



**MEETING AGENDA
DECEMBER 10, 2018**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF SEPTEMBER 24, 2018
3. REPORT OF THE ACTING EXECUTIVE DIRECTOR
4. RULEMAKING
 - A. ADOPTION GAMING RULEMAKING: SGC-38-18-00002-P HEADS UP HOLD'EM POKER
 - B. ADOPTION RACING RULEMAKING: SGC-40-18-00006-P-AMENDMENT OF MULTIPLE MEDICATION VIOLATION (MMV) PENALTY ENHANCEMENT RULE
 - C. ADOPTION RACING RULEMAKING: SGC-42-18-00015-P-PERMIT GREATER PURSE-TO-PRICE RATIO IN THOROUGHBRED CLAIMING RACES
 - D. REVISED PROPOSED GAMING RULEMAKING: SGC-38-18-00003-P COMMERCIAL CASINO FEES AND PAYMENTS
 - E. PROPOSED RULEMAKING: USE OF SOCIAL SECURITY NUMBERS
 - F. PROPOSED GAMING RULEMAKING: SPANISH 21 TABLE GAME
 - G. PROPOSED RACING RULEMAKING: BACKSTRETCH WORKER HOUSING AT THOROUGHBRED TRACKS
 - H. PROPOSED RACING RULEMAKING: HELMETS AND SAFETY VESTS AT THOROUGHBRED TRACKS
5. ADJUDICATIONS
 - A. IN THE MATTER OF PUFF & STUFF

B. IN THE MATTER OF JAVIER CASTELLANO

6. OLD BUSINESS/NEW BUSINESS
7. SCHEDULING OF NEXT MEETING
8. ADJOURNMENT

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New York State Gaming Commission

Minutes

Meeting of September 24, 2018

A meeting of the Commission was conducted in New York, New York.

1. **Call to Order and Establishment of Quorum**

Acting Executive Director Ronald Ochrym called the meeting to order at 1:15 p.m. Establishment of a quorum was noted by Acting Executive Director Ronald Ochrym. In attendance were Chairman Barry Sample and Commissioners John Crotty, Peter Moschetti, John Poklemba, Jerry Skurnik and Todd Snyder.

2. **Consideration of Minutes for Meeting of July 16, 2018**

The Commission considered previously circulated draft minutes of the meeting conducted on July 16, 2018. The minutes were accepted as circulated.

3. **Report of the Acting Executive Director**

Director Ochrym provided a report regarding the recently concluded race meet at the Saratoga Race Course, the Fall race meet at Belmont Park, the 2018 N.Y. Sire Stakes Night of Champions at Yonkers Raceway and the forthcoming announcement of a Powerball winner from Staten Island.

4. **Rulemaking**

a. **ADOPTION: Blazing 7's Progressive Wager, SGC-32-18-00002-P**

The Commission considered an adoption of a proposed rulemaking to a blackjack table game feature for commercial casino.

ON A MOTION BY: Commissioner Crotty
APPROVED: 6-0

b. **RE-PROPOSED: Self Exclusion**

The Commission considered a re-proposal of amended regulations for self-exclusion from gaming activities.

ON A MOTION BY: Commissioner Snyder
APPROVED: 6-0

c. PROPOSED: Claiming Purses Structure in Thoroughbred Racing

The Commission considered a proposed rulemaking to add flexibility to the Thoroughbred claiming-price rule in appropriate circumstances.

ON A MOTION BY: Commissioner Poklemba
APPROVED: 6-0

d. PROPOSED: Pick-Six Jackpot Pools for Thoroughbred Racing

The Commission considered a proposed rulemaking for a new Thoroughbred wager to be known as the pick-six jackpot wager.

ON A MOTION BY: Commissioner Crotty
APPROVED: 6-0

5. Adjudications

a. In the Matter of Thomas E. Russell

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 6-0 vote to sustain, with technical modifications to certain language, the Hearing Officer's Report and Recommendation that the denial of the applicant's registration be upheld.

b. In the Matter of Terry Santiago

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 6-0 vote to sustain the Hearing Officer's Report and Recommendation that the that the denial of the applicant's registration be upheld.

6. Old Business/New Business

a. Old Business

No old business was offered for discussion.

b. New Business

No old business was offered for discussion.

7. Scheduling of Next Meeting

The Commission tentatively set October 22nd as the date for the next meeting.

8. Adjournment

The meeting was adjourned at 1:44 p.m.

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Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: November 20, 2018

Re: Adoption of Proposed Rulemaking for Heads Up Hold 'Em Casino Table Game (9 NYCRR §§ 5324.43)

For Commission consideration is the adoption of a proposal to add a poker table game called Heads Up Hold 'Em to the rules for commercial casinos. The proposed rulemaking was published in the September 19, 2018 *State Register*, a copy of which is attached. The text of the proposed rule is attached. The public comment period for the proposal expired on November 19, 2018. No comments were received.

At the request of a casino license, rules for this game were approved temporarily for a trial period, pursuant to Rule 5323.19. The Commission's Division of Gaming evaluated the experience with this game and is satisfied that the game would be appropriate to add to the table game rules as a permanent rule.

[REDACTED]

attachments

cc: Ronald Ochrym, Acting Executive Director
Thomas Anapolis, Director, Division of Gaming

Although most insurers are not small businesses, industry has asserted previously that certain insurers subject to the regulation are small businesses but has not provided the Department of Financial Services ("Department") with specific insurers or the number of such entities.

The amendment does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this amendment is directed at insurers that elect to sell volunteer firefighter enhanced cancer insurance. Although every legally organized fire district, department or company in this state will have to provide the benefits to their members, it is General Municipal Law Section 205-cc and not the regulation that imposes such requirement.

2. Compliance requirements: An insurer that is a small business that elects to sell the insurance would have to file new policy forms and premium rates with the Department. However, form and rate filing requirements are imposed by the Insurance Law and not by this amendment. Moreover, an insurer does not have to provide the coverage.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the amendment.

3. Professional services: It is not anticipated that any insurer that is a small business affected by this amendment will need to retain professional services to comply with this amendment.

4. Compliance costs: This amendment does not impose compliance costs on state or local governments. Although fire districts, departments or companies will have to provide the benefits to their members, the requirement is imposed by statute and not the regulation.

Insurers that elect to sell volunteer firefighter enhanced cancer insurance may incur costs to file new policy forms and premium rates with the Department. However, as noted, form and rate filing requirements are imposed by the Insurance Law and not by this amendment. Moreover, an insurer does not have to provide the coverage.

5. Economic and technological feasibility: No insurer that is a small business affected by this amendment should experience any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: The Department considered the criteria in State Administrative Procedure Act ("SAPA") section 202-b(1) but the Department could not design the amendment to minimize any adverse impact on insurers that are small businesses since the minimum requirements for the coverage must be uniform. However, the Department expects the potential benefits of this amendment to outweigh any additional compliance costs that insurers may incur.

7. Small business and local government participation: The Department will comply with SAPA section 202-b(6) by publishing the amendment to the regulation in the State Register and posting it on the Department's website.

Rural Area Flexibility Analysis

The Department of Financial Services finds that this amendment to Part 52, which establishes minimum standards for form, content and sale of volunteer firefighter enhanced cancer insurance authorized by General Municipal Law Section 205-cc, does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This amendment applies uniformly to insurers that do business in both rural and non-rural areas of New York State. This amendment will not impose any additional costs on rural areas.

Job Impact Statement

The Department of Financial Services finds that this amendment to Part 52 should have no negative impact on jobs or employment opportunities in this state. The amendment establishes minimum standards for volunteer firefighter enhanced cancer insurance policies that, pursuant to GML Section 205-cc, every legally organized fire district, department or company in this state must provide and maintain for each eligible volunteer firefighter unless the fire district, department or company self-funds the benefits.

Assessment of Public Comment

The agency received no public comment.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Heads Up Hold 'Em Poker

I.D. No. SGC-38-18-00002-P

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

Proposed Action: Addition of section 5324.43 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(5), (6) and (11)

Subject: Heads Up Hold 'Em poker.

Purpose: To set forth the practices and procedures for the operation of Heads Up Hold 'Em poker as a casino table game.

Substance of proposed rule (Full text is posted at the following State website: https://www.gaming.ny.gov/proposed_rules.php): The proposed rule § 5324.43 would add the "Heads Up Hold 'Em" poker game as an approved table game for implementation at commercial casinos. Heads Up Hold 'Em is a "Texas Hold 'Em" variation that has many of the familiar features of the traditional Texas Hold 'Em including the familiar betting patterns, and offers some exciting extras. Players make an Ante and Odds wager and play against the dealer. There are optional wagers for the Trips Plus Bonus and the Pocket bonus that play against a posted pay table. Heads Up Hold 'Em also offers a poker favorite, the Bad Beat Bonus, which does not require any additional wager.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

Public comment will be received until: 60 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 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1307(2)(g) authorizes the Commission to regulate the devices permitted for use at a table game.

Racing Law section 1335(5) authorizes the Commission to regulate the wagers and pay-offs of winning wagers as may be necessary to assure the vitality of casino operations and fair odds to patrons.

Racing Law section 1335(6) authorizes the Commission to regulate the posting of gaming rules, pay-offs of winning wagers and the odds of winning for each wager.

Racing Law section 1335(11) authorizes the Commission to regulate a dealer's ability to deal cards by hands or by use of a machine.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state," as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rule implements the above-listed statutory directives regarding table game rules and equipment. Best practices addressed in the proposed rule include detailing the rules of play for the Heads Up Hold 'Em poker table game, as well as relevant pay tables.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulation will be approximately \$10,000 per year for each gaming facility, based on the estimated license fee charged by Galaxy Gaming, Inc. for the game.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administra-

tion of the rule will be negligible given that all such costs are the responsibility of the gaming facility. These rules will not impose any additional costs on local governments.

(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. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: The rule is not expected to impose any significant paperwork or reporting requirements on the regulated entities.

7. DUPLICATION: The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. These included the rules for similar table games and the appropriate pay tables. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1307(2)(g), and 1335(5), (6) and (11).

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

The proposed rule will not have any adverse impact on small businesses, local governments, jobs or rural areas. This rule is intended to promote public confidence and trust in the credibility and integrity of casino gambling in New York State. The rule will ensure that licensed gaming facilities follow game rules that are authorized and trustworthy.

The proposed rule does not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

The proposed rule imposes no adverse impact on rural areas. The rule applies uniformly throughout the state and solely applies to licensed gaming facilities.

The proposed rule will have no adverse impact on job opportunities.

This rule will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

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

Casino Fees and Payments

I.D. No. SGC-38-18-00003-P

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

Proposed Action: Addition of Part 5302; and repeal of section 5315.3 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103, 104, 1307(1), (2)(f), (m), (n), (o), 1348, 1349, 1350, 1351, 1352, 1353 and 1354

Subject: Casino fees and payments.

Purpose: Implementation of rules governing procedures for submission of fees and payments by gaming facilities to the Gaming Commission.

Text of proposed rule: A new Part 5302 would be added to 9 NYCRR, to read as follows:

Part 5302

Fees and Payments

§ 5302.1. Definition.

Unless the context indicates otherwise, gaming position means each player position at a slot machine and table game.

§ 5302.2. Annual license fee for machines and tables.

(a) The annual license fee set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1348 shall be paid for each gaming position by July 1st of each year for all approved slot machines and tables on that date.

