



**MEETING AGENDA
DECEMBER 12, 2022**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES FOR MEETING OF OCTOBER 27, 2022
3. RULEMAKING
 - A. ADOPTION: SGC-36-22-00003-P, DESIGNATION OF SUBSTITUTE STEWARDS
 - B. ADOPTION: SGC-40-22-00009-P, LICENSING AND REGISTRATION OF GAMING FACILITY EMPLOYEES AND VENDORS
 - C. ADOPTION: SGC-40-22-00010-P, INELIGIBLE POTENTIAL CLAIMANTS IN THOROUGHBRED CLAIMING RACES
4. ADJUDICATIONS
 - A. IN THE MATTER OF RICHARD GAZER
 - B. IN THE MATTER OF ORLANDO NODA
5. CONSIDERATION OF STATUTORY MITIGATION AGREEMENT BETWEEN MONTREIGN OPERATING COMPANY, LLC, D/B/A RESORTS WORLD HUDSON VALLEY AND MGM YONKERS, INC.
6. CONSIDERATION OF RESORTS WORLD HUDSON VALLEY VIDEO LOTTERY GAMING FACILITY LICENSE APPLICATION
7. NEW & OLD BUSINESS
8. ADJOURNMENT

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**New York State
Gaming Commission**

Minutes

Meeting of October 27, 2022

A meeting of the Commission was conducted in New York, New York and Schenectady, New York. Two-way audio and video communications were maintained between locations for the duration of the meeting.

1. Call to Order and Establishment of Quorum

Executive Director Robert Williams called the meeting to order at 10:02 a.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance in Manhattan were Chairman Brian O'Dwyer, and Members John Crotty, Marissa Shorenstein, and Jerry Skurnik. In physical attendance in Schenectady were Members Peter Moschetti and Christopher Riaño,

2. Consideration of Minutes for Meeting of October 3, 2022

The Commission considered previously circulated draft minutes of the meeting conducted on October 3, 2022. The minutes were accepted as circulated.

3. Consideration of License Award for Churchill Downs Incorporated

The Commission considered finding Churchill Downs Incorporated suitable for gaming facility licensing per standards contained with sections 1315(5), 1317 and 1318 of the N.Y.S. Racing, Pari-Mutuel Wagering and Breeding Law. Churchill acquired certain gaming assets of Peninsula Pacific Entertainment LLC, including del Lago Resort & Casino, and committed to the conditions set forth in the license award issued to Lago Resort & Casino, LLC on December 15, 2015, and amended on October 8, 2019.

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

4. Exemption from the Horseracing Integrity and Safety Authority regarding the use of furosemide for Thoroughbreds other than 2-year-olds and those competing in stakes races

The Commission considered approving staff to request an exemption from the Horseracing Integrity and Safety Authority to permit the use of furosemide in horses other than 2-year old covered horses or covered horses in stakes races from the effective date of the horseracing anti-doping and medication control program for a period of three years.

A vigorous discussion occurred, with input provided by Equine Medical Director Scott Palmer, New York Racing Association President and Chief Executive Officer David O'Rourke and New York Thoroughbred Horsemen's Association President Joseph Appelbaum.

ON A MOTION BY: Commissioner Crotty

APPROVED: 6-0

Dr. Palmer was directed by Chairman O'Dwyer to advise the Commission in one-year regarding the progress of the study and the methodology used.

5. Hearing on and Consideration of Video Conferencing Resolution

The Commission considered a Resolution to allow for the use of videoconferencing to conduct open meetings under extraordinary circumstances.

- a. Public Hearing. Open Meetings Law § 103-a(2)(a) requires a public body to only consider adoption of a videoconferencing resolution following a public hearing. Chairman O'Dwyer sought a motion to commence a Public Hearing for the purposes of receiving public comment on the proposed resolution to allow members to attend Commission meetings by videoconferencing under extraordinary circumstances.

ON A MOTION BY: Commissioner Shorenstein

APPROVED: 6-0

Chairman O'Dwyer requested public comments on the proposed resolution. None were received. Chairman O'Dwyer then sought a motion to close this Public Hearing.

ON A MOTION BY: Commissioner Crotty

APPROVED: 6-0

- b. Resolution. Chairman O'Dwyer sought a motion to accept Resolution Number 01-2022, to authorize its members to attend meetings by videoconferencing under extraordinary circumstances.

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

6. **New & Old Business**

Chairman O'Dwyer advised that he had been appointed Chair of the Agriculture & New York State Horse Breeding Development Fund Corporation and the New York State Thoroughbred Breeding and Development Fund Corporation and that he had tasked respective staff to review practices given breeding trends. He also advised that staff had been working on the Request For Applications governing the Additional Casino Licensing law. Chairman O'Dwyer also announced that commencing in January, the Report of the Executive Director will be reestablished, and senior staff will attend meetings when there are issues from their portfolio that come before the Commission.

7. **Adjournment**

The meeting was adjourned at 10:53 a.m.

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Gaming Commission

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

www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns

Date: November 8, 2022

Re: Adoption of Consensus Rulemaking for Substitute Stewards (9 NYCRR § 4022.5)

The Commission proposed a consensus rulemaking to make the rule concerning substitute stewards consistent with the amended Racing, Pari-Mutuel Wagering and Breeding Law section 218. The proposed rule was published in the September 7, 2022 edition of the *State Register*, a copy of which is attached. The public comment period expired on November 7, 2022. No comments were received.

[REDACTED]

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

The amendments will also redefine removal for cause and establish a process for the Division of Criminal Justice Services (Division) to correct any material inaccuracy reported by a law enforcement agency which affects the certification standing of an officer. Police officers who have been decertified maybe ineligible for future certifications; thus, they may be prohibited from being employed as a police officer in New York.

2. Categories and numbers affected: The categories of jobs affected would be municipal police officers; however, it is difficult to estimate the number of jobs at issue.

3. Regions of adverse impact: The proposed rule applies equally throughout New York State. Prior to implementation of Chapter 59 of the laws of 2021, the New York City Police Department was exempt from the Municipal Police Training Council training requirements/certificate.

4. Minimizing adverse impact: When it shall appear to the Commissioner of the Division (or the Commissioner's designee) that there is a material inaccuracy in an employer's reporting of the reason an officer ceased to serve, the commissioner shall attempt to resolve the perceived inaccuracy. If such attempt does not promptly resolve the discrepancy, the Commissioner shall issue a notice to the employer and the officer who is the subject of such notification of the Commissioner's intent to amend the inaccuracy of such record.

Within 15 days of the receipt of said notice, the employer or the officer may forward to the Commissioner a written request for a hearing to be held by the Municipal Police Training Council to consider the accuracy of the agency's reporting of the reason an officer ceased to serve.

Assessment of Public Comment

The 60-day public comment period commenced on October 20, 2021. The comment(s) received are still under review and consideration. Once complete, the Division of Criminal Justice Services will provide a summary of comments and any revisions made as a result of those comments; and whether the rule will be adopted on a permanent basis (minor changes) or if there are significant changes warranting another public comment period.

Department of Environmental Conservation

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Environmental Conservation publishes a new notice of proposed rule making in the *NYS Register*.

