John Poklemba, Barry Sample and Todd Snyder. Commissioner Crotty was unanimously elected as presiding officer for the meeting.

**2. Consideration of the Minutes from September 10, 2015**

The Commission considered previously circulated draft minutes of the meeting conducted on September 10, 2015. The minutes were then accepted as circulated.

**3. Report of Executive Director**

Executive Director Robert Williams discussed the casino licensing timeline and process and recent meetings of the Gaming Facility Location Board and the Responsible Play Partnership.

**4. Rulemaking**

**a. Adoption: SGC-33-15-00013-P, New Numbers and Win-4 Lottery Games Wagers (9 NYCRR §§ 5009.2 and 5010.2)**

The Commission considered adoption of an amendment to a rule allowing for the introduction of a new wager type for the Lottery Division's Numbers and Win-4 draw games, conditioned on no substantive comment being received by close of business on October 5, 2015.

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

**b. Proposed Rulemaking: Bonding of Video Lottery Agents (9 NYCRR § 5103.5)**

The Commission considered proposing a rule in regards to the Bonding of Video Lottery Agents.

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

**c. Proposed Rulemaking for Unqualified Standardbred Horses (9 NYCRR § 4113.5)**

The Commission considered proposing a rule in regards to the Unqualified Standardbred Horses.

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

**d. Proposed Rulemaking: Standardbred Definition of “Wire” (9 NYCRR § 4100.1)**

The Commission considered proposing a revision to the standardbred racing rules definition of the term “wire.”

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

**e. Proposed Rulemaking: Post-Race Testing of Claimed Horses (9 NYCRR §§ 4038.5, 4038.17, 4109.3 and 4109.5)**

The Commission considered proposing revisions to the horseracing rules in relation to the cost and frequency of post-race testing of claimed horses.

The Commission unanimously determined to defer consideration of this proposal pending receipt of supplemental information regarding its potential effect.

**f. Proposed Rulemaking: Veterinary Technicians (9 NYCRR §§ 4002.1, 4002.7, 4002.8, 4002.11 4002.14, 4002.20, 4005.1, 4005.5, 4012.1, 4012.4, 4043.11, 4101.24, 4101.37, 4120.6, 4120.9 and 4120.19)**

The Commission considered proposing rule amendments to explicitly authorize the supervised use of veterinarian technicians at New York racetracks.

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

**g. Proposed Rulemaking for Contract Apprentice Jockeys (9 NYCRR § 4032.1)**

The Commission considered proposing an amendment deleting an extra weight allowance for an apprentice jockey who continues to ride for the jockey’s “original contract employer.”

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

**h. Proposed Rulemaking: 48-Hour Restrictions (9 NYCRR §§ 4043.2(e) and 4120.2(e))**

The Commission considered proposing revisions to the horseracing rules in relation to the 48-hour restricted time period for the pre-race medication of horses, eliminating the use of more than one non-steroidal anti-inflammatory drug within one week of racing.

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

**i. Proposed Rulemaking: Use of Stanozolol (9 NYCRR §§ 4043.15 and 4120.12)**

The Commission considered proposing a revision to the horseracing rules that strictly regulate the use of anabolic steroids in racehorses, discontinuing the permissive presence at threshold amounts of Stanozolol.

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

**j. Proposed Rulemaking: Uncoupling of Certain Standardbred Entries (9 NYCRR § 4111.15)**

The Commission considered proposing a revision to the coupled entries rule for certain standardbred races.

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

**k. Proposed Rulemaking: Use or Removal of Hopples (9 NYCRR §§ 4113.5 and 4117.3)**

The Commission considered proposing revisions to the horse racing rules in relation to the use or removal of hobbles for standardbred horses.

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

**l. Proposed Rulemaking: Continuing Trainer's Education (9 NYCRR § 4002.8)**

The Commission considered proposing revisions to the horse racing rules requiring that all thoroughbred trainers, including assistant and private trainers, have continuing education of at least four hours each year.