(b) The annual license fee for any slot machine or table approved by the commission after July 1st shall be paid upon such approval and prorated by the number of days left in the year, with such year measured from July 1st through the following June 30th.

(c) No adjustment or credit shall be issued to a gaming facility for any machines or tables removed from use after a fee has been imposed.

§ 5302.3. Submission of payments.

(a) Payments for taxes, fees, interest and penalties shall be made to the commission within 30 days of obligation incurred, unless a different period is set forth for a type of payment by article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Part. Any payment for taxes, fees, interest and penalties shall be made by electronic wire transfer, money order, certified check or any other manner designated by the commission.

(b) Forfeiture of winnings as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1345 and gross gaming tax as prescribed in Racing, Pari-Mutuel Wagering and Breeding Law section 1351, including any applicable interest and penalties, shall be transmitted weekly by electronic funds transfer to the commission. Such transmissions are the responsibility of, and shall be made by, the gaming facility licensee.

(c) All weekly gross gaming revenue tax reports filed with the commission shall reflect all gross gaming revenue received by the gaming facility licensee for the period of the return.

(d) When the commission finds that the gaming facility licensee is required to pay additional taxes or finds that the gaming facility licensee is entitled to a refund of taxes, the commission shall report its findings to the licensee and set forth the basis upon which such findings are made.

§ 5302.4. Overdue payments.

The commission may recover from a gaming facility:

(a) any unpaid amount including overdue payments from the gaming facility's employee or vendor applicants, registrants or licensees;

(b) revenues lost to the State of New York as a result of nonpayment or underpayment;

(c) attorney fees associated with recovery of funds; and

(d) any other payments, including any interest and penalties imposed, as prescribed by article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter.

§ 5302.5. Regulatory investigative fees and costs.

(a) Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1349, a gaming facility licensee shall pay for the costs of any investigation into a violation of article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or regulation promulgated caused by such licensee. The costs of an investigation conducted pursuant to this section shall be assessed directly to such licensee upon completion of an investigation.

(b) Billable hours by commission staff shall be determined by using payroll costs for commission employees as obtained from the office of the State comptroller, including salaries and non-wage compensation and payroll taxes, as well as fringe benefit and indirect costs at rates established by the division of the budget.

(c) The commission shall charge the gaming facility licensee for actual costs of any consultant including, without limitation, attorneys, accountants, investigators and other designees of the commission related to such consultation.

§ 5302.6. Regulatory cost assessment.

(a) Gaming facility licensees annually shall be assessed commercial gaming regulatory costs as authorized pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1350. The commission shall determine the total assessment of regulatory costs for a forthcoming State fiscal year. Such total assessment shall include all commercial gaming costs reasonably anticipated by the commission in regard to all gaming facilities, including, without limitation, direct and indirect payroll, fringe benefits, non-personal service expenses and administrative overhead costs.

(b) The total assessment shall be allocated to each gaming facility licensee in proportion to the number of gaming positions at each gaming facility compared to the total number of gaming positions at all gaming facilities, all as determined by the commission; provided, however, that the commission may use intermediate allocation bases between opened gaming facilities and gaming facilities that have not opened, as the commission may determine.

(c) At the conclusion of a State fiscal year, the commission shall determine the actual costs of commercial gaming regulation for such concluded fiscal year, excluding investigatory fees assessed pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1349. The commission shall apportion such actual costs according to the proportion of the number of gaming positions at each facility compared to the total number of gaming positions at all facilities and shall credit or debit the next annual assessment of each gaming facility according to the variance between the cost that had been assessed to such facility at the start of the year pursuant to subdivisions (a) and (b) of this section and the actual cost, as determined at the end of such year pursuant to this subdivision. If the number of gaming positions varies throughout the year, the commission may choose one date on which to measure gaming positions or may, in its sole discretion, determine an average number of gaming positions throughout the year.

(d) Regulatory costs of the commercial gaming program incurred prior

A new section 5324.43 of title 9 of NYCRR would be added to read as follows:

§ 5324.43 Heads up hold 'em poker.

(a) Equipment and layout.

(1) Heads up hold 'em shall be played on a table having positions for six players on one side of the table and a place for the dealer on the opposite side.

(2) In addition to the requirements of subdivision (a) of section 5324.30 of this Part, the layout for a heads up hold 'em table shall contain, at a minimum:

(i) a separate designated betting area at each player position for the placement of ante wagers;

(ii) a separate designated betting area at each player position for the placement of a raise wager, which shall be located immediately behind the ante betting area as viewed by a player;

(iii) a separate designated area at each player position for the placement of an odds wager, which shall be located to the right of the ante betting area as viewed by a player and shall be separated with the following symbol: “=”;

(iv) a separate designated area at each player position for the placement of a trips plus wager, which shall be located immediately above the ante betting area as viewed by a player;

(v) a separate designated area at each player position for the placement of a pocket bonus wager, which shall be located to the right of the trips plus betting area as viewed by a player;

(vi) inscriptions that advise patrons of the payout odds of the odds wager, bad beat bonus, trips plus wager and pocket bonus wager; and

(vii) inscriptions that advise patrons of the permissible raise wagers.

(b) Heads up hold 'em poker hand rankings.

(1) For the determination of winning hands in heads up hold 'em, the rank of the cards in order of highest to lowest rank shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. Notwithstanding the foregoing, an ace may be used to complete a straight flush or straight formed with a 2, 3, 4 and 5.

(2) The permissible five-card poker hands at the game of heads up hold 'em, in order of highest to lowest rank, shall be:

(i) *royal flush* is a hand consisting of an ace, king, queen, jack and 10 of the same suit;

(ii) *straight flush* is a hand consisting of five cards of the same suit in consecutive ranking, with ace, king, queen, jack and 10 being the highest-ranking straight flush and ace, 2, 3, 4 and 5 being the lowest straight flush;

(iii) *four-of-a-kind* is a hand consisting of four cards of the same rank, with four aces being the highest-ranking four-of-a-kind and four 2s being the lowest-ranking four-of-a-kind;

(iv) *full house* is a hand consisting of a three-of-a-kind, with a pair with three aces and two kings being the highest-ranking full house and three 2s and two 3s being the lowest-ranking full house;

(v) *flush* is a hand consisting of five cards of the same suit, not in consecutive order, with ace, king, queen, jack and 9 being the highest-ranking flush and 2, 3, 4, 5 and 7 being the lowest-ranking flush;

(vi) *straight* is a hand consisting of five unsuited cards of consecutive rank, with an ace, king, queen, jack, and 10 being the highest-ranking straight and an ace, 2, 3, 4 and 5 being the lowest-ranking straight;

(vii) *three-of-a-kind* is a hand consisting of three cards of the same rank, with three aces being the highest-ranking three-of-a-kind and three 2s being the lowest-ranking three-of-a-kind;

(viii) *two pairs* is a hand consisting of two pairs, with two aces and two kings being the highest-ranking two pair and two 3s and two 2s being the lowest-ranking two pair; and

(ix) *one pair* is a hand consisting of two cards of the same rank, with two aces being the highest-ranking pair and two 2s being the lowest-ranking pair.

(3) When comparing two hands that are of identical poker rank pursuant to the provisions of this subdivision, or that contain none of the hands authorized in this subdivision, the hand that contains the highest-ranking card as provided in paragraph (1) of this subdivision that is not contained in the other hand shall be considered the higher-ranking hand. If the hands are of identical rank after the application of this subdivision, the hands shall be considered a push.

(c) *Wagers.*

(1) All wagers at heads up hold 'em shall be made by chips or plaques and, if applicable, a table game promotional coupon on the appropriate betting areas of the table layout.

(2) All wagers shall be placed prior to the dealer announcing "no more bets." Except as provided in subdivision (e) of this section, no wager shall be made, increased, or withdrawn after the dealer has announced "no more bets."

(3) Upon placing an ante wager, and an odds wager in an amount equal to the ante wager, a player may also make an optional bonus wager by placing a wager on the designated betting area of the layout. The outcome of these wagers shall have no bearing on any other wager made by the player.

(4) Raise wagers shall be made in accordance with the provisions of subparagraph (e).

(5) Only players who are seated at the heads up hold 'em poker table may place a wager at the game. Once a player has placed a wager and received cards, that player must remain seated until the completion of the round of play.

(6) A player shall not be permitted to wager on more than one position.

(d) *Procedure for dealing the cards.* In addition to the requirements set forth in subdivisions (d) and (e) of section 5324.2 of this Part, the dealer shall deal the cards as follows:

(1) If using a manual dealing shoe or dealing from the hand, after all players have placed a wager in accordance with subdivision (c) of this section, the dealer shall, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal the cards as follows:

(i) one card face down to each player;

(ii) one card face down to the area designated for the dealer's hand;

(iii) a second card face down to each player; and

(iv) a second card face down to the area designated for the dealer's hand.

(2) If using an automated dealing shoe, the automated dealing shoe shall dispense five cards and continue to deliver cards in stacks of two cards. The dealer shall first deliver the first stack of five cards to the community card area and spread them out. After the community cards have been delivered, the dealer shall deliver the first stack of two cards dispensed by the automated dealing shoe face down to the player farthest to his or her left who has placed a wager in accordance with subdivision (c) of this section. As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed a wager in accordance with subdivision (c) of this section. The dealer shall then deliver the next stack face down to the area designated for the dealer's hand.

(e) *Procedure for completion of each round of play; collection and payment of wagers.*

(1) To begin each round of play, each player must place an ante and an odds wager in a designated betting position on the table layout. The ante wager and odds wager must be in equal amounts.

(2) After the dealing procedures required by subdivision (d) of this section have been completed, each player shall have the opportunity to examine such player's cards and, without exposing such cards to any other person, each player shall then place the cards face down on the layout and shall either place a raise wager or check.

(3) Each player then has the option to make a raise wager equal to their ante wager, make a raise wager twice their ante wager, make a raise wager three times their ante wager or check.

(4) The dealer shall then reveal three community cards, either by turning over the first three face-down community cards if dealt from an automated dealing shoe, or by removing the next three cards off of the top of the deck and revealing them on the designated area of the layout if dealt by a manual dealing shoe or the hand.

(5) Each player who has not yet made a raise wager may make a raise wager equal to such player's ante wager, twice such player's ante wager or check.

(6) The dealer shall then reveal the final two community cards, either by turning over the last two face-down cards if dealt from an automated dealing shoe, or by removing the next two cards off of the top of the deck and revealing them on the designated area of the layout if dealt by a manual dealing shoe or the hand.

(7) Each player who has not yet made a raise wager may make a raise wager equal to such player's ante wager or fold, forfeiting both the ante and odds wager. A player who folds is still eligible to win the pocket bonus wager if such player's two-card hand contains a ranking hand in accordance with subdivision (f) of this section.

(8) After each player has either folded or placed a raise wager, the dealer shall reveal his or her two hole cards and then make the best five-card hand possible using any combination of his or her two hole cards and the five community cards. If the dealer's best possible five-card hand is lower than a pair, the dealer shall, starting with the player farthest to the dealer's right who has placed a raise wager and proceeding counter-clockwise around the table, return each player's ante wager and settle all other wagers in accordance with paragraph (8) of this subdivision.

