



**MEETING AGENDA
MARCH 25, 2019**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF JANUARY 28, 2019
3. RULEMAKING
 - A. FOR ADOPTION: SGC-47-18-00009-P, SELF-EXCLUSION AND CASINO ADVERTISING
 - B. FOR ADOPTION: SGC-17-18-00002-P, REGULATION OF COURIER SERVICES THAT PURCHASE AND CLAIM CERTAIN LOTTERY TICKETS AND PRIZES AS AGENTS FOR CUSTOMERS
 - C. FOR ADOPTION: SGC-38-18-00003-RP, CASINO FEES AND PAYMENTS
 - D. FOR ADOPTION: SGC-01-19-00018-P, STANDARDS FOR BACKSTRETCH HOUSING AND RELATED FACILITIES
4. CONSIDERATION OF GAMING FACILITY LICENSE AMENDMENT
 - A. MONTREIGN OPERATING COMPANY, LLC DOING BUSINESS AS RESORTS WORLD CATSKILLS
 - B. TIOGA DOWNS RACETRACK, LLC DOING BUSINESS AS TIOGA DOWNS CASINO, RACING AND ENTERTAINMENT
5. ADJUDICATIONS
 - A. IN THE MATTER OF CARL CONTE, JR.
 - B. IN THE MATTER OF PHILIP PAPAS
6. OLD BUSINESS/NEW BUSINESS
7. ADJOURNMENT

New York State Gaming Commission

Minutes

Meeting of January 28, 2019

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

1. Call to Order and Establishment of Quorum

Acting Executive Director Robert Williams called the meeting to order at 1:46 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, Jerry Skurnik and Todd Snyder.

2. Consideration of Minutes for Meeting of December 10, 2018

The Commission considered previously circulated draft minutes of the meeting conducted on December 10, 2018. The minutes were accepted as circulated.

3. Rulemaking

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

The Commission considered an adoption of a proposed rulemaking that would add flexibility to the Thoroughbred claiming-price rule on a case-by-case basis for all or a portion of a race meeting while requiring the track to meet increased requirements to ensure the competitiveness, soundness and safety of the horses that enter any such races.

Chairman Sample directed State Equine Medical Director Scott Palmer to carefully examine each request and for staff to report back in May on the preliminary effect of the rule change.

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

b. PROPOSED: Cash 4 Life Rules Amendment

The Commission considered proposed amendments to rules relating to the Cash 4 Life draw game.

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

c. PROPOSAL: Sports Wagering

The Commission considered a proposal to enable sports wagering as an authorized casino game.

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

4. Adjudications

a. In the Matter of Jahmel Stokes

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 applicant's license denial be upheld.

b. In the Matter of S&S Grocery Mart, 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 6-0 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.

c. In the Matter of Sanam Petroleum Corp.

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 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. The Commission also clarified that the Hearing Officer's Report applied to the licensed entity.

d. In the Matter of BP-BAPS Enterprises 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 6-0 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. The Commission also clarified that the Hearing Officer's Report applied to the licensed entity.

e. In the Matter of Harguru Nanak Petroleum Corp.

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 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. The Commission also clarified that the Hearing Officer's Report applied to the licensed entity.

f. In the Matter of 3rd Ave Deli and Grill Corp.

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 grant the Office of Commission Counsel's Motion for Summary Judgment finding that the entity's lottery sales agent license should be revoked. The Commission also announced that Findings and Order would be forthcoming.

5. Consideration of MGM Yonkers, Inc. to conduct harness racing, simulcasting, account wagering on horseracing and video lottery gaming at Yonkers Raceway

a. Harness Licensing

The Commission considered and approved, on a 6-0 vote, the application of MGM Yonkers to conduct harness racing in 2019, effective as of the date the purchase transaction closes.

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

b. Simulcasting and Account Wagering Licenses

The Commission considered and approved, on a 6-0 vote, the application of MGM Yonkers to conduct simulcasting and account wagering on horseracing in 2019, effective as of the date the purchase transaction closes.

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

c. Video Lottery Gaming

The Commission considered and approved, on a 6-0 vote, the application of MGM Yonkers for a video lottery gaming license and the issuance of an operation certificate to conduct video lottery gaming at Yonkers Raceway, effective as of the date the purchase transaction closes.

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

d. Material Debt Transactions

The Commission considered and approved, on a 6-0 vote, the request of MGM Yonkers to approve material debt transactions in regard to the merger transaction and of the related acquisition of real property and interests.

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

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 February 25, 2019 as the date for the next meeting.

8. Adjournment

The meeting was adjourned at 2:16 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: March 20, 2019

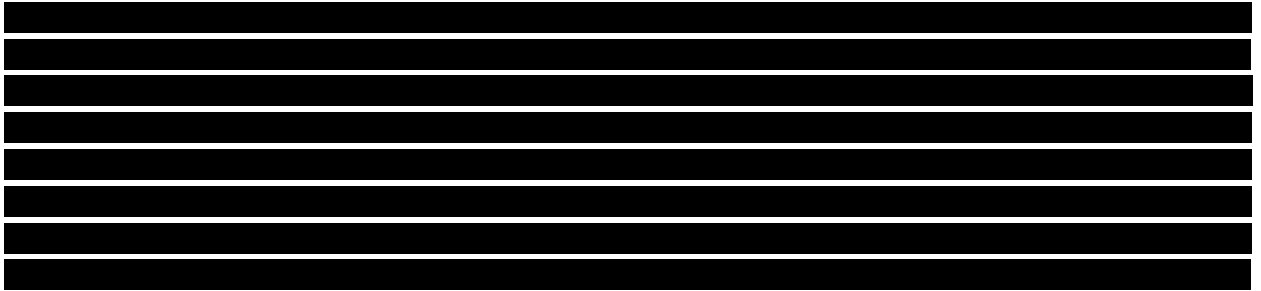
Re: Adoption of Proposed Rulemaking for Self-Exclusion (9 NYCRR Parts 5402 and 5403)

For Commission consideration is the adoption of proposed consolidated and amended regulations for self-exclusion from gaming activities. The proposed rulemaking was published in the November 21, 2018 *State Register*, a copy of which is attached. The full rule text is also attached.

Currently, there are different self-exclusion rules applying to different forms of gaming. This proposal would centralize Commission self-exclusion policies and make self-exclusion universal throughout the various forms of gaming Statewide, rather than limit it to one form of gambling or another. The proposal would require that a person file a request for self-exclusion, to include the length of exclusion sought (one year, three years, five years or lifetime). A self-excluded person would be prohibited from collecting gambling winnings or recovering any gambling losses occurring during the exclusion period and would be subject to possible arrest for trespass if found on the premises of a place from which the person is excluded. Upon registration, the excluded person would be required to release any claims that could arise from a failure by the State, Commission or Commission licensees or operators of gaming activity to withhold or restore gaming privileges or from confiscation of such person's gambling winnings. A gaming operator would be required to establish procedures and training for its employees to identify and manage any self-excluded persons found to be present on a gaming floor or involved in gaming-related activities. Current rules that would be rendered duplicative or conflicting would be repealed.

The public comment period for the proposal expired on January 21, 2019. One comment was received during the public comment period, from Churchill Downs Technology Initiatives Company ("CDTIC"), an advance deposit wagering operator that is licensed to offer pari-mutuel wagering in New York on horse races. CDTIC advocates keeping the current self-exclusion regime in place and not expanding it statewide. CDTIC wishes to maintain its own self-exclusion list and not share the names of self-excluded patrons with other gaming operators. CDTIC also asserts that proposed Part 5403, which would require multi-jurisdictional account wagering providers in horse racing to permit customers to place limits on the amounts of their betting, as New York tracks and off-track betting corporations are currently required to do, would be unduly burdensome and "is a paradigm shift to how we currently operate."

Staff response: [REDACTED]



In addition, three comments were received on an earlier version of the proposal, before the Commission revised the proposal and authorized its submission for publication at its September 24, 2018 meeting. Another comment was received after the comment period expired.

Rivers Casino wrote on May 15, 2017 and asked that Commission staff administer the intake of requests for self-exclusion, instead of staff at the facility. Commission staff believed that the effectiveness of the program would be best served by having the flexibility to require facility staff to perform necessary intake procedures. The proposal presented to the Commissioners that is now ripe for adoption therefore does not incorporate the Rivers Casino request.

The off-track betting corporations, collectively, wrote twice in 2017, first requesting that the Commission not implement the statewide self-exclusion policy promptly, to enable them to consider how best to implement the new procedures, and then on May 2, 2017 with specific comments on the potential rule text. The specific comments were as follows:

- The OTBs asked that each OTB be considered a single facility, so that each branch office would not need to have staff trained in handling self-exclusion intake or have responsible gaming ambassadors.
- The OTBs stated that out-of-state advance deposit wagering providers should be subject to the same requirements as in-state providers.
- The OTBs suggested that requiring a notarized self-exclusion form might discourage participation.
- The OTBs requested that the rule requiring a self-excluding person to be advised that they may be subject to arrest for trespassing explicitly state an exemption for restaurants that partner with OTBs to offer horse race wagering as OTB branch offices.
- The OTBs question where forfeited winnings would go.
- The OTBs assert that on-site training of employees would be costly and questions who would provide training materials.
- The OTBs question whether account wagering customers would be able to withdraw amounts in their accounts.

- The OTBs suggest that self-excluding patrons should remain on the list unless they affirmatively request removal at the end of the limited time-period for which they selected to self-exclude.
- The OTBs question whether confidentiality provisions in the rule conflict with the need for facilities to have access to the statewide list. The OTBs suggest that they should have access to one, central database of excluded persons.

[REDACTED]
[REDACTED] In particular:

- Each facility should be able to handle intake of self-excluding persons, in order to maximize effectiveness of the statewide program. Under current rules, each OTB facility handles OTB-specific exclusions, and the extension of those exclusions statewide should not impose any materially different burden on OTB staff. A person now signing a form for OTB exclusion would, under the proposed rules, be signing a statewide exclusion. The staffing and regulatory burden of accepting the form is similar.
- The rules do apply to out-of-state advance deposit wagering providers.
- Notarization is an important protection to ensure that the proper person will be excluded pursuant to the program.
- The requirement to notify a self-excluding person of the potential for trespassing culpability is a protection to ensure that the self-excluding person understands the consequences of the decision. It is not a requirement that trespassing arrests will happen. Such decisions are left to the discretion of local law enforcement.
- The treatment of forfeited winnings is a matter for legislative determination.
- The rules contemplate facilities developing training materials and submit them to the Commission for review and approval. There is no requirement that training be conducted onsite.
- Account wagering customers would be able to withdraw amounts in their accounts at the time of their self-exclusion.
- If a person excludes for only a limited period of time, the exclusion remains only for so long as the person has agreed. If the person intended to agree to a longer term of exclusion, the person has such options at the time of entering the self-exclusion program.
- The confidentiality provisions are intended to ensure that public disclosure of excluded persons, which might inhibit participation in the program, is prohibited. Anyone enforcing the program would, by necessity, have access to the names and identities of persons on the self-exclusion list. The Commission would maintain the statewide list, aggregating intake input from the various covered gaming operators.

After the public comment period expired, the New York Racing Association, Inc. wrote to note the difficulty of ensuring that a self-excluded patron not receive marketing materials, if such materials are provided by vendors who may target persons with advertising at contact points (such as email addresses) that are not apparent from the statewide self-exclusion list. Staff notes that a gaming operator is required by these rules to “train its employees and establish procedures to...ensure that self-excluded persons do not receive...targeted mailings, telemarketing promotions, player club materials or other promotional materials.” The rules do not make operators strictly liable should a self-excluded person receive such materials. A gaming operator would work with Commission regulators to develop and maintain procedures adequate to minimize such risks.

[REDACTED]

attachments

cc: Robert Williams, Esq., Acting Executive Director
Thomas Anapolis, Director, Division of Gaming
Gweneth Dean, Director, Division of Lottery
Ronald Ochrym, Director, Division of Horse Racing and Pari-Mutuel Wagering

4. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed amendment is to provide a one-year renewable waiver allowing districts with fewer than 30 ELLs to seek approval from the Commissioner to expand the allowable grade span for ENL and BE classes to three contiguous grades.

5. RURAL AREA PARTICIPATION:

Copies of the proposed amendments have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The purpose of the proposed amendment is to provide a one-year renewable waiver allowing districts with fewer than 30 ELLs to seek approval from the Commissioner to expand the allowable grade span for ENL and BE classes to three contiguous grades.

Because there is a demonstrated shortage of ELL and BE teachers, it is evident from the nature of the proposed amendment that it will have little or no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Self-Exclusion and Casino Advertising

I.D. No. SGC-47-18-00009-P

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

Proposed Action: Repeal of Parts 4044, 4123, 4237, 4411, 5326 and section 5117.6(e)-(h); amendment of sections 5116.6 and 5325.6; addition of Parts 5402 and 5403 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103, 104(19), 111 and 1344

Subject: Self-exclusion and casino advertising.

Purpose: To centralize Commission self-exclusion policies and make self-exclusion universal throughout the various forms of gaming.

Substance of proposed rule (Full text is posted at the following State website: https://www.gaming.ny.gov/proposed_rules.php): The addition of Parts 5402 and 5403 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission (“Commission”) to prescribe the procedures to make self-exclusion universal throughout the various forms of gaming Statewide, rather than limit it to one form of gaming or another.

Part 5402 establishes self-exclusion policies. The proposal would require that a person file a request for self-exclusion, to include the length of exclusion sought (one year, three years, five years or lifetime). A self-excluded person would be prohibited from collecting winnings or recovering losses occurring during the exclusion period and would be subject to possible arrest for trespass if found on the premises of a place from which the person is excluded. Upon registration, the excluded person would be required to release any claims that could arise from a failure by the State, Commission or Commission licensees or operators of gaming activity to withhold or restore gaming privileges or from confiscation of such person’s winnings. A gaming operator would be required to establish procedures and training for its employees to identify and manage any self-excluded persons found to be present on a gaming floor or involved in gaming-related activities.

Part 5403 consolidates current rules allowing for self-imposed restrictions in the amount of wagering on horse racing, eliminating duplicative provisions currently in the Thoroughbred, Standardbred, Quarterhorse and off-track betting rules.

The amendment of subdivision (b) of section 5325.6 of the regulations in regard to advertising of commercial casinos would be to correct texting contact information for the New York State HOPEline.

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 111 requires the Commission to promulgate rules and regulations enabling people to exclude themselves voluntarily from gaming activities.

Racing Law section 1344 requires the Commission to provide by regulation the establishment of a list of persons self-excluded from gaming activities.

2. **LEGISLATIVE OBJECTIVES:** This rule making carries out the legislative objectives of the above-referenced statutes.

3. **NEEDS AND BENEFITS:** This rule making proposed consolidated and amended regulations for self-exclusion from gaming activities. Currently, there are different self-exclusion rules applying to different forms of gaming. This proposal would centralize Commission self-exclusion policies and make self-exclusion universal throughout the various forms of gaming Statewide, rather than limit it to one form of gaming or another. Contact information for the New York State HOPEline would be corrected in the advertising regulations for commercial casinos.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: The rules prescribe self-exclusion procedures under 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 development and maintenance of a Statewide self-exclusion database (already built), however it is anticipated that these costs are minimal because the Commission will be using existing technology without the need for additional resources. 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 Statewide self-exclusion database will be based on the Commission’s administrative costs associated with building and maintaining the database.

5. **LOCAL GOVERNMENT MANDATES:** These rules do not impose any mandatory program, service, duty, or responsibility upon local government because intake of self-excluded people is strictly a matter of State law.

6. **PAPERWORK:** These rules are not expected to impose any significant paperwork requirements for gaming facility employee and vendor applicants other than the paperwork necessary for the application submission and investigation.

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

8. **ALTERNATIVES:** The Commission considered maintaining the self-exclusion limitation to only particular forms of gaming, but concluded that self-excluded persons would be better served by being prevented from participating in each forms of legalizing gaming.

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 revises the Commission’s self-exclusion rules and procedures and re-codifies certain provisions in regard to restrictions on account wagering on horse racing.

This rule will not impose an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved. This proposal will not adversely impact small businesses, local governments, jobs or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis or Job Impact Statement.

A new Subchapter B would be added to Chapter V of Subtitle T of 9 NYCRR on the subject of problem gambling, containing new Parts 5402 and 5403, as follows:

Chapter V

Administration

Subchapter A Public Access to Records

Subchapter B Problem Gambling

Part

5402 Self-Exclusion

5403 Restrictions on Account Wagering in Horse Racing

PART 5402

Self-Exclusion

Section

5402.1 Definitions

5402.2 Request for self-exclusion

5402.3 Self-exclusion list

5402.4 Duties of gaming operators

5402.5 Removal from self-exclusion list

5402.6 Exceptions for individuals on the self-exclusion list

5402.7 Disclosure of information related to persons on the self-exclusion list

§ 5402.1. Definitions.

For purposes of this Part:

(a) *gaming facility* means any room, premises, designated gaming area or platform where gaming pursuant to articles 2, 3, 4, 5, 6, 9, 10, 13 or 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or video lottery gaming pursuant to Tax Law section 1617-a is conducted; and

(b) *gaming operator* means any licensee or operator authorized to conduct or operate gaming or other activity pursuant to articles 2, 3, 4, 5, 6, 9, 10, 13 or 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or video lottery gaming pursuant to Tax Law section 1617-a.

§ 5402.2. Request for self-exclusion.

(a) A person requesting placement on the self-exclusion list shall submit to the commission or the commission's designee a completed request for voluntary self-exclusion form provided by the commission. Such submission may be made by appearing at the commission's principal office in Schenectady during regular business hours or at any licensed gaming facility's area designated for problem gambling intake. Persons who are unable to travel may request accommodation for submission through United States mail, so long as a notarized statement accompanies the required form stating clearly that the person signing understands fully the implications of submitting such form.

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

(1) name, including any aliases or nicknames;

(2) date of birth;

(3) address of current residence;

(4) telephone number;

(5) social security number, when voluntarily provided in accordance with section seven of the Privacy Act of 1974 (5 U.S.C. § 552a) or Article 6-A of the Public Officers Law (Personal Privacy Protection Law);

(6) a copy of a current government-issued photo identification, such as a driver's license or passport; and

(7) height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person.

(c) Any person requesting self-exclusion pursuant to this Part shall be required to file with the commission or the commission's designee a photograph of such person taken within six months of the date of the request. Such photograph shall accompany the submission of the required form.

(d) A self-excluded person shall update any of the information set forth in paragraphs (1) through (6) of subdivision (b) of this section and any material change in any of the information set forth in paragraph (7) of subdivision (b) of this section within 30 days of any change.

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

(1) one year;

(2) three years;

(3) five years; or

(4) lifetime.

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

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

(h) Each person requesting self-exclusion shall be advised in writing that if such person is found violating the rules set forth in this Part, such person may be subject to arrest for trespassing pursuant to Penal Law sections 140.10, 140.15 and 140.17.

§ 5402.3. Self-exclusion list.

(a) The commission shall maintain an official self-exclusion list and notify each gaming operator of additions to or deletions from the list within five business days of the verification of the information received pursuant to section 5402.2 of this Part.

(b) The notice that the commission provides to gaming operators shall include the information provided pursuant to subdivision (a) of section 5402.2 of this Part and a copy of the person's photograph pursuant to subdivision (b) of section 5402.2 of this Part.

(c) A gaming operator shall maintain a current copy of the self-exclusion list and ensure that all appropriate employees and agents of the gaming operator are notified promptly of any addition to or deletion from the list.

(d) Gaming operators, employees or agents thereof may not disclose the name of, or any information about, a person who has requested self-exclusion to anyone other than employees and agents of the gaming operator whose duties and functions require access to the information or as authorized by the Racing, Pari-Mutuel Wagering and Breeding Law for the limited purpose of assisting in the proper administration of responsible gaming programs. Notwithstanding anything to the contrary in this subdivision, a gaming operator may disclose the identity of a self-excluded person to appropriate employees of other gaming operators in the State of New York or affiliated gaming entities in other jurisdictions for the limited purpose of assisting in the proper administration of problem gambling treatment or responsible gaming programs or to law enforcement or as may be required by a validly issued court order.

(e) A self-excluded person shall not, directly or indirectly, collect in any manner any winnings or recover any losses arising as a result of any gaming activity, including lottery, conducted during the period of time that such person is on the commission's self-exclusion list, consistent with the requirements set forth in the Racing, Pari-Mutuel Wagering and Breeding Law and article 34 of the Tax Law.

(f) Winnings of a self-excluded person shall be subject to forfeiture to the commission if such forfeiture is authorized by the Racing, Pari-Mutuel Wagering and Breeding Law or article 34 of the Tax Law.