Petroleum Bulk Storage (PBS)

I.D. No.	Proposed	Expiration Date
ENV-24-21-00008-P	June 16, 2021	August 17, 2022

Chemical Bulk Storage (CBS)

I.D. No.	Proposed	Expiration Date
ENV-24-21-00009-P	June 16, 2021	August 17, 2022

New York State Gaming Commission

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

Designation of Substitute Stewards

I.D. No. SGC-36-22-00003-P

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

Proposed Action: This is a consensus rule making to amend section 4022.5 of Title 9 NYCRR.

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

Subject: Designation of substitute stewards.

Purpose: To conform the substitute stewards rule to the current statute.

Text of proposed rule: Section 4022.5 of 9 NYCRR would be amended to read as follows:

§ 4022.5. [Commissioner to act as steward] *Substitute stewards.*

During the absence or inability to act of an official steward of the commission or in the event of the failure or inability to appoint either of the other two stewards, the powers and duties of such steward shall be exercised and performed [without compensation] by a [member of the commission] *person* designated by the commission for that purpose, *as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 218.*

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

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

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

Consensus Rule Making Determination

The adoption of this proposed rulemaking will allow an absent steward's duties to be performed by a person designated by the Commission, which will allow the Commission to retain a qualified person and compensate such official appropriately, eliminating the potential role of a Commission member as an uncompensated steward. This proposed rulemaking is required for consistency with chapter 240 of the Laws of 2022.

Due to the non-controversial nature of this amendment, no person is likely to object to the revisions proposed by this amendment.

Job Impact Statement

A job impact statement is not required for this consensus rulemaking proposal because the proposed amendment will not adversely affect jobs or employment opportunities.

The proposal will allow an absent steward's duties to be performed by a person designated by the Commission, which will allow the Commission to retain a qualified person and compensate such official appropriately, eliminating the potential role of a Commission member as an uncompensated steward.

The proposed amendments will not have an adverse impact on jobs or employment opportunities.

Department of Health

**EMERGENCY
RULE MAKING**

Face Coverings for COVID-19 Prevention

I.D. No. HLT-50-21-00003-E

Filing No. 667

Filing Date: 2022-08-19

Effective Date: 2022-08-19

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

Action taken: Addition of section 2.60 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206 and 225

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

Specific reasons underlying the finding of necessity: The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory and other symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: December 6, 2022

Re: Adoption of Proposed Rulemaking for Casino Licensing Amendments (9 NYCRR §§ 5300.1, 5301.4, 5303.14, 5304.1, 5304.2, 5305.1, 5305.2, 5305.3, 5305.4, 5306.2, 5306.3, 5306.4, 5307.3 and 5307.5)

For Commission consideration is the adoption of amendments to improve various casino licensing regulations that concern occupational and vendor licensing. The proposal would extend passive investor and qualified institutional investor definitions to threshold ownership interests in any type of entity; clarify that waiver provisions apply to licensing standards and qualification standards; clarify that an applicant denied a license or registration based on criminal history is not barred from applying for a different position; clarify standards for licensure or registration; clarify that incomplete or misleading information on an occupational license or registration application may result in denial of licensure; eliminate a provision that is inconsistent with the practice of temporary licensure of gaming employee registrants; clarify standards for gaming employee registrants; clarify discretion to determine the scope of investigation of non-gaming employee registrants; clarify the duration of a non-gaming employee registration; clarify the circumstances under which certain vendors are not required to be registered; broaden the scope of discretionary waivers of licensing and qualification requirements for passive or institutional investors; establish wagering restrictions for owners, managers, supervisory personnel and employees of casino vendor enterprise or ancillary casino vendor enterprise licensees that provide services to a gaming facility; and broaden the scope of discretionary waivers of licensing requirements for passive and institutional investors in commercial casinos and their vendors.

The Notice of Proposed Rulemaking was published in the October 5, 2022 State Register, an excerpt of which is attached. The text of the proposed amendments is attached. The public comment period for the proposed rulemaking expired on December 5, 2022. No public comments were received.

[REDACTED]

attachments

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

Industry has asserted in the past that certain insurers, in particular mutual insurers, subject to the rulemaking fall within the definition of a "small business" as defined by State Administrative Procedure Act section 102(8) because in general they are independently owned and have fewer than 100 employees.

Certain portions of the rulemaking also apply to licensed excess line brokers. There are approximately 1,377 business entities and 3,317 individuals licensed as excess line brokers in New York. Many of these brokers may be small businesses but the Department does not know how many are.

Certain portions of the rulemaking will also affect administrators, which may be small businesses.

2. Compliance requirements: No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rulemaking because the rulemaking does not apply to any local government.

Authorized insurers that are small businesses may need to file new policy forms and rates. However, that is the consequence of Chapters 795 and 129 and not this rulemaking. Insurers that are small businesses will need to provide certain notices to insureds, including a notice from an authorized insurer upon issuance and renewal regarding whether and, if so, to what extent, an owner's policy of liability insurance provides coverage when the vehicle is used or operated through a car sharing program.

Excess line brokers that are small businesses must provide written affirmations annually of the unavailability of coverage from authorized insurers if the group policy is procured from the excess line market and must obtain commitments from the unauthorized insurers.

Administrators that are small businesses will be subject to 11 NYCRR 65-3 and 11 NYCRR 65-4 if the group policy lapses.

3. Professional services: No local government will need professional services to comply with this rulemaking because the rulemaking does not apply to any local government. The Department of Financial Services ("Department") does not anticipate that any insurer, excess line broker, or administrator that is a small business affected by the rulemaking, if any, should need to retain professional services, such as lawyers or auditors, to comply with this rulemaking.

4. Compliance costs: Authorized insurers may incur costs to file new policy rates and forms. However, that is the consequence of Chapters 795 and 129 and not this rulemaking. Insurers also may incur a cost to provide certain notices to insureds, such as notices to insureds regarding whether the insured's owner's policy of liability insurance provides coverage when the vehicle is shared through a car sharing program.

Excess line brokers that are small businesses may incur costs because the broker must provide a written affirmation annually of the unavailability of coverage from authorized insurers if the group policy is procured from the excess line market. However, this is a consequence of Chapters 795 and 129 and not of the rulemaking. The rulemaking also requires the broker to obtain commitments from the unauthorized insurer. This should present no significant additional costs to the broker.

Administrators may incur costs if the group policy lapses because the rulemaking requires the administrator to be subject to 11 NYCRR 65-3 and 11 NYCRR 65-4.

5. Economic and technological feasibility: This rulemaking does not apply to any local government; therefore, no local government should experience any economic or technological impact because of the rulemaking. No insurer, excess line broker, or administrator that is a small business affected by the rulemaking, if any, should experience any economic or technological impact because of the rulemaking.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rulemaking does not apply to any local government. This rulemaking should not have an adverse impact on an insurer, excess line broker, or administrator that is a small business affected by the rulemaking, if any, because the rulemaking uniformly affects all insurers, excess line brokers, and administrators that are subject to the rulemaking.

7. Small business and local government participation. The Department met with administrators that may be small businesses to discuss certain parts of the rule. All small businesses and local governments will have an opportunity to participate in the rulemaking process when the rule is published in the State Register and posted on the Department's website.

Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this consolidated rulemaking will not have any adverse economic impact or impose compliance requirements on rural areas. The rulemaking applies uniformly to insurers, licensed excess line brokers, and peer-to-peer car sharing administrators ("administrators") that do business in both rural and non-rural areas of New York State. Insurers, excess line brokers, and administrators, including those located in rural areas, will have an opportunity to participate in the rule-making process when the rule is published in the State Register and posted on the Department's website.