(9) Starting with the player farthest to the dealer's right who has folded but is still eligible to win the pocket bonus wager, and proceeding counter-clockwise around the table, the dealer shall turn face up the two hole cards of that player to determine if the cards contain a ranking hand in accordance with subdivision (f) of this section. The player's wager shall then be resolved and the hand of the player shall be collected immediately by the dealer and placed in the discard rack before the dealer proceeds to the next player.

(10) Starting with the player farthest to the dealer's right who has placed a raise wager and proceeding counter-clockwise around the table, the dealer shall turn face up the two cards of each player who has placed a raise wager and announce the best possible five-card poker hand that can be formed using the two player cards and the five community cards. The player's wager shall then be resolved and the hand of the

player shall be collected immediately by the dealer and placed in the discard rack before the dealer proceeds to the next player.

(11) All cards collected by the dealer shall be picked up in order and placed in the discard rack in such a way that such cards can be arranged readily to reconstruct each hand in the event of a question or dispute.

(f) *Payout odds.*

(1) If the dealer's five-card hand does not rank as a pair or higher, the dealer shall not qualify and the ante wager is pushed. All other wagers are settled accordingly.

(2) If the dealer's five-card hand qualifies with a pair or better and the player's hand ranks higher than the dealer's hand, the ante wager shall be paid at odds of even money.

(3) If the dealer's hand ranks higher than the player's hand, the ante wager shall lose and be collected. If the player's hand loses and ranks as a three-of-a-kind or worse, then both the raise and odds wagers shall lose and be collected.

(4) If the dealer's hand and the player's hand are identical, the ante, raise and odds wager shall be a push.

(5) If the player's hand ranks higher than the dealer with a straight or better, the raise wager is paid at odds of even money, and the odds wager is paid in accordance to the following pay table:

<u>Hand</u>	<u>Payout Odds</u>
Straight	1:1
Flush	3:2
Full house	3:1
Four-of-a-kind	10:1
Straight flush	50:1
Royal flush	500:1

(6) If the player's hand ranks higher than the dealer with a three-of-a-kind or less, the raise wager shall win and be paid at odds of even money and the odds wager shall push.

(7) If the player's hand ranks below the dealer's but the player's hand ranks at least a straight or higher, the raise and ante wager shall lose and be collected. The odds wager shall remain and be paid in accordance to the following bad beat bonus pay table:

<u>Losing hand</u>	<u>Payout odds</u>
Straight	4:1
Flush	5:1
Full house	6:1

NYS Gaming Commission Rule 5324.43

Four-of-a-kind	25:1
Straight flush	500:1

(g) The trips plus wager is an optional wager that pays if the player's seven-card poker hand, comprised of the player's two hole cards and the five community cards, contains a three-of-a-kind or better, regardless of the outcome of the primary game wagers. Winning wagers are paid according to one of the following pay tables:

<u>Hand</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
Three-of-a-kind	3:1	3:1	3:1	3:1
Straight	4:1	5:1	4:1	5:1
Flush	7:1	6:1	7:1	6:1
Full house	9:1	8:1	8:1	7:1
Four-of-a-kind	30:1	30:1	30:1	30:1
Straight flush	40:1	40:1	40:1	40:1
Royal flush	100:1	100:1	100:1	100:1

(h) The dealer may take or pay the trips plus wager before processing the players' main wagers or after the dealer has processed the players' main wagers.

(i) The pocket bonus wager is an optional wager that pays if the player's two hole cards contain a pair or are composed of an ace with a king, queen or jack (*face card*), without regard to the outcome of the primary game. If the player placed a pocket bonus wager and such player's hole cards are not an ace paired with a face card, the pocket bonus wager will lose and be collected by the dealer. However, if the player wins, the pocket bonus wager pays according to one of the following pay tables:

<u>Hand</u>	<u>A</u>	<u>B</u>	<u>C</u>
Pair (2-k)	5:1	5:1	4:1
Ace-jack, ace-queen, ace-king unsuited	10:1	10:1	10:1
Ace-jack, ace-queen, ace-king suited	20:1	20:1	20:1
Pair of aces	30:1	25:1	30:1

(j) *Irregularities.*

(1) If any card dealt to the dealer is exposed prior to each player placing an authorized wager or folding, all hands shall be void.

(2) Notwithstanding paragraph (1) of this subdivision:

(i) if a player has placed a trips wager, the community cards shall be dealt and each trips wager shall be settled; and

(ii) if the card or cards are found face up after each player and the dealer has received their initial two cards, the community cards shall be dealt and any trips wager shall be settled.

NYS Gaming Commission Rule 5324.43

(3) If a player is dealt an incorrect number of cards, that player's hand shall be void. If the dealer is dealt an incorrect number of cards, all players' hands shall be void unless the dealer can deal the correct number of cards in sequence for the dealer's hand, provided that such cards have not already been turned face up.



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: November 28, 2018

Re: Adoption of Proposed Rulemaking for Amendments to Minimum Penalty Enhancement Rules in Thoroughbred Racing (9 NYCRR Part 4045)

For Commission consideration is the adoption of a proposal to revise the Thoroughbred racing rules on minimum penalty enhancement. The proposed rulemaking, including the text of the proposed rule, was published in the October 3, 2018 *State Register*, a copy of which is attached. The public comment period for the proposal will expire on December 3, 2018. No comments have been received to date. Staff will bring any comment received before the expiration of the public comment period to the attention of the Commissioners.

The minimum penalty enhancement rules, adopted by the Commission in February 2016, were designed to ensure that every state imposes a mandatory minimum penalty whenever a horseperson, typically the trainer, reaches a certain level of multiple equine drug violations. The proposed amendment is intended to conform New York's rules to changes in the national model rules adopted by the Association of Racing Commissioners International, Inc. (ARCI).

The proposed revisions will appropriately focus the MMV system on those who consistently violate serious medication and anti-doping rules and assist in developing national consistency in regard to punishment.

[REDACTED]

attachment

cc: Ronald Ochrym, Acting Executive Director

This amendment extends from January 1, 2019 to July 1, 2019 the date until which a group policy must provide that the group policy is primary to give insurers more time to revise and implement their new policy forms. Many insurers waited to start making changes to their motor vehicle liability insurance policy forms to exclude coverage for using or operating a motor vehicle as TNC vehicle until the Department had adopted the final regulation in October 2017. It takes time for an insurer to amend and file its policy forms with and receive approval from the Superintendent, and then for the insurer to actually implement the policy form changes. In addition, the Insurance Law prohibits an insurer from amending the terms of a motor vehicle liability insurance policy mid-contract. Rather, an insurer only may change the terms of an insurance policy upon the renewal date, which is usually annually. Furthermore, the Insurance Law requires an insurer to provide sufficient advance notice to an insured of any changes to the policy terms. Thus, many insurers may not have sufficient time to revise and implement their new policy forms by January 1, 2019. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2).

4. Costs: This amendment will not impose compliance costs on insurers because it merely extends the date until which a group policy must provide that the group policy is primary and fixes an incorrect citation. The Department of Financial Services will not incur costs for the implementation and continuation of this amendment. This amendment does not impose compliance costs on any local government.

5. Local government mandates: This amendment does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: An insurer will not incur additional paperwork because the amendment merely extends the date until which a group policy must provide that the group policy is primary and fixes an incorrect citation.

7. Duplication: This amendment does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: There were no significant alternatives to consider.

9. Federal standards: The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The amendment will take effect upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

The amendment to Insurance Regulation 35-E should have no impact on small businesses and local governments. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

The proposed amendment to Insurance Regulation 35-E should have no impact on rural areas or public or private entities in rural areas. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should not impose any adverse impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

The proposed amendment to Insurance Regulation 35-E should have no impact on jobs and employment opportunities. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should have no impact on jobs and employment opportunities.

New York State Gaming Commission

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

Amendment of Multiple Medication Violation (MMV) Penalty Enhancement Rule

I.D. No. SGC-40-18-00006-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 4045.1, 4045.3 and 4045.4 of Title 9 NYCRR.

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

Subject: Amendment of multiple medication violation (MMV) penalty enhancement rule.

Purpose: To enable the Commission to enhance the integrity and safety of thoroughbred pari-mutuel racing.

Text of proposed rule: Section 4045.1 of 9 NYCRR would be amended, as follows:

§ 4045.1. Definitions.

The following terms, when used in this Part, have the following meanings:

(a) ARCI Penalty Guidelines means the [penalty] *uniform classification* guidelines published in “Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule,” Version [8.0] 13.0 ([revised] *approved* December [2014] 9, 2016) of the Association of Racing Commissioners International, Inc., 1510 Newtown Pike, Suite 210, Lexington, KY 40511, which are hereby incorporated by reference. Such Uniform Rules of Racing are available for public inspection at the New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY and at the Department of State, 99 Washington Street, Albany, NY.

Section 4045.3 of 9 NYCRR would be amended, as follows:

§ 4045.3. Points.

(a) When a precipitating equine drug rule violation occurs, the commission shall examine the equine drug rule violation history of the violator and assign a point value to [other] *the* equine drug rule violations as set forth in this section.

(b) The commission shall assign six points, which shall accumulate [permanently] *with points resulting from other violations committed within a three-year period*, for a violation involving a drug or other substance that:

(c) The commission shall assign four points, which shall accumulate with points resulting from other violations committed within a [three-year] *two-year* period, for a violation involving a drug or other substance that:

(d) The commission shall assign [two points] *one point*, which shall accumulate with points resulting from other violations committed within a [two-year] *one-year* period, for a violation involving a drug or other substance that is classified as Penalty Class C in the ARCI Penalty Guidelines, subject to any adjustments that apply as set forth in this section.

[(e) The commission shall assign one point, which shall accumulate with points resulting from other violations committed within a one-year period, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class D in the ARCI Penalty Guidelines; or

(2) does not fall within any other subdivision of this section, subject to any adjustments that apply as set forth in this section.]

(e) *When more than one violation described in subdivision (d) of this section is committed within a 365-day period, the commission shall assign an additional penalty of one-half point for each previous violation (e.g., a second such violation within a 365-day period incurs an additional one-half point, a third such violation incurs an additional one point) in addition to the points assessed pursuant to subdivision (d) of this section.*

(f) *The point values set forth in subdivisions (c), [.] and (d) [and (e)] of this section are reduced by one-half for any drug or other substance that is listed in section 4043.3 of this Subchapter.*

[(g)] (g) No points shall be assigned for a violation involving a drug or other substance that has no effect on the physiology of a racing horse except to improve nutrition or to treat or prevent infections or parasite infestations.

[(g)] (h) No points shall be assigned for any violations that occurred before January 1, 2014.

[(h)] The point values set forth in subdivisions (c), (d) and (e) of this section are reduced by one-half for any drug or other substance that is listed in section 4043.3 of this Subchapter.]

(i) If a violation involves more than one drug or substance, then the commission shall assign to such violation not less than the highest point value of any one of the drugs or substances and shall assign additional points for each drug or substance that could have the effect of substantially altering the nature or effect of such drugs or other substances on the horse. *No points shall be assessed for more than one non-steroidal anti-inflammatory drug (NSAID) when there has been only an NSAID stacking violation.*

(j) If multiple violations involving one drug or substance are committed before a licensee is notified of a positive laboratory test, then the commission may assign lesser points for the violations, although not less than the points for a single violation, when the responsible parties are able to show that the multiple violations occurred as the result of an honest and unavoidable mistake. *If such an assessment of lesser points had been made by the jurisdiction in which a predicate equine drug violation occurred, or such jurisdiction had assigned lesser (even zero) points due to environmental contamination, then the commission shall assign such lesser points for the violation.*

Section 4045.4 of 9 NYCRR would be amended, as follows:
§ 4045.4. Administrative action.