(g) For the purposes of this section, winnings issued to, found on or about, or redeemed by, a self-excluded person shall be presumed to constitute winnings subject to forfeiture to the commission if such forfeiture is authorized by the Racing, Pari-Mutuel Wagering and Breeding Law or article 34 of the Tax Law.

(h) A self-excluded person shall be removed from any lottery subscription program described in Part 5005 of subchapter A of Chapter III of this subtitle. The commission shall not accept any new lottery subscription deposits from such self-excluded person, but such self-excluded person shall be allowed to withdraw any amounts from such person's account as of the date of the self-exclusion.

§ 5402.4. Duties of gaming operators.

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

(1) for a physical facility, identify a self-excluded person when such person is present on a gaming floor, present in areas off the gaming floor where gaming activity is conducted, present in areas

accessible only through a gaming floor or engaging in gaming-related activities and, upon identification, notify immediately, unless section 5402.6 of this Part applies, the following persons:

(i) employees of the gaming operator whose duties include the removal of self-excluded persons;

(ii) the commission's designated staff at the licensed facility; and

(iii) if the gaming operator deems appropriate, a law enforcement agency;

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

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

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

(5) comply with section 5402.3 of this Part; and

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

(b) A gaming operator shall designate responsible gaming ambassadors and provide commission approved training to such ambassadors to assist in the development and maintenance of the self-exclusion list.

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

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

(1) specify the nature of the objection and, when possible, an acceptable alternative; and

(2) direct that the amendments not be implemented until approved by the commission.

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

(f) For physical facilities, each gaming operator shall post signs in a conspicuous manner within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by

the commission indicating that a person who is on the self-exclusion list will be subject to arrest for trespassing pursuant to Penal Law sections 140.10, 140.15 and 140.17 if such person is on the gaming floor, in areas off the gaming floor where gaming activity is conducted, in areas accessible only through a gaming floor or engaging in gaming-related activities in the gaming facility. The text and font size of such signs shall be submitted to the commission for review and approval.

(g) For interactive gaming, a gaming operator shall not accept any new deposits from the self-excluded person, but such self-excluded person shall be allowed to withdraw any amounts from such person's account and the gaming operator shall acknowledge such withdrawals to such person.

§ 5402.5. Removal from self-exclusion list.

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

§ 5402.6. Exceptions for individuals on the self-exclusion list.

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

(a) the individual is carrying out the duties of employment or incidental activities related to employment;

(b) the gaming operator's security department has received prior notice, unless it was impracticable to have done so;

(c) access to the gaming floor or areas off the gaming floor where gaming activity is conducted is limited to the time necessary to complete the individual's assigned duties; and

(d) the individual does not otherwise engage in gaming activities.

§ 5402.7. Disclosure of information related to persons on the self-exclusion list.

(a) Information furnished to or obtained by the commission pursuant to this Part shall be deemed confidential and shall not be disclosed unless necessary to implement this Part or other law or as may be required by a validly issued court order;

(b) The commission may release periodically to the public demographics and general information in regard to the self-exclusion list, such as the total number of persons on the list, gender breakdown and age range.

(c) The commission may make selected data available, upon request, for the limited purpose of assisting in the proper administration of problem gambling treatment or responsible gaming programs.

PART 5403

Restrictions on Account Wagering in Horse Racing

Section

5403.1 General requirements

5403.2 Voluntary restrictions on account wagering

§ 5403.1. General requirements.

(a) Each account wagering licensee, as defined by Racing, Pari-Mutuel Wagering and Breeding Law section 1001(r), that maintains telephone betting accounts for wagering on horse races shall establish procedures that are designed to permit an account holder to voluntarily place limits on the amount of his or her wagers. This restriction may be calculated on a daily or weekly basis.

(b) An account holder who has placed restrictions on his or her account may remove such exclusion or restrictions upon request made to the account wagering licensee. No request, however, from a person to remove any self-exclusion or limit placed on account wagers shall be effective until seven days after such request has been received by the account wagering licensee.

§ 5403.2. Voluntary restrictions on account wagering.

(a) Any holder of an account authorized pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1012 may voluntarily place limits on the amount of his or her wagers. This restriction may be calculated on a daily or weekly basis.

(1) Each account wagering licensee that maintains telephone betting accounts for wagering on horse races shall establish procedures that are designed to deny wagering privileges beyond a daily or weekly threshold set by the account holder.

(2) Any holder of an account voluntarily restricted may have such restrictions removed or modified upon written or in-person request to the racing association or corporation. Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 111(3), no request from a person to remove any limit placed on account wagers shall be effective until seven days after such request has been received by the racing association or corporation.

(b) Each account wagering licensee that maintains telephone betting accounts for wagering on races shall file with the commission a copy of such account wagering licensee's procedures established pursuant to this section.

* * *

Parts 4044, 4123, 4237, 4411 and 5326 of 9 NYCRR would be repealed.

* * *

Subdivisions (e) through (h) of section 5117.6 of 9 NYCRR would be repealed and such section would be renamed as follows:

§ 5117.6. Responsible gaming [and self-exclusion].

* * *

Subdivision (b) of section 5325.6 of 9 NYCRR would be amended as follows:

§ 5325.6. Advertising.

* * *

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

- (1) If you or someone you know has a gambling problem, help is available. Call (877-8-HOPENY) or text HOPENY [(46769)] (467369);
- (2) Gambling Problem? Call (877-8-HOPENY) or text HOPENY [(46769)] (467369); or
- (3) any other message approved in writing by the commission.



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 Lottery Couriers (9 NYCRR Part 5014 and various other sections).

For Commission consideration is the adoption of regulations to authorize courier services as a new category of lottery licensee. A licensed courier would take requests from registered, age-verified individuals within the State through a computer or mobile device to purchase lottery draw game tickets. A licensed courier would then purchase requested tickets from a licensed New York Lottery sales agent as the customer's agent. A licensed courier would then validate and deliver winning tickets to the customer for tickets with a prize of more than \$600 or credit the customer with winnings cashed by the courier service as agent of the customer, if the winnings are \$600 or less.

The notice of proposed rulemaking was published in the April 25, 2018 State Register, a copy of which is attached. The text of the proposed rule and related amendments is posted on the Commission's website and is also attached. Also attached are several non-substantive technical amendments to the proposed text.

Public comments

Four comments were received during the public comment period, which expired on June 25, 2018. One supported the proposal, two opposed it and one suggested several amendments. Summaries of the comments follow, along with staff responses, where applicable.

Potential courier licensee

Jackpocket, Inc. ("Jackpocket") is a service provider currently doing business in Minnesota and New Hampshire, taking orders from lottery customers within a state and purchasing tickets on the customers' behalf. Jackpocket is a potential licensee pursuant to the proposed rule. Jackpocket stated its strong support for the proposed regulations, expressing the opinion that the regulations "reflect a thoughtful approach from both the state and the industry, by protecting consumers and providing new growth opportunities for the NY Lottery." Jackpocket asserted that the proposed regulations would enable the Lottery "to better engage a young mobile-first audience, sell more tickets, and provide a convenient new way for everyone to play the lottery" at no added cost to taxpayers.

Jackpocket suggested that “these regulations will serve as template for other states to follow on how to responsibly integrate lottery couriers into their existing operations.”

Trade associations representing Lottery sales agents

The New York Association of Convenience Stores (“NYACS”) and the New York State Association of Service Stations & Repair Shops, Inc. (“NYSASSRS”) each submitted comments opposing the proposed regulations. NYACS is a trade association representing the convenience store industry in New York State. NYSASSRS is a trade association representing independent automotive service stations and repair shops throughout New York State, through various affiliated associations. Their comments are addressed below, with numbering added for ease of reference.

1. Each of NYACS and NYSASSRS expressed “serious doubts” as to whether the Commission has the statutory authority to promulgate these regulations. NYACS noted that Article 34 of the Tax Law, which establishes and governs the New York Lottery, does not expressly authorize the licensing of agents of Lottery customers. Each noted that Tax Law section 1605 authorizes the Commission to license sales agents, but noted that the regulations provide that potential lottery couriers would be buyers of lottery tickets, not sellers. (NYACS p. 1; NYSASSRS p. 1).

Staff response #1

[REDACTED]

2. NYACS and NYSASSRS each characterized the age-verification requirements set forth in the proposed regulations as a “troubling new standard for verifying the age of a lottery customer,” because the use of online resources for age verification “is far less reliable than live, face-to-face interaction.” (NYACS pp. 1-2; NYSASSRS p. 2).

Staff response #2

[REDACTED]

3. NYACS and NYSASSRS each noted that there is no provision in law for a criminal penalty for a lottery courier transacting with a minor, while Tax Law section 1610 provides that the sale or offer for sale of a Lottery ticket to a minor by a Lottery sales agent is a misdemeanor. NYACS characterized this result as a double standard and NYSASSRS characterized this result as “not a level playing field.” (NYACS p. 2; NYSASSRS p. 2).

Staff response #3

[REDACTED]

4. NYACS disagreed that the establishment of licensed Lottery couriers would result in “minimal cannibalization” of existing sales agents. NYACS suggests that while couriers would still purchase Lottery tickets from licensed sales agents, such purchasers would not contribute to sales of non-Lottery products that lottery customers “typically purchase” during a visit to a Lottery sales agent. (NYACS p. 2).

Staff response #4

[REDACTED]

5. NYACS and NYSASSRS each asserted that the proposed regulations would redefine what a lottery ticket is, because a ticket would not need to be tangible. Each suggested that this definition is an “ill-advised step” by the Commission “in the direction of online lottery sales, which in [their] opinion[s] would inflict ‘maximum cannibalization’ upon brick-and-mortar lottery sales agents without significantly increasing net proceeds for education.” (NYACS pp. 2-3; NYSASSRS p. 3).

Staff response #5

[REDACTED]

[REDACTED]

6. NYACS objected to the provision of the proposed regulations that would allow a courier service to charge a convenience charge to customers. NYACS stated that such an extra fee is not expressly authorized by statute. NYACS complained that the commission provided to Lottery sales agents had not increased despite its urging to do so and that it would be unfair to allow a courier service to add a reasonable service charge for what NYACS characterizes as a “re-sold ticket.” (NYACS p. 3).

Staff response #6

[REDACTED]

7. NYACS questioned why the regulations do not require a courier service to demonstrate its ability to increase Lottery sales, because applicants for Lottery sales agent licenses must do so. NYACS suggested that courier services “would merely redistribute sales from existing locations.” NYACS further complained that although a Lottery sales agent may have its license suspended for poor sales results, there is no such provision in the proposed regulations applicable to Lottery couriers. (NYACS p. 3).

Staff response #7

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. NYACS objected to the provision to allow a courier service to operate on a temporary license, asserting that Lottery sales agents are not permitted to do so. (NYACS p. 4).

Staff response #8

[REDACTED]

9. NYACS questioned whether Lottery courier services would be subject to State and local sales taxes. (NYACS p. 4).

Staff response #9

[REDACTED]

10. NYACS suggested that Lottery couriers be required to indemnify licensed sales agents from whom they purchase Lottery tickets, in addition to indemnifying the State, the Commission and State employees. (NYACS p. 4).

Staff response #10

[REDACTED]

11. NYACS questioned whether Lottery couriers should be permitted to present multiple smaller winning tickets (\$600 or less, for each ticket), thereby defeating, in its view, a policy behind not requiring lottery sales agents to keep large amounts of cash on hand to pay such smaller prize-winning tickets. (NYACS p. 4).

Staff response #11

[REDACTED]

12. NYACS noted that Tax Law section 1605 prohibits a Lottery sales agent from engaging in business “exclusively as a lottery sales agent” and questioned whether “that policy” will “also apply to courier services.” (NYACS p. 4).

Staff response #12

[REDACTED]

13. NYACS concluded its comment by stating that it is “dismayed” that the Commission has proposed regulations that would “sanction the rogue practice of re-selling New York lottery tickets over the Internet without undertaking a full and objective analysis of the impact on existing small businesses,” “[i]ntroduce inappropriate double standards and compromising age verification principles” and “[c]onfer upon ‘courier services’ privileges never before granted to brick-and-mortar lottery retailers.” (NYACS p. 4).

Staff response #13

[REDACTED]

NYSASSRS also expressed general support for the “other” reasons that are submitted to oppose the proposed regulation.

NJ Lotto comment

NJ Lotto LLC (“NJL”), thorough attorney Lloyd Levenson of the law firm of Cooper Levenson in Atlantic City, N.J., submitted a comment suggesting various revisions to the proposed regulations. The comment does not describe NJL’s business or its interest in the proposed regulations. NJL is not the state-run New Jersey lottery. NJL’s comments are addressed below, with numbering added for ease of reference.

1. NJL suggested that the regulations add a provision that establish a licensed courier service as “the merchant of record for the Lottery” and recommended language from New Jersey’s regulations in that regard.

Staff response #1

[REDACTED]

2. NJL suggested that the regulations eliminate a provision in proposed section 5014.3(a) that includes a “daily courier customer request limit,” because there is no such limit on a customer purchasing in person from a Lottery sales agent. NJL supported, however, the provision that requires a courier service to include a feature that allows a customer, himself or herself, to establish a daily request limit.

Staff response #2

[REDACTED]

3. The proposed regulations require a courier service to maintain insurance. NJL suggested a revision to the insurance limit requirements for courier services, asserting that a set \$1 million coverage limit is sufficient. The proposed regulations provide that limits and coverage requirements must be satisfactory to the Commission, without setting forth any particular limit.

Staff response #3

[REDACTED]

4. NJL suggested language changes to proposed section 5014.7, which governs requirements for a courier network. NJL suggested revisions in regard to the word “purchase” in proposed rule 5014.7(a) and the words “request” and “requests” throughout section 5014.7. NJL expressed a belief that the proposed regulations contemplate that the customer must be located in New York when the actual ticket is purchased, not just when the request to the courier is made. NJL suggested similar wording amendments in proposed rule 5014.8.

Staff response #4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. NJL suggested that the courier customer location requirement is inconsistent with online Lottery subscriptions in New York and other states.

Staff response #5

[REDACTED]

6. NJL expressed the opinion that the geolocation requirement in section 5014.7, which requires a courier network to provide information about the nearest New York Lottery sales agent, improperly “indicates that the courier service is being paid for the actual sale of lottery tickets.”

Staff response #6

[REDACTED]

7. NJL suggested language changes to proposed section 5014.8, which governs prevention of use by prohibited persons. NJ lotto suggests replaced the words “a request” and “requests” with “authorization” and “authorizations.”

Staff response #7

[REDACTED]

8. NJL suggested revisions to proposed rule 5014.10(d), which governs required trust accounts for courier customer funds. NJ Lotto suggests adding language in regard

to customer prizes required to be deposited in trust accounts. NJ Lotto also advocated allowing a courier service to pay prize amounts collected on the customer's behalf to the customer before placing such money in a trust account.

Staff response #8

[REDACTED]

9. Proposed rule 5014.14(a) requires a courier service to notify a courier customer on whose behalf the courier has purchased a winning ticket of the amount of the prize within one hour of the Commission's publication of the winning numbers and prize amounts. NJL stated that one hour is insufficient time to verify the information and provide notification and noted that New Jersey regulations require notification with 24 hours.

Staff response #9

[REDACTED]

10. Proposed rule 5014.14(b) sets forth permissible options for paying prizes to courier customers who have won them, including crediting the courier customer's account, direct deposit to the courier customer's bank account, redemption for cash or by other means approved by the Commission. NJL suggested removing the option to redeem for cash.

Staff response #10

[REDACTED]

11. Proposed rule 5014.19 permits a licensed courier service to charge its customers a reasonable service charge per request for courier services, but not to charge per ticket requested to be purchased on the customer's behalf. NJL suggested eliminating the prohibition on per-ticket fees charged by a licensed courier service. NJL stated that significantly more time and effort is required for a courier to purchase a multitude of tickets

and to comply with the recordkeeping, notice and other requirements in connection with such purchase.

Staff response #11

[REDACTED]

[REDACTED]

attachment

cc: Ronald Ochrym, Acting Executive Director
Gweneth Dean, Director, Division of Lottery

Technical revisions to proposed text:

§ 5000.1. Purpose and scope.

This chapter is promulgated by the [New York State Gaming] Commission pursuant to Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law and governs the establishment, operation, and administration of the [New York State Gaming] Commission in regard to the State lottery, and such additional responsibilities as may be assigned by law. Subjects covered by this chapter include, but are not limited to: frequency of drawings, price of tickets, structure of prizes, payment of prizes, licensing of lottery sales agents, use of vending machines, safekeeping operations and control and distribution of lottery tickets. This Part pertains to the Division of Lottery and supplements those rules and regulations of general applicability promulgated by the [Gaming] Commission.

* * *

§ 5001.20. [Agent] Lottery sales agent accountability for lottery tickets.

* * *

§ 5001.28. Special lottery sales agents.

* * *

(b) Special [licensed] lottery sales agents shall be subject to this Part wherever applicable.

* * *

§ 5003.2. Validation conditions.

* * *

(e) the ticket must have been issued by [an authorized] a lottery sales agent on official paper stock of the commission or other method deemed valid by the commission;

* * *

§ 5007.2. Mega Millions definitions.

(a) The following definitions shall apply to Mega Millions.

* * *

[(15)] (14) *Quick pick* has the meaning set forth in paragraph [(7)] (11) of subdivision (a) of section 5004.9 of this Subchapter.

* * *

§ 5007.14. Raffle Game definitions.

(a) The following definitions shall apply to a raffle game:

* * *

[(3)] (2) *Computer terminal* means the device at [the] a lottery sales agent location authorized by the [Gaming Commission] commission for the placing of game bets.

* * *

§ 5007.15. Cash 4 Life.

(a) *Definitions.* The following definitions apply to the Cash 4 Life:

* * *

[(14)] (13) *Quick pick* has the meaning set forth in paragraph [(7)] (11) of subdivision (a) of section 5004.9 of this Subchapter.

* * *

§ 5007.16. Monopoly™ Millionaires' Club™.

(a) *Definitions.* The following definitions apply to the MONOPOLY Millionaires' Club:

* * *

[(14)] (13) *Quick pick* has the meaning set forth in paragraph [(7)] (11) of subdivision (a) of section 5004.9 of this Subchapter. Quick pick is a player option in the MONOPOLY Millionaires' Club game for selection of up to five number selections ranging from one through 52, but the number ranging from one through 28, representing a MONOPOLY property, must be selected by quick pick.

* * *

§ 5014.1. License requirement.

No person shall carry on a business in which such person acts as agent for another person in purchasing a lottery ticket, unless such person is duly licensed as a courier service pursuant to this subchapter.

* * *

§ 5014.3. Conditions and requirements of licensure.

(a) Conditions. A courier service shall, as a condition of licensure:

(1) display prominently on its platform a warning of the risk of being defrauded by lottery scams and information on playing responsibly, which information shall be substantially similar to the information displayed on the New York Lottery website or such other information approved by the Commission;

* * *

(6) not use trademarks or other marks owned or controlled by the Commission or any multi-state lottery consortium except with the express approval of the Commission;

* * *

§ 5014.7. Requirements for network.

(a) Location of courier customers within the State. A network shall employ a method of restricting requests for courier services to only those made by courier customers physically located in the State of New York at the time of purchase of courier services.

* * *

§ 5014.8. Prevention of use by prohibited persons.

(a) Participation prohibited. A courier service shall prevent the following persons from opening an account or placing a request for courier services through such licensee's network:

* * *

(4) any person identified on a restricted list the Commission provides.

* * *

§ 5014.12. Courier service fulfillment.

* * *

(e) Storage of tickets. Each courier service shall store each physical ticket purchased on behalf of a courier customer securely in a safe or vault with a minimum fire rating of Class 150-1 Hour issued by Underwriter Laboratories Inc., or such equivalent rating approved

by the **c**ommission. The premises housing such safe or vault shall be protected by a burglary alarm system with 24-hour central station monitoring.

* * *

§ 5014.14. Notification of and payment of prizewinners.

* * *

(b) *Prizes at or below threshold.* For a prize of \$600 or less, a courier service shall validate the winning ticket and redeem the prize on behalf of the courier customer. Such prize amount shall be disbursed to the player by crediting the courier customer's account, direct deposit to the courier customer's bank account, redeemed for cash or by other means approved by the **c**ommission.

* * *

§ 5014.17. Advertising and marketing.

* * *

(d) *Approval of announcements.* No courier service may make any announcement of a prizewinner, whether live or through any media, without the prior written approval of the **c**ommission.

moving from a restricted zone have to be accompanied by a state or federal certificate of inspection or a limited permit. This requirement will be eliminated.

7. Duplication:

The New York State Department of Agriculture and Markets will repeal its existing Part 141 of Title 1 NYCRR, parallel to the Department's repeal of existing section 192.7 of 6 NYCRR under their overlapping authorities.