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

**m. Proposed Rulemaking: Pick-Four, Pick-Five and Pick-Six Pools (9 NYCRR §§ 4011.23, 4011.24, 4011.25 and 4011.26)**

The Commission considered proposing revisions to the Commission's pari-mutuel authorized wagering rules in relation to the pick-four, pick-five, and pick-six pools on thoroughbred horse races.

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

**n. Proposed Rulemaking: Per Se Thresholds and Time Restrictions (9 NYCRR §§ 4043.2(i), 4043.3, and 4120.3)**

The Commission considered proposing revisions to the Commission's horse racing rules that regulate the use of certain substances with per se thresholds and restricted time periods.

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

## 5. Adjudication

- a. **In the Matter of Michael Brown.** The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 5-0 vote, to accept the Hearing Officer's recommendation that the applicant's license denial be upheld.

Commissioner Moschetti stated he had concern whether the applicant's due process rights were impaired, suggesting that Commission hearing officers be advised to instruct a *pro se* applicant that they could provide a narrative prior to being subjected to cross-examination.

Commissioners Moschetti and Snyder also raised concern with the wording on the racing license application. Staff advised both concerns would be addressed.

- b. **In the Matter of the Disqualification and Placement of the Horse 'Kiwi Ideal N'.** The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 5-0 vote, to accept the Hearing Officer's recommendation that the applicant's license denial be upheld.

## 6. New Business/Old Business

Commissioner Crotty requested a response to previously requested questions regarding the size of the furosemide industry in New York. Staff advised research is still pending. Commissioner Poklemba advised that he would place discussion of the effects of furosemide use on the breeding industry on the meeting agenda of the N.Y.S. Thoroughbred Breeding and Development Fund Corporation.

## 7. Scheduling of Next Meeting

The next regular meeting was announced as being scheduled for Noon on October 26, 2015. The primary meeting location will be in Manhattan.

## 8. Adjournment

The meeting was adjourned at 1:43 p.m.

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# Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500  
[www.gaming.ny.gov](http://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:** October 20, 2015  
**Re:** Delegation of Authority

The Commission adopted Resolution No. 5–2013, which is attached, at its meeting on November 4, 2013 in regard to Delegation of Authority at the Commission. An Appendix to that resolution provides a list of examples of matters delegated to the Commission Executive Director and staff. Since the adoption of Resolution No. 5–2013, the New York State Constitution was amended to permit commercial casinos in New York State and enabling legislation took effect charging the Commission with the regulation and oversight of commercial casinos. As the gaming facility applications prepare for potential licensure and finalize financing of their projects, it may be appropriate for the Appendix to the delegation resolution to recite explicitly the delegation of certain matters in regard to the regulation of commercial casinos. Accordingly, the attached Resolution No. 1–2015 is offered for the Commission’s consideration.

attachment

## RESOLUTION

### Delegation of Authority in the Gaming Commission

No. 1–2015

*Whereas*, the Commissioners of the New York State Gaming Commission (“Commission”) bear the principal obligation to oversee and govern the Commission;

*Whereas*, the Commissioners have certain duties that are entrusted by statute to only the position of Commissioner to perform specific tasks that are central to the mission of the Commission, such as establishing policies of the Commission, requesting legislative initiatives, promulgating agency rules, deciding adjudicatory proceedings, and reporting the activities of the Commission;

*Whereas*, there are numerous further statutory duties and responsibilities of the Commission;

*Whereas*, the Commissioners may, and shall at any time, choose to exercise directly themselves, and not to delegate, whatever duties and responsibilities of the Commission the Commissioners may deem it appropriate to exercise;

*Whereas*, the other duties and responsibilities of the Commission—whether by statute, rule, practical necessity or the principles of good governance—have been or shall be delegated by the Commissioners to one or more officers, divisions, units, employees or officials of the Commission (“staff”), each of whom or which serves as an agent of the Commissioners;