(a) The commission shall calculate the points applicable to such licensee to determine whether to take any further administrative action pursuant to this Part.

(2) Although point values shall be assigned as of the date of each violation, the commission shall not initiate a suspension pursuant to this Part until after the final adjudication of [each] *an* equine drug rule violation for which points are assigned pursuant to this Part.

(3) When a precipitating equine drug rule violation results in the licensee having accumulated [three] *five* or more points based on final adjudications of equine drug rule violations, the commission shall find that a licensee is a habitual or persistent equine drug rule violator.

(b) The Director of the Division of Horse Racing and Pari-Mutuel Wagering shall suspend the occupational licenses of a habitual or persistent equine drug rule violator, at a minimum, as follows:

(1) if the licensee has accumulated [3] 5 to 5.5 points as a result of equine drug rule violations, a suspension of [30] *15* days;

(2) if the licensee has accumulated 6 to 8.5 points as a result of equine drug rule violations, a suspension of [60] *30* days;

(3) if the licensee has accumulated 9 to 10.5 points as a result of equine drug rule violations, a suspension of [180] *90* days; and

(4) if the licensee has accumulated 11 or more points as a result of equine drug rule violations, a suspension of [one year] *180 days*.

(d) The Director of the Division of Horse Racing and Pari-Mutuel Wagering, on behalf of the commission, may proportionately reduce such suspension, however, when convinced by clear and convincing evidence that the commission had already enhanced, based on one or more of the predicate equine drug rule violations, the penalty imposed on the licensee for the precipitating equine drug rule violation. *The Director may also impose a suspension before there has been a final adjudication of one or more of the predicate equine drug violations, when points assessed for matters that have been finally adjudicated suffice to impose a suspension pursuant to this Part; the balance of any suspension shall be imposed upon additional final adjudications.*

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) 388-3332, email: gamingrules@gaming.ny.gov

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

Public comment will be received until: 60 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 sections 103(2) and 104(1, 19). Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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.

2. Legislative objectives: The proposal advances legislative objectives by allowing the Commission to enhance the integrity of pari-mutuel wagering on thoroughbred races and the health and safety of thoroughbred racehorses.

3. Needs and benefits: This rulemaking will amend part 4045 of 9 NYCRR to be consistent with recent changes to the corresponding national model rule that requires specific minimum penalties for certain multiple violations of equine drug rules.

Part 4045 of 9 NYCRR imposes a minimum license suspension, after the occurrence of an equine drug rule violation in New York, when the Commission determines that the offender meets the criteria of a habitual or persistent violator. Part 4045 is based on a national model rule and was designed to ensure that in every state a mandatory minimum penalty would be imposed when a horseperson, typically the trainer, reaches a certain level of multiple equine drug violations. The national model rule has not been adopted in several racing states, however, due to perceived shortcomings. As a result, the Association of Racing Commissioners International, Inc. ("ARCI") recently changed its national model rule. These changes have received widespread support.

The proposal would adopt these amendments made to the national model rule.

Section 4045.3 would be amended to exempt points for minor medication (ARCI penalty class D) violations and to assess fewer points, except for repeated violations involving the use of non-steroidal anti-inflammatory drugs (NSAIDs), for lesser duration.

Section 4045.3 would be amended to require more points before the lowest (15- day) penalty assessment would be imposed, and to introduce a range of penalties that would grant some discretion to racing commissions.

The proposal would also clarify, in section 4045.3, the assessment of points when multiple NSAIDs are administered to a horse and authority of a state where a violation occurs to determine how many points to assess when environmental contamination is a mitigating factor; and, in section 4045.4, the authority of the Commission to impose some penalty, based on the matters that have been adjudicated with finality, while an offender has other matters under review.

Section 4045.1 would also be amended to incorporate by reference the most recent ARCI penalty guidelines concerning how many points to assess for a violation.

The proposal would not change the fact that, under section 4045.4, the Commission may consider past equine rule violations as an aggravating factor that could result in a more serious penalty for a new equine drug rule violation and proportionately reduce the mandatory minimum penalty enhancement in such situations.

This revised rulemaking is based on a model rule of the ARCI, which is anticipated to be adopted by racing commissions throughout the United States. The adoption of this proposed rule will help to discourage thoroughbred horsepersons from having recurring violations of equine drug rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation.

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

6. Paperwork: The Commission will assess a bare minimum penalty enhancement, when applicable, when an equine drug rule is violated in New York. The affected party may request a hearing. The Commission al-

ready examines the basis of this assessment, i.e., the licensee’s history of equine drug (and other) rule violations. A permanent record of such violations is maintained by the ARCI.

- 7. Duplication: None.
- 8. Alternatives. The Commission considered not amending its current rule. Adopting this proposal, however, is the most effective means to encourage more states to adopt a minimum penalty for repeat drug offenders and improve the public image of racing.
- 9. Federal standards: None.
- 10. Compliance schedule: The proposed rule does not create any additional requirements with which regulated persons must comply.

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.

The proposed amendment mitigates the assessment of points under the Commission’s existing rule to assess a minimum penalty enhancement when an equine drug violation occurs in New York and the offender has a specified significant history of such violations in New York or elsewhere. No regulated party will need a period to cure because the proposed amendments will only reduce, compared to the existing rules, the incidence and severity of the recidivism penalty that the commission applies when a person incurs repeated equine drug rule violations.

Such regulation will serve to enhance the integrity of racing and the health and safety of racehorses by serving as a deterrent to habitual and persistent equine drug rule violations. 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.

Higher Education Services Corporation

EMERGENCY RULE MAKING

NYS Part-Time Scholarship (PTS) Award Program

I.D. No. ESC-40-18-00003-E
Filing No. 914
Filing Date: 2018-09-14
Effective Date: 2018-09-14

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

Action taken: Addition of section 2201.20 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 667-c-1

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (HESC) Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the 2017-18 academic year, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a community college at the State University of New York or the City University of New York. Decisions on applications for student financial aid programs are customarily made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to begin processing scholarship applications. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: NYS Part-time Scholarship (PTS) Award Program.

Purpose: To implement the NYS Part-time Scholarship (PTS) Award Program.

Text of emergency rule: New section 2201.20 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.20 New York State Part-time Scholarship (PTS) Award Program.

(a) *Definitions. As used in Education Law, section 667-c-1 and this section, the following terms shall have the following meanings:*

(1) *Good academic standing shall mean having a minimum cumulative grade point average of 2.0.*

(2) *Interruption of study shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.*

(3) *Program shall mean the New York State Part-time Scholarship (PTS) Award Program codified in Education Law, section 667-c-1.*

(b) *Eligibility. An applicant must satisfy the requirements of Education Law, section 667-c-1 and the general eligibility requirements provided in Education Law, section 661.*

(c) *Administration.*

(1) *Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *For purposes of determining priority, financial need shall be established based on the federal expected family contribution reflected on the applicant’s federal student aid report, with the lowest expected family contribution evidencing the greatest financial need.*

(3) *Recipients of an award shall:*

(i) *request payment annually at such times, on forms and in a manner specified by the corporation;*

(ii) *provide any information necessary for the corporation to determine compliance with the program’s requirements.*

(4) *The corporation shall maintain data relating to the performance of award recipients including, but not limited to, degree completion rates. All such data shall be deemed confidential and the corporation shall only disclose aggregate data unless otherwise required by law.*

(d) *Awards.*

(1) *The amount of the award shall be determined in accordance with section 667-c-1 of the education law.*

(2) *A recipient of an award must remain in good academic standing, as defined in this section, and remain continuously enrolled (excluding summer and winter terms) to be eligible for payment of future awards, excluding any allowable interruption of study.*

(3) *Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time after verification and certification by the institution of the recipient’s grade point average and other eligibility requirements.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 12, 2018.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation’s (HESC) statutory authority to promulgate regulations and administer the NYS Part-time Scholarship (PTS) Award Program (Program) is codified within Article 14 of the Education Law. In particular, Part KKK of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-c-1 to the Education Law. Subdivision 6 of section 667-c-1 of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State’s administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC’s Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC’s President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: November 28, 2018

Re: Adoption of Proposed Rulemaking to Permit Greater Purse-to-Price Ratio in Thoroughbred Racing (9 NYCRR § 4038.2)

For Commission consideration is the adoption of a proposal to add flexibility to the Thoroughbred claiming price rule in appropriate circumstances. The proposed rulemaking, including the text of the proposed rule, was published in the October 17, 2018 *State Register*, a copy of which is attached. The public comment period for the proposal will expire on December 17, 2018. No comments have been received to date. Staff will bring any comment received before the expiration of the public comment period to the attention of the Commissioners.

Various interested parties have requested the Commission to consider adding flexibility to the existing rule, identifying neighboring jurisdictions who have experienced safe racing with higher purse-to-claiming-price ratios. The proposal would allow a Thoroughbred racetrack operator, with the approval of the Commission, to depart from this limitation under certain circumstances. The Commission has added the requirement that its approval to depart from the limitation will not be granted unless the track implements enhanced measures to ensure close examination of the competitiveness, soundness and safety of each horse in such races.

[REDACTED]

attachment

cc: Ronald Ochrym, Acting Executive Director

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act (“SAPA”) § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

Job Impact Statement

The proposed amendments to Insurance Regulations 147 and 179 should have no impact on jobs and employment opportunities. The amendments modify current Insurance Regulations 147 and 179 to specify that two prior amendments to the regulations (i.e., the Fifth and Sixth Amendments to Regulation 147 and the Third and Fourth Amendments to Regulation 179) shall only apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2019 with written notification provided to the Superintendent by December 31, 2018. The proposed concurrent amendments to Insurance Regulations 147 and 179 allow insurers to apply these two prior amendments, if optionally elected, for one additional year of policy issues. Insurers should not need to hire additional employees or independent contractors to comply with these amendments.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Permit Greater Purse-to-Price Ratio in Thoroughbred Claiming Races

I.D. No. SGC-42-18-00015-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 4038.2 of Title 9 NYCRR.

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

Subject: Permit greater purse-to-price ratio in Thoroughbred claiming races.

Purpose: To advance the best interests of Thoroughbred racing and protect the safety of the race horses.

Text of proposed rule: Section 4038.2 of 9 NYCRR would be amended, as follows:

§ 4038.2. Minimum price for claim.

The minimum price for which a horse may be entered in a claiming race shall not be less than 50 percent of the value of the purse for the race, *unless the commission approves a request from an association for a lower minimum price for all or a portion of a race meeting. The commission shall not approve such a request unless such association has implemented increased measures to ensure close examination of the competitiveness, soundness and safety of each horse entered in such race.*

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) 388-3332, email: gamingrules@gaming.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

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) and 104 (1, 19). 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.

2. Legislative objectives: To advance the best interests of Thoroughbred racing and protect the safety of the race horses.

3. Needs and benefits. This rule making proposes to allow an increase in the ratio of the purse to the claiming price in appropriate circumstances in Thoroughbred claiming races.