8. Alternatives:

The alternative of no action was considered. However, this option is not feasible, given that EAB has since been confirmed to be present in several locations well outside of the existing EAB restricted zone. Based on the current known distribution of EAB in the state, maintenance of the restricted zone and restricting the movement of ash wood and other regulated articles will no longer offer the benefit of more effective control of the spread of EAB.

The alternative of expanding the existing EAB restricted zone to encompass the known current range of EAB was considered. However, this option is not feasible because any such expanded restricted zone would by necessity include virtually all of the state, and as such would not significantly reduce the movement of regulated articles or slow the spread of EAB.

In light of these factors, there does not appear to be any reasonable alternative to the repeal of section 6 NYCRR 192.7.

9. Federal standards:

The regulations do not exceed any minimum standards of the federal government. There are no relevant federal standards related to these regulations.

10. Compliance schedule:

This rule shall become effective on and after the tenth day from notification of the clerk of that county. The Department will educate the public about the regulations through information posted on the Department's website and by working with user groups and other stakeholders to help disseminate information regarding the regulations.

Regulatory Flexibility Analysis

Repeal of existing section 192.7 of 6 NYCRR will allow for more efficient utilization of the ash resource in New York. A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed repeal of existing section 192.7 will allow the efficient utilization of ash by the forest products industry and forest landowners.

Rural Area Flexibility Analysis

Repeal of existing section 192.7 of 6 NYCRR will allow for more efficient utilization of the ash resource in New York. A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed repeal will allow the efficient utilization of ash by the forest products industry and forest landowners.

Job Impact Statement

Repeal of existing section 192.7 of 6 NYCRR will allow for more efficient utilization of the ash resource in New York. A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed repeal will allow the efficient utilization of ash by the forest products industry and forest landowners.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulation of Courier Services that Purchase and Claim Certain Lottery Tickets and Prizes as Agents for Customers

I.D. No. SGC-17-18-00002-P

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

Proposed Action: Amendment of Parts 5000, 5001, 5002, 5003, 5004, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013; repeal of sections 5001.8, 5001.22, 5001.23; addition of Part 5014 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19); Tax Law, sections 1601, 1604, 1605, 1607 and 1609

Subject: Regulation of courier services that purchase and claim certain Lottery tickets and prizes as agents for customers.

Purpose: To license courier services to facilitate the sale of Lottery tickets to generate more revenue for education.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov): This amendment of Subtitle T of Title 9 NYCRR will implement requirements for the authorization of a new category of lottery licensee to take requests through a computer or mobile device to purchase lottery draw game tickets, purchase the tickets from a licensed New York Lottery retailer as the customer's agent and deliver purchased tickets to the customer or credit the customer with winnings cashed by the courier service as agent of the customer, if the winnings are under or at a \$600 threshold. This new category of license will enable the New York State Gaming Commission ("Commission"), operator of the New York Lottery, to generate additional revenue for education in New York State.

Section 5000.2 is repealed and replaced, to include new definitions applicable to the purchasing of lottery tickets through courier services, update the definition of person and omit unnecessary definitions. The phrase lottery revenue is not used in the lottery Chapter of regulations and is not needed. The former definition of lottery ticket is superseded by the new definition of ticket.

Section 5001.27 is amended to specify that a courier service is permitted to charge a convenience fee to an interactive customer if approved by the Commission and that such fee shall be deemed to be independent of the ticket price.

Section 5002.1 is amended to specify that nothing in such section shall prohibit the Commission from authorizing a licensed courier service to provide a claimant with an electronic version of a prize claim form.

Section 5002.5 is amended to provide that a prize of \$600 or less resulting from a ticket issued on behalf of a courier customer by a courier service may be validated and redeemed on behalf of the courier customer and disbursed to the player by crediting the courier customer's account; the prize may be paid by direct deposit to the courier customer's bank account; or the prize may be redeemed for cash or by other means approved by the Commission as provided in new section 5014.14.

Section 5004.9 is amended to provide that a draw game ticket or bet ticket is deemed validly issued at the time such ticket is generated by a lottery terminal authorized by the Commission whether by play card, quick pick option, manual entry or other means approved by the Commission.

Section 5007.2 is amended to provide that the use of any non-manual method of marking Mega Millions play slips is permitted only if such method is approved by the Commission.

New Part 5014 governs the licensing of courier services by the Commission. Section 5014.1 provides that no person shall carry on a business in which such person acts as agent for another person in purchasing a lottery ticket unless such person is duly licensed as a courier service by the Commission.

Section 5014.2 provides that a courier license applicant must file an application in a form provided by the Commission that sets forth the factors that the Commission shall consider in evaluating an application for a courier license. License applicants are evaluated considering factors similar to those in place for traditional lottery sales agents, as well as business experience operating a network, proposed internal audit and financial controls and technical standards and whether the applicant's business plan demonstrates that compliance with the Commission requirement is achievable. Section 5014.2 also allows for the issuance of a temporary license upon satisfactory completion of a criminal history check.

Section 5014.3 sets forth conditions and requirements of licensure for courier services. A courier service is required, as conditions of licensure, to display prominently on any platform a warning of the risk of being defrauded by lottery scams; to maintain a customer self-exclusion list; and to provide a mechanism for customers to register to exclude themselves from using the network. According to section 5014.3, such licensee is required to ensure that any customer placed on the self-exclusion list is prevented from purchasing tickets through the network, implement a daily customer purchase request limit of an amount approved by the Commission, maintain a secure database of all tickets requested through the network, maintain at a separate physical location a secure backup database and not use Commission or multi-state lottery trademarks except with the express approval of the Commission. Licensees are required to undergo independent third-party testing of their systems before operating in New York. A courier service licensee is required, as a condition of licensure, to indemnify, hold harmless, release and defend the State for claims relating to courier services, both from third parties and for possible damages to the Commission's systems. Section 5014.3 also requires licensees to obtain

insurance satisfactory to the Commission, which may include cyber liability insurance and errors and omissions insurance.

Section 5014.4 requires a licensed courier service to make available on such licensee's website and platform a true copy of the license issued by the Commission.

Section 5014.5 provides that a courier service must disclose which games the courier service intends to offer for sale and to seek Commission approval for any changes to such game offerings no later than 30 days prior to the effective date of such change.

Section 5014.6 provides that a courier customer that creates an account using the network of a courier service agrees to be bound by the Commission's regulations and to release and hold harmless the courier service from any liability related to a request for courier services that is not completed before the drawing cutoff and never results in the generation of tickets requested. Additionally, section 5014.6 provides that in the event a dispute occurs as to whether a ticket generated to complete a ticket purchase request in connection with a request for courier services placed through a network would have been a winning ticket had the ticket purchase occurred and no prize is paid, the Commission may, at the Commission's option, replace the ticket with a ticket equal in value to the price paid for the ticket that is the subject of the dispute, which remedy shall be the sole and exclusive remedy of the claimant against the Commission.

Section 5014.7 sets forth requirements for courier service networks, which include a method of restricting requests for courier services to customers physically located in the State of New York at the time of purchase, a method of restricting sales in areas designated by the Commission as prohibited sales areas, a method of informing customers of nearest lottery sales agent if requests for services cannot be completed by the drawing cutoff, a mechanism to provide users with complete ticket confirmation details, reporting of transaction details to the Commission, and the completion of unusual incident notifications to the Commission.

Section 5014.8 sets forth persons prohibited from opening an account or placing a request for courier services and requires licensees to implement procedures to prevent prohibited play. Such persons would include those under 18 years of age, employees, officers, directors or direct or indirect owners of the licensee and any spouse, child, brother or parent residing as a member of the same household in the principal place of abode of any employee, officer, director or direct or indirect owner of the licensee. Section 5014.8 also sets forth mandatory sanctions for allowing play by minors, including a \$5,000 fine for a first violation, a \$20,000 fine for a second violation within one year, a \$25,000 fine for a third violation within one year and a fine of \$25,000 for a fourth or subsequent violation within one year, along with such further action as the Commission deems appropriate.

Section 5014.9 requires each licensed courier service to submit its interactive systems, equipment and/or related components to an independent testing laboratory approved by the Commission to conduct specified testing at the licensee's expense.

Section 5014.10 requires that prior to placing a request for courier services through a network, a courier customer shall establish only one account. Section 5014.10 provides that a courier customer account may be funded through the use of a courier customer's credit or debit card, promotional or other credit issued by the licensee, or such other method as the Commission may approve. According to section 5014.10, courier services are required to establish and maintain trust accounts with balances sufficient to pay all money deposited for the purchase of tickets and courier customer prizes. A courier service shall make available within five business days funds a courier customer requests to withdraw from such courier customer's account.

Section 5014.11 provides that licensees must inform courier customers that no courier customer request for courier service and no receipt or acknowledgment of any such request constitutes evidence of a validly issued lottery ticket. A ticket, in order to be a validly issued ticket, shall be generated by a lottery terminal authorized by the Commission. Players must also be informed that a ticket is not deemed validly issued when a request for purchase is made of a courier service, when such a request is acknowledged or when a courier customer makes a payment to a courier service.

Section 5014.12 sets forth time requirements for the completion of ticket processing and the cutoff for accepting requests for courier service orders. For each request for courier services through a network placed during normal business hours, a courier service shall complete ticket processing by the sooner of 30 minutes before the relevant drawing or within 24 hours of the placement of the request. A courier service shall cease accepting requests for courier services no more than two hours and no less than a time period prior to the drawing cutoff, as specified by the Commission. In the event ticket processing is not completed prior to the drawing cutoff, section 5014.12 requires that a network shall cancel a request for courier services automatically and notify the courier customer and refund any payment, including any courier customer fee. Section 5014.12 also

imposes ticket storage and retention requirements for licensed courier services.

Section 5014.13 provides that a courier service that purchases a lottery ticket on instruction from a courier customer holds such ticket in trust for such courier customer and acquires no ownership interest in such ticket, although a courier service may destroy a lottery ticket so long as such courier service complies with the ticket retention requirements of Section 5014.12.

Section 5014.14 imposes notification requirements in which a licensee must notify a courier customer on whose behalf a licensee has purchased a winning ticket. If a prize is \$600 or less, Section 5014.14 requires that a courier service shall validate the winning ticket and redeem the prize on behalf of the courier customer. If a prize is more than \$600, a courier service shall validate the winning ticket, attach the claim receipt and deliver the physical winning ticket to the courier customer and provide a courier customer who is a prizewinner electronically with a digitally completed claim form, tax withholding form and any other documentation required to redeem such prize. Section 5014.14 also requires a courier service to print the prizewinner's full name on the back of a ticket winning a prize of more than \$600.

Section 5014.15 requires a licensee to submit to an annual compliance audit, at the licensee's expense, by an independent party approved by the Commission. Licensees are required to submit an annual anti-money laundering compliance finding statement. Section 5014.15 further provides that licensees are required to submit annual audited financial statements to the Commission.

Section 5014.16 requires licensees to submit for Commission approval the licensee's internal controls.

Section 5014.17 requires licensees to offer Commission discounts and marketing features, if the Commission so requires. A licensee's platform is required to be capable of promoting lottery games that may be available only at lottery sales agent locations, such as instant tickets. Section 5014.17 further provides that courier services are prohibited from making prizewinner announcements without Commission approval.

Section 5014.18 provides that licensed courier services are required to maintain a record of customer complaints and to make such complaints available to the Commission.

Section 5014.19 provides that a courier service may charge courier customers a reasonable service charge per request for courier services and that such charge shall not be deemed to be part of the lottery ticket price. If tickets are never generated to fulfill a request for courier services, section 5014.19 provides that the service charge shall be refunded.

Section 5014.20 governs the suspension and revocation of courier service licenses.

Sections 5001.8, 5001.22 and 5001.23 would be repealed as obsolete.

Technical corrections are made to Sections 5000.1, 5001.1, 5001.2, 5001.3, 5001.4, 5001.5, 5001.6, 5001.7, 5001.10, 5001.11, 5001.12, 5001.13, 5001.14, 5001.16, 5001.17, 5001.18, 5001.19, 5001.20, 5001.21, 5001.24, 5001.26, 5001.28, 5001.29, 5003.2, 5004.6, 5006.6, 5006.10, 5006.14, 5007.3, 5007.5, 5007.8, 5007.9, 5007.10, 5007.12, 5007.13, 5007.14, 5007.15, 5007.16, 5008.5, 5008.12, 5009.2, 5010.2, 5011.5, 5012.1, 5013.1, 5013.2 and 5013.3

The full text of this proposed rule is posted on the Commission's website at: www.gaming.ny.gov

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, PO Box 7500, Schenectady, New York 12301-7500, (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 the proposed rules by Tax Law Sections 1601, 1604, 1605, 1607 and 1609 and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1) and 104(19).

Tax Law Section 1601 describes the purpose of Article 34 of the Tax Law as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1605 authorizes the licensing of lottery sales agents and lottery vendors and sets forth criteria for licensing, while Tax Law Section 1607 establishes that a lottery license may be suspended or revoked. Tax Law Section 1609 provides that no ticket shall be sold by any person other than a licensed lottery sales agent.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education. Racing Law Section 104(1) grants the Commission general jurisdiction over all gaming

activities within the State. Racing Law Section 104(19) authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. **LEGISLATIVE OBJECTIVES:** To permit the regulated use of lottery courier services to act as agents for customers in the customers' purchase of lottery tickets to generate more revenue for education and to implement requirements for the licensing of such courier services.

3. **NEEDS AND BENEFITS:** The proposed regulations would authorize a new category of lottery licensee, courier services, to take requests through a computer or mobile device for a customer to purchase lottery draw game tickets, purchase such tickets as agent for the customer and deliver purchased tickets to the customer or credit the customer with winnings cashed by the courier service as agent of the customer, if the winnings are under or at a \$600 threshold.

Several companies are interested in offering such courier services in the State but have either foregone doing so at the insistence of the Commission or refrained from doing so in the absence of regulations establishing the activity's legality. The proposed regulations would ensure that lottery consumers and the integrity of the lottery are protected by authorizing the activity only so long as participants are duly licensed and compliant with rules designed to protect the interests of customers, the lottery and lottery retail sales agents. Prospective licensees believe that customers accustomed to procuring services through digital applications would be attracted to a courier service product and thereby enhance lottery revenue and aid to education by generating sales that would not otherwise occur.

The Commission would approve games to be offered, considering requirements of multi-state games. The regulations would allow a licensee to fulfill a customer request by allowing a courier service to buy the lottery ticket on the customer's behalf at another licensed lottery agent. Carrying on a business in which a person acts as an agent for another person in purchasing a lottery ticket would be prohibited unless duly licensed.

The proposed regulations provide that a lottery ticket would be issued and valid only when generated from an approved lottery terminal and assigned to the purchaser (and not when a customer places a request for courier services, requests a ticket purchase or receives confirmation of a placed request). The regulations require disclosure to customers of such ticket issuance rules, with the goal of making explicit that the customer would not acquire a ticket merely by virtue of completing a request for courier services, should the licensee fail to procure the actual ticket through the lottery's central system. Licensees would be required to provide to the Commission, before a drawing, comprehensive information in regard to which tickets were issued to which customers, which would give the Commission an audit trail of transactions and comply with multi-state game requirements.

A licensee would be required to employ a method to ensure that customers are located within New York State. A licensee would be required to provide the customer with email confirmations and an image of the purchased ticket. Tickets would be required to be stored securely in a safe or vault with minimum required specifications and retained for a period after the expiration of the applicable prize claiming period. The Commission would be permitted to set a cutoff time after which no requests could be placed for a drawing, in which case the licensee would be required to direct the customer to the nearest lottery sales agent location and would allow the customer to cancel a request if the customer does not wish to place the request for the next available drawing.

The regulations would set forth persons prohibited from opening an account or placing a request and require licensees to implement procedures to prevent prohibited play. Such persons would include those under 18 years of age, employees, officers, directors or direct or indirect owners of the licensee and certain relatives residing as a member of the same household of such persons. The regulations would set forth mandatory sanctions for allowing play by minors, including a \$5,000 fine for a first violation, a \$20,000 fine for a second violation within one year, a \$25,000 fine for a third violation within one year and a fine of \$25,000 for a fourth or subsequent violation within one year, along with such further action as the Commission deems appropriate.

The claims process for prizes of more than \$600 would be similar as that for any other traditional lottery prizewinner: the claimant generally would claim in person at a lottery customer service center. The licensee would be required, in addition, to print the full name of customer on the back of a prizewinning ticket of more than \$600, for added customer security. For prizes of \$600 or less, the courier service would claim the prizes as agent for the prizewinner and credit the account of the prizewinner accordingly.

A licensee would be required to establish a trust account or accounts at a banking institution to hold customer funds, which would include deposits as well as prizes claimed on the customer's behalf.

A courier service would be permitted to charge a reasonable service charge to a customer and such fee would be deemed independent of a ticket price.

License applicants would be evaluated considering factors similar to those in place for traditional lottery sales agents, as well as business experience operating a network, proposed internal, audit and financial controls and technical standards and whether the applicant's business plan demonstrates that compliance is achievable. A temporary license could be issued upon satisfactory completion of a criminal history check. The regulations would allow for suspensions and revocations of licenses for factors applicable to traditional lottery sales agents.

A licensee would be required to indemnify, hold harmless, release and defend the State for claims relating to courier services, both from third parties and for possible damages to Commission systems.

A courier service would be required to display prominently on any platform a warning of the risk of being defrauded by lottery scams, maintain a customer self-exclusion list and provide a mechanism for customers to register to exclude themselves from using the network. A licensee would need to ensure that a self-excluded customer is prevented from purchasing tickets through the network, implement a daily customer purchase request limit of an amount approved by the Commission, maintain a secure database of all tickets requested through the network, maintain at a separate physical location a secure backup database and not use Commission or multi-state lottery trademarks except with the express approval of the Commission. Licensees would be required to undergo independent third-party testing of systems before operating.

The regulations would require licensees to submit for Commission approval the licensee's internal controls. Licensees would be required to offer Commission discounts and marketing features, if the Commission so requires. A licensee's platform would be required to be capable of promoting lottery games that may be available only at lottery sales agent locations, such as instant tickets. Licensees would be prohibited from making prizewinner announcements without Commission approval. Licensees would be required to maintain a record of customer complaints and make such complaints available to the Commission.

The regulations would require a licensee to undergo an annual compliance audit, at the licensee's expense, by an independent party approved by the Commission. Licensees would be required to submit an annual anti-money laundering compliance finding statement. Licensees would be required to submit annual audited financial statements. The regulations would require licensees to obtain insurance satisfactory to the Commission, which may include cyber liability insurance and errors and omissions insurance.

Customers of courier services would be required to agree to be bound by Commission's regulations, to release and hold harmless the courier service and the Commission from any liability related to a request for courier services to purchase tickets on behalf of the customer that the courier service does not complete before a drawing cutoff and that never results in the generation of the tickets requested through the network, and agree that if the Commission chooses to provide a replacement ticket, then such replacement would be the sole and exclusive remedy against the Commission.

The regulations would allow the Commission to require the provision of customer data and to prevent a licensee from selling or providing customer data to another.

4. COSTS:

(a) Costs to regulated parties for the implementation and continuing compliance with the rule: There is no fee for applying for courier service licensure. Required testing of interactive systems, equipment and related components would be at the licensee's expense. The required annual compliance audit would also be at the licensee's expense. Licensed courier services would need to pay the cost of third-party verification services to ensure that customers are of sufficient age to purchase lottery tickets. These costs are necessary to assure reliability of systems and protection of consumers without increasing Commission costs. The Commission cannot estimate the cost of complying with these requirements, as there are no courier services currently operating lawfully in the State and no similar regulatory regime exists elsewhere. Commission staff believes that compliance costs would be consistent with responsible management of a digital company offering products in a regulated environment.

(b) Costs to the regulating agency, the State, and local governments for the implementation and continued administration of the rule: Agency resources must be dedicated to the review of applications submitted by prospective courier services and to monitor compliance with regulatory requirements. No additional operating costs or staff are anticipated as a result of the proposed rules.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: Cost estimates are based on the New York Lottery's experience regulating lottery games for more than 50 years.

5. **LOCAL GOVERNMENT MANDATES:** There are no local government mandates associated with the proposed rules.

6. **PAPERWORK:** The proposed rules would require the completion of

a license application. A licensed courier service would be required to have an independent third party certify the courier services compliance with the courier service regulations. A courier service would be required to provide the Commission with a copy of annual audited financial statements.

7. **DUPLICATION:** The proposed regulations do not duplicate any existing State or federal requirements of the same or similar subject matter.

8. **ALTERNATIVES:** Without the proposed regulations, courier services would not be permitted to operate lawfully in the State. Commission staff also considered whether to permit the sale of lottery tickets directly to customers through digital methods, but determined that a regulated courier service scheme would best balance the interests of customers, the lottery and lottery sales agents.

9. **FEDERAL STANDARDS:** The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. **COMPLIANCE SCHEDULE:** The proposed rules will become effective upon adoption.

