



**OCTOBER 3, 2023
MEETING AGENDA**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES FOR MEETING OF AUGUST 3, 2023
3. REPORT OF THE EXECUTIVE DIRECTOR
4. RULEMAKING
 - A. ADOPTION: SGC-29-22-00010-RP INTERACTIVE FANTASY SPORTS REGULATIONS
 - B. ADOPTION: SGC-31-23-00010-P SPORTS WAGERING ADVERTISING AND MARKETING
 - C. WITHDRAWAL OF CONSENSUS PROPOSAL AND PROPOSAL: CLAIMING RULES REVISIONS IN THOROUGHBRED RACING
5. ADJUDICATION
 - A. IN THE MATTER OF LINDA RICE
6. DISCUSSION OF FANATICS OWNERSHIP ACQUISITION
7. NEW & OLD BUSINESS
8. ADJOURNMENT

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**New York State
Gaming Commission**

Minutes

Meeting of August 3, 2023

A meeting of the Commission was conducted in Saratoga Springs and 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 2:03 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance in Saratoga Springs were Chairman Brian O'Dwyer, and Members Sylvia Hamer and Peter Moschetti. In physical attendance in New York were Members John Crotty, Marissa Shorenstein, and Jerry Skurnik.

2. Consideration of Minutes for Meeting of June 26, 2023

The Commission considered previously circulated draft minutes of the meeting conducted on June 26, 2023. The minutes were accepted as circulated.

3. Report of the Executive Director

The Executive Director presented an update on the Linda Rice improper practices adjudication, announcing that the time for Ms. Rice to appeal the decision of the Third Department had passed, thus the matter was returned to the Commission to reassess the penalty. He also updated the Commission on equine medical director Scott Palmer's appointment to the Horseracing Integrity and Safety Authority Advisory Committee to oversee the statutorily required three-year study on the use of furosemide on horses during the 48-hour period before the start of a horserace, noting that Dr. Palmer had been selected to chair the Committee. Finally, Mr. Williams used the impending \$1.25 billion jackpot Mega Millions drawing to reinforce the impact of these high prize roll-ups on raising revenues for education and driving retail lottery agent commissions.

4. Rulemaking

A. Re-Proposal, SGC-50-22-00009-P, Purchase Location Requirements for Lottery Courier Services.

The Commission considered the re-proposal of an amendment to Rule 5014.7 to clarify the courier-service purchase location requirement by providing that the purchase of courier services occurs when the customer requests the delivery of a ticket or tickets through the courier service network, and the customer initiates the transfer of funds to the such courier service in connection with such to cover the cost in full of the lottery ticket or tickets requested to be purchased.

ON A MOTION BY: Commissioner Moschetti
APPROVED: 5-1, Member Crotty voting in the negative

B. Thoroughbred Claiming Rule

The Commission considered proposal of an amendments to Rules 4038.1, 4038.3, and 4038.4, to expand the number of owners eligible to claim and delay claimed horses from racing out of state.

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

C. Lottery Prize Assignment Processing Fee

The Commission considered proposal of an amendment to Rule 5002.11, establishing a processing fee when a lottery prizewinner seeks to assign voluntarily all or part of a future prize payment installment or installments. The proposed amendments would also rephrase the existing rule for clarity and acknowledge each of the existing offset statutes.

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

5. Adjudication

A. In the Matter of Abdul R. Tillman

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

determined upon a 6-0 vote to adopt the Hearing Officer's findings of fact and conclusions of law recommending that Mr. Tillman's gaming employee registration be revoked.

6. Discussion of Fanatics Ownership Acquisition

An extensive discussion occurred regarding FBG Enterprises Opco, LLC d/b/a Fanatics Betting and Gaming, a subsidiary of Fanatics Holdings, Inc. acquisition of PointsBet USA's subsidiary PointsBet New York LLC, a Platform Provider and Operator licensed in New York since January 24, 2022. The Commission advised that it would consider a staff report and recommendations at the September meeting.

7. New & Old Business

No New or Old Business was discussed.

8. Adjournment

Before concluding, Chairman O'Dwyer noted that mobile sports wagering advertising remained an ongoing concern and he would continue to closely examine all advertising. He also advised that he had attended a meeting with the Division of the Lottery's advertising vendor to review its processes and suggested that a campaign to highlight the public education benefit of the Lottery would be forthcoming. The Chairman also advised that he was looking forward to the development of the new worker housing at Saratoga Race Course, and expected the release of the Round 1 additional casino license answers by the September meeting.

The meeting was adjourned at 2:55 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: September 25, 2023

Re: Adoption of Revised Proposed Rulemaking for Interactive Fantasy Sports (9 NYCRR Chapter VI)

For Commission consideration is the adoption of revised proposed rules to govern interactive fantasy sports (“IFS”). The Commission published a Notice of Proposed Rulemaking in the July 20, 2022 State Register and received public comment. Upon consideration of the public comments, the Commission published a Notice of Revised Rulemaking in the August 2, 2023 State Register, a copy of which is attached. The full text of the revised proposed rules is available on the Commission’s website and a copy of the full text is also attached.

Four extended public comments were received, as well as 1,462 form letters solicited by a purported IFS provider that wishes to operate in New York.

Coalition for Fantasy Sports

A lawyer for the Coalition for Fantasy Sports (“CFS”), described as a membership organization of providers of IFS that offer or would like to offer IFS contests to consumers in New York, submitted a comment. In particular, CFS stated an objection to proposed Rule 5602.1(a)(4), which would provide:

Contests shall not be based on proposition betting or contests that have the effect of mimicking proposition betting. Contests in which a contestant must choose, directly or indirectly, whether an individual athlete or a single team will surpass an identified statistical achievement, such as points scored, are prohibited.

CFS stated that its members wish to offer “pick ‘em contests” in New York to “allow participants or players to strategically select a roster of athletes...and the projected fantasy score or a single-statistical measure...for each athlete on a participant’s roster.”