The current rule requires that the claiming price, the price at which a horse entered in a claiming race may be purchased by another owner, shall not be less than 50 percent of the purse a horse could win. This limitation was adopted in 2012. At the time, an increase in claiming-race purses at Aqueduct Racetrack had caused an increase in racing injuries and horse fatalities, as trainers more freely entered horses in the hope of winning an unusually high purse for the class of horse. The limitation reduced the incentive of an owner or trainer to enter a potentially lame or uncompetitive horse in a claiming race.

The proposal would allow a Thoroughbred racetrack operator, with the approval of the Commission, to depart from this limitation under certain circumstances. The Commission has added the requirement that its approval to depart from the limitation will not be granted unless the track implements enhanced measures to ensure close examination of the competitiveness, soundness and safety of each horse in such races.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The amendment will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendment 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 and rejected not adding this exception to the current rules. The proposed rule changes were drafted in consideration of the improvements made to Thoroughbred horse safety since 2012 and in consultation with NYRA.

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.

The proposed amendment is a revision to the Commission’s Thoroughbred racing rules to enhance the ability of racetracks to fill claiming races by offering a competitive purse that causes the claiming price to be less than 50 percent of the value of the purse for the race.

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.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Durable Medical Equipment; Medical/Surgical Supplies; Orthotic and Prosthetic Appliances; Orthopedic Footwear

I.D. No. HLT-42-18-00006-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 505.5 of Title 18 NYCRR.



Gaming Commission

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

To: Commissioners
From: Edmund C. Burns
Date: November 29, 2018
Re: Adoption or Revision of Proposed Rulemaking for Casino Fees and Payments (9 NYCRR Part 5302)

For Commission consideration is the adoption or revision of proposed rules for gaming facility fees and payments. The proposed rulemaking, including the text of the proposed rule, was published in the September 19, 2018 *State Register*, a copy of which is attached.

The proposed Part addresses procedures for the annual license fees for machines and tables, procedures in regard to transmitting payments to the Commission, rules for overdue payments, rules for regulatory investigative fees and costs, rules for regulatory cost assessment and procedures for distribution of taxes to counties. A section of the current accounting controls rules would be repealed, with the substance of such section incorporated as section 5302.3 of Part 5302.

Public comments

The public comment period for the proposal expired on November 19, 2018. Two of the commercial casinos submitted timely comments.

Proposed section 5302.1 provides a definition for “gaming position.” Montreign Operating Company, LLC (“Montreign”), which operates the Resorts World Catskills casino, requested that the definition of be modified to exclude positions at a table game that is not an electronic table game.

Staff response

[REDACTED]

Proposed section 5302.2 concerns the annual license fee for machines and tables. Rivers Casino requested adding a subdivision to provide that an additional fee shall not be imposed on a new machine or table if such replaces a removed machine or table for which an annual license fee has already been paid.

Staff response

[REDACTED]

Proposed section 5302.3 concerns submission of payments. Subdivision (d) would provide for the Commission to set forth the basis for any refund of taxes. Rivers Casino requested adding a requirement that any refund due to a gaming facility licensee be paid within 30 days of such finding.

Staff response

[REDACTED]

Proposed section 5302.4 concerns overdue payments

Montreign suggested that application, investigatory and other license fees for individuals and vendors should be borne by such applicants and not the gaming facility.

Subdivision (c) would reserve the right for the Commission to recover attorney fees associated with recovery of funds. Rivers Casino requested adding language to limit responsibility for attorney fees to “outside” attorney fees.

Rivers Casino also suggested adding a new subdivision (e) to provide that no fees or penalties for underpayment shall be assessed if the Commission does not provide the gaming facility with a “fee schedule detailing the cost of licensing and registering its vendors and employees.” Montreign also suggested that a fee schedule should be established.

Staff response

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Proposed section 5302.5 concerns regulatory investigative fees and costs. Rivers Casino suggested adding a new subdivision (d) to provide that a gaming facility licensee shall not be assessed any fees or costs for any investigation, consulting or other regulatory functions performed by Commission staff within ordinary business hours and for functions that are performed in their ordinary course of business. Rivers Casino explained that Commission staff time is already to be billed to the gaming facility licensees in proposed section 5302.6. Montreign also suggested that investigation, consulting or other regulatory functions performed by Commission staff within ordinary business hours and for functions that are performed in their ordinary course of business should not be assessed.

Staff response

[REDACTED]

[REDACTED]

[REDACTED]

Proposed section 5302.6 concerns the regulatory cost assessment.

Rivers Casino raised a question about how the anticipated costs will be determined, but does not comment of specific proposed rule language in regard to its question. Staff is willing to engage Rivers Casino in regard to its question. Rivers Casino further suggested replacing language in subdivision (c) to eliminate reference to Commission discretion to determine a date upon which to measure gaming positions or to determine an average number of gaming positions throughout the year. Rivers Casino suggested adding a right for a gaming facility to audit a regulatory assessment prior to paying it.

Rivers Casino suggested eliminating subdivision (d), which provides a mechanism to assess pre-opening regulatory costs. Rivers Casino asserted that the license fee it paid

pursuant to Racing Pari-Mutuel Wagering and Breeding Law section 1306(4) and 9 NYCRR section 6001.1(a) was sufficient.

Staff response

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Recommendation

[Redacted]

attachments

cc: Ronald Ochrym, Acting Executive Director
Thomas Anapolis, Director, Division of Gaming

Revised language highlighted.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

tion of the rule will be negligible given that all such costs are the responsibility of the gaming facility. These rules will not impose any additional costs on local governments.

(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. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: The rule is not expected to impose any significant paperwork or reporting requirements on the regulated entities.

7. DUPLICATION: The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. These included the rules for similar table games and the appropriate pay tables. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1307(2)(g), and 1335(5), (6) and (11).

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

The proposed rule will not have any adverse impact on small businesses, local governments, jobs or rural areas. This rule is intended to promote public confidence and trust in the credibility and integrity of casino gambling in New York State. The rule will ensure that licensed gaming facilities follow game rules that are authorized and trustworthy.

The proposed rule does not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

The proposed rule imposes no adverse impact on rural areas. The rule applies uniformly throughout the state and solely applies to licensed gaming facilities.

The proposed rule will have no adverse impact on job opportunities.

This rule will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Casino Fees and Payments

I.D. No. SGC-38-18-00003-P

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

Proposed Action: Addition of Part 5302; and repeal of section 5315.3 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103, 104, 1307(1), (2)(f), (m), (n), (o), 1348, 1349, 1350, 1351, 1352, 1353 and 1354

Subject: Casino fees and payments.

Purpose: Implementation of rules governing procedures for submission of fees and payments by gaming facilities to the Gaming Commission.

Text of proposed rule: A new Part 5302 would be added to 9 NYCRR, to read as follows:

Part 5302

Fees and Payments

§ 5302.1. Definition.

Unless the context indicates otherwise, gaming position means each player position at a slot machine and table game.

§ 5302.2. Annual license fee for machines and tables.

(a) The annual license fee set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1348 shall be paid for each gaming position by July 1st of each year for all approved slot machines and tables on that date.

(b) The annual license fee for any slot machine or table approved by the commission after July 1st shall be paid upon such approval and prorated by the number of days left in the year, with such year measured from July 1st through the following June 30th.

(c) No adjustment or credit shall be issued to a gaming facility for any machines or tables removed from use after a fee has been imposed.

§ 5302.3. Submission of payments.

(a) Payments for taxes, fees, interest and penalties shall be made to the commission within 30 days of obligation incurred, unless a different period is set forth for a type of payment by article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Part. Any payment for taxes, fees, interest and penalties shall be made by electronic wire transfer, money order, certified check or any other manner designated by the commission.

(b) Forfeiture of winnings as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1345 and gross gaming tax as prescribed in Racing, Pari-Mutuel Wagering and Breeding Law section 1351, including any applicable interest and penalties, shall be transmitted weekly by electronic funds transfer to the commission. Such transmissions are the responsibility of, and shall be made by, the gaming facility licensee.

(c) All weekly gross gaming revenue tax reports filed with the commission shall reflect all gross gaming revenue received by the gaming facility licensee for the period of the return.

(d) When the commission finds that the gaming facility licensee is required to pay additional taxes or finds that the gaming facility licensee is entitled to a refund of taxes, the commission shall report its findings to the licensee and set forth the basis upon which such findings are made.

§ 5302.4. Overdue payments.

The commission may recover from a gaming facility:

(a) any unpaid amount including overdue payments from the gaming facility's employee or vendor applicants, registrants or licensees;

(b) revenues lost to the State of New York as a result of nonpayment or underpayment;

(c) attorney fees associated with recovery of funds; and

(d) any other payments, including any interest and penalties imposed, as prescribed by article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Subchapter.

§ 5302.5. Regulatory investigative fees and costs.

(a) Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1349, a gaming facility licensee shall pay for the costs of any investigation into a violation of article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law or regulation promulgated caused by such licensee. The costs of an investigation conducted pursuant to this section shall be assessed directly to such licensee upon completion of an investigation.

(b) Billable hours by commission staff shall be determined by using payroll costs for commission employees as obtained from the office of the State comptroller, including salaries and non-wage compensation and payroll taxes, as well as fringe benefit and indirect costs at rates established by the division of the budget.

(c) The commission shall charge the gaming facility licensee for actual costs of any consultant including, without limitation, attorneys, accountants, investigators and other designees of the commission related to such consultation.

§ 5302.6. Regulatory cost assessment.

(a) Gaming facility licensees annually shall be assessed commercial gaming regulatory costs as authorized pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1350. The commission shall determine the total assessment of regulatory costs for a forthcoming State fiscal year. Such total assessment shall include all commercial gaming costs reasonably anticipated by the commission in regard to all gaming facilities, including, without limitation, direct and indirect payroll, fringe benefits, non-personal service expenses and administrative overhead costs.

(b) The total assessment shall be allocated to each gaming facility licensee in proportion to the number of gaming positions at each gaming facility compared to the total number of gaming positions at all gaming facilities, all as determined by the commission; provided, however, that the commission may use intermediate allocation bases between opened gaming facilities and gaming facilities that have not opened, as the commission may determine.

(c) At the conclusion of a State fiscal year, the commission shall determine the actual costs of commercial gaming regulation for such concluded fiscal year, excluding investigatory fees assessed pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1349. The commission shall apportion such actual costs according to the proportion of the number of gaming positions at each facility compared to the total number of gaming positions at all facilities and shall credit or debit the next annual assessment of each gaming facility according to the variance between the cost that had been assessed to such facility at the start of the year pursuant to subdivisions (a) and (b) of this section and the actual cost, as determined at the end of such year pursuant to this subdivision. If the number of gaming positions varies throughout the year, the commission may choose one date on which to measure gaming positions or may, in its sole discretion, determine an average number of gaming positions throughout the year.

(d) Regulatory costs of the commercial gaming program incurred prior

to the opening of the first gaming facility shall be assessed to each gaming facility licensee in proportion to the number of gaming positions projected at each gaming facility.

§ 5302.7. *Distribution of tax to counties.*

Distributions to counties within a region, excluding the host county and host municipality, shall be made in proportion to the population of each such county as shown by the latest preceding decennial Federal census completed and published as a final population count by the United States census that precedes the commencement of the calendar year in which such distribution is made.

* * *

Section 5315.3 of 9 NYCRR would be repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 103 authorizes the Gaming Commission ("Commission") to carry out responsibilities relating to the regulation and enforcement of gaming and 104(19) grants authority to the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1348 prescribes annual slot machine and table game license fees.