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

The proposed rules changes do not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. There will be no adverse impact on small businesses, local governments, rural areas or jobs.

The proposed rules would authorize the placement of orders for lottery draw games through a mobile device, such as a smartphone, or other digital network. The Commission believes that the demographic most likely to use such technology, adults ages 18 to 25, is under-represented in sales at traditional business locations. Therefore, this rulemaking will result in increased lottery sales with minimal cannibalization of sales from existing retailers. No adverse impact on small businesses is anticipated.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities.

Department of Labor

EMERGENCY RULE MAKING

Home Care Aide Hours Worked

I.D. No. LAB-17-18-00005-E

Filing No. 357

Filing Date: 2018-04-05

Effective Date: 2018-04-05

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

Action taken: Amendment of sections 142-2.1(b), 142-3.1(b) and 142-3.7 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11) and 659; State Administrative Procedure Act, section 202(6)

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

Specific reasons underlying the finding of necessity: This emergency regulation is needed to preserve the status quo, prevent the collapse of the home care industry, and avoid institutionalizing patients who could be cared for at home, in the face of recent decisions by the State Appellate Divisions that treat meal periods and sleep time by home care aides who work shifts of 24 hours or more as hours worked for purposes of state (but not federal) minimum wage. As a result of those decisions, home care agencies may cease to provide home care aides thereby threatening the continued operation of this industry that employs and serves thousands of New Yorkers by providing vital, lifesaving services and averting the institutionalization of those who could otherwise be cared for at home. Because those decisions relied upon the Commissioner’s regulation, and rejected the Department’s opinion letters as inconsistent with that regulation, this emergency adoption amends the relevant regulations to codify the Commissioner’s longstanding and consistent interpretations that such meal periods and sleep times do not constitute hours worked for purposes of minimum wage and overtime requirements.

Subject: Home Care Aide Hours Worked.

Purpose: To clarify that hours worked may exclude meal periods and sleep times for home care aides who work shifts of 24 hours or more.

Text of emergency rule: Sections 142-2.1, 142-3.1 and 143.7 of 12 NYCRR are amended to read as follows:

§ 142-2.1 Basic minimum hourly wage rate and allowances.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

- (1) New York City for
 - (i) Large employers of eleven or more employees
 - \$11.00 per hour on and after December 31, 2016;
 - \$13.00 per hour on and after December 31, 2017;
 - \$15.00 per hour on and after December 31, 2018;
 - (ii) Small employers of ten or fewer employees
 - \$10.50 per hour on and after December 31, 2016;
 - \$12.00 per hour on and after December 31, 2017;
 - \$13.50 per hour on and after December 31, 2018;
 - \$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

- \$10.00 per hour on and after December 31, 2016;
- \$11.00 per hour on and after December 31, 2017;
- \$12.00 per hour on and after December 31, 2018;
- \$13.00 per hour on and after December 31, 2019;
- \$14.00 per hour on and after December 31, 2020;
- \$15.00 per hour on and after December 31, 2021.

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)

- \$9.70 per hour on and after December 31, 2016;
- \$10.40 per hour on and after December 31, 2017;
- \$11.10 per hour on and after December 31, 2018;
- \$11.80 per hour on and after December 31, 2019;
- \$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee—one who lives on the premises of the employer—shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment. *Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.*

§ 142-3.1 Basic minimum hourly wage rate.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

- (1) New York City for
 - (i) Large employers of eleven or more employees
 - \$11.00 per hour on and after December 31, 2016;
 - \$13.00 per hour on and after December 31, 2017;
 - \$15.00 per hour on and after December 31, 2018;
 - (ii) Small employers of ten or fewer employees
 - \$10.50 per hour on and after December 31, 2016;
 - \$12.00 per hour on and after December 31, 2017;
 - \$13.50 per hour on and after December 31, 2018;
 - \$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

- \$10.00 per hour on and after December 31, 2016;
- \$11.00 per hour on and after December 31, 2017;
- \$12.00 per hour on and after December 31, 2018;
- \$13.00 per hour on and after December 31, 2019;
- \$14.00 per hour on and after December 31, 2020;
- \$15.00 per hour on and after December 31, 2021.

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)

- \$9.70 per hour on and after December 31, 2016;
- \$10.40 per hour on and after December 31, 2017;
- \$11.10 per hour on and after December 31, 2018;
- \$11.80 per hour on and after December 31, 2019;
- \$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors. Such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential

Section 5000.1 of title 9 of NYCRR would be amended to read as follows:

PART 5000

General Provisions

* * *

§ 5000.1. Purpose and scope.

This chapter is promulgated by the New York State Gaming Commission pursuant to Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law and governs the establishment, operation, and administration of the New York State Gaming Commission in regard to the State lottery, and such additional responsibilities as may be assigned by law. Subjects covered by this chapter include, but are not limited to: frequency of drawings, price of tickets, structure of prizes, payment of prizes, licensing of lottery sales agents, use of vending machines, safekeeping operations and control and distribution of lottery tickets. This Part pertains to the Division of Lottery and supplements those rules and regulations of general applicability promulgated by the Gaming Commission.

Section 5000.2 of title 9 of NYCRR would be repealed and replaced by the following:

§ 5000.2. Definitions.

Unless the context indicates otherwise, the following definitions are applicable throughout this chapter.

(a) *Act* or *acts* means article 34 of the Tax Law, commonly known and cited as the New York State Lottery for Education Law and article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(b) *Affiliate* means a parent company or subordinate business entity of a courier service.

(c) *Agent commission* means payments to lottery sales agents, or other persons for sales, processing of claims, distribution and handling of tickets and revenue, and other services performed at the request of the director of the lottery.

(d) *Claims center* or *customer service center* means any place designated by the commission where a ticket holder or such ticket holder's representative may file a claim for a prize in accordance with instructions of such commission.

(e) *Commission* means the New York State Gaming Commission established pursuant to article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(f) *Courier customer* means a natural person who is the holder of an account on a network operated by a courier service and who requests delivery of a lottery ticket through such network.

(g) *Courier service* means a person licensed pursuant to this subchapter as a vendor to carry out transactions as an agent for customers as permitted by this subchapter.

(h) *Drawing cutoff* means the deadline to purchase a lottery ticket for a particular lottery drawing as determined by the commission.

(i) *Lottery director* means the director of the Division of Lottery within the Commission.

(j) *Lottery fund* means the State lottery fund established pursuant to section 92-c of the State Finance Law.

(k) *Lottery* or *State lottery* means the lottery established and operated pursuant to the Lottery for Education Law and article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(l) *Lottery sales agent* means a person who, or entity that, is licensed by the commission pursuant to article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law and the New York State Lottery for Education Law (article 34 of the Tax Law) to sell lottery tickets.

(m) *Network* means an online-enabled technology application service or electronic system offered or used by a courier service agent that enables courier customers of the network within the State to request the courier service to purchase lottery tickets on the courier customer's behalf as the courier customer's agent and receive delivery of a facsimile or other electronic confirmation of the lottery tickets issued on behalf of the courier customer through the network.

(n) *Person* means an individual, partnership, association, organization, corporation, limited liability company, club, company, trust, estate, society, joint-stock company, receiver, trustee, assignee, referee or any other form of business organization or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, as well as agencies and instrumentalities of the State and counties, cities, towns and villages.

(o) *Ticket* means a representation, the form of which is prescribed by the commission, of the lottery play or plays sold to a player.

(p) *Ticket processing* means, with respect to a courier service, the process inclusive of the following:

- (1) accepting a request to purchase lottery tickets as the courier customer's agent;

(2) generation of lottery tickets necessary to complete a request through a commission-approved lottery terminal pursuant to the requirements of section 5004.9 of this subchapter;

(3) scanning legibly the front and back of a ticket and creating an image thereof;

(4) matching the ticket to a courier customer's request and verifying the accuracy thereof; and

(5) providing a courier customer with an image of the front and back of a ticket.

Sections 5001.8, 5001.22 and 5001.23 of title 9 of NYCRR would be repealed.

Sections 5001.1, 5001.2, 5001.3, 5001.4, 5001.5, 5001.6, 5001.7, 5001.10, 5001.11, 5001.12, 5001.13, 5001.14, 5001.16, 5001.17, 5001.18, 5001.19, 5001.20, 5001.21, 5001.24, 5001.25, 5001.26, 5001.27, 5001.28, 5001.29, 5002.1, 5002.5, 5003.2, 5004.6, 5004.9, 5006.6, 5006.10, 5006.14, 5007.2, 5007.3, 5007.5, 5007.8, 5007.9, 5007.10, 5007.12, 5007.13, 5007.14, 5007.15, 5007.16, 5008.5, 5008.12, 5009.2, 5010.2, 5011.5, 5012.1, 5013.1, 5013.2 and 5013.3 of title 9 of NYCRR would be amended to read as follows:

* * *

PART 5001

Lottery Sales Agents

Section	
5001.1	Application
5001.2	Eligibility
5001.3	Minors
5001.4	Residency
5001.5	Issuance of license
5001.6	Duration of license
5001.7	Display of license
5001.8	[Agent identification card] <u>[Reserved]</u>
5001.9	Temporary licenses and special licenses
5001.10	Conditions of licensing
5001.11	License fee
5001.12	Bonding of <u>lottery sales</u> agents
5001.13	Non-transferability of license
5001.14	Access to <u>lottery</u> sales agent's records
5001.15	Location of sales
5001.16	Conversion to vending machines or manual sales
5001.17	[Agent] <u>Lottery sales agent</u> inspections
5001.18	Sales by gaming commission
5001.19	Suspension and revocation
5001.20	[Agent] <u>Lottery sales agent</u> accountability for lottery tickets

Proposed rule
Licensing of lottery couriers

- 5001.21 Consignment of tickets to lottery sales agents
- 5001.22 [Assignment of agent to a bank] [Reserved]
- 5001.23 [Authorization to request tickets] [Reserved]
- 5001.24 [Agent] Lottery sales agent bonus plan
- 5001.25 Deposit of lottery revenues by lottery sales agents
- 5001.26 Notification of prize winners
- 5001.27 Ticket sales
- 5001.28 Special lottery sales agents
- 5001.29 Penalty on delinquent accounts

§ 5001.1. Application.

Tickets may be sold only within New York State by [licensed] lottery sales agents. Any person may apply for a license to become a lottery sales agent by submitting a completed application form to the commission and any supplements thereto as may be required.

§ 5001.2. Eligibility.

(a) No license as a lottery sales agent shall be issued to any person in business exclusively as a lottery sales agent. Before issuing such a license, the commission shall consider such factors as:

* * *

§ 5001.3. Minors.

No person under legal age shall be licensed as [an] a lottery sales agent.

§ 5001.4. Residency.

[Licenses] Lottery sales agent licenses shall be issued only to persons who are residents of this State or whose place of business is located in this State.

§ 5001.5. Issuance of license.

The commission shall license as lottery sales agents to sell lottery tickets only such persons as in the opinion of the commission will best serve public convenience consistent with the purposes of the acts.

§ 5001.6. Duration of license.

A lottery sales agent's license shall remain in force until suspended, revoked or terminated by the commission in accordance with the provisions of the act or those set forth in this Part. The commission may extend the initial or subsequent licensing period at the commission's discretion, or may set starting and expiration dates for new or renewed licenses. Upon reasonable notice to existing licensees, the director may require renewal of licenses, establish probation, or set other conditions upon the license. A license fee may be established and required at the discretion of the commission.

§ 5001.7. Display of license.

Every [licensed] lottery sales agent shall prominently display such lottery sales agent's license in an area visible to the general public in each place of business where lottery tickets are sold. In addition, [the] a lottery sales agent shall display an authorized lottery agent decal on a prominent front window or door of the lottery sales agent's premises so as to be readily visible to the public. [The] A lottery sales agent shall maintain and display all informational and promotional material in connection with ticket sales of each lottery game in accordance with instructions issued by the commission.

* * *

§ 5001.10. Conditions of licensing.

Upon issuance of a license, [the] a lottery sales agent shall agree to the following conditions:

(a) The lottery sales agent shall comply with the provisions of the act, the licensing agreement, and any rules, regulations, procedures, policies and instructions promulgated or issued by the commission.

(b) The lottery sales agent shall offer tickets to the public for sale during normal business hours.

(c) The lottery sales agent shall [utilize] use, display and maintain authorized displays, notices, entry boxes and other marketing materials used in connection with ticket sales as instructed by the commission.

(d) All tickets accepted by the lottery sales agent from the commission, or from such lottery sales agent's distribution or safekeeping depository, are deemed to have been purchased by the lottery sales agent at the price established by the commission, less appropriate sales commission discounts, if any. At the discretion of the commission tickets may be released to lottery sales agents on a consignment basis and the commission may agree to accept for credit any unsold tickets; however, if unsold tickets are not returned to the authorized distribution or safekeeping depository on or before the stated deadline, the lottery sales agent is responsible to pay for them in full.

(e) The lottery sales agent shall maintain current and accurate records of all transactions in connection with ticket sales in conformity with the rules, regulations, licensing agreement, policies, procedures and instructions relating thereto, as promulgated or issued by the commission.

(f) The lottery sales agent shall redeem for cash all lottery tickets with a value of \$25 or less.

(g) The lottery sales agent shall make available to representatives of the division upon request for inspection and audit such records as the lottery sales agent may be required to maintain.

(h) The lottery sales agent's license issued under this Part may be suspended or revoked or have the renewal of such license rejected.

(i) The lottery sales agent shall hold the commission harmless from any liability that may arise as a result of conducting lottery ticket sales.

(j) A lottery sales agent is an independent contractor, and any contractual or tortious liability the lottery sales agent may incur in connection therewith shall be the sole responsibility of the lottery sales agent.

(k) The lottery sales agent's license shall be issued for a fixed period of time, and thereafter renewed on an annual basis unless such licensing period shall be extended or changed at the discretion of the commission.

(l) The lottery sales agent shall surrender to the commission upon request the license, lottery sales agent identification card, and all lottery forms and materials supplied by the commission upon the suspension, revocation, or termination of such license, including temporary suspension.

(m) Lottery sales agents and distributors are responsible for all lost, stolen, or destroyed tickets provided by the commission and will pay for such tickets at the appropriate settlement time. The commission will not reimburse lottery sales agents or distributors for such tickets. Lottery tickets are valuable and should be handled with care.

§ 5001.11. License fee.

(a) A fee for a license as [an] a lottery sales agent may be required in an amount determined by the commission and is payable at the time of licensure. The fee is intended to cover the cost of licensing and is not refundable.

* * *

§ 5001.12. Bonding of lottery sales agents.

The commission may require a surety bond from any [licensed] lottery sales agent in such amount as [it] the commission may determine so as to avoid monetary loss to the State because of [an] a lottery sales agent's activities in the sale of tickets. The bond, if required by the commission, is a condition of becoming or continuing as [an] a lottery sales agent. A financial statement may also be required of any person applying for a lottery sales agent license. The commission may also seek additional surety or guarantee of financial security consistent with the purposes of the acts, as may be deemed appropriate.

§ 5001.13. Non-transferability of license.

* * *

(b) If the business to which a license is issued changes hands or the ownership or type of business undergoes a substantial change, the commission must be notified immediately of such change in writing. At the commission's option the commission may

terminate or continue the license of such lottery sales agent. A substantial change in ownership shall mean a transfer of 50 percent or more of the equity of any business licensed pursuant to this Part. If the business for which a license has been issued changes such business' location, said license shall terminate as of the date of the change and an application for a new license must be filed with the commission. Every such change of business location or contemplated change of ownership shall be reported in writing to the division at least 20 days prior to any proposed change.

§ 5001.14. Access to lottery sales agent records.

A lottery sales agent shall grant access to such lottery sales agent's books and records related to lottery sales, together with any and all papers and information required for purposes of auditing, at such times as deemed appropriate by the commission in connection with the application or license as a lottery sales agent.

* * *

§ 5001.16. Conversion to vending machines or manual sales.

Upon mutual agreement between [an] a lottery sales agent and the commission, any licensed location may be converted from a manual-type operation to a vending machine-type operation, and from a vending machine-type operation to a manual-type operation, for the sale of lottery tickets.

§ 5001.17. [Agent] Lottery sales agent inspections.

Each [licensed] lottery sales agent shall permit inspections of such lottery sales agent's premises upon request by authorized employees of the commission to determine whether said lottery sales agents are complying with the provisions of the acts, the rules, regulations and instructions of the commission, and the licensing agreement. Inspections may be made without notice during normal business hours.

§ 5001.18. Sales by gaming commission.

The commission itself may sell lottery tickets at any branch location or at any other location that [it] the commission may establish in the State.

§ 5001.19. Suspension and revocation of license.

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

* * *

(3) failure to sell a sufficient number of lottery tickets required by the licensing agreement between the lottery sales agent and the commission, when the commission has notified the lottery sales agent of such insufficiency in writing and the lottery sales

agent fails to make satisfactory improvements, in the discretion of the commission, within the time set forth in the notice of insufficiency;

(4) violation of any the provisions of the acts, rules and regulations of the commission, the licensing agreement between the lottery sales agent and the commission or any of the conditions of licensing set forth in section 5000.10 of this Part, or failure to follow procedures, policies or instructions of the commission;

(5) failure of the lottery sales agent to display commission point-of-sale material in a manner readily available to the public;

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

* * *

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

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

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

§ 5001.20. [Agent] Lottery sales accountability for lottery tickets.

(a) The proceeds from lottery ticket sales that cannot be accounted for by the lottery sales agent on the settlement date, regardless of reason, shall be due from the lottery sales agent.

* * *

(c) The commission reserves the right to hold prize money in escrow pending the findings of any investigation by the commission or by other legal authority, when the claimed ticket for that prize has been reported lost or stolen from a [licensed] lottery sales agent.

(d) It is the responsibility of the lottery sales agent to report any lost or stolen tickets at once both to local law enforcement officials and to the commission.

§ 5001.21. Consignment of tickets to lottery sales agents.

Upon instructions of the commission, [banks and depositories] vendors shall consign lottery tickets to lottery sales agents and shall collect tickets that the lottery sales agents have not sold. [Bank depositories] Vendors shall not deliver tickets to [an] a lottery sales agent who has failed to settle such lottery sales agent's account with respect to outstanding tickets.

§ 5001.22. [Reserved]

§ 5001.23. [Reserved]

§ 5001.24. [Agent] Lottery sales agent bonus plan.

(a) The commission may, at the commission's option, establish for any game [an] a lottery sales agent bonus plan for lottery sales agents who sell winning tickets. The bonus shall be paid only to persons authorized to sell lottery tickets as [licensed] lottery sales agents.

(b) The lottery sales agent bonus plan is that which is shown below, unless some other plan is established by the director for a particular game:

<u>Prize</u>	<u>Bonus prize</u> *
Less than \$1,000	\$0
\$1,000[.00] winning ticket	\$10[.00]
\$2,500[.00]	\$25[.00]
\$5,000[.00]	\$50[.00]
\$10,000[.00]	\$100[.00]
\$15,000[.00]	\$150[.00]

* For amounts other than those shown, bonus prize shall be equal to one percent of the prize won on the ticket except that for tickets valued at more than \$100,000 the prize will be one-half of one percent.

Proposed rule
Licensing of lottery couriers

\$20,000[.00]	\$200[.00]
\$25,000[.00]	\$250[.00]
\$50,000[.00]	\$500[.00]
\$1,000[.00] a week for life (a million dollars)	\$5,000[.00]

(c) The commission may establish the criteria for awarding lottery sales agent bonuses for any lottery game as well as the prizes to be awarded for that game.

§ 5001.25. Deposit of lottery revenues by lottery sales agents.

(a) Deposit of receipts. All lottery sales agents are required to deposit in a designated depository or bank all monies received by such lottery sales agents from the sale of lottery tickets, less lottery sales agent compensations, and credit, if any, for redeemed tickets along with reports of receipts and transactions on forms provided by the commission for such purpose. In preparing such forms and reports, lottery sales agents shall refer to the [vendor (agent)] manuals and other instructions made available by the commission for each lottery game.

(b) All tickets accepted by [an] a lottery sales agent from the [bank or depository] commission or the commission's vendor are deemed to have been purchased by the lottery sales agent, unless returned to the [bank or depository from which they were obtained] commission or the commission's vendor within the time specified by the commission[, or to a designated lottery official,] and the purchase price shall be paid to the commission, less the appropriate [commission discount] lottery sales agent compensation, if any. The lottery sales agent is responsible for lost, stolen[, or missing] tickets not returned, and must pay for such tickets [at the bank] as [scheduled] required by the commission.

* * *

§ 5001.26. Notification of prize winners.

At the conclusion of each drawing that results in the selection of numbers, every lottery sales agent shall cause the winning numbers to be posted in a prominent place in full view at the lottery sales agent's business location. In addition, any other numbers for bonus awards or other prizes should be posted in compliance with instructions from the commission.