CFS stated that “a variety of contest styles encourages innovation” and that the proposed regulations are inconsistent with the IFS enabling legislation in Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) and do not account for the legislature’s intent “to promote competition in IFS.” CFS stated that the proposed regulations “would serve to solidify the IFS market domination by DraftKings and

FanDuel.” CFS asserted that the definition of IFS in Racing Law section 1401(8) does not exclude any particular contest format and quoted former New York State Senator John Bonacic, who wrote to the Commission in 2017 after the passage of Article 14, “I intended to ensure enough flexibility to cater to many different styles of interactive fantasy sports gameplay.” CFS noted that a regulatory agency may not adopt regulations that are “inconsistent with the statutory language or its underlying purpose.” CFS stated that the Commission has already awarded a temporary permit to a form of “player selection” IFS contests “that are essentially the same as the IFS contests offered by members of” CFS.

CFS argued that “pick ‘em fantasy” contests are not gambling because they are contests of skill within the meaning of the New York Court of Appeals decision in *White v. Cuomo*, 38 N.Y.3d 209 (2022), the case that upheld Article 14 in the face of a Constitutional challenge. The *White* plaintiffs argued that the Article 14 IFS-enabling legislation was impermissible given the State Constitution’s general ban on gambling contained in Article I, section 9(1). CFS stated that its members’ contests are skill-based, according to a commissioned study by a purported expert who had opined about IFS generally to the Legislature when the Legislature considered enacting Article 14. CFS states that “[p]ick ‘em participants...pit their fantasy lineups against projected fantasy sports points or single-statistic totals, which is akin to the fantasy lineups of fellow participants.” CFS stated that “pick ‘em contests” contain elements that the Court of Appeals in *White* cited in concluding that IFS was not constitutionally-prohibited gambling, such as paying an entry fee for a fixed prize, not having an opportunity to win back an entry fee or collect money staked by other participants, competing for a prize that is fixed without regard for the sum of the entry fees, and having outcomes determined by contestants’ knowledge and skill. CFS argued that the *White* decision’s description of IFS contests as “relative, measured only by the quantity and quality of skill exercised by other IFS participants” is non-binding “dicta,” because such description was not material to the holding in the case and was, instead, “merely one of the particular facts involved in the case.” CFS argued that “[o]f importance to the court was not that there are multiple participants playing against each other, but that ‘participants have control over their own skill-based roster selection, which substantially determines the outcome of the IFS contest.’” (quoting *White*, 38 N.Y.3d at 224.) CFS asserted, “it is the predominance of skill, rather than the number of participants, that is controlling.” CFS further argued that “[e]ven if the concept of relative skill were part of the court’s holding, pick ‘em contests also fit in that category: participants...pit their fantasy lineups against projected fantasy sports point or single-statistic totals, not against the outcome of any single athletic event, full team performance, or the performance of any individual athlete. For purposes of the *White* analysis, these projections are analogous to the fantasy lineups of other participants in IFS contests” and “akin to the fantasy lineups of fellow participants.” CFS argued, “the court’s holding in *White* that IFS Contests are skill-based, do not constitute betting or wagering, and fall outside the constitutional prohibition on gambling applies with equal force to IFS pick ‘em contests. If that form of IFS contest had been at issue in the case, the court most likely would have reached the same conclusion.”

Staff response:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FanDuel

FanDuel, a currently temporarily permitted IFS operator, submitted a comment addressing several aspects of the revised proposal to which it had objected similarly after the initial proposal. The Commission declined to revise its proposal with respect to these elements and FanDuel, in response to the revised rulemaking, renewed these objections, mostly verbatim.

FanDuel suggested removing the requirement in proposed Rule 5607.1(a) for compulsive-play-assistance messaging in advertising. FanDuel stated that the enabling statute required such messaging only on an operator’s website, not its advertising. Furthermore, FanDuel stated that the rule would require its national marketing to accommodate New York-specific requirements and that the proposed requirements would take up too much space in an advertisement.

Staff response:

[REDACTED]

FanDuel objected to the requirement for protection of contestant funds through the use of a special purpose entity, which it interprets as requiring separate trusts for each individual contestant’s account. FanDuel contended that such a requirement would be unduly burdensome.

Staff response:

[REDACTED]

FanDuel objected to the contest-approval process because the Commission’s consideration could be pending for long periods of time. FanDuel suggested a revision to proposed Rule 5602.2 that a contest type be deemed approved by the Commission if no response is received within seven days of an IFS operator’s request for approval.

Staff response:

[REDACTED]

[REDACTED]

FanDuel objected to the provision of proposed Rule 5604.1(d) that would make a registered operator strictly liable for allowing prohibited persons to enter its contests, while providing for mitigation of any possible penalty if the operator demonstrates 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 such a prohibited person.

Staff response:

[REDACTED]

FanDuel objected to the requirement in proposed Rule 5609.3 that an independent testing laboratory certify that a registrant's platform performs as the registrant represents to the public.

Staff response:

[REDACTED]

FanDuel suggested eliminating anti-money-laundering requirements entirely or, in the alternative, eliminating the requirement for an annual compliance statement.

Staff response:

[REDACTED]

[REDACTED]

Mojo Interactive, Inc.

Mojo Interactive, Inc. (“Mojo”), an operator offering product in states other than New York, objected to proposed Rule 5602.1(a)(4), which would prohibit contests based on proposition betting or contests that have the effect of mimicking proposition betting. Mojo stated that it recognized concerns about “single-user contests in which a user competes against the house...with stated odds and a direct payout from the [h]ouse,” but stated its belief that the proposed rule “cast[s] too wide a net.” Mojo stated, “there is nothing inherently offensive about utilizing predictions of players’ statistical achievements as a scoring mechanism in a skill-based contest that is otherwise substantially identical to traditional fantasy offerings.” Mojo stated that its current offering “involves contestants competing against one another (as opposed to competing against the ‘house’) by allocating fake dollars to compile a roster of athletes that will be scored based on collective ability of the roster to achieve or exceed underlying individual statistical goals.” Mojo stated, “there is no principled distinction between appropriately constructed skill-based contests that are based on traditional fantasy point structure or contests that use a scoring structure based on the players’ achievement of specific statistical goals. Both require a compilation of multiple player rosters, skill-based determinations of player performance and winnings awarded based on the relative performance of the contestants.” Mojo stated its belief that “the Commission is attempting to target products that fall outside the scope of fantasy, not because they rely on predicting player statistics, but because they (i) allow patrons to compete against the house, (ii) provide a direct payout from the house based on pre-determined odds, and (iii) do not require contestants to compete against one another, and therefore cannot be based on the relative skill of the contestants.” Mojo suggested that the proposed rule, “while intending to target these specific practices, will have the unintended effect of outlawing a wide range of appropriately constructed, skill-based fantasy games.” Mojo proposes amended language to proposed Rule 5602.1(a)(4), to limit the regulatory prohibition to house-backed purported contests.