Racing Law section 1349 prescribes regulatory investigative fees.

Racing Law section 1350 prescribes additional regulatory costs.

Racing Law section 1351 prescribes gaming revenue tax and permissive supplement fee.

Racing Law section 1352 establishes the commercial gaming revenue fund.

Racing Law section 1353 sets forth the determination of tax liability and procedures for appealing such determination.

Racing Law section 1354 prescribes accounting treatment for unclaimed funds.

2. **LEGISLATIVE OBJECTIVES:** This rule making carries out the legislative objectives of the above-referenced statutes. The Commission, through this rule making, sets the calculation method for casino fees and costs and prescribes methods of submission for such payments from gaming facilities to the Commission.

3. **NEEDS AND BENEFITS:** This rule making is necessary to establish submission of fees and payments procedures from the gaming facility licensees to the Commission, thereby enabling the Commission to implement Article 13 of the Racing Law and help New York State to capitalize on the economic development potential of legalized gambling and increase revenue to the State.

The proposed Part addresses procedures for the annual license fees for machines and tables, procedures in regard to transmitting payments to the Commission, rules for overdue payments, rules for regulatory investigative fees and costs, rules for regulatory cost assessment and procedures for distribution of taxes to counties. A section of the current accounting controls rules would be repealed, with the substance of such section incorporated as section 5302.3 of Part 5302.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: All payments and fees will be borne by the gaming facility licensees. The rules prescribe methods for the submission of fees and payments required under Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and do not impose any new costs.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission for reviewing the submission of fees and payments, however it is anticipated that these costs are minimal. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: The costs associated with the review of submission of fees and payments will be based on the Commission's administrative cost to process each submission.

5. **LOCAL GOVERNMENT MANDATES:** These rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing and registration of gaming facility employees and vendors is strictly a matter of State law and completed by the Commission.

6. **PAPERWORK:** These rules are not expected to impose any significant paperwork requirements for gaming facility employee and vendor applicants.

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 under Racing Law section 1307(2) and sections 1348, 1349, 1350, 1351, 1352, 1353 and 1354. Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the submission of casino fees and payments. It is purely a matter of New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that affected parties will be able to achieve compliance with these rules upon adoption.

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 proposal because it will not adversely affect small businesses, local governments, rural areas or jobs.

The proposal formalizes the Commission's calculation of casino fees and payments and prescribes the method of submission of those fees and payments.

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.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Eligibility of Services

I.D. No. PDD-26-18-00003-E

Filing No. 845

Filing Date: 2018-08-31

Effective Date: 2018-08-31

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

Action taken: Addition of Part 629 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

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

Specific reasons underlying the finding of necessity: The emergency adoption of the regulation that identifies the process by which individuals is determined eligible and provisionally eligible for OPWDD authorized services is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system. The proposed emergency regulation establishes a regulatory framework for OPWDD authorized services and details the review process used by OPWDD to determine eligibility.

The regulations must be filed on an emergency basis to ensure individuals applying for services are aware of the process by which eligibility and provisional eligibility is determined for OPWDD authorized services. Additionally, the emergency filing is necessary to ensure that the eligibility determination process for services, as provided for in statute, is articulated as part of the regulations to assist in requesting these services.

Subject: Eligibility of Services.

Purpose: The eligibility for individuals applying for OPWDD authorized services.

Text of emergency rule: A new Part 629 is added to 14 NYCRR as follows:

Part 629 Eligibility for Services.

Section 629.1 Eligibility Determination Process.

(a) *Applicability.* OPWDD will determine whether individuals are eligible for OPWDD operated, certified, funded and/or authorized services (hereinafter "services")

(b) *General Eligibility Provisions*



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: October 11, 2018

Re: Proposed Rulemaking for Use of Social Security numbers
(9 NYCRR §§ 4026.2(c), 4044.2(c)(4), 4123.2(c)(4), 4237.2(c)(4),
4300.19, 4411.2(c)(4), 4500.4(b)(3), 4500.4(b)(5), 4500.6 and
5326.1(b)(5))

For Commission consideration are amendments to rules relating to the provision of social security numbers. The use of social security numbers would continue to be required where necessary to comply with tax laws and be allowable when voluntarily given (such as when a person chooses to self-exclude from gaming activities). This proposal is consistent with the federal Privacy Act of 1974 (5 U.S.C. § 552a *et seq.*) and the New York Personal Privacy Protection Law (Public Officers Law Article 6-A).

The text of the proposed amendments is attached.

[REDACTED]

attachment

cc: Ronald Ochrym, Acting Executive Director

Subdivision (c) of section 4026.2 of subchapter A of Chapter I of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 4026.2. Managing ownership.

* * *

(c) *Managing owner by lease or designation.* A managing owner established by ownership shall register such ownership with The Jockey Club. A managing owner established by lease or designation shall register such lease or designation, executed by both the lessor or designating owner and the managing owner, with The Jockey Club. [The notice of lease or designation shall set forth the name of the horse, the name of the lessor or designating owner, the name of the managing owner (who is responsible for complying with the licensing, registration and filing requirements of these rules), the term of the lease or designation, and a statement that the managing owner has full power of management and control of the racing activities of the horse, including the right to subject such horse to claim in claiming races, and assumes all liabilities incident thereto. If the managing owner is a partnership, the notice of lease or designation shall set forth the name of the managing partner. All registrations shall include the social security number of each individual registered.]

* * *

Paragraph 4 of subdivision (c) of section 4044.2 of subchapter A of Chapter I of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 4044.2. Self-exclusion from racetrack.

* * *

(c) An application for self-exclusion shall include all of the following information about the individual who is applying:

* * *

(4) social security number, when voluntarily provided for the commission's use;

* * *

Paragraph 4 of subdivision (c) of section 4123.2 of subchapter B of Chapter I of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 4123.2. Self-exclusion from racetrack.

* * *

(c) An application for self-exclusion shall include all of the following information about the individual who is applying:

* * *

(4) social security number, when voluntarily provided for the commission's use;

* * *

Paragraph 4 of subdivision (c) of section 4237.2 of subchapter C of Chapter I of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 4237.2. Self-exclusion from racetrack.

* * *

(c) An application for self-exclusion shall include all of the following information about the individual who is applying:

* * *

(4) social security number, when voluntarily provided for the commission's use;

* * *

Subdivision (d) of section 4300.19 of subchapter E of Chapter I of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 4300.19. Cashing outstanding pari-mutuel tickets.

* * *

(d) The authorized pari-mutuel wagering entity shall obtain name, address[,] and date of birth [and social security number] of the individual cashing an outstanding ticket.

* * *

Paragraph 4 of subdivision (c) of section 4411.2 of subchapter F of Chapter I of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 4411.2. Self-exclusion from off-track betting simulcast branches and teletheaters.

* * *

(c) An application for self-exclusion shall include all of the following information about the individual who is applying:

* * *

(4) social security number, when voluntarily provided for the commission's use;

* * *

Paragraphs (3) and (5) of subdivision (b) of section 4500.4 of subchapter G of Chapter I of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 4500.4. Establishment of an account.

* * *

(b) Account wagering licensees may establish accounts for individuals provided the following minimum requirements are met:

* * *

(3) An account holder shall provide his or her age, principal residential address, mailing address (if different), phone number[, social security number] and date of birth.

* * *

(5) Except in the case of an online application, the name of each new account holder shall be confirmed in accordance with the Federal government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of Homeland Security Employment Verification Form I-9). A copy of each properly validated credential shall be maintained with the appropriate account application. [A copy of a social security card is not required to be maintained at the time of the application if the number is verified with a credit reporting agency and such report is maintained with the account application.] In the case of an online application, the account wagering licensee shall verify the applicant's identity using, at a minimum, the name, address, [social security number] and date of birth of the applicant through a credit reporting agency, public database or similarly reliable sources as provided for in the plan of operation. If there is a discrepancy between the minimum information submitted and the information provided by the electronic verification described above or if no information on the applicant is available from such electronic verification, then the account wagering licensee shall not open the account and shall require verification through the Federal government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of Homeland Security Employment Verification Form I-9). In addition, a multi-jurisdictional account wagering provider shall use the services of an independent third party to perform identity and verification services with respect to establishing an account for any person who is a resident of the State of New York, as prescribed by Racing, Pari-Mutuel Wagering and Breeding Law Section 1012-a(3).

* * *

Section 4500.6 of subchapter G of Chapter I of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 4500.6. Changes to account information.

The account wagering licensee shall provide a method for the account wagering holder to make official changes to his or her account information. The method shall include the

name, date, address, [social security number], account wagering identification number, PIN and signature.

* * *

Paragraph 5 of subdivision (b) of section 5326.1 of subchapter B of Chapter IV of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 5326.1. Request for self-exclusion.

* * *

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

* * *

(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)] for the commission's use;



Gaming Commission

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

To: Commissioners
From: Edmund C. Burns
Date: November 16, 2018
Re: Proposed Rulemaking for Spanish 21 Table Game (9 NYCRR § 5324.12)

For Commission consideration is a proposal to add an optional wager to and pay tables for the Spanish 21 table game. At the request of a casino licensee, rules for this table game feature were approved temporarily through March 17, 2019, pursuant to Rule 5323.19. The Commission's Division of Gaming has evaluated the experience with this table game feature so far and is satisfied that the Spanish 21 optional wager of match the dealer would be appropriate to add to the table game rules as a permanent rule.

The text of the proposed rule is attached.

[REDACTED]

attachment

cc: Ronald Ochrym, Acting Executive Director
Thomas Anapolis, Director, Division of Gaming

Paragraph (d) would be amended and paragraph (e) would be added to section 5324.12 of title 9 of NYCRR to read as follows:

§ 5324.12. Spanish 21

* * *

(d) *Optional wagers.* The gaming facility may choose to offer the optional wagers set forth in subdivisions (d) through (h) and (j) through (p) of section 5324.11.

(e) *Spanish 21 match the dealer wager.* A gaming facility may provide a match the dealer wager as an additional wager.

(1) A player's match the dealer wager shall not affect the player's wager on the underlying hand. A dealer's blackjack shall have no effect on a player's match the dealer wager. The match the dealer wager shall be available only on tables using a six- or eight-deck multi-shuffle device.

(2) Prior to the first card being dealt for each round of play, each player who has placed a Spanish 21 wager may make a match the dealer wager by placing chips or plaques on the designated area of the Spanish 21 layout. The minimum and maximum wagers permitted by the gaming facility shall be inscribed on the table layout or posted on a sign at each table offering the match the dealer wager.

(3) The dealer shall then announce "no more bets" and deal the initial two cards to all players and the dealer. Prior to any additional cards being dealt to any player at the table and before any card reader device is used, the dealer shall, starting with the player farthest to the dealer's right and continuing counter-clockwise around the table, settle in succession all match the dealer wagers by collecting all losing wagers and paying all winning wagers.

(4) A match the dealer wager shall be paid when either of the player's initial two cards match the dealer's initial card. Any card with a point value of 10 (jack, queen, king) shall be deemed a match only if the cards are of identical description (e.g., jack-jack, queen-queen, or king-king, but not jack-queen, etc.). If both of the initial cards dealt to a player match the dealer's initial card, the player shall be paid for each card.