§ 5001.27. Ticket sales.

(a) [No person shall sell a ticket at a price greater than that fixed by the commission, and no person other than a licensed lottery sales agent shall sell a lottery ticket except that nothing in this section shall prevent any person from giving lottery tickets as premiums to customers, employees, or others.] Price charged. Tax Law section 1609(a) governs restrictions on the price charged for lottery tickets and who may sell lottery tickets. In addition, a courier service may charge a convenience charge to a courier customer for

services approved by the commission pursuant to Part 5014 of this subchapter. Any such fee shall be deemed to be independent of a ticket price and shall be subject to the requirements of section 5014.19 of this Chapter.

* * *

(d) All ticket sales shall be final and no ticket return shall be accepted by [an] a lottery sales agent except as otherwise provided by the commission.

§ 5001.28. Special lottery sales agents.

* * *

(b) Special licensed lottery sales agents shall be subject to this Part wherever applicable.

§ 5001.29. Penalty on delinquent accounts.

The commission may impose a penalty of 1½ percent monthly (18 percent per annum) on any monies due to the commission from lottery sales agents whose accounts are delinquent [over] for more than 30 days.

PART 5002

Payment of Prizes

§ 5002.1. Information furnished by winning ticket holder.

Each claimant shall fill out a [winner] prize claim form as specified in the rules of each game and surrender such claimant's winning ticket. Nothing in this section shall prohibit the commission from authorizing a courier service licensed pursuant to Part 5014 of this subchapter to provide a claimant with an electronic version of a prize claim form.

* * *

§ 5002.5. Manner of payment.

(a) By mail. Any prize may be claimed by mailing a completed prize claim form to the commission at the address announced by the commission for such purpose.

(b) Prizes above threshold claimed in person. Any prize paid at an office of the commission, or by an agent designated by the commission to pay prizes of more than \$600 each on behalf of the commission, shall be paid by check or by any alternative method of payment determined by the commission (such as a commission-issued debit card). Any prize of more than \$600 must be claimed directly from the commission or an agent designated by the commission, pursuant to this subdivision or subdivision (a) of this section.

(c) Prizes at or below threshold claimed in person. Any prize of \$600 or less may be claimed at any lottery retailer location and the prize shall be paid in cash or by any alternative method of payment determined by the commission (such as a commission-issued debit card). [Any prize of more than \$600 must be claimed directly from the commission or an agent designated by the commission, pursuant to subdivisions (a) or (b) of this Part.] A prize of such amount resulting from a ticket issued on behalf of a courier customer to a courier service may be claimed pursuant to section 5014.14 of this chapter.

* * *

PART 5003

Games

* * *

§ 5003.2. Validation conditions.

In order to be deemed a valid and winning [draw game] bet ticket all of the following conditions must be met, as determined by the commission:

* * *

(e) the ticket must have been issued by [an authorized] lottery sales agent on official paper stock of the commission or other method deemed valid by the commission;

* * *

PART 5004

Draw Games

* * *

§ 5004.6. Other lottery games or drawings.

* * *

(d) The commission may also establish incentive awards for lottery sales agents and persons selling any special lottery game or promotional drawing ticket and also may, at the commission's discretion, discontinue such awards without prior notice.

* * *

§ 5004.9. General definitions, qualifications, restrictions, validations and rules applying to Lottery Draw games.

(a) [(9)] (1) [Draw game ticket or bet] Bet ticket means the ticket generated by the computer terminal based on input received from the [player's] player, whether by play

card, quick pick option, [or] manual entry or other means approved by the commission. Bet tickets may be purchased only from [licensed] lottery sales agents as previously defined herein. The bet ticket is the only valid receipt for a bet placed. Players should, while still at the point of purchase, verify the game and number selections on the bet ticket.

[(4)] (2) *Computer terminal* means the device at the lottery sales agent location or site licensed by the commission for purchasing lottery game tickets and performing other lottery transactions.

[(3)] *Sales agent* means a person licensed by the commission to sell lottery tickets.]

[(1)] (3) *Director* means the director of the Division of Lottery, or any other person to whom such director's authority is lawfully delegated.

[(11)] (4) *Draw date* means the date designated by the commission on which the winning numbers are drawn for each game.

[(2)] (5) *Draw game* refers to any game that may from time to time be implemented on a computerized terminal system.

[(12)] (6) *Drawing* means the formal process, determined by the commission, by which the winning numbers are drawn.

[(8)] (7) *Game panel* means the area of the play card that contains a number of defined spaces from which a player may select a subset of numbers to be played for a particular drawing. Selections made by the player in the game panel are used to produce an individual wager on the bet ticket.

[(13)] (8) *Gross sales* means the dollar value of lottery tickets produced for a game draw date.

[(6)] (9) *Manual entry* means the capability of the computer terminal operator to enter a player's selections into the computer terminal in response to instruction from a player, or if a play card is incorrectly marked.

[(5)] (10) *Play card* means a card that contains a number of game panels of defined spaces used by a player to select the games the player desires to play, the number of game panels to be played and the specific subset of numbers for each game selected. The play card is the customary method of presenting a player's selections to a [licensed] lottery sales agent. However, the player's number selections may be manually entered into the computer terminal by the terminal operator.

[(7)] (11) *Quick pick* means a method in which some or all character selections are determined at random by the computer system at the time of purchase. If a player communicates some character selections orally or by play slip, any remaining character selections may be determined by quick pick.

[(10)] (12) *Validation* means the process of determining whether a bet ticket presented for prize redemption does or does not represent a winning bet.

* * *

(c) [Draw game] Bet ticket responsibility.

(1) Lottery [draw game] bet tickets are bearer instruments.

(2) The commission shall not be responsible for:

(i) lost or stolen [draw game] bet tickets;

(ii) [draw game] bet tickets claimed by a player in error for a lower prize at a [vendor] lottery sales agent;

(iii) [draw game] bet tickets that are not intact;

(iv) [draw game] bet tickets that are mutilated, altered, reconstituted, counterfeit in whole or in part, or tampered with in any manner, or mis-cut; or

(v) [draw game] bet tickets that have not been issued in an authorized manner, or are mis-registered, defective, or printed or produced in error[; or

(vi) draw game tickets from a book appearing on an omissions list submitted by such book's manufacturer].

(d) To be valid, a [draw game] bet ticket must pass all additional confidential and security validation tests of the commission.

(e) Any [draw game] bet ticket that does not conform to the requirements of this section shall be considered null and void, and may not be paid, as determined by the commission. However, the commission may, at the commission's sole discretion, replace such void ticket with an unplayed ticket from the game or an equivalent one in sales price from any other game.

* * *

(l) [Agents will] A lottery sales agent shall sell tickets in book, page or numerical order and shall not exchange books or tickets with other lottery sales agents.

(m) [Agents are] A lottery sales agent is prohibited from playing lottery tickets using any method other than fair chance or any method that is contrary to the principle that every ticket has an equal and random chance of winning.

* * *

PART 5006

New York Instant Lottery

Section	
5006.1	New York instant lottery
5006.2	Method of play
5006.3	Price
5006.4	Definitions
5006.5	Determination of prize winners
5006.6	Ticket responsibility
5006.7	Claim period
5006.8	Ticket validation requirements
5006.9	Disputes
5006.10	[Agent] <u>Lottery sales agent</u> compensation
5006.11	Termination of the game
5006.12	Governing law
5006.13	Number and amount of prizes
5006.14	[Agent] <u>Lottery sales agent</u> conduct

* * *

§ 5006.6. Ticket responsibility.

* * *

(c) The commission shall not be responsible for tickets claimed by a player in error for a lower prize at [an] a lottery sales agent location.

* * *

§ 5006.10. [Agent] Lottery sales agent compensation.

The commission shall allow a compensation rate of six percent for each ticket sold to [an] a lottery sales agent. The commission shall allow such compensation by permitting [an] a lottery sales agent to deduct such compensation rate from the face value otherwise payable by the lottery sales agent to the commission.

* * *

§ 5006.14. [Agent] Lottery sales agent conduct.

(a) [Agents are] A lottery sales agent is prohibited from exchanging books of instant lottery tickets.

(b) [Agents are] A lottery sales agent is prohibited from playing instant lottery tickets using any method other than fair chance or any method that is contrary to the principle that every ticket has an equal and random chance of winning.

PART 5007
Multi-Jurisdictional Lottery Games

* * *

§ 5007.2. Mega Millions definitions.

(a) The following definitions shall apply to Mega Millions.

[(1)] *Agent* means the person who has been licensed and authorized by the commission to sell lottery tickets pursuant to this Subchapter.]

[(2)] (1) *Annuity option* is the manner in which the Mega Millions jackpot prize may be paid in 30 annual installments.

[(3)] (2) *Authorized claim center* means any place designated by the commission where a ticket holder or such ticket holder's representative may file a claim for a prize in accordance with instructions of the commission.

[(5)] (3) *Claimant* means any person or entity submitting a claim form within the required time period to collect a prize for any Mega Millions ticket. A claimant may be the person or entity named on a signed Mega Millions ticket, or the bearer of an unsigned Mega Millions ticket. No claimant may assert rights different from the rights acquired by the original purchaser at the time of purchase.

[(6)] (4) *Jackpot prize* means, for the Mega Millions game, the prize awarded for selecting all the numbers drawn from both fields. If more than one player from all participating lottery states has selected all the numbers drawn, the jackpot prize shall be divided among those players. Jackpot prize may also be referred to from time to time as *grand prize*. For any other game, the jackpot prize will be identified in game rules issued for such game.

[(4)] (5) *Lump sum option* means the manner in which the Mega Millions jackpot prize may be paid in a single payment.

[(7)] (6) *Mega Millions play area* is, for the on-line Mega Millions game, the areas on a Mega Millions play slip identified by an alpha character, A through E, containing two separate fields—one field of 70 and a second field of 25—both containing one- or two-digit numbers each. This is the area where the player, or computer if the player is using the quick pick option, will select five one- or two-digit numbers from the first field and will select one one- or two-digit number from the second field.

[(8)] (7) *Mega Millions play slip* means, for the Mega Millions game, a computer-readable form, printed and issued by the New York Lottery, used in purchasing a Mega Millions ticket, having up to five separate play areas. The play slip also provides for multiple drawing wagering up to 26 draws.

[(9)] (8) *Mega Millions ticket* means a game ticket, produced on official paper stock, by [an] a lottery sales agent in an authorized manner, bearing [player or computer selected] player- or computer-selected numbers [from the play area on the play slip], game name, drawing dates, amount of wager, jackpot prize payment option and validation data.

[(10)] (9) *Mega Millions winning numbers* are, for the on-line Mega Millions game, five one- or two-digit numbers, from one through 70 and one one- or two-digit number from one through 25, randomly selected at each Mega Millions drawing, which shall be used to determine winning Mega Millions plays contained on Mega Millions tickets.

[(11)] (10) *Pari-mutuel* means, for the Mega Millions game total amount of prize money allocated to pay prize claimants, at the designated prize level, divided among the number of winning Mega Millions tickets.

[(12)] (11) *Party lottery or party lotteries* means one or more of the State lotteries established and operated pursuant to the laws of any State lottery that becomes a signatory to the Mega Millions game agreement.

[(13)] (12) *Prize fund* means that portion of Mega Millions gross sales set aside for the payment of prizes.

[(14)] (13) *Purchaser(s)* means player(s) of Mega Millions who purchase tickets within New York State in accordance with Mega Millions rules and New York State governing laws and regulations.

[(15)] (14) *Quick pick* has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.

* * *

§ 5007.3. Ticket sales.

The sale of Mega Millions tickets within New York State may be conducted only by [an] a lottery sales agent.

* * *

§ 5007.5. Play characteristics and restrictions.

* * *

(f) For the Mega Millions game, purchasers may submit a manually completed Mega Millions play slip to [an] a lottery sales agent to have issued a Mega Millions ticket. Mega Millions play slips shall be available at no cost to the purchaser and shall have no pecuniary or prize value, or constitute evidence of purchase or number selections. The use of mechanical, electronic, computer generated or any other non-manual method of marking play slips that has not been authorized by the commission is prohibited. A play

may be entered by other means only as approved by the commission. A lottery sales agent shall not permit the use of facsimiles of play slips, copies of play slips, or other materials that are inserted into the terminal's play slip reader that are not printed or approved by the commission. A lottery sales agent shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the commission.

(g) Purchasers may orally convey their selections to [an] a lottery sales agent to have issued a Mega Millions ticket. Such selections shall be [manually] entered manually into the computer terminal by the [Mega Millions] lottery sales agent.

(h) Purchasers may [utilize] use player express terminals if available for the purchase of Mega Millions tickets, and may make number selections by such methods as may be permitted by the commission's gaming system. Those methods may include, but are not limited to, inserting a completed Mega Millions play slip into the optical mark reader, manually entering the selections on the touch screen, or selecting a quick pick option.

(i) It shall be the sole responsibility of the purchaser to verify the accuracy and condition of the data printed on the Mega Millions ticket at the time of purchase. Neither the lottery sales agent nor the commission [will] shall be liable for any errors in the accuracy and condition of the data printed on the ticket occurring for any reason, after the purchaser leaves the lottery sales agent location.

* * *

§ 5007.8. Ticket responsibility.

* * *

(d) The commission shall not be responsible to the claimant for Mega Millions tickets redeemed in error by a [Mega Millions] lottery sales agent [or retailer].

* * *

§ 5007.9. Ticket validation requirements.

(a) In order to be deemed a valid, winning Mega Millions ticket, all of the following conditions must be met:

* * *

(5) the ticket must have been issued by [an authorized Mega Millions agent of the commission] a lottery sales agent in an authorized manner;

* * *

§ 5007.10. Procedures for claiming and payment of prizes.

(a) For the Mega Millions tickets purchased in New York, prizes shall be redeemed or claimed only in New York through lottery sales agents or authorized claim centers, effective upon determination of prize payouts.

* * *

§ 5007.12. Governing law.

(a) In purchasing a ticket issued for Mega Millions within New York State, the purchaser agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of New York State, and by directives and determinations of the commission. The purchaser agrees, as such purchaser's sole and exclusive remedy, that claims arising out of a ticket purchased in New York State from [an] a lottery sales agent can be pursued only against the commission and no other lottery. Litigation, if any, arising from the purchase of a Mega Millions ticket in New York State from [an] a lottery sales agent shall [only] be maintained against the commission only within the State of New York.

* * *

§ 5007.13. Powerball.

* * *

(c) *Game Description.*

(1) Powerball is a five out of 69 plus one out of 26 computerized lottery game that pays the jackpot prize, at the election of the player made in accordance with this section or by a default election made in accordance with this section, either on an annuitized pari-mutuel basis or as a lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a fixed lump sum basis. To play Powerball, a player may select five different numbers, from one through 69 and one additional number from one through 26. The additional number may be the same as one of the first five numbers selected by a player. A player may select a set of five numbers and one additional number by communicating the six numbers to a lottery sales agent, or by marking six numbered spaces in any one panel on a play slip and submitting the play slip to [an] a lottery sales agent or by requesting quick pick from [an] a lottery sales agent. [An] A lottery sales agent will then issue a ticket containing the selected set or sets of numbers, each of which constitutes a game play.

* * *

(3) It shall be the sole responsibility of a player to verify the accuracy and readability of the information displayed on a Powerball ticket at the time of purchase. Neither [an] a lottery sales agent nor the commission shall be liable for any errors in the accuracy

and readability of a ticket occurring for any reason, after the purchaser leaves [an] a lottery sales agent location.

(4) A play may only be entered manually using the lottery terminal keypad or touch screen or by means of a play slip provided by the commission and hand-marked by the player or by other means approved by the commission. [An] a lottery sales agent shall not permit the use of facsimiles of play slips, copies of play slips[,] or other materials that are inserted into the terminal's play slip reader that are not printed or approved by the commission. [An] A lottery sales agent shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the commission.

* * *

(d) *Ticket Sales.* Powerball tickets shall be sold only through lottery sales agents or other means authorized by the commission.

* * *

(f) *Play Characteristics and Restrictions.*

* * *

(5) A player may submit a completed Powerball play slip to [an] a lottery sales agent to have a Powerball ticket issued. Powerball play slips shall be available at no cost to a player and shall have no pecuniary or prize value, or constitute evidence of purchase or number selections.

(6) A player may orally convey such player's selections to [an] a lottery sales agent to have a Powerball ticket issued. Such selections shall be entered into the computer terminal by [an] a lottery sales agent.

* * *

(j) *Ticket Responsibility.*

* * *

(4) The commission and/or MUSL shall not be responsible to [the] a claimant for a Powerball ticket redeemed in error by [an] a lottery sales agent [or retailer].

* * *

(k) *Ticket Validation Requirements.*

(1) In order to be deemed a valid, winning Powerball ticket, all of the following conditions must be met:

* * *

(v) the ticket must have been issued by the commission or [an authorized agent of the commission] a lottery sales agent;

* * *

(xv) no Powerball ticket purchased outside the State of New York may be presented to either the commission or [an] a lottery sales agent for payment within New York.

* * *

(l) *Procedures for claiming and payment of prizes.*

(1) For a Powerball ticket purchased in New York State, a prize shall be redeemed or claimed only in New York State through lottery sales agents or authorized customer service centers, effective upon determination of prize payouts.

* * *

§ 5007.14. Raffle Game definitions.

(a) The following definitions shall apply to a raffle game:

* * *

[(2)] *Commission* means the New York State Gaming Commission established pursuant to Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.]

[(3)] (2) *Computer terminal* means the device at [the] a lottery sales agent location authorized by the Gaming Commission for the placing of game bets.

[(4)] (3) *Draw date* means the date determined by the commission on which the process used to randomly select the winning game numbers takes place for the game.

[(5)] (4) *Game* means a raffle game, which is a lottery game in which a player purchases a number or numbers generated by the lottery's gaming computer system.

[(6)] (5) *Gross sales* means the value of the tickets eligible for the game.

[(7)] *Lottery or State Lottery* means the New York State Division of Lottery established and operated pursuant to Article 34 of the Tax Law and Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.]

[(8)] (6) *Manual entry* means the capability of the computer terminal operator to enter the amount of dollars wagered by a player for the game into the terminal in response to verbal or written communication by the player. There is no other method of play at the terminal for the game.

[(9)] (7) *Raffle game* means a game played at any lottery sales agent location by purchasing a ticket that will be sold for a limited sales period, in which a number of chances or plays will be offered.

[(10)] (8) *Prize pool* means those funds available from the game sales or other sources to support the payment of prizes for the game.

[(11)] (9) *Sales period* means a period of time starting from the initial sales date of the game tickets as specified by the director and ending

(i) on the date when all available numbers for such raffle game sales period have been sold, or

(ii) a date specified by the director.

[(12)] (10) *Ticket* means a raffle game ticket produced by the [Lottery] lottery and sold by a [licensed] lottery sales agent in an authorized manner containing at a minimum a unique nine-digit number constituting a single play or chance, the drawing date and validation data.

[(13)] (11) *Winning ticket* means the ticket bearing the unique numbers randomly selected in the drawing as a winning play.

* * *

(g) *Miscellaneous.*

(1) A raffle game as described in this section may be, at the discretion of the commission, a multi-state game among other participating government-authorized lotteries or a game sold only by the [Lottery] lottery. The frequency that a raffle game is conducted shall be as determined by the commission. If the raffle game is a multi-state game, the commission shall operate such game in compliance with any applicable multi-state agreement.

* * *

(5) A bet ticket for a raffle game may not be cancelled once issued by the computer terminal. The lottery sales agent, however, may receive credit for any unreadable bet ticket issued, as these tickets (although unreadable) are recorded on the computer file as valid bets. A lottery sales agent's request for credit must be postmarked before the draw date in order to receive credit for any such unreadable bet ticket.

§ 5007.15. Cash 4 Life.

(a) *Definitions.* The following definitions apply to the Cash 4 Life:

[(1)] *Agent* means the person who has been licensed and authorized by the commission to sell lottery tickets pursuant to this Subchapter.]

[(2)] (1) *Annuity option* means the manner in which the Cash 4 Life jackpot prize or second-level prize level may be paid in annual installments.

[(3)] (2) *Cash 4 Life play slip* means a computer-readable form, printed and issued by the commission, used in purchasing a Cash 4 Life ticket, having up to five separate play areas. The play slip shall also provide for multiple-drawing wagering up to a specified number of draws.

[(4)] (3) *Cash 4 Life ticket* means a game ticket, produced on official paper stock, by [an] a lottery sales agent in an authorized manner, bearing player- or computer-selected numbers [from the play area on the play slip], game name, drawing date (or dates), amount of wager and validation data.

[(5)] (4) *Claimant* means any person or entity submitting a claim form within the required time period to collect a prize for any Cash 4 Life ticket.