Job Impact Statement

The Department of Financial Services finds that this consolidated rulemaking will not have a substantial adverse impact on jobs and employment opportunities. The rulemaking implements Chapter 795 of the Laws of 2021 and Chapter 129 of the Laws of 2022, which legalized peer-to-peer car sharing in New York, and in doing so aims to ensure that consumers will have appropriate insurance protection when using or operating a vehicle through a car sharing program.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensing and Registration of Gaming Facility Employees and Vendors

I.D. No. SGC-40-22-00009-P

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

Proposed Action: Amendment of sections 5300.1, 5301.4, 5303.14, 5304.1, 5304.2, 5305.1, 5305.2, 5305.3, 5305.4, 5306.2, 5306.3, 5306.4, 5307.3 and 5307.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(19), 1307(1), 1307(2), 1322, 1323, 1324, 1325, 1326 and 1327

Subject: Licensing and registration of gaming facility employees and vendors.

Purpose: To govern the licensing and registration of gaming facility employees and vendors.

Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>): Proposed changes to Rule 5300.1 would extend passive investor and qualified institutional investor definitions to threshold ownership interests in any type of entity, in addition to publicly traded corporations.

Proposed changes to Rule 5301.4 would clarify that waiver provisions apply to licensing standards and qualification standards.

Proposed changes to Rule 5303.14 would clarify that an applicant denied a license or registration based on criminal history is not barred from applying for a different position, as the relevancy of the criminal history may differ depending upon the position for which the applicant applies.

Proposed changes to Rules 5304.1, 5305.2, and 5306.2 would clarify standards for licensure or registration, by incorporating statutory cross-references to important provisions or otherwise setting forth standards by regulation.

Proposed changes to Rules 5304.2, 5305.3, and 5306.3 would clarify that incomplete or misleading information on an occupational license or registration application may result in denial of licensure.

Proposed changes to Rule 5305.1 would eliminate a provision that is inconsistent with the practice of temporary licensure of gaming employee registrants.

Proposed changes to Rule 5306.3 would clarify discretion to determine the scope of investigation of non-gaming employee registrants.

Proposed changes to Rule 5306.4 would clarify the duration of a non-gaming employee registration.

Proposed changes to Rule 5307.3 would clarify the circumstances under which certain vendors are not required to be registered.

Proposed changes to Rule 5307.5 would broaden the scope of discretionary waivers of licensing and qualification requirements for passive or institutional investors. Additionally, the proposed changes would establish wagering restrictions for owners, managers, supervisory personnel and employees of casino vendor enterprise or ancillary casino vendor enterprise licensees that provide services to a gaming facility.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, Gaming Commission, One Broadway Center, P.O. 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:** 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. Pursuant to Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Racing Law section 1307(1) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13, which governs the operation of commercial casinos in the State.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things: the methods and forms of application and registration that any applicant or registrant shall follow and complete; the methods, procedures, and form for delivery of information concerning any person’s family, habits, character, associates, criminal record, business activities and financial affairs; the procedures for the fingerprinting of an employee of a licensee, or registrant; the manner and method of collection of payments of fees; and the grounds and procedures for the revocation or suspension of licenses and registrations.

Racing Law section 1322 requires the Commission to regulate the form by which applicants, licensees and registrants provide information pertaining to their qualifications for licensure or registration.

Racing Law section 1323 requires the Commission to regulate the procedures for photographing and fingerprinting applicants, licensees and registrants for identification and investigation purposes.

Racing Law section 1324 requires the Commission to regulate the method and form of registration that a gaming employee shall follow and complete, and the form for delivery of information pertaining to a gaming employee’s qualifications for registration.

Racing Law section 1325 requires the Commission to establish by regulation appropriate fees to be paid upon the filing of the required applications.

Racing Law section 1326 requires the Commission to establish by regulation the time period during which a casino vendor may conduct business transactions with a gaming facility applicant or licensee prior to the casino vendor receiving a license. Racing Law section 1326 also requires the Commission to regulate the method and form of vendor registration.

Racing Law section 1327 requires the Commission to establish by regulation appropriate fees to be imposed on vendor registrants.

2. **LEGISLATIVE OBJECTIVES:** The above-referenced statutory provisions carry out the legislature’s stated goal “to tightly and strictly” regulate casinos “to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry” as set forth in Racing Law section 1300(10).

3. **NEEDS AND BENEFITS:** The proposed amendments would continue to implement the above-listed statutory directives in regard to the establishment of licensing and registration requirements for gaming facility employees and vendors. The amendments would specify requirements for updating information contained in applications, specify the process of reapplication after a denial or revocation of a license or registration, clarify the categories of vendor licensing and designate additional groups of vendors who are not required to be licensed. Experience with occupational and vendor licensing applications suggests these rules should be clarified and modified to enhance applicants’ and licensees’ understanding of and compliance with the licensing process, which will enhance agency review and determinations and better guide regulated parties’ understanding of standards and requirements, including those of full disclosure of required information. Extending passive investor and qualified institutional investor definitions to threshold ownership interests in any type of entity, in addition to publicly traded corporations, will streamline licensing requirements and reduce paperwork for regulated parties, as will broadening the scope of discretionary waivers of licensing and qualification requirements for passive or institutional investors. Clarifying that waiver provisions apply to licensing standards and qualification standards will better guide applicants and licensees. Establishing wagering restrictions for owners, managers, supervisory personnel and employees of casino vendor enterprise or ancillary casino vendor enterprise licensees that provide services to a gaming facility will enhance public confidence in the integrity of casino gaming.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: There are no new or additional costs associated with the proposed amendments. The amendments seek to clarify the existing licensing and registration process and, in certain circumstances, exempt specific vendors from the licensing or registration process, reducing overall costs to the gaming facilities and the vendors.

(b) Costs to the regulating agency, the State, and local governments for

the implementation of and continued administration of these rules: There are no new or additional costs associated with the proposed amendments. The amendments seek to clarify the existing process and, in certain cases, enumerate the specific vendors that would be exempt from the licensing or registration process, reducing overall costs to the division of the state police and the Commission. The proposed amendments 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: These proposed amendments are clarifying the process of licensing and registration of gaming facility employees and vendors. They impose no additional costs; no methods were used to determine the costs to the regulated parties or the Commission and the State.

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

6. **PAPERWORK:** These proposed amendments are not expected to impose any significant paperwork requirements for gaming facility employees and vendor applicants other than the paperwork already required by the existing rules.

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

8. **ALTERNATIVES:** The Commission had consulted stakeholders and reviewed other gambling jurisdiction best practices and regulations. Alternatives were discussed and considered with stakeholders and compared to other jurisdiction regulations. These included the type of information required to be updated from an employee or vendor application; the appropriate vendors to be exempt from the licensing or registration process; and the types of vendors to be properly classified as ancillary vendor enterprises.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing or registration of gaming employees and vendors in New York. 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 proposed amendments 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 rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas or jobs.

The proposed rulemaking is a revision to the New York State Gaming Commission’s commercial casino rules with respect to licensing and registration requirements for gaming facility employees and vendors. The proposal would specify requirements for updating information contained in applications, specify the process of reapplication after a denial or revocation of a license or registration, clarify the categories of vendor licensing and designate additional groups of vendors who are not required to be licensed.