Staff response:

[REDACTED]

Vivid Seats LLC

Vivid Seats LLC (“Vivid Seats”) operates contests in other states in which “users choose two or more individual players and select whether those players will either perform above or below fantasy projections” and objected to proposed Rule 5602.1(a)(4), which would prohibit contests based on proposition betting or contests that have the effect of mimicking proposition betting. Vivid Seats asserted that the statute does not exclude any particular contest format and that the proposed rule exceeds the scope of the statute. Vivid Seats stated that its contests require a contestant to “build a roster” and that a “winning outcome is dependent upon the aggregate statistical results of all players on the contestant’s roster (for example, in a contest with a 3-player roster, all 3 players must perform in accordance with the contestant’s selected stats” and that Vivid Seats offers “combined stats for certain players...further ensuring that those winning outcomes are determined by the selected players’ accumulated statistical results.” Vivid Seats contended that Racing Law section 1401(8) contemplates single-player contests.

Staff response:

[REDACTED]

Individual comments from PrizePicks campaign

The identical comments from individuals solicited in the PrizePicks campaign each stated opposition “to regulations that would limit my ability to play my favorite fantasy sports.” The comments stated an understanding that the proposed regulations “will effectively ban fantasy sports” and urged the Commission to “vote no to outlawing daily fantasy sports.”

Staff response:

[REDACTED]

[REDACTED]

attachments

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

A new Chapter VI to Subtitle T of 9 NYCRR would be added as follows:

Chapter VI

Interactive Fantasy Sports

Part

5600 General

5601 Registration of Interactive Fantasy Sports Operators

5602 Permissible Contests

5603 Requirements for Contests

5604 Restrictions on Play

5605 Accounting Controls

5606 Internal Controls

5607 Advertising and Marketing

5608 Misconduct, Associations and Duties to Promote Integrity

5609 Reporting and Auditing

5610 Taxes and Fees

5611 Financial Stability

5612 Complaints

5613 Penalties and Sanctions

PART 5600

General

Section

5600.1 Definitions

§ 5600.1. Definitions.

(a) Unless the context indicates otherwise, the definitions set forth in this section and the definitions set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1401 are applicable throughout this Chapter.

(b) *Definitions.*

(1) *Assisted-draft mode* means a feature of an interactive fantasy sports platform that allows a contestant to arrange for the automated selection of a roster of athletes for a contest based on criteria set by the contestant.

(2) *Autopick draft option* means a function in an interactive fantasy sports system that automatically selects athletes to an interactive fantasy sports roster of athletes, either without input from the interactive fantasy sports contestant or not based upon preferences set by such contestant.

(3) *Consumer complaint* means a complaint about a registrant's interactive fantasy sports contests or platform by a person who participates or attempts to participate in such contests, including, without limitation, complaints about the conduct of employees or independent contractors of the registrant.

(4) *Contestant* means an authorized player as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(1) and any person who deposits money with an operator, registrant, or SPE that may be used to enter a contest.

(5) *Cybersecurity event* means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt or misuse an information system or information stored on such information system.

(6) *Dormant account* means an account [in] to which [funds remain unclaimed] a user has not logged in for three consecutive years.

(7) *Insider information* means any proprietary or non-public information about a contest that might provide an advantage to a contestant, including, without limitation, the frequency of athlete selections made by contestants.

(8) *Lock* means the point in time at which an athlete selected for a contestant's contest roster is not permitted to be changed or withdrawn.

(9) *Platform* means any website, smart-phone application or other portal providing access to an interactive fantasy sports contest for an entry fee.

(10) *Registrant* has the meaning set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(12). For purposes of Part 5610 of this Chapter, an interactive fantasy sports operator that has been granted a temporary permit pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1402 shall be deemed a registrant.

(11) *Registration* means an interactive fantasy sports registration issued pursuant to this Chapter.

(12) *Script* means a set of commands that an interactive-fantasy-sports-related computer program can execute to automate processes on a platform.

(13) *Session* means the time an interactive fantasy sports contestant spends logged into and is active on an operator's web site, mobile application or other user interface.

(14) *Special Purpose Entity* or *SPE* means a properly constituted entity described in section 5605.5 of this Chapter.

(15) *Sports event* has the meaning set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(17) and, in addition, the event shall be an athletic event or competition that involves a material degree of physical skill.

(16) *Youth sports event* means a sports event played predominantly by minors who are not professional athletes.

PART 5601

Registration of Interactive Fantasy Sports Operators

Section	
5601.1	General
5601.2	Application
5601.3	Filing
5601.4	Processing
5601.5	Amendment
5601.6	Investigation
5601.7	Registration determination
5601.8	Issuance of registration

§ 5601.1. General.

(a) *Entities required to obtain an interactive fantasy sports registration.* Any interactive fantasy sports operator seeking to administer, manage or otherwise make available a platform hosting paid-entry contests to persons located in the State of New York is required first to obtain a registration.

(b) *Individuals required to submit a personal history disclosure form.* The commission shall require a personal history disclosure form for:

(1) each person listed on an application as an officer, director or a shareholder owning a 10 percent or more equity interest, direct or indirect, in the applicant, if the applicant is a corporation; and

(2) a person owning a five percent or more direct or indirect ownership interest in the applicant, if the applicant is an entity other than a corporation; and

(3) each person listed on an application as an officer, director or a shareholder owning a 10 percent or more equity interest, direct or indirect, in the applicant's SPE.

(c) *Term of registration.* All registrations shall remain in effect for three years, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1402(3).

(d) *Renewal.* Renewal applications shall be submitted in a form and manner approved by the commission. The commission may renew a registration for a term of three years or less, in the discretion of the commission.