(5) A gaming facility shall post its match the dealer wager pay table at each Spanish 21 table offering the match the dealer wager. A gaming facility may change pay tables at such facility's discretion at any time after the conclusion of a round of play, upon prior notice to the commission. A gaming facility may choose from one of the following pay tables for the match the dealer wager:

Hand:	Pay table A (six decks)	Pay table B (eight decks)
Each matching card of a different suit	4:1	3:1
Each matching card of the same suit	9:1	12:1



Gaming Commission

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

To: Commissioners
From: Edmund C. Burns
Date: November 29, 2018
Re: Proposed Rulemaking for Backstretch Worker Housing (9 NYCRR Part 4047)

For Commission consideration is a proposed regulation to set forth standards for housing maintained on the grounds of certain racetracks. A staff survey of housing among the various racetracks found varying levels of attention. Additional staff research found that nine other racing jurisdictions (California, Illinois, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Pennsylvania and Texas) provide regulatory standards for racetrack housing.

At present, on-track housing is available at nine State-based racetracks: Aqueduct Racetrack, Belmont Park, Buffalo Raceway, Finger Lakes Racetrack, Monticello Raceway, Saratoga Race Course, Saratoga Harness, Vernon Downs and Yonkers Raceway. Of the 2,512 racetrack beds statewide, 2,261, or 90 percent, are at facilities operated by The New York Racing Association, Inc. Given that, staff determined to limit applicability initially to any association hosting 200 or more beds in one or multiple locations. We anticipate proposing extending language to other racetracks in the future.

The proposed rule, which would provide, among other things, standards for buildings and residential rooms, sanitary, water, garbage removal and pest control, is generally modeled after the New York Department of Health's Migrant Farmworker Housing regulations. Staff from the New York Department of Health and New York Department of Labor provided significant input in the development and refinement of the proposal.

A copy of the proposed text is attached.

[REDACTED]

attachment

cc: Ronald Ochrym, Acting Executive Director

Article 1 of subchapter A of Chapter I of subtitle T of 9 NYCRR would be amended by adding a new Part 4047 as follows:

PART 4047

Backstretch Worker Housing

Section	
4047.1	Definitions
4047.2	Applicability
4047.3	Annual inspection required
4047.4	Location and grounds
4047.5	Housing standards
4047.6	New construction requirements
4047.7	Sanitary facility requirements
4047.8	Provision for laundry facilities
4047.9	Garbage; refuse
4047.10	Pest control
4047.11	Responsibilities of occupants
4047.12	Water
4047.13	Variance and waiver

§ 4047.1. Definitions.

The following definitions are applicable throughout this Part:

(a) *Adequate* means sufficient to accomplish the purposes for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled; an activity conducted; or act performed, in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this Part.

(b) *Association* means an entity authorized to conduct racing on which pari-mutuel wagering occurs.

(c) *Backstretch workers* are individuals required to be licensed under Part 4002 of this article who are employed to care for horses at any entity that conducts pari-mutuel wagering at a racetrack.

(d) *Backstretch worker housing* means buildings or other structures pertaining thereto, any part of which may be used or occupied by persons employed as backstretch workers as or relating to housing. Such housing includes sleeping facilities provided in whole or in part by the employer of such persons; owner; lessee; or operator thereof, with or without stipulated agreement as to the duration of a backstretch worker's stay. Such housing includes bathing and toilet facilities for the use of the occupants. All the facilities do not need to be in the same structure but must be readily accessible to, and under the control of, the occupants.

(e) *Executive director* means the executive director of the commission or the executive director's designee.

(f) *Hot water* means water heated or tempered to provide a temperature of 110 to 120 degrees Fahrenheit at the point of use.

(g) *Potable water* means water provided or used for consumption or for washing, showering or cooking purposes.

(h) A *public health hazard* is any condition that reasonably could be expected to be responsible for illness, physical injury or death. Any of the following violations are public health hazards that require the executive director to order immediate correction or to institute immediate action as provided in the law and in this Part:

(1) The condition of the electric service, wiring or electrical system components is such a that an imminent fire or shock hazard exists.

(2) Installation or operation of stoves, including cook stoves or other heat producing equipment constituting a fire hazard or inadequate venting of fumes.

(3) Failure to provide required fire exits or blockage of a required exit by locking or other obstruction.

(4) Use of construction materials resulting in an imminent fire or structural safety hazard.

(5) A potable water system serving the backstretch worker housing that contains contaminants in excess of the levels prescribed in applicable sections of Part 5 of Chapter I of 10 NYCRR.

(6) Treatment of the backstretch worker housing water system, when required for disinfection or removal of contaminants, is not continuous.

(7) Presence of cross-connections or other faults in the plumbing system that result, or may result, in contamination of the potable water supply.

(8) Inadequately treated sewage discharging on the ground surface in an area accessible to backstretch worker housing occupants, or in a manner that may contaminate food service areas or result in pollution of a ground or surface water supply source.

(9) Storage of hazardous materials, including agricultural chemicals and pesticides or their containers, in a manner that is hazardous to the health or safety of the housing occupants, or contamination of housing by materials that are hazardous to the health and safety of the housing occupants.

(10) Other conditions that constitute a public health hazard.

(i) *Sewage* means the waste from a flush toilet, bath, sink, shower, laundry tray or tub, dishwashing or laundry machine, or the water-carried waste from any other fixture or equipment or machine.

(j) *Uniform code* means the New York State Uniform Fire Prevention and Building Code, 9 NYCRR, Subtitle S, Chapter 1.

§ 4047.2. Applicability.

Backstretch worker housing provided by an association hosting 200 or more beds shall be maintained in accordance with this Part. If an association maintains housing at multiple locations, the number of beds shall be aggregated to determine the applicability of this Part.

§ 4047.3. Annual inspection required.

(a) An association that provides backstretch worker housing shall, at least annually, submit to an inspection of such housing. The inspection shall be conducted by a designated representative of the commission or a local housing authority for the jurisdiction in which the racetrack is located and shall be consistent with this Part and requirements in the Property Maintenance Code of the Uniform Code.

(b) For backstretch worker housing that is occupied seasonally, no occupancy shall be allowed until after the required inspection has been made and the executive director has granted permission for such occupancy.

§ 4047.4. General obligations.

(a) Each association shall be responsible for maintaining all housing facilities in a structurally sound condition that prevents infestation by rodents, flies, cockroaches, mosquitoes, bats and other vermin.

(b) All backstretch worker housing facilities shall be well drained and be free of depressions where water may pool and stagnate. The site or sites shall be located where disposal of sewage can be provided in a safe, sanitary manner that neither creates nor is likely to create a public health nuisance or health hazard.

(c) The grounds of backstretch worker housing shall be maintained in a clean and sanitary condition and be free of noxious plants. Driveways and access roads shall be maintained to allow free and safe vehicular access to the property.

(d) No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for backstretch worker housing, except for those needed for current household use. Agriculture chemicals including pesticides shall not be stored in a housing area.

(e) Whenever the buildings of an association are contaminated, or suspected of being contaminated by hazardous materials, chemicals or pesticides, the occupancy or use of the housing facilities may be restricted by the commission until required decontamination and/or corrective actions are completed.

(f) Each association shall have the affirmative responsibility to report to the commission in writing any injury, serious illness, death or fire occurring at or within backstretch worker housing. Such reporting shall be made immediately when practicable, but in no case later than 24 hours following the reportable issue.

§ 4047.5. Housing standards.

(a) *Buildings.* All buildings provided by associations for sleeping shall have each of the following:

(1) A floor that is constructed of smooth, readily cleanable, durable material such as sealed concrete, close-grained wood or composition material.

(2) A minimum ceiling height of at least seven feet.

(3) Adequate natural light and ventilation in all common use rooms and areas. Adequate artificial lighting and mechanical ventilation may be provided in lieu of natural light and ventilation in toilet rooms and shower rooms.

(4) At least one separate wall-type electric duplex outlet in addition to the required electric light fixture in each bathroom, washroom, laundry room and eating space. All electrical components, wiring and appliances shall be properly installed and maintained in accordance with applicable state or local building codes and the National Electric Code.

(5) At least two exits from each occupied floor. Where sleeping rooms are located above the ground floor, at least one outside exit from each floor above the ground floor is required. Any stairway extending beyond two occupied floors in a building shall have tight-fitting, self-closing doors that have a minimum three quarter-hours fire rating at each floor level. The doors shall swing in the direction of exit travel. For buildings with room access from within enclosed space, stairways shall be enclosed within smoke-tight walls.

(6) A type 2A rated fire extinguisher in a readily accessible location not more than 100 feet from each housing facilities. In addition, a minimum of a type 5BC rated extinguisher shall be provided within 30 feet of all rooms containing cooking facilities. Any extinguisher with an equivalent ABC rating may also be provided.

(7) Smoke detection devices that are designed adequately, installed and maintained in compliance with General Business Law Section 399-ccc.

(b) *Rooms.* All rooms provided by associations for sleeping shall have each of the following:

(1) Natural light by means of at least one exterior window that, if the window can be opened, has screening with a tight-fitting frame. Natural ventilation may be provided by exterior openings that can be opened in lieu of a mechanical ventilating system.

(2) Lockable exterior doors that have a tight fitting and are outfitted with door sweeps.

(3) Electrical switches, outlets and at least one electric light. Electric components in a room shall be installed to State or local building codes and maintained in a manner that does not endanger the health or safety of the occupants. The use of flexible (extension) cords shall not be used for permanent wiring.

(4) Battery-operated smoke detectors that are maintained in working order, or any other approved fire alarm system as otherwise permitted in writing by the executive director.

(5) Dimensions of not be less than seven feet in any direction and not less than 70 square feet of floor area if single occupancy and not less than 50 square feet of floor area for each occupant if greater than single occupancy. In housing where occupants are permitted to cook, live and sleep in the same room, a minimum of 100 square feet of floor area is required for each occupant.

(6) Heating capable of maintaining a minimum temperature of 68 degrees Fahrenheit in each room, if the rooms are used or occupied between September 1 and June 1. When regulation of the temperature is not controlled by the occupants, the heating facilities must be operated to maintain minimum temperature requirements in all occupied rooms during the specified time period. Fossil-fuel-powered heaters shall be prohibited.

(7) Beds or bunks, complete with required springs and mattresses. There shall be a clear space of at least 27 inches above the sleeping surface of a bed or bunk.

(8) Adequate space for the storage of clothes and personal possessions of each occupant. As a minimum, such space shall include 21 square feet of wall storage area that has a minimum depth of 12 inches and is equipped with clothes rods or hooks and shelving for each occupant. Other provisions that provide equivalent storage capacity for each person may be substituted as approved in writing by the executive director.

(c) *Dining.* When meals are not furnished or sold to the occupants, adequate cooking and dining facilities shall be provided. This requirement may be accomplished by providing either a common cooking area consisting of a separate well lighted and ventilated room that is equipped adequately for cooking and dining, or by providing facilities for cooking and dining within each individual housing facility. When the required cooking and dining facilities are provided within individual housing units, the facilities shall:

(1) be located either in a separate room, or a separate area of at least 10 square feet per person shall be set aside for such purpose;

(2) contain a properly installed cook stove with a minimum of two burners in each individual housing unit. Existing housing with common cooking areas shall have adequate cook stoves providing a ratio of two burners per five occupants or fraction thereof, unless otherwise authorized by the executive director;

(3) have an adequate amount of food and utensil storage shelves and counter space for food preparation with shelves and counters constructed of materials that are non-toxic, non-absorbent and easily cleanable;

(4) have adequate provisions for safe storage and mechanical refrigeration of food at a temperature of not more than 45 degrees Fahrenheit;

(5) have table and chairs or equivalent seating with adequate capacity for the intended use;

(6) have a dishwash sink that is supplied with cold running water, adequate in size for the intended use and adequately installed with hot water readily accessible for dishwashing needs; and

(7) have non-absorbent, easily cleaned wall and floor surfaces in food preparation, cooking and dishwashing areas.