*Whereas*, Commission staff actions or omissions that substantially affect the policies and goals of the Commission, as established by statute, rule, or the Commissioners, including through a significant impact on State revenue or the financial condition of a regulated party, should occur on such sufficient notice to the Commissioners as enables the Commissioners to provide such advice, guidance, or directives as they may decide is well advised;

*Whereas*, the Commission adopted Resolution 5–2013 in regard to the Delegation of Authority in the Gaming Commission;

*Whereas*, since the adoption of Resolution 5–2013, the New York State Constitution was amended to permit commercial casinos in New York State and enabling legislation took effect charging the Commission with the regulation and oversight of commercial casinos; and

*Whereas*, the Commission has determined that it would be appropriate for the Appendix to the delegation resolution to recite explicitly the delegation of certain matters in regard to the regulation of commercial casinos;

NOW, therefore, it is

*Resolved*, That the Commissioners shall act in regard to any duty that is explicitly prescribed by statute to the Commissioners;

*Resolved*, That the Executive Director (or Acting Executive Director, as the case may be), in the normal course shall act for the Commission, directly or through subdelegation, with appropriate reporting to and oversight by the Executive Director (or Acting Executive Director, as the case may be) in matters set forth in the Appendix to this Resolution and similar matters, and shall notify the Commissioners of any such matters that, due to their novelty, complexity or public importance, might incline the Commissioners to decide such matters themselves and not as delegated matters;

*Resolved*, That the Commissioners shall advise the Executive Director (or Acting Executive Director, as the case may be) of all such matters as the Commissioners have determined, or shall at any time determine, are or have been determined by the Commissioners as a matter of discretion to warrant their direct participation and control;

*Resolved*, That Commission staff shall fully and faithfully perform their duty as agents of the Commissioners to implement Commissioners' the policies, advice, guidance and directives; and

*Resolved*, That this resolution supersedes Resolution No. 5-2013.

Dated: New York, New York  
October 26, 2015

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Kristen M. Buckley  
Acting Secretary, New York State Gaming Commission

## Appendix to Resolution No. 1–2015

Examples of matters in which the Executive Director (or Acting Executive Director, as the case may be) may act for the Commission in the normal course, directly or through subdelegation, pursuant to Resolution No. 1–2015: annual track license applications, racetrack requests for race days to be conducted pending licensing action, annual wagering facility simulcast license applications of racetracks and regional off-track betting corporations (“OTBs”), racetrack requests to utilize capital improvement funds, approval of alterations to racetrack grounds and structures, approval of promotional activities to be conducted by racetracks and OTBs, approval of changes in the plans of operation of racetracks and OTBs, certification to the Tax Department that racetracks have conducted a sufficient number of race days, consent to the export of simulcast signals to out-of-state wagering facilities, approval of the interstate transmission of simulcast signals by and between in-state and out-of-state wagering facilities, approval of the opening or closing of an OTB branch office, annual totalisator company and other service provider license applications, transfers of stock in racing corporations, track-level determination of horse racing violations and impositions of penalties, issuing orders to show cause why horse racing violations should not be found and penalties imposed, approval of apprentice jockey weight allowance extension requests, approval of resuming participation in horse racing upon compliance with rehabilitation conditions for human drug violators, granting, denying, suspending, or revoking a horse racing occupational license or the registration number or municipal license of an organization authorized to conduct charitable games of chance or bingo, monitoring compliance with the tribal-state compacts that define lawful Indian gaming within the State, licensing of gaming facilities and operating entities, licensing principals and key employees of a gaming facility, licensing vendors, ancillary vendors and junket operators, approval of internal controls, approval of table game rules, approval of workforce diversity plans, operating lottery and video lottery games, licensing lottery sales agents, issuing lottery and video lottery prize payments, conducting lottery and video lottery advertising and marketing, granting, denying, suspending, or revoking a lottery sales agent license, and conducting day-to-day investigatory, recordkeeping and filing, personnel, security investigation, internal audit, and other administrative and legal activities, and other similar matters.