(e) *Burden of proof.* It shall be the duty of each applicant to establish by clear and convincing evidence such applicant's qualifications for registration or renewal of registration.

§ 5601.2. Application.

(a) *Requirements.* Each applicant for a registration shall file with the commission a registration application form and all other disclosure forms and produce all information, documentation and assurances as the commission may require.

(b) *Disclosure required of persons.* Each person listed in subdivision (b) of section 5601.1 of this Part shall, in addition to filing a personal history disclosure supplement to the registration form, produce all information, documentations and assurances as the commission may require. Each such person shall, at the time of the application and upon renewal, be fingerprinted under the supervision of the commission or a duly authorized authority approved by the commission. In the alternative, the commission may permit a person to submit sets of classifiable fingerprint impression cards the commission provides. If the commission cannot obtain usable fingerprints for processing after two good-faith attempts, the commission may in its discretion rely upon a search of a person's background via other means available to the commission. Nothing in this Part shall relieve a person who submits fingerprint sets pursuant to this subdivision from the duty to disclose any criminal arrests as required by this Part. Each applicant shall remit fingerprinting fees directly to the fingerprinting service provider approved by the commission. However, if the applicant is submitting fingerprints via fingerprint impression cards, the applicant shall remit the fee to the commission, payable to the fingerprinting service provider approved by the commission.

For the purpose of providing each person with an opportunity to correct erroneous criminal history information before the commission makes a determination to approve or deny an application, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1403(4), the commission shall provide each subject of criminal history record information with a copy of such information in the following manner:

(1) Upon receiving notification that the commission has received such information, each person may obtain a copy by mail or email upon providing written confirmation to the commission, within 10 days of such notice, of such person's current mailing or emailing address to which the commission may send such information; or

(2) Each person may inspect a record of such information at the main office of the commission during normal working hours upon presenting satisfactory proof of identification that such person is the subject of the criminal history information.

(c) *Disclosure required of creditors.* Each applicant shall list in the application each creditor of the applicant that holds at least 10 percent of debt of the applicant, along with the full names and addresses of the officers and directors of such creditor and of those stockholders or other owners, direct or indirect, of more than 10 percent of such creditor. The commission may require any such creditor or such officer, director, owner, principal or partner of such creditor, to file with the commission a personal history disclosure form and produce all information, documentations and assurances as the commission may require to determine the qualifications of the applicant. The commission may also require such officers, directors, owners, principals and partners to submit fingerprints according to the procedures set forth in subdivision (b) of this section, as if such person were a person covered by the requirements of subdivision (b) of this section.

(d) *Disclosure of SPE information.* Each applicant shall list in the application each SPE that shall perform services for the registrant pursuant to sections 5605.5 and 5605.6 of this Chapter, along with the full names and addresses of the officers and directors of such SPE and of those stockholders or other owners, direct or indirect, of more than 10 percent of such SPE. The commission may require any such SPE or such officer, director or owner of such SPE to produce all information, documentations and assurances as the commission may require to determine the qualifications of the applicant for

registration. The commission may also require such officers, directors and owners to submit fingerprints according to the procedures set forth in subdivision (b) of this section.

(e) *Description of contests.* An applicant for registration shall describe how each type of contest will be conducted and will comply with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding law and the requirements for permissible contests set forth in this Chapter. An applicant shall specify the underlying sport and sports league, association or other organization upon which each type of interactive fantasy sports contest is based. The applicant shall provide rules of play for each contest.

(f) *Internal controls.* An applicant for registration shall provide internal controls as required by Part 5606 of this Chapter.

§ 5601.3. Filing.

No application for a registration shall be deemed filed with the commission pursuant to this Part until:

(a) all papers presented conform to all requirements relating to format, signature, oath or affirmation, attorney certification, if applicable, and copies, as the commission may require;

(b) all appropriate application exhibits and disclosure forms have been properly completed and submitted.

(c) all required consents, waivers and fingerprints have been properly submitted;

(d) all other information, documentation, assurances and other materials required or requested at the filing stage have been submitted properly; and

(e) all required fees, if any, have been paid.

§ 5601.4. Processing.

The commission shall process only complete applications. The processing of any application shall not constitute any agreement or acceptance by the commission that the requirements of Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Chapter have been satisfied.

§ 5601.5. Amendment.

(a) Each registrant shall file promptly with the commission an update explaining any new or changed facts or circumstances whenever any material new or changed fact or circumstance occurs with respect to any matter set forth in the application.

(b) All applicants and registrants shall have an obligation to ensure that information, documentation and assurances submitted to the commission are not misleading in light of the circumstances in which such information, documentations and assurances were submitted.

(c) The commission may permit any applicant to file an amendment to its application at any time prior to the commission's final action thereon.

(d) The failure of an applicant or registrant to comply with this Chapter shall be grounds for denial of the application or for suspension or revocation of a registration.

§ 5601.6. Investigation.

The commission, or the commission's designee, shall make or cause to be made an inquiry or investigation concerning an applicant or registrant and any owners (direct or indirect), officers, directors, principals and partners, as the commission may deem appropriate, at the time of the initial application and at any time thereafter.

§ 5601.7. Registration determination.

(a) *Disqualifying criteria.* In evaluating an application, the commission shall apply the disqualifying criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1403(4)(a) through (d) to each registration applicant and any owner (direct or indirect), officer, director, principal or partner.

(b) *Criminal history.* In evaluating an application, the commission may consider whether the criminal history of the registration applicant and any owner (direct or indirect), officer, director, principal or partner compromises the promotion of fairness, honesty or integrity of contests.

(c) *Experience, character or general fitness.* The commission may deny a registration if the commission finds that the experience, character or general fitness of any person associated with the registration applicant is such that the participation by such person in interactive fantasy sports would be inconsistent with the public interest, convenience or necessity or with the best interests of interactive fantasy sports generally.

(d) *Denials.* The commission shall deny a registration to an applicant who, or that, has failed to implement the criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1404. The applicant may request a de novo hearing to review the denial. Such hearing shall then be held pursuant to the procedures set forth in this Subtitle.

(e) *Determination of application.* Upon completion of an investigation of each applicant, the commission shall either:

- (1) grant the application for registration;
- (2) grant the application with conditions the commission deems necessary or advisable; or
- (3) deny the application.