This rule will not impose an adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Ineligible Potential Claimants in Thoroughbred Claiming Races**

I.D. No. SGC-40-22-00010-P

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

Proposed Action: Amendment of sections 4038.1, 4038.3, 4038.4, 4038.5, 4038.6, 4038.7, 4038.11, 4038.15 and 4038.17 of Title 9 NYCRR.

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

Subject: Ineligible potential claimants in Thoroughbred claiming races.

Purpose: To establish procedures for identifying ineligible claimants and resolving challenges to claims.

Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>): The proposed amendments to section 4038.5 would make explicit the current practice that it is the responsibility of the track’s racing secretary to verify the eligibility of potential claimants and conduct the disposition of the horse

Sections 5300.1, 5301.4, 5303.14, 5304.1, 5304.2, 5305.1, 5305.2, 5305.3, 5305.4, 5306.2, 5306.3, 5306.4, 5307.3 and 5307.5 of title 9 of NYCRR would be amended to read as follows:

§ 5300.1. Definitions.

* * *

(q) *Passive investor* means an investor owning, holding or controlling up to 25 percent of the publicly traded securities issued by, or other ownership interest in, a gaming facility licensee or vendor or applicant or holding, intermediate or parent company of a licensee or vendor in the ordinary course of business for investment purposes only and who does not, nor intends to, exercise influence or control over the affairs of the [issuer of such securities] entity, nor over any licensed subsidiary of the [issuer of such securities] entity.

* * *

(t) *Qualified institutional investor* means an institutional investor holding up to 15 percent of the publicly traded securities of, or other ownership interest in, a gaming facility applicant or licensee or vendor, or holding, intermediary or subsidiary company thereof, for investment purposes only and does not, nor intends, to exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities. To qualify as an institutional investor, an investor, other than a State or Federal pension plan, must meet the requirements of a qualified institutional buyer as defined in regulations of the United States Securities and Exchange Commission. A qualified institutional investor includes, without limitation, any of the following:

- (1) a bank as defined under Federal securities laws;
- (2) an insurance company as defined under Federal investment company laws;
- (3) an investment company registered under Federal investment company laws;
- (4) an investment advisor registered under Federal investment company laws;
- (5) collective trust funds as defined under Federal investment company laws;
- (6) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act, subject to certain exclusions;
- (7) a State or Federal government pension plan; and
- (8) such other persons as the commission may determine for reasons consistent with policies of the commission.

* * *

§ 5301.4. Waiver of licensing or qualification requirements by commission.

(a) The commission may in its discretion waive the licensing or qualification requirement for any of the following:

* * *

§ 5303.14. Application and employment after denial or revocation.

(a) Any natural person whose license, registration or application was denied, suspended or revoked by the commission on the basis of any of the following provisions may reapply at any time after the failure or disqualification is cured:

(1) failure to demonstrate financial stability, after which reapplication is permitted only upon achieving financial stability;

(2) failure to satisfy the age requirement, after which reapplication is permitted only upon attaining the requisite age;

(3) if the commission has determined to deny a license or registration application or suspend or revoke a license or registration based upon a pending disposition of a criminal offense, reapplication is permitted upon disposition of the pending charge;

(4) if the commission has determined to deny a license or registration application or suspend or revoke a license or registration based upon the relation of the criminal history of the applicant and the employment position sought with the gaming facility, reapplication is permitted if a different employment position is sought to which the applicant's criminal history might not provide a basis for denial of the application; and

(5) any statutory or regulatory provision that is subsequently repealed or modified, after which reapplication is permitted only upon a showing that the subsequent repeal or modification of the statutory or regulatory provision obviates the grounds for denial or revocation and justifies the conclusion that the prior determination should not be a basis for denying a license or registration application;

* * *

§ 5304.1. Standards for issuance of a casino key employee license.

(a) The specific criteria and standards for casino key employee licensing are set forth in Racing, Pari-Mutuel Wagering and Breeding Law sections 1301(8) and 1323(1) through (6).

(b) All applicants for a casino key employee license shall prove, by clear and convincing evidence, his or her financial stability, integrity and responsibility as well as the applicant's good character, honesty and integrity.

(c) Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1318(1)(c), a casino key employee is disqualified on the basis of any prior felony conviction, unless the applicant has been

issued a certificate of relief from disabilities (see Correction Law section 701) or a certificate of good conduct (see Correction Law section 703-a) in relation to the conviction.

§ 5304.2. Casino key employee license application and disclosure forms.

(a) An applicant for a casino key employee license shall file a multi-jurisdictional personal history disclosure form and other disclosure forms as required by the commission.

(b) Each applicant for a casino key employee license is required to provide complete and accurate responses to the license application form, including, without limitation, disclosing all criminal convictions and other misconduct of the applicant.

(c) Each applicant for a casino key employee license is required to fill out the license form completely and accurately. Incomplete or misleading information supplied on the license form may result in denial of the application.

PART 5305

Gaming Employee Registration

Section

[5305.1

Persons required to register as a gaming employee

5305.2] 5305.1

Standards for issuance of a gaming employee registration

[5305.3] 5305.2

Gaming employee registration forms

[5305.4] 5305.3

Duration of registration

[§ 5305.1. Persons required to register as a gaming employee.

A person, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1301(22), is required to obtain a gaming employee registration prior to being involved in any gaming licensed activities.

§ 5305.2] § 5305.1. Standards for issuance of a gaming employee registration.

(a) [Each applicant for a gaming employee registration shall produce such information, documentation and assurances as requested by the commission concerning the qualification criteria set forth in sections 5303.1 through 5303.6 of this Subchapter.] The specific criteria and standards for gaming employee registration are set forth in Racing, Pari-Mutuel Wagering and Breeding Law sections 1301 and 1324.

(b) [The commission shall provide an applicant for a gaming employee registration with a copy of criminal history information as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1324(5).] Each applicant for a gaming employee registration is required to prove, by clear and convincing evidence, that the applicant is qualified to hold a gaming employee registration.

(c) [Subsequent to the registration of a gaming employee, the executive director of the commission may revoke, suspend, limit or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of criteria set forth in Racing, Pari- Mutuel Wagering and Breeding Law

section 1318. Notwithstanding, a gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction provided that the registrant has affirmatively demonstrated registrant's rehabilitation, pursuant to article 23-A of the Correction Law.] Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1324(3), a gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction or the commission of any act or acts that would constitute any offense described in Racing, Pari-Mutuel Wagering and Breeding Law section 1318 if the applicant has, in the judgment of the commission, affirmatively demonstrated the applicant's rehabilitation pursuant to article 23-A of the Correction Law.

[§ 5305.3.] § 5305.2. Gaming Employee Registration form.

(a) A gaming employee registrant shall file a gaming employee registration form the commission supplies and may amend from time to time.

(b) Each gaming employee registrant is required to provide complete and accurate responses to the registration form, including, without limitation, disclosing any criminal convictions and other misconduct of the applicant.

(c) Each gaming employee registrant is required to fill out the registration form completely and accurately. Incomplete or misleading information supplied on the registration form may result in the denial of the application.

[§ 5305.4.] § 5305.3. Duration of registration.

(a) Gaming employee registrations shall remain valid as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1325(6).

(b) Each gaming employee registration shall indicate an expiration date.

* * *

§ 5306.2. Standards for issuance of a non-gaming employee registration.