§ 4047.6. New construction requirements.

(a) No backstretch worker housing, or any portion thereof, shall be constructed or enlarged for occupancy or use, and no property shall be converted for occupancy or used as backstretch worker housing, without the executive director being first notified in writing. The required notice of construction, enlargement or conversion shall be submitted on a form, approved by the executive director, at least 30 days prior to beginning such construction. The notice may be supplemented by such further information, plans or specifications as the executive director may require.

(b) All new construction and alterations, enlargements, conversions or relocation of mobile homes, shall conform with the Uniform Code. A certificate of occupancy, or equivalent documentation to certify the construction was completed in conformance with the Uniform Code requirements, shall be obtained prior to occupancy and be available for review on request by the executive director.

§ 4047.7. Sanitary facility requirements.

(a) Shower facilities, separate for each sex, shall be provided. There shall be:

- (1) at least one shower head provided for every 15 residents, or fraction thereof;
- (2) an adequate supply of tempered water or both hot and cold running water at every shower head;
- (3) floors constructed and maintained with non-absorbent, non-skid materials and sloped to floor drains; and
- (4) adequate, dry dressing space in common use facilities.

Separate facilities for each sex are not required when the facilities are located in individual housing units.

(b) Toilet facilities shall be provided for groups of each sex. These facilities shall be:

- (1) located within 200 feet of each sleeping room;
- (2) constructed of cleanable materials and maintained in good repair;
- (3) in a quantity as follows:
 - (i) at least one toilet for every 15 residents or fraction thereof of the sex for whom the toilet facility is designated; and
 - (ii) at least one urinal for every 30 resident men or fraction thereof in a toilet facility designated for men, which urinals may be substituted for up to a maximum of one-third of the required toilets, or additional flush toilets may be provided in place of required urinals.

(c) Adequate ventilation shall be provided in each shower room and toilet room. Mechanical ventilation may be provided in lieu of natural ventilation, as approved by the executive director.

§ 4047.8. Provision for laundry facilities.

Mechanical clothes washers, laundry trays, tubs and sinks shall be provided in the ratio of at least one for every 50 residents or fraction thereof. Such facilities also shall have adequate provisions for drying clothes.

§ 4047.9. Garbage; refuse.

An adequate number of covered storage receptacles shall be provided and readily available for the storage of garbage and refuse. Such garbage and refuse shall be removed in a timeframe to ensure that no accumulation outside the covered storage receptacles is required. The storage receptacles shall be constructed of durable, cleanable materials and be maintained in a sanitary condition and in good repair. Garbage and refuse shall not be allowed to accumulate on the surface of the ground.

§ 4047.10. Pest control.

(a) Each association shall conduct a program of abatement to control the presence of rodents, flies, cockroaches, mosquitoes, bats and other vermin in and around backstretch worker housing and animal feed storage areas. The methods of control shall include, without limitation:

(1) the daily removal of all materials that contribute to the breeding and harboring of vermin, such as horse excrement, garbage, refuse or any other putrid or offensive animal or vegetable matter; and

(2) a program of spraying or baiting for insects or rodents.

(b) Each association shall file with the commission on an annual basis an integrated pest management protocol that incorporates pest management industry-standard best practices.

(c) Should an association undertake pest control by a third party, only certified commercial pesticide applicators or commercial pesticide technicians shall be used.

§ 4047.11. Responsibilities of occupants.

(a) All occupants of backstretch worker housing are responsible for maintaining their housing unit and common use areas in a reasonably clean and sanitary condition; for exercising safe practices and proper care when using the facilities and equipment provided; for the sanitary storage and disposal of garbage and refuse that they generate using the facilities provided; for not using any unapproved heating or cooking device; and for occupancy of the property in accordance with the capacity limit.

(b) Occupants who observe a public health hazard have an affirmative obligation to report promptly the concern to both management of the association and to the commission.

§ 4047.12. Water.

Every water supply serving backstretch worker housing shall comply with requirements of 10 NYCRR Part 5 and also shall meet the following requirements:

(a) *Contaminants.* The water supply shall not exceed the maximum contaminant levels set forth in sections 5-1.51 and 5-1.52 of Subpart 5-1 of Part 5 of 10 NYCRR.

(b) *Minimum standards.* Potable water shall be adequate in quantity and quality and shall be available readily to resident occupants of the housing. Only potable water shall be so delivered or piped.

(c) *Source protection.* All potable water sources and distribution systems shall be designed, located, constructed and maintained to provide protection against contamination or pollution. All pumps, piping, fixtures and appurtenances shall be installed and maintained adequately to protect against contamination of any water source.

(d) *Connections prohibited.* There shall be no physical connection between the potable water supply and any non-potable water supply. Any fixture, installation or equipment that is subject to back-siphonage shall be installed and maintained adequately to protect against contamination of any water source.

(e) *Pressure.* A minimum pressure of 20 pounds per square inch, at peak demand, shall be maintained in all parts of the distribution system.

(f) *Reports on water treatment.* When a water treatment process is required to maintain adequate water quality, accurate and complete reports on the operation of the treatment system shall be maintained daily and submitted to the executive director at a frequency specified on a form supplied for this purpose.

(g) *Interruptions, changes in sources or treatments.* Any incident or condition that effects the quantity or quality of the onsite potable water supply shall be reported to the executive director within 24 hours of occurrence. There shall be no changes made to the source or method of treatment of a potable water supply, either temporary or permanent, without first receiving written approval from the executive director. An adequate supply of potable water must be provided and maintained during all times of operation.

§ 4047.13. Variance and waiver.

(a) *Variance.* In order to allow time to comply with a provision of this Part, an association may submit a written request to the executive director for a variance. Such variance request shall not be granted unless the association demonstrates that the health and safety of the housing occupants and the public will not be prejudiced by the variance and that there are practical difficulties or hardships in immediate compliance with the provisions. An operator shall meet all terms of an approved variance, including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the executive director specifies. A variance shall end one year from its date of issuance, unless such variance is granted for a lesser period of time or otherwise extended.

(b) *Waiver.* In order to accept alternative arrangements that do not meet a provision of this Part, an association may submit a written request to the executive director for a waiver from a specific provision of this Part. Such request shall not be granted unless the association can demonstrate that circumstances exist that are beyond the control of the association, compliance with the provision would present a hardship and that the public and housing occupants' health and safety will not be endangered by granting such a waiver. An operator must meet all terms of any approved waiver. A waiver shall remain in effect indefinitely unless revoked by the executive director.



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: November 20, 2018

Re: Proposed Rulemaking for Helmets and Safety Vests at Thoroughbred Racetracks (9 NYCRR §§ 4006.7 and 4006.8)

For Commission consideration is a proposal to update the requirements for helmets and safety vests worn by persons on horseback on the grounds of Thoroughbred racetracks. While the Commission previously authorized the proposal of a form of this rule, upon further contemplation staff determined additional revisions were necessary and appropriate.

As a reminder, the Jockey Injury Compensation Fund commissioned a report from March Risk Consulting to assess operational risks in New York Thoroughbred racing. The Report recommended improving Commission safety rules for protective equipment by updating Rules 4006.7 (helmets) and 4006.8 (vests). At the request of Commission staff, the Stewards, horsemen and jockey representatives identified applicable product standards and recommended expanding the requirement of wearing safety helmets and vests to any person mounted on a horse. The proposal also increases the maximum weight of the safety vest from two to four pounds to permit the wearing of newer vest models, which provide enhanced safety. The proposal also expands the requirement to wear a safety helmet to apply to the starting gate crew.

The proposal would update Commission rules that require protective helmets and safety vests for persons who may be injured while loading horses into the starting gate or mounted on any horse (e.g., ponies, outriders, racehorses) on the grounds of a racetrack.

A copy of the proposed text is attached.



attachment

cc: Ronald Ochrym, Acting Executive Director

Section 4006.7 of 9 NYCRR would be amended as follows:

§ 4006.7. Safety helmet required.

(a) Every [jockey, apprentice jockey and other rider, whether in a race or when exercising or ponying a thoroughbred horse,] person working in the gate crew or mounted on horseback on the grounds of a racetrack shall wear a properly fastened safety helmet [of a type approved in writing by the stewards. No change shall be made in any such helmet without the approval of the stewards]. The gate crew means the starter and assistant starter and any person who handles a horse for the starter or assistant starter at the starting gate.

(b) Each safety helmet shall provide a minimum level of shock absorbing protection to the head as evidenced by a label indicating compliance with one or more of the following product standards or with a standard that in the judgment of the executive director of the commission or his or her designee is comparable or superior:

(1) American Society for Testing and Materials, ASTM F1163-04a or F1163-15, Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding;

(2) European Norm, EN 1384:1996, Helmets for Equestrian Activities;

(3) British Standards Institute Product Approval Specification, PAS 015:2011, Specification for Helmets for Equestrian Activities;

(4) Interim European Standard, VG1 01.040: 2014-12 (with or without BSI Kitemark), Equestrian helmets;

(5) Australian Standards/New Zealand Standards, AS/NZS 3838:2006, Helmets for horse riding and horse-related activities;

(6) Australian Racing Board Helmet Safety Standard, ARB HS 2012;

(7) Snell Memorial Foundation (Snell) Equestrian Helmet Standard E2001 or E2016; or

(8) L'Union Technique de l'Automobile du Motorcycle et du Cycle (UTAC) or CRITT Sport Loisirs (CRITT) 04/2015 standards.

(c) A safety helmet shall not be altered from its original manufactured design nor shall the product marking be removed or defaced.

Section 4006.8 of 9 NYCRR would be amended as follows:

§ 4006.8. Safety vests.

(a) Every person mounted on [No jockey, apprentice jockey, or exercise rider, pony person or outrider shall participate in any race, train, exercise, or pony any] horseback on [such] the grounds [conducted by any association or corporation licensed or franchised by the commission to conduct thoroughbred race meetings unless he or she wears a] of a racetrack shall wear a properly fastened safety vest.

(b) [Such safety vest] Each safety vest shall weigh no more than [two] four pounds and [shall be designed to] provide a minimum level of shock absorbing protection to the upper body[,] as evidenced by a label [with at least a rating of British Equestrian Trade Association (BETA) [2000/2009 Level 1] indicating compliance with one or more of the following product standards or with a standard that in the judgment of the [stewards] executive director of the commission or his or her designee is comparable or superior:

(1) British Equestrian Trade Association (BETA) Standard for Body and Shoulder Protectors for Equestrian Use, BETA 2009 Level 1;

(2) European Norm, EN 13158:2009 Level 1, Protective Clothing for equestrian use; or

(3) American Society for Testing and Materials, ASTM F2681-08 or F1937-04, Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding.

(c) A safety vest shall not be altered from its original manufactured design nor shall the product marking be removed or defaced.