§ 5601.8. Issuance of registration.

The commission shall notify an applicant in writing if the commission grants a registration and shall add the trade name and entity name of the registrant to a list the commission maintains on the commission's website.

PART 5602

Permissible Contests

Section	
5602.1	Requirements for permissible contests; restrictions
5602.2	Commission approval of new contests

§ 5602.1. Requirements for permissible contests; restrictions

(a) *Requirements.* An interactive fantasy sports contest in which contestants pay a fee to enter, in order to be offered or made available to contestants physically located in the State of New York at the time of entering the contest, shall be structured to meet the requirements set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1404 and this Part.

(1) Contest outcomes shall reflect the skill of contestants and the relative knowledge and understanding that contestants possess of sports events and athletes participating in such sports events, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(o).

(2) Contest outcomes shall be determined predominantly by accumulated statistical results of the performance of individual athletes who have been selected to a contestant's fantasy roster in sports events, as required by Racing, Pari-Mutuel Wagering and Breeding Law sections 1400(1)(b) and 1404(1)(o). Each contest shall be based on a contestant's roster of selected athletes and shall not be based on discrete occurrences or statistics within a sports event unrelated to rosters of athletes selected by contestants.

(3) Contest outcomes shall not be based on the score, point spread or performance of a single sports team, or any combination of such teams, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(p).

(4) Contests shall not be based on proposition betting or contests that have the effect of mimicking proposition betting. Contests in which a contestant must choose, directly or indirectly, whether an individual athlete or a single team will surpass an identified statistical achievement, such as points scored, are prohibited.

(5) Contest outcomes shall not be based solely on any single performance of an individual athlete in a single sport or athletic event, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(q).

(6) Contest outcomes shall not be based, in whole or in part, on statistics or results of any high school or college sports event or horse racing event, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(r), or on statistics or results of any youth sports event.

(7) Contests shall maintain rules that comply with the requirements set forth in section 5601.2 of this Chapter.

(b) *Approval of sports events.* The commission may, in the exercise of discretion, withhold approval of any proposed contest type that directly or indirectly violates any requirement for permissible contests or that the commission determines does not comply fully with the policy and objectives of Article 14 of

the Racing, Pari-Mutuel Wagering and Breeding Law. A registrant shall comply with every commission request for information about any sports event that such registrant proposes to use as a basis for a contest.

(c) *Entry fees and prize structure.*

(1) A registrant, in order to offer or make available a contest for entry by contestants physically located in the State of New York at the time of entering a contest, shall define clearly, and make known to any contestant in advance of such contest, the fee required to enter such contest.

(2) A registrant shall ensure that the value of any prizes to be awarded to contestants are established and made known to such contestants in advance of the contest, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(n).

(3) The value of prizes to be awarded to contestants who submit a prize-winning entry shall not be determined by the number of contestants entering the contest or the amount of entry fees paid by contestants entering such contest, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(n).

(4) A registrant shall disclose to users of such registrant's platforms how many contestants have entered each contest and the amount of prizes distributed following conclusion of each contest and archive such contest results so that the commission may gain access to such results for a reasonable amount of time following each contest and in no event for fewer than 30 days.

(5) A registrant shall identify any highly experienced player, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(6), who entered a contest by a symbol attached to such contestant's username or by a different but easily visible method of identifying a highly experienced player.

(d) *Maximum entries per contest.*

(1) A registrant shall restrict the number of entries submitted by a single authorized player in a contest [in accordance with] to a maximum of 150 entries or three percent of the total entries by all players in such contest, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(2), with the exception of contests with [fewer than] 100 or fewer entries or contests regulated by paragraph (2) of this subdivision. For contests with [fewer than] 100 or fewer entries, a registrant shall not allow a contestant to submit more than:

- (i) one entry in any IFS contest involving 12 or fewer entries;
- (ii) two entries in any IFS contest involving 13 to 36 entries; or
- (iii) three entries in any IFS contest involving 37 to 100 entries.

(2) A registrant may establish contests in which there is no restriction on the number of entries, so long as:

- (i) the number of such contests is less than 2% of the total number of contests such registrant offers;
- (ii) the registrant clearly discloses there are no limits on the number of entries by each contestant in any such contest; and
- (iii) the cost to a contestant to participate in such a contest is \$50 or more per entry.

§ 5602.2. Commission approval of new contests.

(a) *Approval.* Commission approval is required before a registrant is permitted to introduce a new type of contest or an existing contest type for a sport, league, association or organization not previously offered by such registrant. To obtain commission approval, a registrant shall specify the underlying sport and sports league, association or organization upon which the proposed type of contest is based, provide rules of play for the contest and demonstrate that the new type of contest will comply with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law and the requirements for permissible contests set forth in this Chapter. Following review of the proposed contest type, the commission shall inform such registrant whether the proposed contest type is approved or denied or whether additional information from such registrant is required.

(b) *Variations.* A registrant may introduce minor variations of permissible types of contests without seeking commission approval. A registrant is not required to amend a previously approved submission to describe a minor variation. Minor variations of permissible contests that may be introduced without commission approval include, without limitation:

- (1) the size of the contest and number of entries permitted;
- (2) non-material changes to entry fee and prize structure;
- (3) the number of athletes that a contestant selects to fill a roster when completing an entry;
- (4) the positions that must be filled when completing an entry; and
- (5) adjustments to a salary cap.

PART 5603

Requirements for Contests

Section	
5603.1	Disclosures to contestants
5603.2	Contest rules and game play
5603.3	Contest entry and lock requirements
5603.4	Prohibition on using insider information in contests
5603.5	Autopick and additional features and modes
5603.6	Computerized contestants
5603.7	Scripts
5603.8	Game display

- 5603.9 Concurrent sessions
- 5603.10 Prohibition on extension of credit

§ 5603.1. Disclosures to contestants.

(a) *Displays.* The requirements set forth in this Part apply to the contest information, display and help screens including any written, graphical and auditory information provided to a contestant either directly from the contestant interface or from a page accessible to a contestant from the contestant interface or from a page accessible to a contestant from a contestant interface via a hyperlink located in a conspicuous location.