(a) Each applicant for a non-gaming employee registration shall produce such information, documentation and assurances as requested by the commission concerning the qualification criteria set forth in sections 5303.1 through 5303.6 of this Subchapter.

(b) Subsequent to the registration of a non-gaming employee[, the executive director of] the commission may revoke, suspend, limit or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in Racing, Pari-Mutuel Wagering and Breeding Law section 1318. [Notwithstanding, a non-gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction provided that the registrant has affirmatively demonstrated registrant's rehabilitation, pursuant to article 23-A of the Correction Law.]

(c) Notwithstanding subdivision (b) of this section, a non-gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction or the commission of any act or acts that would constitute any offense described in Racing, Pari-Mutuel Wagering and Breeding Law

section 1318 if the applicant has, in the judgment of the commission, affirmatively demonstrated the applicant's rehabilitation pursuant to article 23-A of the Correction Law.

§ 5306.3. Non-gaming employee registration forms.

(a) A non-gaming employee registration applicant shall be required to file a non-gaming employee registration form that the commission supplies and may amend from time to time.

(b) Each non-gaming employee registrant is required to provide complete and accurate responses to the registration form, including, without limitation, disclosing any criminal convictions and other misconduct of the applicant.

(c) Each non-gaming employee registrant is required to fill out the registration form completely and accurately. Incomplete or misleading information supplied on the registration form may result in the denial of the application.

(d) The commission may determine, in its discretion, upon the review of the application, including the criminal history fingerprint results, that further background investigation of a non-gaming employee is not necessary.

§ 5306.4. Duration of registration.

(a) Non-gaming registrations shall remain valid [as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1325(6)] for five years unless suspended or revoked. If a non-gaming registrant has not been employed in any position within a gaming facility for a period of three years, the registration of that non-gaming registrant shall lapse.

* * *

§ 5307.3. Registration of other vendors.

* * *

(b) Notwithstanding the requirements set forth in this Part, entities engaged in the following fields of commerce that provide goods or services to a gaming facility applicant or licensee, shall not be required to be licensed or registered as a vendor:

- (1) insurance companies and insurance agencies;
- (2) television, radio newspaper, internet or other similar media outlets used for advertising purposes;
- (3) governmental entities performing traditional governmental functions;
- (4) providers of professional [legal, accounting] and financial services including accountants, attorneys, engineers and architects, when acting in their respective professional capacities and when not anticipated to be present in secured areas of the gaming facility;
- (5) physicians, nurses, emergency medical technicians, hospitals and other medical providers;

(6) utility companies;

(7) telecommunication companies;

(8) training seminars, publication subscriptions, conference registration or membership dues for professional associations intended to directly contribute to the work performance or professional development of an employee;

(9) non-profit charitable corporations or organizations, provided that no consideration is received for the contribution;

(10) professional sports teams, sports figures, entertainers and/or celebrity appearances, including the associates of such persons reasonably required to facilitate the appearance;

(11) mail carriers, shipping services and delivery services;

(12) online travel booking agents that are not junkets, junket enterprises or junket representatives within the meaning of Racing, Pari-Mutuel Wagering and Breeding Law section 1301;

(13) state and Federally chartered banks or savings and loan associations where funds are deposited by gaming facility licensees, notwithstanding those sources or transactions provided to a gaming facility licensee that require commission approval;

(14) any non-gaming vendor that provides goods and services valued at less than \$75,000 per year, so long as the gaming facility notifies the commission of the intended transaction or relationship, provides the commission with any history of transactions with such vendor and certifies that to the best of the gaming facility's knowledge and belief, there is no reason to believe that such vendor would be disqualified pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1318(1)(c) through (k); or

(15) any other person who, by submission of a written petition, demonstrates to the commission that registration as a non-gaming vendor is not necessary to protect the public interest. For the purposes of this paragraph, the gaming facility may submit a written petition on behalf of the person seeking exemption.

(c) The commission may request information or assurances from any person listed in subdivision (b) of this section to determine the validity of such person's exempt status.

§ 5307.5. Vendor application and disclosure forms.

* * *

(b) [Owners, managers] Managers and supervisory personnel of a casino vendor enterprise or ancillary casino vendor are required to fill out a casino key employee application form and comply with the standards for issuance of a casino key employee license as set forth in section 5304.2 of this Subchapter.

(c) Owners of a casino vendor enterprise or ancillary casino vendor are required to fill out a casino key employee application form and comply with the standards for issuance of a casino key employee license as set forth in section 5304.2 of this Subchapter, except that the commission may in its discretion waive application and disclosure requirements for qualified institutional investors and passive investors of a vendor (as defined in section 5300.1 of this Subchapter).

(d) No owner of a casino vendor enterprise licensee or ancillary casino vendor enterprise licensee that provides services to a gaming facility is permitted to wager at any gaming facility to which such licensee provides services.

(e) No manager, supervisory personnel or employee of a casino vendor enterprise licensee or ancillary casino vendor enterprise licensee that provides services to a gaming facility is permitted to wager at such gaming facility or with equipment or products of such casino vendor enterprise licensee or ancillary casino vendor enterprise licensee at any gaming facility.

[(c)] (f) Employees of a casino vendor enterprise licensee or ancillary casino vendor enterprise licensee who provide services to the gaming area of a gaming facility are required to complete a vendor employee license application form and comply with the standards of a casino key employee as set forth in Part 5304 of this Subchapter.

[(d) Employees] (g) Any employee of a vendor [registrants are] registrant performing duties related to a gaming facility is required to [fill out] complete a non-gaming employee application form and [comply] undergo a criminal history fingerprint review to determine compliance with the standards of a non-gaming employee as set forth in Part 5306 of this Subchapter.



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: December 6, 2022

Re: Adoption of Proposed Rulemaking for Ineligible Potential Claimants in Thoroughbred Claiming Races (9 NYCRR §§ 4038.1, 4038.3, 4038.4, 4038.5, 4038.6, 4038.7, 4038.11, 4038.15 and 4038.17)

For Commission consideration is the adoption of amendments to address ineligible potential claimants in Thoroughbred claiming races, establish procedures for resolving challenges to claims and address horse custody if the stewards discover a claimant had been ineligible.

This proposed rulemaking would make explicit the responsibility of the track's racing secretary to verify the eligibility of potential claimants and conduct the disposition of the horse by lot in the event of multiple claims; establish a deadline of one hour after a race for an objection to a claim award to be made; require the stewards to act upon a claiming issue on their own initiative within 24 hours of the race; make explicit potential discipline for a horseperson who enters a potential claim despite being ineligible or for track office personnel for fail to verify eligibility properly; make explicit that a claim shall be void for any horse that is scratched before the race is started; require claim slips to be in a form prescribed by the stewards; and make stylistic edits.

The Notice of Proposed Rulemaking was published in the October 5, 2022 State Register, an excerpt of which is attached. The text of the proposed amendments is attached. The public comment period for the proposed rulemaking expired on December 5, 2022. Two public comments were received.

The New York Racing Association, Inc. expressed support for the proposal and its hope that other unspecified improvements to the Commission's claiming rules could be made in the future.

The New York Thoroughbred Horsemen's Association, Inc. submitted a comment, supporting the proposed rulemaking and requesting "clarity" on proposed Rule 4038.5(c)(2)(ii), which would provide that the stewards may void a claim through their own initiative if they determine, but only within 24 hours after the running of a race, "that the lease or the entry of a horse was not made in good faith but was made for the purpose of obtaining the privilege of entering a claim."