Andrew M. Cuomo  
Governor

Barry C. Sample, Chair  
John A. Crotty  
John J. Poklemba  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** Barry C. Sample, Chair  
John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** October 31, 2013

**Re:** Delegation of Authority

The Commission adopted Resolution No. 3-2013, which is attached, at its initial meeting on June 26, 2013 in regard to administration of the Commission. Several Commissioners expressed a desire for a subsequent resolution that would address matters of delegation of authority in more expansive terms. In response to that request, the attached Resolution No. 5-2013 is offered for the Commission's consideration.

attachment

cc: Robert Williams, Acting Executive Director

## RESOLUTION

### Delegation of Authority in the Gaming Commission

No. 5 – 2013

*Whereas*, the Commissioners of the New York State Gaming Commission (“Commission”) bear the principal obligation to oversee and govern the Commission;

*Whereas*, the Commissioners have certain duties that are entrusted by statute to only the position of Commissioner to perform specific tasks that are central to the mission of the Commission, such as establishing policies of the Commission, requesting legislative initiatives, promulgating agency rules, deciding adjudicatory proceedings, and reporting the activities of the Commission;

*Whereas*, there are numerous further statutory duties and responsibilities of the Commission;

*Whereas*, the Commissioners may, and shall at any time, choose to exercise directly themselves, and not to delegate, whatever duties and responsibilities of the Commission the Commissioners may deem it appropriate to exercise;

*Whereas*, the other duties and responsibilities of the Commission—whether by statute, rule, practical necessity or the principles of good governance—have been or shall be delegated by the Commissioners to one or more officers, divisions, units, employees or officials of the Commission (“staff”), each of whom or which serves as an agent of the Commissioners; and

*Whereas*, Commission staff actions or omissions that substantially affect the policies and goals of the Commission, as established by statute, rule, or the Commissioners, including through a significant impact on State revenue or the financial condition of a regulated party, should occur on such sufficient notice to the Commissioners as enables the Commissioners to provide such advice, guidance, or directives as they may decide is well advised;

NOW, therefore, it is

*Resolved*, That the Commissioners shall act in regard to any duty that is explicitly prescribed by statute to the Commissioners;

*Resolved*, That the Executive Director (or Acting Executive Director, as the case may be), in the normal course shall act for the Commission, directly or through subdelegation, with appropriate reporting to and oversight by the Executive Director (or Acting Executive Director) in matters set forth in the Appendix to this Resolution and similar matters, and shall notify the Commissioners of any such matters that, due to their novelty, complexity or public importance, might incline the Commissioners to decide such matters themselves and not as delegated matters;

*Resolved*, That the Commissioners shall advise the Executive Director of all such matters as the Commissioners have determined, or shall at any time determine, are or have been determined by the Commissioners as a matter of discretion to warrant their direct participation and control; and

*Resolved*, That Commission staff shall fully and faithfully perform their duty as agents of the Commissioners to implement Commissioners' the policies, advice, guidance and directives.