- (1) Contestant interface and contestant device usage instructions, contest payout information and rules of participation shall be complete and unambiguous and shall not be misleading or unfair to the contestant. Any ambiguity shall be construed in a manner most favorable to the contestant.
- (2) Help screen information, including all contest eligibility, entrance fees, contest rules, prizes and scoring criteria shall be accessible by a potential contestant without the need for purchasing an entry;
- (3) Contest payout information shall include all possible winning positions, rankings and achievements, along with their corresponding payouts, for any available entry option.
- (4) Any prizes that are offered in the form of merchandise, annuities, lump-sum payments or payment plans instead of cash payouts shall be explained clearly and conspicuously to a potential contestant for each contest that offers such a prize.
- (5) Instructions presented aurally also shall be displayed in writing.
- (6) Instructions shall be rendered in a color that contrasts with the background color to ensure that all instructions are clearly legible.
- (7) A contest display shall state clearly the rules for payments of prizes where multiple wins are possible.
- (8) A potential contestant or a contestant shall be able to view information on all available contest types, including by specific sports, entry fees required, number of entries allowed and prize structure for the contest.
- (9) Statistical data made available to a potential contestant or a contestant pertaining to a contest shall be accurate and reasonably updated.
- (10) A contest's starting time, including time zone, shall be clearly identified to a potential contestant.
- (11) The rules available to a potential contestant and a contestant shall state clearly how contest winners are determined and shall state clearly the handling of an award in any case in which a tie is possible.

(12) The maximum percentage a registrant retains for each contest or entry shall be displayed fully in a platform's help screens or in an alternative manner approved by the commission.

(b) *Account history.* A contestant interface shall make a contestant account history readily accessible. Such account history shall include all credits and debits to an account for a period of no less than six months, or from the time the account was opened, if the contestant's account has been opened for fewer than six months.

(c) *Acknowledgment of entry.* Each contest entry, or related series of entries (such as bulk entries), shall be acknowledged to make clear the acceptance of each entry, so a contestant is in no doubt as to which entries have been accepted into a contest.

(d) *Contest results.* The results of each contest shall be displayed clearly to all contestants such that each contestant's entry is identified and credited with the associated prize, if any.

(e) *Payout adjustments.* The rules made available to a potential contestant and a contestant shall state clearly circumstances in which the payouts are to be adjusted, including, without limitation:

(1) when cancelled entries will be refunded; and

(2) when and for what reason or reasons contests will be cancelled.

(f) *Explanation of rules.* A registrant shall disclose to a potential contestant and a contestant, through a help screen or rules explanation (or the equivalent), how contest points are calculated. If a contest will round or truncate statistics at a certain decimal place, a registrant shall disclose how many decimal places will be used in such calculations. A registrant shall disclose rules on how a contest is resolved in the event of a tie among contestants.

(g) *Data on rates of success.* A registrant shall maintain a webpage on such registrant's platform that provides information about relevant rates of success of contestants, including, without limitation, the performance of beginner contestants. Such webpage shall be accessible from a registrant's internet and mobile application home page and from any page from which a contestant may enter a contest. Such webpage shall include, without limitation:

(1) the percentage of such registrant's [contests] entry fees that are won by the top one percent, five percent and 10 percent of such registrant's contestants over each of one-month, three-month and six-month time periods; and

(2) statistics about the percentage of contestants who are net winners and net losers, as measured by the aggregate value of prizes received minus the aggregate entry fees paid, over relevant time periods, including at least over a one-week and a one-month period. Such information may be conveyed in regard to specific sports.

§ 5603.2. Contest rules and game play.

(a) *Categorizing contestants.* A registrant shall categorize contestants based on experience.

(1) A *highly experienced contestant*, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law 1401(6), is an authorized player who has:

(i) entered more than 1,000 contests offered by a single operator or registrant; or

(ii) won more than three prizes valued at one thousand dollars each or more from a single operator or registrant.

(2) An *intermediate contestant* means an authorized contestant who has entered more than 50 and [fewer] no more than 1,000 contests on such registrant's platforms and who is not a highly experienced contestant.

(3) A *beginner contestant* means an authorized contestant who has entered 50 or fewer contests on such registrant's platforms and who is not a highly experienced contestant.

(b) *Contests for beginner contestants*. Each registrant shall offer contests that are limited to beginner contestants and shall keep non-beginner contestants from entering, such contests. A registrant shall suspend the account of any non-beginner contestant who enters, directly or through another person as a proxy, a contest designated for beginner contestants and shall ban such contestant from further play for one year from the date of the latest violation, except that a registrant may allow an intermediate contestant to enter up to 10 beginner contests in any sport in which such contestant has not already entered 20 contests.

(c) *Contests excluding highly experienced contestants*. Each registrant shall offer contests in which highly experienced contestants cannot enter. A registrant shall suspend the account of any highly experienced contestant found to enter a game, directly or through another person as a proxy, that excludes highly experienced contestants and shall ban such contestant from further play for one year from the date of the latest violation.

(d) *Resources for beginner contestants*. Each registrant shall make available resources for beginner contestants to learn the mechanics of contest play, how to identify low-cost contests and how to recognize highly experienced contestants.

(e) *Changes to contests*. A registrant shall not permit any material change to an announced contest rule unless such change is made with the informed consent of all contestants.

§ 5603.3. Contest entry and lock requirements.

(a) *Disclosure of lock times*. A registrant shall disclose, for each contest, the time at which no further entries are permitted for such contest.

(b) *Disclosure of lock requirements*. A registrant shall disclose, for each contest, the lock requirements for such contest.

(c) *Multiple lock times*. The rules for a contest may allow for multiple lock times in situations in which underlying sports events begin at different times.

(d) *Posting and enforcement*. A registrant shall post and strictly enforce all rules governing lock times.

§ 5603.4. Prohibition on using insider information in contests.

(a) *Prohibited disclosure of insider information.* No prohibited player, as defined in subdivisions (a), (b) or (c) of Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14), shall disclose any insider information to any person who may make contest roster selections. A registrant shall not knowingly permit a prohibited player who is associated with such registrant in a manner described in such subdivisions (a), (b) or (c) of Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14) to make any such disclosure and shall take reasonable measures to prevent any such disclosures.