Staff response:

[Redacted]

[REDACTED]

[REDACTED]

attachments

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

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. Pursuant to Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Racing Law section 1307(1) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13, which governs the operation of commercial casinos in the State.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things: the methods and forms of application and registration that any applicant or registrant shall follow and complete; the methods, procedures, and form for delivery of information concerning any person’s family, habits, character, associates, criminal record, business activities and financial affairs; the procedures for the fingerprinting of an employee of a licensee, or registrant; the manner and method of collection of payments of fees; and the grounds and procedures for the revocation or suspension of licenses and registrations.

Racing Law section 1322 requires the Commission to regulate the form by which applicants, licensees and registrants provide information pertaining to their qualifications for licensure or registration.

Racing Law section 1323 requires the Commission to regulate the procedures for photographing and fingerprinting applicants, licensees and registrants for identification and investigation purposes.

Racing Law section 1324 requires the Commission to regulate the method and form of registration that a gaming employee shall follow and complete, and the form for delivery of information pertaining to a gaming employee’s qualifications for registration.

Racing Law section 1325 requires the Commission to establish by regulation appropriate fees to be paid upon the filing of the required applications.

Racing Law section 1326 requires the Commission to establish by regulation the time period during which a casino vendor may conduct business transactions with a gaming facility applicant or licensee prior to the casino vendor receiving a license. Racing Law section 1326 also requires the Commission to regulate the method and form of vendor registration.

Racing Law section 1327 requires the Commission to establish by regulation appropriate fees to be imposed on vendor registrants.

2. **LEGISLATIVE OBJECTIVES:** The above-referenced statutory provisions carry out the legislature’s stated goal “to tightly and strictly” regulate casinos “to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry” as set forth in Racing Law section 1300(10).

3. **NEEDS AND BENEFITS:** The proposed amendments would continue to implement the above-listed statutory directives in regard to the establishment of licensing and registration requirements for gaming facility employees and vendors. The amendments would specify requirements for updating information contained in applications, specify the process of reapplication after a denial or revocation of a license or registration, clarify the categories of vendor licensing and designate additional groups of vendors who are not required to be licensed. Experience with occupational and vendor licensing applications suggests these rules should be clarified and modified to enhance applicants’ and licensees’ understanding of and compliance with the licensing process, which will enhance agency review and determinations and better guide regulated parties’ understanding of standards and requirements, including those of full disclosure of required information. Extending passive investor and qualified institutional investor definitions to threshold ownership interests in any type of entity, in addition to publicly traded corporations, will streamline licensing requirements and reduce paperwork for regulated parties, as will broadening the scope of discretionary waivers of licensing and qualification requirements for passive or institutional investors. Clarifying that waiver provisions apply to licensing standards and qualification standards will better guide applicants and licensees. Establishing wagering restrictions for owners, managers, supervisory personnel and employees of casino vendor enterprise or ancillary casino vendor enterprise licensees that provide services to a gaming facility will enhance public confidence in the integrity of casino gaming.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: There are no new or additional costs associated with the proposed amendments. The amendments seek to clarify the existing licensing and registration process and, in certain circumstances, exempt specific vendors from the licensing or registration process, reducing overall costs to the gaming facilities and the vendors.

(b) Costs to the regulating agency, the State, and local governments for

the implementation of and continued administration of these rules: There are no new or additional costs associated with the proposed amendments. The amendments seek to clarify the existing process and, in certain cases, enumerate the specific vendors that would be exempt from the licensing or registration process, reducing overall costs to the division of the state police and the Commission. The proposed amendments 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: These proposed amendments are clarifying the process of licensing and registration of gaming facility employees and vendors. They impose no additional costs; no methods were used to determine the costs to the regulated parties or the Commission and the State.

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

6. **PAPERWORK:** These proposed amendments are not expected to impose any significant paperwork requirements for gaming facility employees and vendor applicants other than the paperwork already required by the existing rules.

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

8. **ALTERNATIVES:** The Commission had consulted stakeholders and reviewed other gambling jurisdiction best practices and regulations. Alternatives were discussed and considered with stakeholders and compared to other jurisdiction regulations. These included the type of information required to be updated from an employee or vendor application; the appropriate vendors to be exempt from the licensing or registration process; and the types of vendors to be properly classified as ancillary vendor enterprises.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing or registration of gaming employees and vendors in New York. 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 proposed amendments 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 rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas or jobs.

The proposed rulemaking is a revision to the New York State Gaming Commission’s commercial casino rules with respect to licensing and registration requirements for gaming facility employees and vendors. The proposal would specify requirements for updating information contained in applications, specify the process of reapplication after a denial or revocation of a license or registration, clarify the categories of vendor licensing and designate additional groups of vendors who are not required to be licensed.

This rule will not impose an adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Ineligible Potential Claimants in Thoroughbred Claiming Races**

I.D. No. SGC-40-22-00010-P

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

Proposed Action: Amendment of sections 4038.1, 4038.3, 4038.4, 4038.5, 4038.6, 4038.7, 4038.11, 4038.15 and 4038.17 of Title 9 NYCRR.

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

Subject: Ineligible potential claimants in Thoroughbred claiming races.

Purpose: To establish procedures for identifying ineligible claimants and resolving challenges to claims.

Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>): The proposed amendments to section 4038.5 would make explicit the current practice that it is the responsibility of the track’s racing secretary to verify the eligibility of potential claimants and conduct the disposition of the horse

by lot in the event of multiple claims. The amendments would also establish a deadline of one hour after a race for an objection to a claim award to be made, in which case the stewards would hear from the interested parties the same day and determine whether to void the claim and then award it to a remaining eligible potential claimant, by lot if there is more than one eligible potential claimant remaining. There would be no further appeal to the Commission so long as this process was followed, given the need for finality to determine the custody and care of the horse. Similarly, if the stewards discover, even absent an objection by a horseperson, that a claim had been awarded to an ineligible claimant, the stewards would need to act within 24 hours of the race to be able to order the delivery of the horse to a different owner or trainer. The amendments would make explicit that a horseperson who enters a potential claim despite being ineligible, and track office personnel charged with verifying eligibility who fail to do so properly, may face Commission discipline. The amendments would make explicit that a claim shall be void for any horse that is scratched before the race is started.

The proposed amendments to sections 4038.1, 4038.3, 4038.4, 4038.6, 4038.7, 4038.15, and 4038.17 would make stylistic edits, including the addition of titles to subdivisions.

The proposed amendments to section 4038.11 would move a provision on voiding a claim from section 4038.11(b) to section 4038.5(c)(2)(ii), to organize that material with other voiding provisions.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), and 104 (1) and (19). Pursuant to Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. **LEGISLATIVE OBJECTIVES:** To enable the Commission to enhance the integrity of Thoroughbred horse racing.

