



**MEETING AGENDA
JANUARY 3, 2019**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF DECEMBER 10, 2018
3. RULEMAKING
 - A. ADOPTION: SGC-42-18-00015-P, PERMIT GREATER PURSE-TO-PRICE RATIO IN THOROUGHBRED CLAIMING RACES
4. CONSIDERATION OF MGM YONKERS, INC. TO CONDUCT HARNESS RACING, SIMULCASTING, ACCOUNT WAGERING ON RACING, AND VIDEO LOTTERY GAMING AT YONKERS RACEWAY
5. OLD BUSINESS/NEW BUSINESS
6. SCHEDULING OF NEXT MEETING
7. ADJOURNMENT

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New York State Gaming Commission

Minutes

Meeting of December 10, 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 1:35 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Chairman Barry Sample and Commissioners John Crotty, Peter Moschetti, John Poklemba and Jerry Skurnik.

2. Consideration of Minutes for Meeting of September 24, 2018

The Commission considered previously circulated draft minutes of the meeting conducted on September 24, 2018. The minutes were accepted as circulated.

3. Report of the Acting Executive Director

Director Ochrym provided a report regarding the new Lottery studio, a New York Powerball winner and the annual gift responsibly campaign. Ochrym also discussed two court cases and extended condolences to the family and friends of thoroughbred trainer Rick Violette Jr. and former Racing and Wagering Board Chairman William Barry.

4. Rulemaking

a. **ADOPTION: Heads Up Hold'em Poker, SGC-38-18-00002-P**

The Commission considered an adoption of a proposed rulemaking to add a Poker table game called Heads Up Hold'em to the rules for commercial casino.

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

b. **ADOPTION: Amendment of Multiple Medication Violation Penalty Enhancement Rule, SGC-40-18-00006-P**

The Commission deferred consideration of the adoption of a proposed rulemaking for Multiple Medication Violation Penalty Enhancement Rule.

c. ADOPTION: Permit Greater Purse-to-Price Ratio in Thoroughbred Claiming Races, SGC-42-18-00015-P

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

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

d. REVISED PROPOSED: Commercial Casino Fees and Payments, SGC-38-18-00003-P

The Commission considered a revised proposed rulemaking for gaming facility fees and payments.

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

e. PROPOSED: Use of Social Security Numbers

The Commission considered amendments to rules relating to the provision of social security numbers.

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

f. PROPOSED: Spanish 21 Table Game

The Commission considered a proposal to add an optional wager to and amend a pay table for the Spanish 21 table game.

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

g. PROPOSED: Backstretch Worker Housing at Thoroughbred Tracks

The Commission considered a proposed regulation to set forth standards for housing maintained on the grounds of certain racetracks.

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

h. PROPOSED: Helmets and Safety Vests at Thoroughbred Tracks

The Commission considered a proposal to update the requirements for helmets and safety vests worn by persons on horseback on the grounds of Thoroughbred racetracks.

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

5. Adjudications

a. In the Matter of Puff N Stuff Hicksville, Inc.

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed on a 5-0 vote to sustain the Hearing Officer's Report and Recommendation that the entity's license be revoked and that the period from the date of suspension to the Commission's final determination be the term of license suspension.

b. In the Matter of Javier Castellano

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed on a 5-0 vote to sustain the Hearing Officer's Report and Recommendation be upheld and Mr. Castellano pay the \$2,000 fine that had been levied by State Steward.

6. Old Business/New Business

a. Old Business

No old business was offered for discussion.

b. New Business

No new business was offered for discussion.

7. Scheduling of Next Meeting

The Commission tentatively set January 28th as the date for the next meeting.

8. Adjournment

The meeting was adjourned at 1:53 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: December 18, 2018
Re: Proposed Rulemaking for Claiming Price in Thoroughbred Racing
(9 NYCRR § 4038.2)

You will recall that at your December 10, 2018 meeting you authorized the adoption of the proposed rulemaking to permit a greater purse-to-price ratio in Thoroughbred racing, subject to there being no adverse public comments received before the public comment period expired on December 17, 2018. One adverse comment (attached) was received on December 17, 2018, the last day of the public comment period.

The State Administrative Procedure Act (“SAPA”) requires the Commission to consider and assess public comments received. The Commission may not, consistent with SAPA, adopt a rule without having considered public comment. Any such consideration should be undertaken at a public meeting, pursuant to the Open Meetings Law.

The Commission has several times voted at a public meeting that occurred before the expiration of a public comment period to authorize the adoption of a proposed rule, subject to the condition that no adverse comment is subsequently received before the end of the public comment period. That is how the Commissioner acted with this rulemaking. In prior matters, no adverse comment was received between the meeting and the expiration of the public comment period and staff did not submit the formal Notice of Adoption paperwork the Department of State requires until after the subsequent expiration of the public comment period.

Because the attached comment urges the Commission to not adopt the proposed rule, the Commission should consider the comment and determine at a public meeting how to proceed.

Comment received

Thomas Noonan submitted a letter that contains public comment. Most of the contents of the letter do not relate to the substance of the proposed rule and are not therefore public comments on the rule. For example, Mr. Noonan misunderstands that the Commission’s action on December 10 was a conditional authorization of the rule’s adoption, not a final adoption of the proposed rule. Staff has not filed a Notice of Adoption with the Department of State and, therefore, the proposed rule is not yet adopted. There is no SAPA violation. Mr. Noonan had objected to the possibility of the Commission taking action on the rule on December 10, but his communication expressing that objection was

not a comment on the substance of the rule itself and was not, therefore, deemed to be a public comment on the proposed rule. Mr. Noonan also incorrectly asserts that input into a potential rule before the rule's publication as a proposed rule in the State Register amounts to public comment. Public comments are those received commenting on a proposed rule from the time of the proposed rule's publication in the State Register and the expiration of the statutory public comment period, which is also set forth in the published Notice of Proposed Rule Making. Mr. Noonan also complains about the handling of a Freedom of Information Law request he made. That complaint is not a comment on the proposed rulemaking and, in any event, is unfounded.

On the substance of the rule, Mr. Noonan expresses the opinion that the proposal not be adopted. He asserts that the current rule, which stemmed from the recommendations of a 2012 task force on equine fatalities, better protects horse safety. Mr. Noonan questions the wisdom of "a transactional approach that balances economic considerations with equine and human safety." Mr. Noonan notes that Dr. Scott Palmer did not explain "what [the] criteria would be" to grant an exception to the general ratio rule currently in place. Mr. Noonan complains that "[t]here was...no explanation of the reasons warranting a lessening of protections designed to protect horses."

[REDACTED]

cc: Ronald Ochrym, Acting 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 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.