Dated: New York, New York  
November 4, 2013



*Kristen M Buckley*

Kristen M. Buckley  
Acting Secretary, New York State Gaming Commission

## Appendix to Resolution No. 5 – 2013

Examples of matters in which the Executive Director (or Acting Executive Director, as the case may be) may act for the Commission in the normal course, directly or through subdelegation, pursuant to Resolution No. 5 – 2013: annual track license applications, racetrack requests for race days to be conducted pending licensing action, annual wagering facility simulcast license applications of racetracks and regional off-track betting corporations (“OTBs”), racetrack requests to utilize capital improvement funds, approval of alterations to racetrack grounds and structures, approval of promotional activities to be conducted by racetracks and OTBs, approval of changes in the plans of operation of racetracks and OTBs, certification to the Tax Department that racetracks have conducted a sufficient number of race days, consent to the export of simulcast signals to out-of-state wagering facilities, approval of the interstate transmission of simulcast signals by and between in-state and out-of-state wagering facilities, approval of the opening or closing of an OTB branch office, annual totalisator company and other service provider license applications, transfers of stock in racing corporations, track-level determination of horse racing violations and impositions of penalties, issuing orders to show cause why horse racing violations should not be found and penalties imposed, approval of apprentice jockey weight allowance extension requests, approval of resuming participation in horse racing upon compliance with rehabilitation conditions for human drug violators, granting, denying, suspending, or revoking a horse racing occupational license or the registration number or municipal license of an organization authorized to conduct charitable games of chance or bingo, monitoring compliance with the tribal-state compacts that define lawful Indian gaming within the State, operating lottery and video lottery games, licensing lottery sales agents, issuing lottery and video lottery prize payments, conducting lottery and video lottery advertising and marketing, granting, denying, suspending, or revoking a lottery sales agent license, and conducting day-to-day investigatory, recordkeeping and filing, personnel, security investigation, internal audit, and other administrative and legal activities, and other similar matters.



# Gaming Commission

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Barry Sample, Commissioner  
Todd R. Snyder, Commissioner

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

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** October 20, 2015

**Re:** Adoption of Rulemaking for Video lottery gaming facility closing hours (9 NYCRR § 5118.9)

For Commission consideration is the adoption of amendments to conform Commission rules to legislation allowing later closing hours in video lottery facilities. Formerly, the law required facilities to close no later than 4:00 a.m. Now, the facilities are authorized to stay open until 6 a.m. Facilities continue to be limited to 20 consecutive hours of operation.

The amendment would remove the 4:00 a.m. restriction now superseded by subdivision b of Section 1617-a of the N.Y. Tax Law and replace it with a reference to the statute, so that the regulation need not change in the future if the statute is further amended. Other technical changes are proposed.

A copy of the excerpt from the *State Register* that includes the text of the proposed amendment is attached. The public comment period expired on October 19, 2015. No comments were received.

[REDACTED]

cc: Robert Williams, Executive Director  
James Nielsen, Acting Director, Division of Gaming

MLS registrations, as well as for the imposition of fines and penalties on MLSS.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSS and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of \$3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

**Rural Area Flexibility Analysis**

**Types and Estimated Numbers:** Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimis business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

**Compliance Requirements:** Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSS are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSS which service not more than \$4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

**Costs:** The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be \$3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSS and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

**Minimizing Adverse Impacts:** The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

**Rural Area Participation:** Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

**Job Impact Statement**

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSS and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

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## New York State Gaming Commission

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

#### Video Lottery Gaming Facility Closing Hours

I.D. No. SGC-35-15-00001-P

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

**Proposed Action:** Amendment of section 5118.9 of Title 9 NYCRR.

**Statutory authority:** Tax Law, section 1617-a(b); and Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2) and 104(1) and (19)

**Subject:** Video lottery gaming facility closing hours.

**Purpose:** To remove the 4:00 a.m. restriction, which is now superseded by new subdivision (b) of section 1617-a of the Tax Law.

**Text of proposed rule:** Section 5118.9 of 9 NYCRR is amended to read as follows:

## § 5118.9. Hours of Operation.

The hours of operation of video lottery gaming at all licensed video lottery gaming facility locations shall be 20 consecutive hours per day, unless otherwise approved by the commission in writing after [a 60-day written application is made by the] a video gaming agent *applies for an exception at least 60 days in advance of a proposed change*. In no event shall video lottery gaming be conducted past [4:00 a.m.] *the time set forth in subdivision b of Section 1617-a of the Tax Law*. Public access to the video lottery gaming floor must be restricted at all times video lottery gaming is not in operation. The failure of the video lottery gaming agent to comply with the hours of operation set forth in this [Part] *section* shall be a violation of these regulations.

**Text of proposed 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, NY 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 and 1604, 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.