3. **NEEDS AND BENEFITS:** This rule making proposes to amend the Commission's regulations pertaining to Thoroughbred claiming races. Claimants generally must be licensed and have participated in the current or prior race meeting in order to claim. The track's racing office is tasked with verifying claimant eligibility. If an ineligible potential claimant is initially awarded a claim due to administrative error in not noting the ineligibility, complications arise when the claim is voided and there is a dispute over custody of the horse. If the horse remains with an ineligible claimant or is returned to the original owner from before the race, the horse may be trained or treated in a manner that is not preferred by the claimant who may be eventually awarded the horse, either by order of the stewards or through the Commission's dispute-resolution processes. It is in everyone's interests for any objections to a claim and any stewards' order in regard to ownership of a horse be raised and resolved as quickly as possible, so that custody of the horse may be determined promptly. This proposal would make explicit the current practice that it is the responsibility of the track's racing secretary to verify the eligibility of potential claimants and conduct the disposition of the horse by lot in the event of multiple claims. The proposal would establish a deadline of one hour after a race for an objection to a claim award to be made, in which case the stewards would hear from the interested parties the same day and determine whether to void the claim and then award it to a remaining eligible potential claimant, by lot if there is more than one eligible potential claimant remaining. There would be no further appeal to the Commission so long as this process was followed, given the need for finality to determine the custody and care of the horse. Similarly, according to this proposal, if the stewards discover, even absent an objection by a horseperson, that a claim had been awarded to an ineligible claimant, the stewards would need to act within 24 hours of the race to be able to order the delivery of the horse to a different owner or trainer.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: These amendments will not add any new 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: None anticipated. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate Thoroughbred racing.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: Experience of agency staff.

5. **LOCAL GOVERNMENT MANDATES:** None. The Commission is the only governmental entity authorized to regulate Thoroughbred racing activities.

6. **PAPERWORK:** There will be no additional paperwork.

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

8. **ALTERNATIVES:** The alternative of not revising claiming rules was considered and rejected. The current rules do not provide for quick and efficient methods of identifying ineligible potential claimants and resolving objections to claims, nor do they provide for timely finality to resolve disputes when the custody of a horse is questioned.

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

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

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

The proposed 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 rule making would address ineligible potential claimants in Thoroughbred claiming races, establish procedures for resolving challenges to claims and address horse custody if the stewards discover a claimant had been ineligible.

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. No local government activities are involved.

Department of Health

EMERGENCY RULE MAKING

Surge and Flex Health Coordination System

I.D. No. HLT-07-22-00011-E

Filing No. 745

Filing Date: 2022-09-20

Effective Date: 2022-09-20

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

Action taken: Addition of sections 1.2, 700.5, Part 360; amendment of sections 400.1, 405.24, 1001.6 of Title 10 NYCRR; amendment of sections 487.3, 488.3 and 490.3 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 225, 576, 2800, 2803, 4662; Social Services Law, section 461

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

Specific reasons underlying the finding of necessity: During a State disaster emergency with significant public health impact, and where compliance with certain regulations may prevent, hinder or delay action necessary to cope with the disaster, as has been the case with COVID-19, these proposed regulations will ensure that the State has the most efficient regulatory tools to facilitate the State's and regulated parties' response efforts to Surge and Flex the healthcare system statewide. Additionally, this authority will also ensure that the Department has the flexibility to impose additional requirements, where necessary, to ensure effective response to a declared state disaster emergency. Accordingly, these tools will help ensure the health and safety of patients and residents in New York State.

The Surge and Flex Health Care Coordination System was activated during the COVID-19 State disaster emergency which was declared by Governor Cuomo under Executive Orders No. 202 through 202.111 (March 7, 2020 to June 15, 2021; see 9 NYCRR §§ 8.202 through 8.202.111), the State disaster emergency which was declared by Governor

Sections 4038.1, 4038.3, 4038.4, 4038.5, 4038.6, 4038.7, 4038.11, 4038.15 and 4038.17 of 9 NYCRR would be amended to read as follows:

§ 4038.1. Who may make claim.

(a) Licensed and participating owners. Claims may be made by an owner licensed for the current year, or duly authorized agent, if the owner is presently registered in good faith for racing at that meeting and has nominated a starter in the previous or current race meet of the licensed or franchised racing association, up to or including the race in which the claim is made. Such claim shall be in the name of the owner making the claim, or in the name of the entity of which the potential claimant is the managing owner.

(b) [The holder] Holder of a certificate of eligibility to claim. A person who has not previously been licensed in any state as an owner, upon application for an owners' license in this State, may apply to the stewards for a certificate authorizing him or her to claim one horse during the next 30 racing days following the issuance of the certificate. The stewards may grant an extension if deemed appropriate. The certificate shall be valid for claiming only at the track of the racing association at which it was issued. Such certificate shall be issued by the stewards only after the stewards have been advised by the commission that after an initial background check, and from the face of the application, the applicant appears to be qualified to be licensed and only after the applicant has designated a licensed trainer who will assume care and responsibility for the horse to be claimed.

(c) Ownership interest restriction. No person shall claim any horse in which he or she has an ownership interest or cause any horse in which he or she has an ownership interest to be claimed directly or indirectly for his or her own account.

(d) Owner who had a horse claimed. Notwithstanding the provisions of subdivision (a) of this section, an owner who shipped in to race and had a horse claimed from him or her at the meeting, shall be eligible to claim one horse for that ownership entity for the remainder of the meeting or for the next 30 days, whichever is longer.

* * *

§ 4038.3. Conditions for starting claimed horse.

If a horse is claimed [it] the horse shall not start in a claiming race for a period of 30 days from date of claim for less than 25 percent more than the amount for which [it] such horse was claimed.

§ 4038.4. Sale, transfer restricted.

If a horse is claimed [it] the horse shall not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from the date of the claim. A claimed horse shall not, unless reclaimed, remain in the same stable or under the control or management of its former owner or trainer for a like period. A claimed horse shall not race outside New York State for a period of 30 days from the date of the claim or the end of the meeting at which [it] such

horse was claimed, whichever period of time is longer, except that a horse may run in a sweepstakes elsewhere for which the horse was nominated by its former owner or trainer, or if permission is granted by the stewards.

§ 4038.5. Requirements for claim; determination by stewards.

(a) Form of claim and deposit requirements.

(1) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the racing secretary or the racing secretary's designee, at least 10 minutes before post time. Claim slip forms must be in a form prescribed by the stewards, must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim.

(2) Each person desiring to make a claim, unless the person has such amount to the person's credit with the association, must first deposit with the association the whole amount of the claim, in a manner approved by the racing secretary or designee for which a receipt will be given. Unless funds of the claimant available in the claimant's account with the association are sufficient, in the judgment of the stewards, to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. If such funds are sufficient, an amount sufficient to pay for the post-race testing requested on the claim form shall be frozen in such claimant's account to secure anticipated costs of testing.

(b) Disposition of claim. [All claims shall be passed upon by the stewards.] If there is one claim for a horse, the right of claim to such horse shall be awarded to such claimant, subject to rights to void the claim set forth in this Part. If more than one [person should enter] claimant enters a claim for the same horse, then the disposition of the horse shall be decided by lot by the [stewards] racing secretary. The racing secretary shall, before conducting such disposition by lot, ensure that each potential claimant is eligible to claim pursuant to this Part. The right of claim to the horse shall be awarded to the claimant thereby decided by lot.

(c) Voiding claim award to an ineligible claimant.

(1) Through objection by a horseperson. Any party wishing to contest the award of a right of claim to a horse shall make such objection in writing to the stewards no later than one hour after the conclusion of the race from which the horse was claimed (notwithstanding any time period set forth in Part 4039 of this Article or otherwise), setting forth the nature of the objection.