[(6)] (5) *Jackpot prize* means the prize awarded for selecting all the winning numbers drawn from both fields for the Cash 4 Life. If more than one player from all participating lottery states has selected all the winning numbers drawn, the jackpot prize shall be divided among those players, as set forth in subdivision (h) of this section.

[(7)] (6) *Liability limit* means a pre-established upper threshold, as determined and announced by the party lotteries before sales commence for a drawing to which such threshold applies, equal to a fixed percentage of the gross ticket sales receipts for a particular drawing (or such fixed percentage plus an additional reserve amount), according to the established procedures agreed to by the party lotteries.

[(8)] (7) *Lump sum option* means the manner in which particular Cash 4 Life prize levels may be paid in a single payment, as set forth in this section.

[(9)] (8) *Measuring life* means the period over which a jackpot or second-level annuitized prize is paid out. For each winning ticket, the measuring life shall be the natural life of the individual determined by the commission to be a valid prize winner. If

- (i) a minor under the age of 18 claims a prize;
- (ii) a legal entity other than an individual claims a prize; or
- (iii) more than one natural person claims a prize on the same ticket,

the measuring life for such prize shall be 20 years. The measuring life shall be determined at the time a jackpot or second-level prize is claimed.

[(10)] (9) *Party lotteries* mean one or more of the State lotteries established and operated pursuant to the laws of any state that becomes a signatory to the Cash 4 Life agreement.

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[(11)] (10) *Play area* is the area on a Cash 4 Life play slip containing two separate fields: one field of 60 one- or two-digit numbers (1 to 60 inclusive) and a separate and distinct second field of four one-digit numbers (1 to 4 inclusive) (which may be referred to as the *Cash Ball number*). This is the area from which the player, or computer, if the player is using the quick pick option, selects five numbers from the first field and one number from the second field.

[(12)] (11) *Prize pool* means that portion of Cash 4 Life gross sales set aside for the payment of prizes.

[(13)] (12) *Purchaser* means a player of Cash 4 Life who purchases a ticket within New York State in accordance with Cash 4 Life rules and New York State governing laws and regulations.

[(14)] (13) *Quick pick* has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.

[(15)] (14) *Winning numbers* are five one- or two-digit numbers (1 to 60, inclusive) and one Cash Ball number (1 to 4, inclusive), randomly selected at each Cash 4 Life drawing, that shall be used to determine winning Cash 4 Life plays contained on Cash 4 Life tickets.

(b) *Ticket price and sales.*

* * *

(3) Cash 4 Life tickets shall be sold only through lottery sales agents or other means authorized by the commission.

* * *

(5) It shall be the sole responsibility of a player to verify the accuracy and readability of the information displayed on a Cash 4 Life ticket at the time of purchase. Neither [an] a lottery sales agent nor the commission shall be liable for any errors in the accuracy and readability of a ticket occurring for any reason, after the purchaser leaves [an] a lottery sales agent location.

* * *

(7) Cash 4 Life play slips shall be available at no cost to a player, shall have no pecuniary or prize value, shall not constitute evidence of purchase and shall not constitute evidence of a player's number selections. [An] A lottery sales agent shall not permit the use of facsimiles of play slips, copies of play slips or other materials that are not printed or approved by the commission to be inserted into a terminal's play slip reader. [An] A lottery sales agent shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the commission.

(c) *Game description.*

(1) To play Cash 4 Life, a player shall select five different numbers (from 1 to 60, inclusive) and one additional Cash Ball number (from 1 to 4, inclusive) for each play. The additional number may be the same as one of the five numbers a player selects in the first field. A player may select numbers by communicating the six numbers to a lottery sales agent; by marking six numbered spaces in any one panel on a play slip and submitting the play slip to [an] a lottery sales agent; or by requesting quick pick from [an] a lottery sales agent. The lottery sales agent shall then issue a ticket containing the selected set or sets of numbers, each of which constitutes a game play.

* * *

§ 5007.16. Monopoly™ Millionaires' Club™.

(a) *Definitions.* The following definitions apply to the MONOPOLY Millionaires' Club:

[(1)] *Agent* means a person who has been licensed and authorized by the commission to sell lottery tickets pursuant to this Subchapter.]

[(2)] (1) *Annuity option* means the manner in which the MONOPOLY Millionaires' Club top prize may be paid in annual installments.

[(3)] (2) *Claimant* means any person or entity submitting a claim form within the required time period to collect a prize for any MONOPOLY Millionaires' Club ticket.

[(4)] (3) *Lump-sum option* means the manner in which MONOPOLY Millionaires' Club top prize may be paid in a single payment as set forth in this section.

[(5)] (4) *Millionaires' Club prize* means a single payment prize (prize level 11) with a value of \$1,000,000 drawn independently from the other MONOPOLY Millionaires' Club prizes (prize levels 1-10).

[(6)] (5) *MONOPOLY Millionaires' Club play slip* means a computer-readable form, printed and issued by the commission, used to mark a player's numbered selection when purchasing a MONOPOLY Millionaires' Club ticket, having up to four separate play areas.

[(7)] (6) *MONOPOLY Millionaires' Club ticket* means a game ticket, produced on official paper stock, by [an] a lottery sales agent in an authorized manner, bearing player- or computer-selected numbers, game name, drawing date, amount of wager and validation data. Each such ticket shall bear a unique non-repeating transactional number associated with that play.

[(8)] (7) *Pari-mutuel* means, for this section, the total amount of prize money allocated to pay prize claimants, at the designated prize level, divided among the number of winning MONOPOLY Millionaires' Club ticket.

[(9)] (8) *Party lotteries* mean one or more of the state lotteries established and operated pursuant to the laws of any state that are part of the national premium game product group that offers the MONOPOLY Millionaires' Club lottery game.

[(10)] (9) A *play* is one entry into a MONOPOLY Millionaires' Club drawing.

[(11)] (10) *Play area* is the area on a MONOPOLY Millionaires' Club play slip containing one field of 52 one- or two-digit numbers (1 to 52, inclusive). This is the area from which the player selects five numbers from the first field of 52 if the player is not using the quick pick option and allowing the computer system to select up to five numbers at random.

[(12)] (11) *Prize pool* means that portion of MONOPOLY Millionaires' Club gross sales set aside for the payment of prizes.

[(13)] (12) *Purchaser* means a player of MONOPOLY Millionaires' Club who purchases a ticket within New York State in accordance with MONOPOLY Millionaires' Club rules and New York State governing laws and regulations.

[(14)] (13) *Quick pick* has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter. Quick pick is a player option in the MONOPOLY Millionaires' Club game for selection of up to five number selections ranging from one through 52, but the number ranging from one through 28, representing a MONOPOLY property, must be selected by quick pick.

[(15)] (14) *Top prize* means the game prize awarded when a player's selections matches all five winning numbers from the field of 52 and the property number drawn from the field of 28 numbered MONOPOLY properties for the MONOPOLY Millionaires' Club. If more than one player has selected all the winning numbers drawn, the top prize shall be divided equally among those players.

[(16)] (15) *Set prize or low-tier prizes* (prize levels 2-10) means, except as otherwise specified in this section, all prizes (other than the top prize and Millionaires' Club prizes) that are to be paid in a single payment as established by this section for each prize level.

[(17)] (16) *Winning numbers* are five one- or two-digit numbers (1 to 52, inclusive) and one number (1 to 28, inclusive), randomly selected at each MONOPOLY Millionaires' Club drawing, that shall be used to determine winning MONOPOLY Millionaires' Club plays contained on MONOPOLY Millionaires' Club tickets.

(b) *Ticket price and sales.*

* * *

(3) MONOPOLY Millionaires' Club tickets shall be sold only through lottery sales agents or other means authorized by the commission.

* * *

(5) It shall be the sole responsibility of a player to verify the accuracy and readability of the information displayed on a MONOPOLY Millionaires' Club ticket at the time of purchase. Neither [an] a lottery sales agent nor the commission shall be liable for any errors in the accuracy and readability of a ticket occurring for any reason, after the purchaser leaves [an] a lottery sales agent location.

* * *

(7) MONOPOLY Millionaires' Club play slips shall be available at no cost to a player, shall have no pecuniary or prize value, shall not constitute evidence of purchase and shall not constitute evidence of a player's number selections. [An] A lottery sales agent shall not permit the use of facsimiles of play slips, copies of play slips or other materials that are not printed or approved by the commission to be inserted into a terminal's play slip reader. [An] A lottery sales agent shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the commission.

(c) *Game description.*

(1) Primary drawing. To play MONOPOLY Millionaire's Club, a player shall select five different numbers (from 1 to 52, inclusive); the terminal or selling system shall always quick pick one additional number in the range from one through 28, to comprise the second value in the player's selection for each play. The additional number may be the same as one of the five numbers a player selects in the first field. The second number shall be represented on the player's ticket both as a number and as the associated MONOPOLY game board property. A player may select numbers by:

- (i) communicating the five numbers to a lottery sales agent;
- (ii) marking five numbered spaces in any one panel on a play slip and submitting the play slip to [an] a lottery sales agent; or
- (iii) requesting quick pick from [an] a lottery sales agent.

The lottery sales agent shall then issue a ticket or tickets containing the selected set or sets of numbers, each of which constitutes a game play.

* * *

PART 5008

LOTTO

* * *

§ 5008.5. Miscellaneous.

* * *

(e) LOTTO bet tickets may not be canceled once issued by the computer terminal. However, the lottery sales agent may receive credit for any unreadable bet tickets issued, as these tickets (although unreadable) are recorded on the computer file as valid bets.

(f) If [an] a lottery sales agent applies for credit for an unreadable bet ticket and it is determined that such ticket would have qualified for a prize, the commission may make a proportionate reduction in the number of shares into which the prize money for that prize category is divided, thereby increasing the value of the prize available for each qualifying game panel.

* * *

§ 5008.12. Ticket sales for variations of the LOTTO game.

* * *

(e) A bet ticket for any variation of the LOTTO game may not be canceled once issued by the computer terminal. However, the lottery sales agent may receive credit for any unreadable bet ticket issued, as these tickets (although unreadable) are recorded on the computer file as valid bets.

* * *

PART 5009

New York's Numbers

* * *

§ 5009.2. Game Description.

* * *

(e) To place a bet, a purchaser communicates the desired bet data (day, amount, bet type and bet number selections) to [an] a lottery sales agent, who will issue a bet ticket. If desired, a purchaser may use the quick pick option for deciding bet number selections. When the quick pick option is used, the bet will be entered by computer in the next scheduled drawing as a straight bet in the amount of 50 cents and the numbers to be played will be randomly selected by computer. A purchaser using the quick pick option may specify such purchaser's own choice of drawing date(s), bet type or bet amount. The lottery sales agent enters the bet into a secure computer system via a computer terminal. Upon acceptance of and payment for the ticket issued by the lottery sales agent, the transaction shall become binding and final.

* * *

(h) *Lucky Sum*. Lucky Sum is a feature of New York's Numbers game. Lucky sum shall determine winners from bet tickets by correctly matching the sum of the player's number

selection against the sum of the winning numbers drawn by the commission for that drawing.

(1) To place a bet, a purchaser must communicate to a lottery sales agent:

- (i) the desired game bet data [to an agent], pursuant to subdivision (e) of this section; and
- (ii) [communicate to the agent that] such purchaser's desire to add a lucky sum wager to the normal wager[, who will issue a bet ticket]. Such bet ticket will reflect the sum of the numbers played by the purchaser on that wager as the additional lucky sum wager.

* * *

PART 5010

Win-4

* * *

§ 5010.2. Game description.

* * *

(e) To place a bet, a purchaser communicates the desired bet data (day, amount, bet type and bet number selections) to a [game] lottery sales agent, who will issue a bet ticket. If desired, a purchaser may use the quick pick option for deciding bet number selections. When the quick pick option is used, the bet will be entered by computer in the next scheduled drawing as a straight bet in the amount of 50 cents and the numbers to be played will be randomly selected by computer. A purchaser using the quick pick option may specify such purchaser's own choice of drawing date (s), bet type or bet number. The lottery sales agent enters the bet into a secure computer system via a computer terminal. Upon acceptance of and payment for the ticket issued by the lottery sales agent, the transaction shall become binding and final.

* * *

(g) *Lucky Sum*. Lucky sum is a feature of the Win-4 game. Lucky sum shall determine winners from bet tickets by correctly matching the sum of the player's number selection against the sum of the winning numbers drawn by the lottery for that drawing.

(1) Lucky sum wagers shall not be placed with pairs or Close Enough wagers.

(2) To place a bet, a purchaser must communicate to a lottery sales agent:

- (i) the desired game bet data [to an agent], pursuant to subdivision (e) of this section; and

(ii) [communicate to the agent that] such purchaser's desire to add a lucky sum wager to the normal wager[, who will issue a bet ticket]. Such bet ticket will reflect the sum of the numbers played by the purchaser on that wager as the additional lucky sum wager.

* * *

PART 5011

Pick-10

* * *

§ 5011.5. Miscellaneous.

* * *

(f) Commission rules do not allow for the payment of prizes for previously redeemed or cancelled tickets. Accordingly, neither the commission nor the contractors shall be responsible for bet tickets inadvertently returned to a player following redemption or cancellation by [an] a lottery sales agent. In such cases, the computer file will be the sole method for determining whether the ticket has been previously redeemed or cancelled.

* * *

PART 5012

Take Five

§ 5012.1. Definitions.

The definitions [below] set forth in this section apply to the Take Five game [herein] described in this Part.

(a) *Take Five* means a game played by placing five-digit number bets at lottery sales agent locations.

* * *

PART 5013

Quick Draw

§ 5013.1. Definitions.

The definitions below apply to the Quick Draw game herein described:

(a) *Quick Draw* means the Quick Draw game played at lottery sales agent locations with television monitor and controller.

* * *

(d) *Computer terminal with television monitor and controller* means the device at the lottery sales agent location authorized by the commission for the placing of Quick Draw bets.

* * *

§ 5013.2. Payment of prizes; chances of winning.

* * *

(c) Valid winning tickets valued at \$600 or less and presented for payment may be presented to any lottery sales agent for payment. Quick Draw tickets may be purchased only at a Quick Draw agent location.

* * *

§ 5013.3. Ticket sales.

* * *

(e) Quick Draw tickets shall be sold only on premises satisfying the following:

(1) If the premises are not used for the sale of alcoholic beverages for consumption on the premises, the lottery sales agent must have certified in writing that the premises comprise an area greater than 2,500 square feet.

* * *

Part 5014 of title 9 of NYCRR would be added to read as follows:

PART 5014
Courier Services

<u>Section</u>	
<u>5014.1</u>	<u>License requirement</u>
<u>5014.2</u>	<u>Courier license application and evaluation</u>
<u>5014.3</u>	<u>Conditions and requirements of licensure</u>
<u>5014.4</u>	<u>Display of license</u>
<u>5014.5</u>	<u>Disclosure of games offered</u>
<u>5014.6</u>	<u>Courier customer agreements</u>
<u>5014.7</u>	<u>Requirements for network</u>
<u>5014.8</u>	<u>Prevention of use by prohibited persons</u>
<u>5014.9</u>	<u>Independent third-party testing</u>
<u>5014.10</u>	<u>Courier customer accounts</u>
<u>5014.11</u>	<u>Ticket sale occurrence</u>
<u>5014.12</u>	<u>Courier service fulfillment</u>
<u>5014.13</u>	<u>Ticket ownership</u>
<u>5014.14</u>	<u>Notification of and payment of prizewinners</u>
<u>5014.15</u>	<u>Audit and financial controls</u>
<u>5014.16</u>	<u>Internal Controls</u>
<u>5014.17</u>	<u>Advertising and marketing</u>
<u>5014.18</u>	<u>Courier customer complaints</u>
<u>5014.19</u>	<u>Fees</u>
<u>5014.20</u>	<u>License suspension or revocation</u>

§ 5014.1. License requirement.

No person shall carry on a business in which such person acts as agent for another person in purchasing a lottery ticket, unless such person is duly licensed as courier service pursuant to this subchapter.

§ 5014.2. Courier license application and evaluation.

(a) *Application.* An applicant for a courier service license shall file an application in a form provided by the commission. An applicant shall have an ongoing duty to supplement such application as may be necessary to maintain updated information and accuracy. In addition to other requirements the commission may establish, such application shall describe how the audit and financial controls, technical standards and internal controls proposed for applicant's network will comply with the requirements of this subchapter.

(b) *Evaluation of application.* In evaluating an application for a courier service license, the commission shall consider such factors as:

- (1) financial responsibility and security of the business or activity in which such person is engaged;

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(2) sufficiency of existing lottery sales agent and courier service licenses to serve the public convenience;

(3) whether the proposed network is predominantly frequented by persons under the age of 18 years;

(4) volume of expected sales;

(5) conviction of any offense as defined in the Penal Law;

(6) veracity and completeness of information supplied on the application form or any supplement thereto;

(7) applicant's indebtedness, if any, to State or local government;

(8) business experience operating a network;

(9) reputation of the applicant;

(10) whether the audit and financial controls, technical standards, internal controls, proposed for applicant's network comply with the requirements of this Part; and

(11) whether the application submitted contains a business plan demonstrating that compliance with all conditions of a courier service license is achievable.

(c) *Temporary licenses.* The commission may issue a temporary courier service license to an applicant on a provisional basis pending completion of an initial application review process. As a condition to the issuance of a temporary service license, the applicant shall waive any right to a hearing or to challenge any commission decision in regard to a temporary courier service license. Any such temporary courier service license may be issued only if:

(1) the applicant has filed a complete application with the commission;

(2) the completed application, on the face of such application, discloses no grounds from which the commission readily may ascertain that there are reasonable grounds to deny the application; and

(3) the commission receives and reviews a fingerprint report from the New York State Division of Criminal Justice Services and Federal Bureau of Investigation that does not indicate any grounds to withhold a temporary approval.

(d) *Cooperation required.* An applicant for a courier service license shall cooperate fully with the commission in the course of the application process. Failure to cooperate with the commission shall be a violation of this section and shall be in itself sufficient grounds for denial of such license application.

(e) Commission reservation of rights. Nothing in this subchapter prohibits the commission itself from engaging in the sale of lottery tickets through a network the commission operates or that is operated on the commission's behalf.

§ 5014.3. Conditions and requirements of licensure.

(a) Conditions. A courier service shall, as a condition of licensure:

(1) display prominently on its platform a warning of the risk of being defrauded by lottery scams and information on playing responsibly, which information shall be substantially similar to the information displayed on the New York Lottery website or such other information approved by the Commission;

(2) maintain a courier customer self-exclusion list and provide a mechanism for courier customers to register through the network to exclude themselves from using the network. Such list shall include any person who appears on a statewide exclusion list maintained by the commission. A courier service shall ensure to the satisfaction of the commission that any courier customer placed on the self-exclusion list is prevented from requesting tickets through the network;

(3) ensure the network includes the following features:

(i) a daily courier customer request limit of an amount approved by the commission, which may provide that prize amounts of \$600 or less awarded to a courier customer and credited to the courier customer's account may be excluded from the daily request limit;

(ii) the ability for a courier customer to set a lower personal daily request limit; and

(iii) a waiting period, as determined by the commission, before a courier customer can raise a previously set personal daily request limit;

(4) maintain a courier customer and ticket management system that includes a secure database of all tickets requested through the network;

(5) maintain at a separate physical location a secure backup database;

(6) not use trademarks or other marks owned or controlled by the Commission or any multi-state lottery consortium except with the express approval of the Commission;

(7) offer for delivery only draw games, each as approved by the commission for delivery by such licensee; and

(8) provide courier customer support, for purposes of responding to courier customer inquiries and disputes, in a manner approved by the commission.

(b) Approval of lottery games offered. No courier service may offer for sale or delivery any lottery game unless the commission has approved in writing the offering of such game by such licensee. The commission may consider, without limitation, technical requirements and multistate game requirements in determining whether to grant such approval. Any commission approval may establish a date before which the licensee may not offer the delivery of such lottery game tickets.

(c) Compliance audits. At the sole expense of the courier service, the network shall be audited and certified to be compliant with this Part at least annually by an independent party approved by the commission.

(d) Indemnification, release and hold harmless. As a condition to the issuance and acceptance of a courier service license, such licensee agrees to:

(1) indemnify and hold harmless the State, the commission and any of the employees of the State or the commission from any and all claims, damages, claims for damages, causes of action or suits that may arise or occur directly or indirectly as a result of

(i) any act or omission of such licensee that affects the State, the commission and any of the employees of the State or the commission; and

(ii) any purchase of courier services through the courier service's network or any operation carried on, under and pursuant to a courier service;

(2) release the State, the commission and any of the employees of the State or the commission from any and all claims, damages, claims for damages, causes of action or suits that shall accrue to the licensee, such licensee's employees, representative or agents that may arise or occur directly or indirectly as a result of any operation carried on, under or pursuant to such license; and

(3) defend, at such licensee's own expense, any and all causes of action or suits against the State that may be brought by any party, including any courier customer, that may arise or occur directly or indirectly out of any act or omission of such licensee or operation carried on pursuant to or in accordance with such license, the placement of requests for courier services through such licensee's network or the generation of, or failure to generate, lottery tickets to complete ticket purchases related to such requests for courier services.