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 establish hours of operation for facilities that operate video lottery terminals (VLTs). This rulemaking supports the mandate of establishing a state lottery, the net proceeds of which are to be applied exclusively for the purpose of providing aid to pupils with special educational needs and pupils with handicapping conditions, and supplemental aid to all school children.

3. Needs and benefits: This rulemaking is necessary to amend the Commission's VLT regulations to conform with Section 1617-a of the Tax Law, which was amended on July 22, 2014 in regards to hours of operation. Subdivision (b) of Section 1617-a of the Tax Law was amended to read that "Video lottery gaming shall only be permitted for no more than twenty consecutive hours per day and on no day shall such operation be conducted past 6:00 a.m." Previously, VLT operations could not be conducted past 4:00 a.m. Expanded hours of VLT operations will increase lottery revenues which are applied to special education needs and supplemental aid for general education.

The rule amendment will not explicitly state that VLT hours of operation may be conducted until 6:00 a.m. The rule references the statute [Tax Law 1617-a(b)], which specifically states the hours of operation.

## 4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to the VLT facility operators. The rule does not expand the 20-hour period of operation. It allows the VLT to move the hours of operation to conclude at 6:00 a.m. It is a permissive rule and does not mandate the VLT facility operator to remain open until 6:00 a.m.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated. The costs of state monitoring of gaming operations are provided by the facility operator. The state inspectors will still provide coverage for no more than 20 hours a day per facility.

c. Sources of cost evaluations: The Commission evaluated the impact of the new rule.

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 alternative was considered because this rulemaking is intended to amend the Commission rules to comply with statutory amendments.

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

10. Compliance schedule: VLT facilities have already established new hours of operation as authorized by the Tax Law amendment, so they are already in compliance with the proposed 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.

The rule making is necessary to conform Commission rules to recently-enacted legislation allowing later closing hours in video lottery facilities. This addition will impose no significant technological changes. No local government activity is involved. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The revision 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 rulemaking.

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## Department of Health

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### EMERGENCY RULE MAKING

**Protection Against Legionella**

**I.D. No.** HLT-35-15-00005-E

**Filing No.** 696

**Filing Date:** 2015-08-17

**Effective Date:** 2015-08-17

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

**Action taken:** Addition of Part 4 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 225(5)(a)

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

**Specific reasons underlying the finding of necessity:** Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older, current or former smokers, those with chronic lung diseases, those with weakened immune systems from diseases like cancer, diabetes, or kidney failure, and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including Legionella)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing Legionella.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.



# Gaming Commission

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

[www.gaming.ny.gov](http://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:** September 16, 2015

**Re:** Proposed Rulemaking for the Post-Race Testing Claimed Horses (9 NYCRR §§ 4038.5, 4038.17, 4109.3, 4109.5).

For the Commission's consideration are proposed revisions to the Commission's horse racing rules 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. A positive test result gives the claimant the option to void the claim.

These proposals would discontinue the commission's universal post-race sampling of claimed horses and replace it with a program of sampling at the expense of the claimant when the claimant requests this service on the claim form. The purpose of this proposal is to eliminate the burdensome State expense of testing every claimed horse. Many claimants do not elect to void a claim even if the sample tests positive, and New York is the only major racing commission to provide unrequested sampling of every claimed horse at no expense to the claimant.

The Thoroughbred stewards and Standardbred judges would retain their discretion to order the post-race sampling of any horse at the expense of the Commission. A claimant would continue to be able to void a claim if a Commission-ordered sample proved to be positive for the presence of a prohibited substance.

The text of the proposed rules is attached.