(2) Through initiative of the stewards. The stewards may determine, but only within 24 hours after the running of a race,

(i) that the claimant had been ineligible to make the claim; or

(ii) that the lease or the entry of a horse was not made in good faith but was made for the purpose of obtaining the privilege of entering a claim.

in which case the stewards shall invoke the procedures set forth in paragraph (3) of this subdivision.

(3) Procedure for determining timely objection to a claim or potential voiding of a claim through the initiative of the stewards.

(i) The stewards shall promptly arrange a time, the same day of the race in the case of an objection or the same or next day in the case of a potential voiding of a claim through the initiative of the stewards, at which the following parties, each of whom may be represented by a trainer or other designated person, shall have a right to be heard: the party making an objection, if any; the owner who entered the horse in the race; any party that made a claim for the horse; and the racing secretary. After hearing such parties, the stewards shall make a prompt decision.

(ii) If the stewards determine that the right of claim should not have been awarded to the presumptive claimant, then the stewards shall void such claim. If one eligible potential claimant remains, the racing secretary shall verify the eligibility of such potential claimant and, if the potential claimant is eligible, the stewards shall award the right of claim to such claimant. If more than one eligible potential claimant remains, the racing secretary shall verify that each such potential claimant is eligible to make the claim and then the stewards shall supervise the racing secretary in conducting a disposition by lot from among such eligible potential claimants. The right of claim to the horse shall be awarded to the claimant thereby decided by lot.

(iii) As set forth in section 4038.9 of this Part, no eligible potential claimant shall be permitted to withdraw a claim at any stage of the process set forth in this paragraph to consider the voiding of a claim or the award of the right to claim to an alternate party.

(iv) If the stewards void a claim pursuant to this subdivision and there are no other eligible potential claimants, then the horse shall be returned to the owner who had entered the horse in the claiming race.

(v) There shall be no appeal to the commission of the disposition of a horse made pursuant to this section, notwithstanding any provision to the contrary in this Chapter.

(vi) Responsibility for any expenses relating to the care of a horse from the time of delivery of the horse after the race to the time alternative custody of the horse is determined pursuant to the subdivision shall remain with the party that had incurred such expenses.

(4) Potential discipline of persons relating to an ineligible potential claimant. Nothing in this section shall impair the ability of the stewards or the commission to impose sanctions upon a party or person involved in making a claim while the potential claimant is ineligible to do so, upon track personnel who fail to verify eligibility of a potential claimant before the awarding of a right to claim, or upon a potential claimant who leased or entered a horse not in good faith as described in subparagraph (ii) of paragraph (2) of this subdivision.

(d) Passing of ownership of horse, testing and voidability. Claimed horses shall be taken after the race to the test barn for a determination of soundness and for any test samples to be collected. The person determined by the stewards to have the right of claim shall become the owner of the horse when the race is started, whether the horse is sound or unsound or injured before or during the race or after the race, except that:

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

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

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

(4) a claim is voidable at the discretion of the new owner if the horse is placed on the veterinarian's list following an examination by the State veterinarian or other veterinarian who has been designated by the commission to examine claimed horses in the test barn following the race for a determination of soundness for either of the following reasons:

(i) the horse is grade two lame or higher on the American Association of Equine Practitioners lameness grading scale, meaning the lameness of the horse is consistently apparent under certain circumstances (e.g., weight carrying, circling, inclines, hard surface) even if such lameness is difficult to observe when the horse is at a walk or trotting in a straight line; or

(ii) the claimed horse has bled visibly from a nostril (epistaxis) that is attributable, because the bleeding is not caused wholly by a wound or superficial injury, to an episode of exercise induced pulmonary hemorrhage.

When a horse is placed on the veterinarian's list pursuant to this paragraph, the claimant shall be deemed to have voided the claim and the horse shall be removed from the test barn area by the original owner, unless the claimant or a representative of the claimant is present at the test barn to be informed of the determination of the State or designated veterinarian and, upon being informed of the veterinarian's findings, decides immediately to accept the horse;

(5) a claim shall be void for any horse that is scratched before the race is started; and

(6) a claim shall be void if the stewards determine, pursuant to subdivision (c) of this section,

(i) that the claimant had been ineligible to make the claim; or

(ii) that the lease or the entry of a horse was not made in good faith but was made for the purpose of obtaining the privilege of entering a claim.

[(b)] (e) Testing for equine infectious anemia. In the event a horse is claimed, and the claimant has indicated on the claiming blank an election to have a test for equine infectious anemia performed and has paid the prescribed fee for such test, a blood sample shall be taken by the State veterinarian, and the sample identified as being from a claimed horse shall be forwarded within 24 hours to an approved laboratory to be tested for equine infectious anemia. Pending the receipt of a negative test for equine infectious anemia the monies paid for the claimed horse shall be held by the track. In the event of a positive test for equine infectious anemia the ownership of the claimed horse shall revert to the owner from whom the horse was claimed and the claiming monies shall be returned to the person or persons who claimed the horse. The cost of the test is to be borne by the claimant.

[(c)] (f) Provision of records of corticosteroid injections. The previous trainer of a claimed horse shall, within 48 hours after the race is made official, provide to the new owner an accurate record of all corticosteroid joint injections that were administered to the horse within 30 days before the race.

§ 4038.6. Opening of sealed claim.

No official or other person shall open the sealed claim box and envelope or give any information on claims filed except to check on the potential claimant's license and eligibility of the claim. Otherwise, the claim box and envelope shall remain unopened until after the results of the race are made official.

§ 4038.7. Limitations on claims.

(a) One horse per claimant. No person shall claim more than one horse in a race.

(b) One claim per agent. No authorized agent, although representing more than one owner, shall submit more than one claim in any one race.

(c) One claim per stable. When a stable consists of horses owned by more than one person, trained by the same trainer, not more than one claim may be entered on behalf of such stable in any one race.

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§ 4038.11. Collusive claiming punished.

[(a)] Should the stewards be of the opinion that any person is claiming a horse collusively for the benefit of another interest or in order to evade the provision of any sections of this Article, they may require such person to make an affidavit that he or she is not so doing, and if upon proof it is ascertained that such person made a false affidavit, such person shall be referred to the commission for further action.

[(b)] Should the stewards within 24 hours after the running of a race determine that the lease or the entry of a horse was not made in good faith but was made for the purpose of obtaining the privilege of entering a claim, then in each case the stewards may disallow or cancel any such

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claim and order the return of a horse that may have been delivered and refer the case to the commission for further action.]

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§ 4038.15. Intimidation, collusion.

Any person who shall attempt to prevent another person from claiming any horse in a claiming race, or any owners running in claiming races who may make any agreement for the claiming of each other's horses, may be [punished] sanctioned by the stewards or the stewards may refer the matter to the commission for further action.

* * *

§ 4038.17. Horses claimed—testing.

(a) Post-race testing. If the claimant of a horse has requested post-race testing, at the expense of the claimant, on the claim form, then the stewards shall designate such horse for post-race testing pursuant to subdivision (b) of section 4012.3 of this Article. The original trainer shall remain responsible for the claimed horse until any on-track post-race sample collection has been completed.

(b) Responsibility of original trainer until examination is complete. The original trainer shall remain responsible for a claimed horse that is required to be examined pursuant to paragraph (4) of subdivision [(a)] (d) of section 4038.5 of this Part until the horse has undergone such examination and been released to the new owner.