(1) A registrant, upon learning of a violation of this section, shall bar the contestant committing the violation, as well as the contestant receiving such information, from entering any contest, by suspending the affected account or accounts and banning such contestant from further contests. A registrant also shall terminate any existing individual promotional agreements with any athlete, sports agent, team employee, referee or league official who violates this section and shall refrain from making any subsequent promotional agreements with such person.

(2) A registrant shall make these restrictions known to all affected persons and entities.

(b) *Prohibited disclosure to provide advantage.* A prohibited player as defined in subdivisions (d) or (e) of Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14) shall not disclose any non-public information with the intent to provide an advantage to a person who may enter a contest or when knowing that it is probable that such information shall be used in such manner.

(c) *Avoidance of facilitating prohibited disclosures.* A person who may enter a contest shall not solicit, obtain, accept, use or disclose to another person any information described in subdivisions (a) or (b) of this section. A registrant shall not provide such information to a contestant before such information is made public, shall not knowingly permit any contestant to obtain or provide another contestant with any such information and shall take reasonable measures to avoid facilitating any such disclosures.

(d) *Penalties.* A person (including a registrant) found to be in violation of this section shall be penalized as set forth in Part 5613 of this Chapter.

§ 5603.5. Autopick and additional features and modes.

(a) *Autopick prohibited.* A registrant shall not offer an autopick draft option in any contest.

(b) *Permitted resources.* A registrant may offer contests that contain a resource, such as a data stream, that a contestant may use to facilitate fantasy roster selection, so long as the contestant interface:

(1) clearly describes to all contestants that such resource is available and the advantage such resource offers;

(2) discloses the method for obtaining such resource; and

(3) provides contestants with sufficient information to make an informed decision, prior to participation, as to whether to compete against other contestants who may possess such a resource.

(c) *Permitted advice.* A registrant may offer contests that support a feature that offers advice, hints or suggestions to contestants, so long as such feature meets the following requirements:

- (1) the contestant advice feature shall describe clearly to a contestant that such feature is available and what options exist for selection;
- (2) any contestant advice that is offered for purchase shall disclose clearly the cost and benefit;
- (3) any contestant advice shall not be misleading or inaccurate and must be consistent with the rules of play for a contest;
- (4) contest design shall prevent access to any information storage such that data related to the contest is not readily available through software tampering;
- (5) any contestant advice feature shall allow a contestant the option of accepting the advice and shall not force a contestant to accept such advice; and
- (6) the availability and content of contestant advice shall remain consistent and shall not adapt based upon prior participation or contest events.

(d) *Assisted-draft mode.* A registrant may allow contestants to use assisted-draft mode in a draft, provided that the assisted-draft mode meets the following requirements:

- (1) assisted-draft mode shall offer the contestant an option to terminate the mode at any time; and
- (2) assisted-draft mode shall not disregard or override any contest information display requirements as compared to the manual mode of athlete drafting.

(e) *Preference rankings permitted.* A registrant may allow contestants, in drafting a roster, to rank roster candidates in order of preference, such that the highest available preferred roster candidate would be selected in the event a contestant fails to make a roster selection in the allotted time.

§ 5603.6. Computerized contestants.

A registrant shall not employ artificial contestant software to act as a contestant, except:

- (a) the software may employ the use of artificial intelligence to facilitate participation for demos, free contests or training modes;
- (b) the use of artificial intelligence software shall be explained clearly in help menus; and
- (c) all computerized contestants shall be marked clearly in contests so that contestants are aware of which contestants are not human.

§ 5603.7. Scripts.

(a) *Unauthorized scripts prohibited.* A registrant shall not permit unauthorized scripts to be used on any platform and shall use commercially reasonable efforts to monitor for and to prevent use of such scripts.

(b) *Use of unauthorized scripts.* A registrant shall bar any person found to be using an unauthorized script from participating in any contest by terminating such person’s account and by permanently banning such person from further contests.

(c) *Scripts that provide a competitive advantage.* A registrant shall not authorize scripts that are not made available to all contestants and therefore provide a contestant with a competitive advantage over another contestant. A script shall be deemed to provide a competitive advantage if, without limitation, such script could be used to:

- (1) facilitate entry of multiple contests with a single lineup;
- (2) facilitate changes in many lineups at one time;
- (3) facilitate use of commercial products designed and distributed by third parties to identify advantageous game strategies; or
- (4) gather information about the performance of others for the purpose of identifying or entering contests against competing contestants who are less likely to be successful.

(d) *Authorized scripts.* Authorized scripts shall either be incorporated as a game feature or be prominently published and thereby made available to all contestants.

§ 5603.8. Game display.

No registrant shall offer a display or interface that uses video or mechanized reels or symbols or any other depiction of gambling games (e.g.: slots, poker, blackjack, craps or roulette). No registrant shall use a contest result or results as the direct or indirect equivalent of a results-generator for a game or activity that appears to contestants to be an activity other than interactive fantasy sports.

§ 5603.9. Concurrent sessions.

A registrant’s platform shall reflect any action a user undertakes, while logged in, in any concurrent session.

§ 5603.10. Prohibition on extension of credit.

A registrant shall not extend credit to any contestant.

PART 5604

Restrictions on Play

Section	
5604.1	Prevention of play by prohibited persons
5604.2	Compulsive play plan
5604.3	Self-excluded contestants
5604.4	Excluded contestants
5604.5	Prizes won by prohibited, self-excluded and excluded persons

§ 5604.1. Prevention of play by prohibited persons

(a) *Participation prohibited.* A prohibited player, as defined by Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14), shall not participate in an approved interactive fantasy sports contest.