(e) Insurance. Each courier service shall obtain insurance, which may include cyber liability insurance, errors and omissions insurance and such other insurance coverage as the commission may require, with limits and coverage requirements and minimum carrier ratings satisfactory to the commission.

(f) Independent third-party testing. As a condition to the issuance and acceptance of a courier license, a licensee shall implement, prior to offering a network, independent third-party testing required by the commission as provided in section 5014.9 of this Part.

§ 5014.4. Display of license.

Each courier service shall make available on such licensee's website and platform a true copy of the license issued by the commission pursuant to this subchapter.

§ 5014.5. Disclosure of games offered.

Each courier service shall disclose to the commission the lottery games, each of which the commission has considered and approved consistent with subdivision (b) of section 5014.3 of this Part, that such courier service intends to offer for sale. Each courier service shall notify the commission of any proposed changes to such list of lottery games already approved for delivery by such courier service, pursuant to subdivision (b) of section 5014.3 of this Part, no later than 30 days prior to the effective date of such change.

§ 5014.6. Courier customer agreements.

By creating an account using the network of a courier service to place a request for courier services, a courier customer agrees

(a) to be bound by the commission's regulations;

(b) to release and hold harmless the courier service, the State and the commission from any liability related to a request for courier services to purchase tickets that is not completed before the drawing cutoff and never results in the generation of the tickets requested; and

(c) that, in the event a dispute occurs as to whether a ticket generated to complete a ticket purchase request in connection with a request for courier services placed through a network would have been a winning ticket had the ticket purchase occurred and no prize is paid, the commission may, at the commission's option, replace the ticket with a ticket equal in value to the price paid for the ticket that is the subject of the dispute, which remedy shall be the sole and exclusive remedy of the claimant against the commission.

§ 5014.7. Requirements for network.

(a) *Location of courier customers within the State.* A network shall employ a method of restricting requests for courier services to only those made by courier customers physically located in the State of New York at the time of purchase.

(b) *Prohibited sales areas.* A network shall employ a method of restricting requests for courier services made from any area within the State of New York that the commission designates as a prohibited sales area.

(c) *Geolocation.* A network shall employ a method of providing a courier customer with the location of the nearest lottery sales agents using GPS technology. In the event a courier customer attempts to request courier services through the network of a courier service in the period between the halt of requests via the network but prior to the drawing

cutoff, such method shall be capable of directing the courier customer to the nearest lottery sales agent.

(d) *Courier service location.* A courier service shall receive and process in a location in New York requests from courier customers for courier services. Ticket processing shall occur in New York.

(e) *Play slips.* A courier service may employ a method or means to print play slips or facsimiles thereof, only after approval by the commission pursuant to these regulations. No such approval shall be granted by the commission unless such method or means has been tested, at the licensee's expense, and verified by an independent third-party testing facility to the satisfaction of the commission that such play slips perform at least as accurately as the commission's official play slips.

(f) *Ticket confirmation to the courier customer.* The network shall employ a mechanism to provide a user with the following:

(1) immediately following a request for courier services or issuance of a ticket pursuant to a lottery promotion, an email confirmation of the purchase or procurement of the ticket including the relevant game, applicable draw data and player's name;

(2) immediately following ticket processing, an email confirmation of the ticket processing including the serial number of the ticket and the relevant game, applicable data and player's name;

(3) an image of the front and back of an issued ticket in its entirety, which image shall contain a watermark of the ticket. Such mechanism shall ensure that the image is available within the time frame required for ticket processing as set forth in subdivision (a) of section 5014.12 of this Part and only for the purchaser of the ticket to view through the network, and is not accessible by any other user of the network

(g) *Record of courier customer purchases.* Each courier service shall provide to the commission, in an electronic format acceptable to the commission, the following data in regard to each drawing for which such courier service provides a ticket:

(1) lottery game;

(2) drawing date and time;

(3) full name of the courier customer as set forth in such customer's account;

(4) customer account number;

(5) electronic mail address of the courier customer;

(6) date the ticket was issued;

(7) lottery transaction identification number for the purchase transaction;

(8) location of the purchase; and

(9) time of the purchase.

Such data shall be submitted to the commission no later than 15 minutes before the drawing to which such data relates. The provisions of such data to the commission does not constitute ticket processing and shall not be sufficient evidence of a purchased ticket. Ticket processing must occur pursuant to the requirements of section 5014.12 of this Part in order to generate a ticket that may be submitted for a prize claim.

(h) *Incident notice.* A licensee shall report immediately all significant incidents related to the operation of such licensee's platform, either personally or by telephone, within one hour of the discovery of the incident, followed by a letter addressed to the lottery director of operations within 24 hours of the incident. At a minimum, the licensee shall provide a written report for each of the following types of events:

(1) platform outages;

(2) major communications failures;

(3) significant operator errors;

(4) out of balance conditions;

(5) emergency software or hardware changes;

(6) security violations;

(7) requests where purchase occurred as prescribed per regulations but either lottery or player purchase notification did not occur prior to a drawing;

(8) other conditions as defined by a memorandum of understanding;

(9) any situation which may cause the general public to become alarmed and/or which may damage the integrity or public image of the commission.

§ 5014.8. Prevention of use by prohibited persons.

(a) *Participation prohibited.* A courier service shall prevent the following persons from opening an account or placing a request for courier services through such licensee's network:

(1) persons under the age of 18;

(2) employees, officers, directors or direct or indirect owners of such licensee;

(3) any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any employee, officer, director or direct or indirect owner of such licensee; and

(4) any person identified on a restricted list the Commission provides.

(b) Procedures to prevent prohibited play. A courier service shall submit for commission approval procedures to prevent prohibited players from placing a request for courier services through such licensee's network. A courier service shall implement any changes to such procedures as the commission may direct at any time.

(1) Such plan shall include the following, in regard to prevention of play by a minor:

(i) specification of parental controls procedures to allow parents and guardians to exclude persons under the age of 18 from placing a request for courier services through such licensee's network. The licensee shall explain what information is made available about the specific steps a parent or guardian may take to implement parental controls, including the toll-free number that a licensee shall provide for individuals seeking help in establishing such parental controls;

(ii) detailed explanation of the steps taken to prevent persons under the age of 18 from placing a request for courier services through such licensee's network. The licensee shall explain what types of native or third-party age verification procedures are implemented to verify that each person registering for an account with such licensee is not under the age of 18;

(iii) procedures used to identify and deactivate accounts created or used by persons under the age of 18 and to exclude such persons from all paid activity offered through such licensee's network;

(iv) verification that any account balance attributable to a person under the age of 18 shall be refunded, less any prizes already awarded, within no more than two business days of discovery that such account is attributable to such person. The licensee also shall explain how deposits will be refunded; and

(v) procedures to ensure that persons under the age of 18 do not receive promotional materials that relate to a licensee's network.

(2) Such plan shall include, in regard to verification of geolocation capabilities, procedures to ensure the network's ability to prevent requests for courier services by players not physically present in the state of New York at the time of such request.

(c) Required terms of use. A courier service shall specify in the terms of use applicable to such licensee's network that each category of individuals identified in this section is prohibited from placing requests for courier services through such licensee's network.

(d) Operator liability for violations. A courier service shall be strictly liable for permitting any prohibited courier customer, as set forth in subdivision (a) of this section, to use such licensee's network. The commission shall consider, however, before imposing any penalty or sanction upon a licensee for a violation of this section, other than a mandatory penalty set forth in subdivision (e) of this section, any circumstances that such licensee presents in writing to the commission as mitigating factors for the commission's consideration, including, without limitation, good-faith reliance on false or misleading information provided by the prohibited person and good-faith compliance with appropriate internal controls designed to prevent play by a prohibited person.

(e) Mandatory sanctions for allowing play by minors. The commission shall penalize a courier service found to have allowed a minor to use such licensee's network as follows:

(1) for a first violation, a fine of \$5,000;

(2) for a second violation within one year of a violation, a fine of \$20,000;

(3) for a third violation within one year of a violation, a fine of \$25,000; and

(4) for a fourth violation or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include, without limitation, the suspension or revocation of license.

§ 5014.9. Independent third-party testing.

(a) Testing required. Prior to engaging in courier operations, each licensed courier service shall submit such interactive systems, equipment and/or related components to an independent testing laboratory approved by the commission to conduct such category of testing, at the licensee's expense.

(b) Topics for testing. An independent testing laboratory shall use technical standards, as approved in writing by the commission, for the testing, certification and/or verification of the following topics:

(1) player account registration;

(2) player account controls;

(3) control program;

(4) client software;

(5) gaming disable/enable;

(6) shutdown and recovery;

(7) malfunction;

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- (8) geolocation;
- (9) advertising;
- (10) player loyalty programs;
- (11) reporting;
- (12) player interface;
- (13) game recall;
- (14) information security policy;
- (15) administrative controls;
- (16) technical controls;
- (17) physical and environmental controls; and
- (18) any other function or feature as required by the commission.

(c) *Independence of tester.* An independent testing laboratory shall adhere to the requirements for independence set forth in sections 5318.4 through 5318.6 of this title as if a courier service or any of the vendors of a courier service were a gaming facility licensee.

(d) *Waivers.* A courier service may submit a written request to the commission for a waiver for one or more of the requirements in this section. Any such request shall:

- (1) include supporting documentation demonstrating how the courier service system, equipment or associated equipment for which the waiver has been requested will still meet operational integrity requirements; and
- (2) be approved in writing by the commission.

§ 5014.10. Courier customer accounts.

(a) *Establishment of account.* Prior to placing a request for courier services through a network, a courier customer shall establish an account with the licensee operating such network.

(b) *Limitation on number of accounts.* A courier service shall establish controls to ensure that no courier customer is able to establish more than one courier customer account with such courier service. Each such account shall be non-transferable and unique to the courier customer who established the account.

(c) *Funding of accounts.* A courier customer account may be funded through the use of a courier customer's credit or debit card; promotional or other credit issued by the licensee, or such other method as the commission may approve.

(d) *Trust account for courier customer funds.* Each courier service shall establish and maintain a trust account or trust accounts in national or State chartered banking institutions with balances sufficient to pay all money deposited by or on behalf of courier customers for the purchase of tickets, including all courier customer prizes. All prizes collected on behalf of courier customers shall be placed promptly in such trust account or accounts. Monies may be withdrawn from such trust account or accounts for no purpose other than to transfer a courier customer's funds to such courier customer, purchase courier services through the network as requested by such courier customer or as otherwise may be provided by the Abandoned Property Law. A courier service shall make available within five business days funds a courier customer requests to withdraw from such courier customer's account. A courier service shall make available to the commission any documents the commission requests in order to monitor compliance with this section.

(e) *Approval required to sell or provide courier customer data.* No courier service may sell or provide to another person or entity courier customer information or data on purchasers of courier services.

(f) *Abandoned property.* Each courier service shall remit all funds in abandoned customer accounts of courier customers as may be required by Abandoned Property Law section 1315. Unclaimed and abandoned prize money is governed by Tax Law section 1614.

§ 5014.11. Ticket sale occurrence.

(a) *Receipt is not a ticket.* No courier customer request for courier service and no receipt or acknowledgment of any such request constitutes evidence of a validly issued lottery ticket. A ticket, in order to be a validly issued ticket, shall be generated by a lottery terminal authorized by the commission. A ticket is not deemed validly issued when a request for purchase is made of a courier service, when such a request is acknowledged or when a courier customer makes a payment to a courier service.

(b) *Required disclosures to courier customers.*

(1) A courier service shall disclose prominently on such licensee's network the text of subdivision (a) of this section.

(2) A courier service shall disclose prominently on such licensee's network a warning to customers to take care to ensure the safekeeping of lottery tickets and not to risk claim complications by disseminating images of purchased tickets.

§ 5014.12. Courier service fulfillment.

(a) Time requirements.

(1) Completion of ticket processing. For each request for courier services through a network placed during normal business hours, a courier service shall complete ticket processing by the sooner of 30 minutes before the relevant drawing or within 24 hours of the placement of the request.

(2) Cutoff for accepting requests. A courier service shall cease accepting requests for courier services no more than two hours and no less than a time period prior to the drawing cutoff, as specified by the commission. A platform shall provide a message to all courier customers who attempt to place requests after the drawing cutoff but prior to the drawing, informing such courier customers that the ticket purchase associated with the request will be fulfilled for the next available drawing, unless such courier customer chooses to cancel the request.

(b) Required cancellation. A network shall cancel a request for courier services automatically, notify the courier customer and refund any payment, including any courier customer fee, in the event ticket processing is not complete prior to the drawing cutoff.

(c) Purchase of multi-drawing lottery tickets. A courier service may offer to purchase on behalf of a courier customer multi-draw tickets only to the extent that such tickets would be permitted to be purchased by a lottery customer directly from a lottery sales agent.

(d) Ticket processing. Each courier service shall accomplish all ticket processing requirements for each ticket issued on behalf of a courier customer. Each ticket purchased or obtained pursuant to a lottery promotion by a courier service on behalf of a courier customer shall represent the unique, individualized transaction of the courier customer on whose behalf the ticket was issued.

(e) Storage of tickets. Each courier service shall store each physical ticket purchased on behalf of a courier customer securely in a safe or vault with a minimum fire rating of Class 150-1 Hour issued by Underwriter Laboratories Inc., or such equivalent rating approved by the Commission. The premises housing such safe or vault shall be protected by a burglary alarm system with 24-hour central station monitoring.

(f) Retention requirements. Each courier service shall retain each ticket issued for a courier customer until at least 90 days have passed from the expiration of the applicable period in which a prize claim validly may be made to the commission in regard to such ticket.

§ 5014.13. Ticket ownership.

A courier service that purchases a lottery ticket on instruction from a courier customer holds such ticket in trust for such courier customer and acquires no ownership interest in such ticket. Notwithstanding such lack of ownership, a courier service may destroy a

lottery ticket so long as such courier service complies with the retention requirements set forth in subdivision (f) of section 5014.12 of this chapter.

§ 5014.14. Notification of and payment of prizewinners.

(a) Notification. A licensee shall notify a courier customer on whose behalf such licensee has purchased a winning ticket of the amount of the prize within one hour of the commission's publication of the winning numbers and prize amounts. Such notification shall be made electronically through the network, electronic mail or other method approved by the commission. If the prize is more than \$600, the licensee shall also notify the commission promptly of the identity of the prizewinner, the prize amount, the type of game, the date of the drawing and, for a draw game conducted more than once per day, the time of the drawing.

(b) Prizes at or below threshold. For a prize of \$600 or less, a courier service shall validate the winning ticket and redeem the prize on behalf of the courier customer. Such prize amount shall be disbursed to the player by crediting the courier customer's account, direct deposit to the courier customer's bank account, redeemed for cash or by other means approved by the Commission.

(c) Prizes above threshold.

(1) For a prize of more than \$600, a courier service shall validate the winning ticket, attach the claim receipt and deliver the physical winning ticket to the courier customer.

(2) A courier service shall provide electronically a courier customer who is a prizewinner with a digitally completed claim form, tax withholding form and any other documentation required to redeem such prize.

(3) A courier service shall provide the commission with all information the commission may request in regard to a prize of more than \$600.

(4) In all respects, payment of such prize shall be in accordance with Part 5002 of this subchapter.

(d) Printing prizewinner name on ticket. Within a reasonable time after notifying a courier customer of winning a prize of more than \$600, a courier service shall print the prizewinner's full name, as set forth in such prizewinner's account, on the back of the ticket.

§ 5014.15. Audit and financial controls.

(a) Financial statements.

(1) A courier service shall provide annually to the commission, no later than 120 days following the end of such licensee's fiscal year, financial statements audited in accordance with generally accepted auditing standards, unless the commission, in

writing, waives such requirement. The commission may require additional financial information in a format the commission prescribes. The preparation of annual or other financial statements shall be at the sole expense of the licensee.

(2) In addition to the licensee's audited financial statements, each courier service shall submit a copy of the management letter prepared by the independent certified public accountant that lists any internal control or operational weaknesses noted during the financial statement audit and recommendations for improvement. The licensee shall prepare a response to the issues outlined in the management letter that describes any corrective actions taken or planned to be taken and include a copy of this response with its submission to the commission.

(3) If a courier service or any of its affiliates is publicly held, such licensee or affiliate shall make available and provide, to the commission, written notice of any report, including, without limitation, forms S-1, 8-K, 10-Q, 10-K, proxy or information statements, and all registration statements required to be filed by such licensee or affiliates with the United States Securities and Exchange Commission or other domestic or foreign securities regulatory agency, at the time of filing with such agency.

(4) The commission has the authority to conduct, or to have conducted at a licensee's expense, an audit or review of any of such licensee's financial controls and records.

(b) *Anti-money laundering.* A courier service shall submit to the commission by April 15th of each year an anti-money laundering compliance finding statement on a form issued by the commission and duly executed by the licensee's designated anti-money laundering compliance officer. A courier service shall implement anti-money laundering procedures that shall, at a minimum:

(1) establish a system of internal policies, procedures and controls to assess anti-money-laundering-related risks present within its business, considering, among other things, play volume and character, range of financial services offered, characteristics of certain games, contestant behaviors and contestant characteristics;

(2) designate an anti-money laundering compliance officer and file the name of such officer with the commission, updating such filing as may be necessary to maintain a current and accurate record at the commission;

(3) conduct an internal and/or external independent audit to test for compliance and provide copies to the commission;

(4) train appropriate employees in reportable currency transactions and identifying unusual or suspicious transactions;

(5) assign an individual or group of individuals to be responsible for day-to-day compliance; and

(6) employ the use of automated programs to aid in assuring compliance when automated processing systems are in use.

§ 5014.16. Internal Controls.

Each courier service shall submit to the commission for approval a written description of its initial system of internal controls prior to the start of operations. Such system of internal controls shall demonstrate to the satisfaction of the commission that such courier service has adequate controls in place to address data security, responsiveness to cybersecurity events to mitigate any negative events, recovery from cybersecurity events and restoration of normal operations and services, risk assessment and mitigation, training, access controls and identity management, systems operations and availability concerns, courier customer data privacy, incident response, disaster recovery, document retention and any other control issue the commission may identify.

§ 5014.17. Advertising and marketing.

(a) *Promotions in general.* A network shall offer any promotion, discount or other marketing feature authorized by the commission and offered by lottery sales agents licensed in accordance with Part 5001 of this subchapter. In addition, a courier service may offer to courier customers, at such licensee's own expense, any promotion, discount or other marketing feature not inconsistent with this subchapter. The commission may order a licensee to cease any promotion that the commission deems to be not in the best interests of the lottery program, in the discretion of the commission. Each licensee shall provide to each courier customer each promotional benefit to which such courier customer is entitled and shall in no case retain for such licensee's benefit any promotional benefit intended for a lottery player.

(b) *Promotions at lottery sales agents.* A network shall be capable of promoting lottery games that may be available only at lottery sales agent locations, including advertising new instant games, as the commission may direct.

(c) *Commission website.* A network shall provide links to lottery web pages as the commission may direct from time to time.

(d) *Approval of announcements.* No courier service may make any announcement of a prizewinner, whether live or through any media, without the prior written approval of the Commission.

§ 5014.18. Courier customer complaints.

Each courier service shall maintain for a period of two years a record of each courier customer complaint, the inquiry or investigation undertaken by the licensee, action taken by the licensee to resolve the complaint and the final disposition of the complaint. Such records shall contain the original or copies of the complaint, all written communications between the licensee and the complainant, all documents or telephone recordings

created in connection with a complaint and any documentation provided to the courier customer by the licensee. Such courier customer complaint records shall include:

- (a) the name and address of the complainant;
- (b) the purpose of the complaint;
- (c) the date the complaint was received by the courier service;
- (d) the complaint denial whenever a complaint is denied; and
- (e) any additional information used by the courier service in determining how to resolve the complaint.

The courier service shall also maintain a permanent record summarizing the number and nature of consumer complaints and the resolution or outcome of such complaints.

§ 5014.19. Fees.

(a) *Service charges.* The commission may grant approval to a courier service to charge courier customers a reasonable service charge per request for courier services, and not per ticket requested to be purchased on the customer's behalf, or other charge for service associated with use of a network and fulfillment of a request for services.

(b) *Other charges prohibited.* No courier service is permitted to charge any fee other than the service charge described in subdivision (a) of this section. Prohibited fees include, without limitation, any fee relating to validation of a winning ticket, payment of a prize or a withdrawal from a courier customer's account.

(c) *Service charges not part of ticket price.* Any charge assessed or collected in accordance with this section shall not be deemed to be part of the lottery ticket price.