[REDACTED]

attachment

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

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4038.5, 4038.17, 4109.3, 4109.5 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTERS A AND B

**§ 4038.5. Requirements for claim; determination by stewards.**

(a) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the racing secretary or the racing secretary's designee, at least 10 minutes before post time. Claim slip forms must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim. Each person desiring to make a claim, unless the person has such amount to the person's credit with the association, must first deposit with the association the whole amount of the claim, in a manner approved by the racing secretary or designee for which a receipt will be given. Unless funds of the claimant available in the claimant's account with the association are sufficient, in the judgment of the stewards, to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. If such funds are sufficient, an amount sufficient to pay for the post-race testing requested on the claim form shall be frozen in such claimant's account to secure anticipated costs of testing. All claims shall be passed upon by the stewards. The person determined at the closing time for claiming to have the right of claim shall become the owner of the horse when the start is effected, whether the horse is sound or unsound or injured before or during the race or after the race, except that:

(1) the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section 4038.19 of this Part unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

(2) a claim shall be void for any horse that dies during a race or is euthanized on the track following a race; and

(3) a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

In the event more than one person should enter a claim for the same horse, the disposition of the horse shall be decided by lot by the stewards. Any horse so claimed shall then be taken to the test barn for delivery to the claimant after [the] any test sample is taken.

**§ 4038.17. Horses claimed—testing.**

Each horse claimed in a race shall [be designated by the stewards for] undergo post-race blood and urine testing if the claimant requested such testing, at the expense of the claimant, on the claim form. The original trainer shall remain responsible for the claimed horse until [the] any on-track post-race sample collection has been completed.

**§ 4109.3. Claiming procedure.**

(a) *Claimant's credit.* The claimant must have to [his] the claimant's credit with the track an amount equivalent to the specified claiming price, the applicable sales tax, the cost of transferring the registration[,] and the fee for the test for equine infectious anemia. No claims shall be accepted

unless such credit is certified in writing by an authorized track official and such written certification is included with the claim. Unless the claimant also has to the claimant's credit an amount sufficient to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. No track official of [said] the racing association shall give any information as to the filing of any claim or claim information to the public and horsemen until after the race has been run.

**§ 4109.5. Horses claimed—testing.**

[Each horse claimed in a race shall be designated by the judges for post-race blood and urine testing.] Section 4038.17 of this Chapter shall apply to standardbred racing as if set forth fully herein.

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4038.5, 4038.17, 4109.3, 4109.5 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTERS A AND B

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, the New York State Gaming Commission hereby proposes this amendment of Sections 4038.5, 4038.17, 4109.3, 4109.5 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

**§ 4038.5. Requirements for claim; determination by stewards.**

(a) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the racing secretary or the racing secretary's designee, at least 10 minutes before post time. Claim slip forms must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim. Each person desiring to make a claim, unless the person has such amount to the person's credit with the association, must first deposit with the association the whole amount of the claim, in a manner approved by the racing secretary or designee for which a receipt will be given. Unless funds of the claimant available in the claimant's account with the association are sufficient, in the judgment of the stewards, to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. If such funds are sufficient, an amount sufficient to pay for the post-race testing requested on the claim form shall be frozen in such claimant's account to secure anticipated costs of testing. All claims shall be passed upon by the stewards. The person determined at the closing time for claiming to have the right of claim shall become the owner of the horse when the start is effected, whether the horse is sound or unsound or injured before or during the race or after the race, except that:

- (1) the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section 4038.19 of this Part unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and
- (2) a claim shall be void for any horse that dies during a race or is euthanized on the track following a race; and
- (3) a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

In the event more than one person should enter a claim for the same horse, the disposition of the horse shall be decided by lot by the stewards. Any horse so claimed shall then be taken to the test barn for delivery to the claimant after [the] any test sample is taken.

**§ 4038.17. Horses claimed—testing.**

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**§ 4109.3. Claiming procedure.**

(a) *Claimant's credit.* The claimant must have to [his] the claimant's credit with the track an amount equivalent to the specified claiming price, the applicable sales tax, the cost of transferring the registration[,] and the fee for the test for equine infectious anemia. No claims shall be accepted unless such credit is certified in writing by an authorized track official and such written certification is included with the claim. Unless the claimant also has to the claimant's credit an amount sufficient to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. No track official of [said] the racing association shall give any information as to the filing of any claim or claim information to the public and horsemen until after the race has been run.

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