(d) *Refunds for tickets requested but not generated.* Any fee charged for a transaction in which requested tickets were never generated, for whatever reason, shall be refunded.

§ 5014.20. License suspension and revocation.

(a) *Grounds.* A courier service license may be suspended or revoked:

(1) for any of the grounds set forth in Tax Law section 1607 or section 5001.19 of this subchapter, with a courier service being considered a lottery sales agent for purposes of applying section 5001.19 of this subchapter;

(2) a violation of any of the conditions and requirements of licensure set forth in section 5014.3 of this Part; or

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(3) if the commission determines that there are an excessive number of courier customer complaints about such licensee, with due disregard being given to complaints that are vexatious or wholly without merit.

(b) Review. A courier service whose license has been suspended or revoked may seek review or hearing on such action according to the procedures set forth in section 5000.6 of this section, as if such licensee were a lottery sales agent.



Gaming Commission

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

To: Commissioners
From: Edmund C. Burns
Date: March 13, 2019
Re: Adoption of Revised Proposed Rulemaking for Casino Fees and Payments (9 NYCRR Part 5302)

For Commission consideration is the adoption of revised proposed rules for gaming facility fees and payments. The proposed rulemaking, including the text of the proposed rule, was published in the January 16, 2019 *State Register*, a copy of which is attached.

The proposed rule addresses procedures for the annual license fees for machines and tables, procedures with 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 March 4, 2019. One commercial casino submitted timely comments.

Proposed section 5302.6 concerns the regulatory cost assessment.

Rivers Casino provided a comment about the proposed language of subdivision (d) which provides a mechanism to assess pre-opening regulatory costs. Rivers Casino does not comment with regard to specific rule language, but rather notes that the license fee it paid was sufficient, and that said fee was \$50 million in addition to the \$1 million application fee.

Rivers Casino had previously suggested, in a preceding public comment period, eliminating subdivision (d), asserting 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]

Recommendation

[REDACTED]

attachments

cc: Robert Williams, Acting Executive Director
Thomas Anapolis, Director, Division of Gaming

Rivers suggested adding to the list of providers that are not required to be licensed or registered as a vendor the following: nurses, EMTs, other medical providers, mail carriers, delivery services, online booking agents and non-gaming publicly traded companies. The Commission agrees with adding nurses, emergency medical technicians, other medical providers, mail carriers, delivery services and online booking agents to the list set forth in the regulation. The Commission does not agree with adding non-gaming publicly traded companies to the exempted list, because doing so might put small business, which would be required to undergo investigation costs, at a disadvantage to publicly traded companies. The Commission incorporates the Rivers suggestion for revision in part, with stylistic changes.

Rivers inquired about the interpretation of the revised proposed paragraph (14) and the interplay between paragraphs (14) and (15) of the revised proposed 9 NYCRR § 5306.3. Paragraph (14) concerns the Commission's ability to exempt a vendor from registration or licensing if the Commission determines that another regulator with substantially similar licensing requirements already regulates such vendor. The Commission may make this determination on its own initiative. Paragraph (15) provides a pathway for other vendors, not otherwise covered in the other paragraphs of the rule subdivision, to petition for an exemption. The revised proposed amendment to this paragraph does not change the Commission's ability to grant a waiver of licensing or registration requirements. The proposal (other than renumbering) only adds the option for the gaming facility, rather than the vendor, to petition for the vendor's exemption, a change that is intended to ease the ability of a vendor to seek an exemption. The exemption petition process is anticipated to remain the same, as an ad hoc process pursuant to which a vendor seeking exemption would need to petition for the exemption or have the gaming facility petition for the exemption on behalf of such vendor.

Rivers suggested that the proposed 9 NYCRR § 5307.5(e) be amended to require that an employee of a vendor registrant be required to complete only a service provider form, rather than a non-gaming employee registration application. The Commission agrees that a full background check may not be necessary for each non-gaming employee registration applicant, but believes that a fingerprint criminal history check should be required. Furthermore, there is no currently existing service provider form. The Commission revises the language of the proposed 9 NYCRR § 5307.5(e) accordingly.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Casino Fees and Payments

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

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

- (1) each player position at a slot machine;
- (2) each player position at an electronic table game; and
- (3) each 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.

(d) A fee shall not be imposed on a gaming position that replaces a

removed gaming position for which an annual license fee has been paid for the relevant year.

§ 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.

Revised rule compared with proposed rule: Substantial revisions were made in sections 5302.1 and 5302.2.

Text of revised proposed rule and any required statements and analyses may be obtained from Kristen Buckley, New York State Gaming Commission, PO Box 7500 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: March 4, 2019.

Revised Regulatory Impact Statement

This revised rulemaking proposal does not necessitate a revision to the previously published regulatory impact statement. The revised text changes the definition of gaming position as it relates to table games. The revised text also provides that a fee shall not be imposed on a gaming position that replaces a removed gaming position for which an annual license fee has been paid for the relevant year. These revisions are not inconsistent with the previously published.

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

This revised rulemaking proposal does not necessitate a revision to the previously published analyses and statement and does not have an adverse effect on small businesses, local governments, jobs or rural areas.

Assessment of Public Comment

The Commission received timely public comments from two of the licensed commercial casinos in New York, Montreign Operating Company, LLC (“Montreign”), which operates the Resorts World Catskills casino, and Capital Region Gaming, LLC (“Rivers Casino”), which operates the Rivers Casino in Schenectady.

Proposed section 5302.1 provides a definition for “gaming position.” Montreign requested that the definition be modified to exclude positions at a table game that is not an electronic table game. The Commission agrees and revises the proposed text of section 5302.1 accordingly.

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. The Commission agrees that an additional fee should not be imposed if a machine or game is swapped out for another and revises the proposed text of section 5302.2 accordingly.

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. The Commission disagrees with this request. While generally it is anticipated that refunds would be settled through weekly remittance adjustments well within the suggested refund timeframe, unanticipated and unforeseen obstacles may arise that would prevent meeting such a payment schedule.

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. The Commission disagrees with this request. The Commission has made the policy judgment that application, investigatory and other license fees for individuals and vendors should be borne by the gaming facility and not the individual or vendor. Subdivision (c) of proposed section 5302.4 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. The Commission disagrees with these requests. In the event attorney time is needed to collect overdue payments, it would be appropriate to charge

only the gaming facility concerned for staff attorney time or Attorney General fees in such recovery effort, rather than billing staff attorney time to casino regulation generally. No such “fee schedule” exists as is contemplated by the suggested language for a new subdivision (e). The regulatory assessment will include staff cost for all gaming facility regulatory activities, not only licensing cost. The Commission anticipates providing a budget with assumptions for the annual assessment, which will be based on the proposed commercial gaming state appropriation request that the Legislature will authorize annually.

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. The Commission disagrees with these requests. The Legislature, in Racing, Pari-Mutuel Wagering and Breeding Law section 1349, has authorized the Commission explicitly to recover investigatory costs from a gaming facility licensee. It is common policy for regulated parties to bear the costs of their regulation. No gaming facility licensee would be billed twice for the same service. Rather, any investigatory costs within the meaning of Racing, Pari-Mutuel Wagering and Breeding Law section 1349 (Regulatory investigative fees) would be billed only to the gaming facility to which the investigation relates, not to the general regulatory assessment of Commission costs.

Proposed section 5302.6 concerns the regulatory cost assessment. Rivers Casino 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. The Commission disagrees with these requests. The Commission believes that the regulations need to provide flexibility for the Commission to calculate an average number of gaming positions in the event that gaming floor expansions or machine removals are approved within the fiscal year. Creating an audit right before payment would delay payments beyond the 30-day period required by Racing, Pari-Mutuel Wagering and Breeding Law section 1350(1). Subdivision (d) provides a mechanism to recover regulatory costs incurred prior to the opening of facilities, such as developing and ensuring compliance with gaming regulations. The casino license fee was collected for the privilege of conducting casino gaming and was distributed according to the requirements of State Finance Law section 97-nnnn. The regulatory costs contemplated by subdivision (d) are those not already covered by the \$1 million application fee required by Racing, Pari-Mutuel Wagering and Breeding Law section 1316(8), which statute imposed the application fee “to defray the costs associated with the processing of the application and investigation of the applicant.”

Long Island Power Authority

NOTICE OF ADOPTION

Authority’s Tariff for Electric Service

I.D. No. LPA-37-18-00009-A

Filing Date: 2019-01-01

Effective Date: 2019-01-01

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

Action taken: The Long Island Power Authority adopted modifications to its Tariff for Electric Service to implement an annual budget and rate update.

Statutory authority: Public Authorities Law, section 1020-f(u) and (z)

Subject: Authority’s tariff for electric service.

Purpose: To effectuate the Authority’s annual budget and rate update.



Gaming Commission

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

www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns

Date: March 13, 2019

Re: Adoption of Rulemaking for Backstretch Worker Housing (9 NYCRR Part 4047)

For Commission consideration is the adoption of a proposed rulemaking to establish standards for the housing maintained on the grounds of racetracks operated by associations hosting 200 or more beds in one or multiple locations, *i.e.*, by The New York Racing Association, Inc. (NYRA). NYRA has 90 percent (2,261 of 2,512) of the racetrack beds that are available statewide. These standards may be proposed for other racetracks in the future based on experiences with this rulemaking.

The proposed standards are for buildings and residential rooms, sanitary, water, garbage removal and pest control. They are generally modeled after the New York Department of Health's Migrant Farmworker Housing regulations. The New York Department of Health and Department of Labor provided significant input in the development of the proposal. With the adoption of the proposed rules, New York would join California, Illinois, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Pennsylvania and Texas in providing regulatory standards for racetrack housing.

This rulemaking proposal was published in the January 2, 2019 *State Register*. The public comment period expired on March 4, 2019. One comment was received within the comment period. The New York Thoroughbred Horsemen's Association, Inc. (NYTHA) commended the rulemaking proposal and recommended supplementing this proposal with the following additional provisions:

- requiring a NYTHA representative to be permitted to advocate on behalf of a backstretch worker facing NYRA's proposed revocation of housing privileges;
- set a minimum level of NYRA personnel charged with overseeing housing (NYTHA states that current staffing is insufficient);
- prohibit smoking in backstretch housing;
- create a streamlined, transparent and modern system for submitting and tracking maintenance requests;
- require NYRA to install air conditioning in sleeping areas;
- prohibit backstretch residents from installing air conditioners; and
- ensure access for a horsemen's organization advocate.

Commissioners
March 13, 2019
Page 2

NYTHA states that these issues, which would normally be addressed in an agreement between the horsemen's organization and the track, should be addressed through regulation, because the federal Interstate Horseracing Act of 1978 exempts NYRA from needed to have such a contract.

The Commissioners may consider these suggestions in a revised proposed rulemaking or may determine to adopt the proposed rulemaking and take these comments under consideration for future rulemaking.

NYRA expressed its full support of the proposal in a March 5, 2019 email, received after the comment period expired.

[REDACTED]

attachment

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

vests. The average cost for an approved helmet and vest is \$500 (\$300 and \$200, respectively). This cost ranges, respectively, from \$100 and \$160 for less comfortable models to \$1000 and \$550 for advanced products.

There will be no new costs for the outriders and starting gate crews, who are employed by the Thoroughbred tracks, because the tracks have already upgraded their employees' equipment to the new safety standards. The amendments would not add other mandated costs to the existing rules.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: There will be no costs to local governments because they do not regulate pari-mutuel racing activities. There will be no new costs to the Gaming Commission, which already monitors that proper equipment is used. All races are viewed by the stewards who can see what equipment is being used by the gate crew and the persons mounted on horses. The state steward is also able to conduct inspections of the equipment of all such persons, including when training, whose equipment can be readily produced and examined.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The average cost of compliant helmets and vests is known from the recent program conducted by horsemen's organizations to assist all riders to update their equipment. The range of costs is known through an internet search of available products online.

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

6. PAPERWORK: There will be no additional paperwork.

7. DUPLICATION: None.

8. ALTERNATIVES: The Commission considered not amending its current rules. Adopting this proposal, however, provides an assurance to insurance providers that the stewards are requiring helmets and vests that meet current product standards in the industry, that any person mounted on a horse on the grounds of a Thoroughbred track will be wearing such a helmet and vest, and that the starting gate crew will be wearing such helmets.

9. FEDERAL STANDARDS: None.

10. COMPLIANCE SCHEDULE: Once adopted, the rule can be implemented as soon as it is published in the State Register.

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

This proposal does not require a Regulatory Flexibility Analysis for Small Businesses, and Local Governments, Rural Area Flexibility Statement or Job Impact Statement since the amendment conforms the Commission's equipment rule for safety helmets and vests to what a majority of jockeys, pony and other riders, and safety gate crews are already using at the New York State Thoroughbred tracks. In addition, this rule does not affect small business, local governments, jobs or rural areas. Further, this proposal will not impose an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. Due to the straightforward nature of the rulemaking, there is no need for the development of a small business regulation guide to assist in compliance. These provisions are clear as to what the permissible equipment is and what is necessary to comply with the rule.

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

Standards for Backstretch Housing and Related Facilities

I.D. No. SGC-01-19-00018-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 4047 to Title 9 NYCRR.

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

Subject: Standards for backstretch housing and related facilities.

Purpose: To create minimum standards for housing and related facilities offered to backstretch workers by racing associations.

Substance of proposed rule (Full text is posted at the following State website: https://www.gaming.ny.gov/proposed_rules.php): The addition of Part 4047 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to set forth standards for housing maintained on the grounds of certain facilities conducting horse racing.

Section 4047.1 sets forth the definitions used throughout the Part. Section 4047.2 establishes the requirements for an association to be subject to

the regulations. Section 4047.3 sets forth that an annual inspection is required. 4047.4 set forth the general maintenance, health, sanitary and safety obligations an association providing backstretch housing must meet. Section 4047.5 sets forth specific housing standards for buildings, rooms and dining facilities provided by associations. Section 4047.6 establishes notice and building requirements for new construction. Section 4047.7 sets forth requirements for bathroom and shower facilities. Section 4047.8 establishes requirements for laundry facilities. Section 4047.9 sets forth the standards for trash and refuse storage. Section 4047.10 requires abatement of pests and notice thereof. Section 4047.11 establishes responsibilities of backstretch housing occupants. Section 4047.12 establishes requirements for backstretch water supply. Section 4047.13 set forth requirements for an association to receive a variance or waiver.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, Suite 500, Schenectady, New York, (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: 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 103(2) sets forth that the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State.

Racing Law section 104(1) 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.

2. LEGISLATIVE OBJECTIVES: The Commission is charged with enhancing the integrity and safety of thoroughbred and standardbred racing, which extends to the health, wellness and safety of individuals employed at and residing within racing facilities.

3. NEEDS AND BENEFITS: The proposed rules establish specific standards for housing, sanitary and dining facilities at racing entities. Currently there is a broad variance in the habitability of backstretch housing, with some facilities in a state of general disrepair. These rules will require that housing be habitable and safe, access to sanitary facilities be present and the Commission be notified regularly of the housing and related facilities.

These rules will benefit the backstretch workers who reside at a track facility and help ensure that racing in New York state is of the highest caliber by addressing housing and sanitary conditions. The rules specifically define what constitutes adequate housing, from the type of building materials, dimensions, ventilation, electrical supply and wiring, plumbing capabilities and the minimum quality standards for water used in such plumbing, number of points of egress from a housing facility and the quantity and type of smoke detectors and fire extinguishers that must be present in the home. The rules further define what constitutes sanitary conditions, both within a home and exterior areas, as to prevent standing water or other public health hazards.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: The Commission does not have data to precisely identify the impact of this proposed rule on race facilities that will need to improve housing, sanitary and dining facilities.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: There is no additional anticipated cost, but should the Commission procure persons to conduct the inspections required by proposed section 4047.3, there would be a cost to retain such persons for such task.

(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 activities within the State and in consultation with other racing jurisdictions that have such standards in place.

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

6. PAPERWORK: The rules impose paperwork burdens on a racing association to submit documentation in relation to the inspection of housing; injury, serious illness, death of a housing tenant; occurrence of a fire at the housing; renovation of existing housing or construction of new housing, dining or sanitary facilities; annual inspection and action taken regarding pest control; water treatment; interruptions or changes to water source; and any request for variance or waiver of regulatory requirements.

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

8. **ALTERNATIVES:** The Commission consulted stakeholders and reviewed other racing jurisdiction best practices and regulations. Alternatives were discussed and considered with stakeholders and compared to other jurisdiction regulations. These included the frequency of notifications required by the Commission, the types of notification and documentation required to be provided to the Commission.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the housing requirements of backstretch workers.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because the New York State horse racing tracks already provide backstretch housing. In addition, this rule does not affect small business, local governments, jobs or rural areas. Further, this proposal will not impose an adverse economic impact on reporting, record keeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. Due to the straightforward nature of the rulemaking, there is no need for the development of a small business regulation guide to assist in compliance. These provisions are clear as to what the permissible equipment is and what is necessary to comply with the rule.

Department of Motor Vehicles

NOTICE OF ADOPTION

FOIL - Denials to Access of Records

I.D. No. MTV-42-18-00004-A

Filing No. 1178

Filing Date: 2018-12-18

Effective Date: 2019-01-02

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

Action taken: Amendment of section 160.7(a) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 215(a); Public Officers Law, sections 87(1)(b) and 89(4)

Subject: FOIL - denials to access of records.

Purpose: To permit the Commissioner to designate another person to hear FOIL appeals other than the Chair of the Appeals Board.

Text or summary was published in the October 17, 2018 issue of the Register, I.D. No. MTV-42-18-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi A. Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Niagara Falls Water Board

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adoption of Rates, Fees, and Charges

I.D. No. NFW-01-19-00019-EP

Filing No. 1182

Filing Date: 2018-12-18

Effective Date: 2019-01-01

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

Proposed Action: Amendment of section 1950.20 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-j

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

Specific reasons underlying the finding of necessity: The Niagara Falls Water Board recently considered estimates for its expenses and revenues for fiscal year 2019 commencing on January 1, 2019 and ending on December 31, 2019. As part of this consideration, the Board recognized an increase in expenses of operations and a projection of revenues from its existing ratepayers in the City of Niagara Falls and related service area. In addition, the Board considered its debt service and its covenants with its bondholders with respect to bonds that were issued as of the acquisition date. In order to maintain the Board on a sound financial status with sufficient resources to provide necessary water and wastewater services to all persons who use the System, the Board adopted an increase in the schedule of rates, fees, and charges.

Subject: Adoption of Rates, Fees, and Charges.

Purpose: To pay for increased costs necessary to operate, maintain, and manage the system, and to meet covenants with the bondholders.

Text of emergency/proposed rule: Section 1950.20. Schedule of rates, fees and charges.

(a) This schedule sets forth the rates, fees and other charges applicable to the provision of water supply, wastewater and related services by the Niagara Falls Water Board to all property owners, users and other persons as of January 1, [2018] 2019. All property owners, users and other persons who receive services from the water board shall pay to the water board the rates, fees and charges set forth in this schedule.

(b) the following rates shall be charged and collected for the use of water within the city, supplied by the water board as hereby fixed and established:

First 20,000 cu. ft. per quarter, [\$3.35] \$3.42 per 100 cu. ft.

Next succeeding 60,000 cu. ft. per quarter, [\$2.90] \$2.96 per 100 cu. ft.

Next succeeding 120,000 cu. ft. per quarter, [\$2.46] \$2.51 per 100 cu. ft.

Over 200,000 cu. ft. per quarter, [\$2.04] \$2.08 per 100 cu. ft.

The minimum charge for water consumed in any premises within the city for any quarter or portion thereof shall not be less than [\$43.53] \$44.40.

(c) The following rates shall be charged and collected for the use of water outside the city for residential and commercial purposes supplied by the water board as hereby fixed and established:

First 20,000 cu. ft. per quarter, [\$8.95] \$9.13 per 100 cu. ft.

Next 60,000 cu. ft. per quarter, [\$7.81] \$7.97 per 100 cu. ft.

Next succeeding 120,000 cu. ft. per quarter, [\$6.51] \$6.64 per 100 cu. ft.

Over 200,000 cu. ft. per quarter, [\$5.48] \$5.59 per 100 cu. ft.

The minimum charge for water consumed in any premises located outside the city for domestic purposes for any quarter or portion thereof shall not be less than [\$116.35] \$118.68.

(d) Water used for testing fire hoses, filling tanks, swimming pools, testing sprinkler systems, and like use shall be billed at the highest residential unit rate enumerated in subdivision (b) of this section. The amount used may be either estimated in accordance with the size of the pipe through which taken at the pressure furnished, or determined by the use of a temporary meter rented to the user by the water board. The use of the latter method shall be at the discretion of the director and may require a refundable deposit.

(e) Use of hydrant for any purpose whatsoever shall be subject to a rental charge of \$1.50 per day or partial day.