(b) *Operator procedures to prevent prohibited play.* A registrant shall submit for commission approval procedures to prevent prohibited players from participating in approved interactive fantasy sports contests. A registrant shall implement any changes to such procedures as the commission may direct at any time. Such plan shall include the following, in regard to prevention of play by a minor:

(1) specification of parental controls procedures to allow parents and guardians to exclude persons under the age of 18 from participating in an interactive fantasy sports contest. The registrant 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 the registrant provides for individuals seeking help in establishing such parental controls, or other means of communication for such purpose that the commission may approve;

(2) detailed explanation of the steps taken to prevent persons under the age of 18 from entering a contest via the registrant's platform. The registrant 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 registrant's platform is not under the age of 18;

(3) procedures used to identify and deactivate accounts created or used by persons under the age of 18 and to exclude such persons from all contests offered through such registrant's platforms;

(4) verification that any deposit made by a person under the age of 18 shall be refunded, less any prizes already awarded, within no more than two business days of discovery, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(b)(i). The registrant shall also explain how deposits will be refunded; and

(5) procedures to ensure that persons under the age of 18 do not receive promotional materials that relate to interactive fantasy sports.

(c) *Required terms of use.* A registrant shall specify in the terms of use applicable to such registrant's platform or such registrant's contest rules that each class of individuals identified in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14) is prohibited from entering contests in which a contestant is required to pay an entry fee.

(d) *Operator liability for violations.* A registrant shall be strictly liable for permitting any prohibited player, as defined by Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14), to enter a contest that such registrant conducts. The commission shall consider, however, before imposing any penalty or sanction upon a registrant for a violation of this section, other than a mandatory penalty set forth in subdivision (e) of this section, any circumstances that such registrant 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 registrant found to have violated Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(b), unless such registrant has complied fully and in good faith with adequate age verification procedures approved pursuant to subdivision (b) of this section, as follows:

(1) for a first violation, a fine of \$5,000 or the amount accepted as an entry fee from a minor in a contest, whichever is greater;

(2) for a second violation within one year of a violation, a fine of \$20,000 or the amount accepted as an entry fee from a minor in a contest, whichever is greater;

(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 registration.

(f) *Reporting to commission.* A registrant shall submit to the commission a list of such registrant's members, officers, employees and agents. A registrant shall provide an updated submission to the commission, after the initial submission, that reflects additions and deletions to the personnel roster within five business days of such personnel change. The commission shall maintain such list and transmit the information in a manner to be determined by the commission.

§ 5604.2. Compulsive play plan.

A registrant shall submit to the commission a compulsive play plan that includes the following:

(a) the goals of the plan, including procedures and timetables to implement the plan;

(b) identification of the individual responsible for implementation and oversight of the plan;

(c) compulsive play assistance message and toll-free number approved in writing by the commission, to be displayed on each website page of the registrant's platform, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(m);

(d) procedures to identify and exclude contestants exhibiting compulsive play behavior;

(e) procedures to limit or prevent marketing programs from reaching contestants exhibiting compulsive play behavior; and

(f) procedures for providing information to contestants and responding to contestant requests for information in regard to any community, public and private treatment services designed to prevent, treat or monitor compulsive play and to counsel family members.

§ 5604.3. Self-excluded contestants.

(a) *Request for self-exclusion.* In accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 1404(d), an authorized contestant may request from a registrant to be self-excluded from such registrant's platform.

(b) *Required procedures.* A registrant shall submit for commission approval:

- (1) the method for authorized contestants to request self-exclusion;
- (2) identifying information required from an authorized contestant requesting self-exclusion;
- (3) procedures to monitor and remove self-excluded contestants from such registrant's platform;
- (4) time periods for self-exclusion;
- (5) procedures to prevent self-excluded contestants from receiving targeted communications and advertisements; and
- (6) procedures to cancel a self-exclusion request.

(c) *Account.* Upon receiving a self-exclusion request, a registrant shall not accept any new paid entries or deposits from the authorized contestant requesting such self-exclusion, but such authorized contestant shall be allowed to withdraw any amounts from such contestant's account and the registrant shall acknowledge such withdrawals to such contestant.

(d) *Reporting to commission.* In addition to the requirement set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1406(f), a registrant shall submit to the commission annually an excluded contestant report that contains, for each excluded contestant, the:

- (1) unique contestant ID;
- (2) date the self-exclusion commenced; and
- (3) date the self-exclusion ended or is scheduled to end, if applicable.

§ 5604.4. Excluded contestants.

(a) *Authority to exclude.* A registrant may exclude an authorized contestant from such registrant's platform. During registration, the authorized contestant shall be notified of the terms and conditions upon which a contestant may be excluded from the platform. In addition, the commission may exclude an authorized contestant from a registrant's platform found to be in violation of this Chapter or Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law. The notice to an excluded contestant shall provide general instructions for resolution of any challenge to such exclusion.

(b) *Freezing of account.* Upon excluding an authorized contestant, a registrant may freeze the account of such contestant and shall allow at least 10 days from the date such registrant notifies such contestant of the exclusion for such contestant to challenge with such registrant such exclusion.

(c) *Account of excluded contestant.* A registrant shall not accept new paid entries or deposits from an excluded contestant, but an excluded contestant shall be allowed to withdraw any amounts from such contestant's account and the registrant shall acknowledge such withdrawals to such contestant.

(d) *Communications to excluded contestant.* A registrant shall prevent an excluded contestant from receiving targeted communications and advertisements for interactive fantasy sports contests and products.

(e) *Reporting to commission.* A registrant shall submit to the commission annually an excluded contestant report that contains, for each excluded contestant, the:

- (1) unique contestant ID;
- (2) date the exclusion commenced;
- (3) date the exclusion ended or is scheduled to end, if applicable;
- (4) reason for the exclusion; and
- (5) number of times the contestant has been excluded.

§ 5604.5. Prizes won by prohibited persons, self-excluded and excluded contestants.

Any prize won by a prohibited person, other than prizes that may be used as offsets pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1404(b)(i), shall be null and void and a registrant may pursue recovery of any such prize from the prohibited person who won such prize. Upon discovery within one year of the conclusion of a contest that a prohibited person has won or may be entitled to win a contest prize, a registrant shall recalculate all prize winnings for such contest as if such prohibited person had not entered such contest and shall for each contestant award and credit to each contestant the difference between the recalculated prize award and the prize already awarded, if any. A registrant may submit to the commission, for review and approval, a plan that establishes alternative benefits to contestants in lieu of recalculated prize awards.

PART 5605

Accounting Controls

Section	
5605.1	Audited financial statements
5605.2	Accounting and financial records
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5605.7	Bond in lieu of special purpose entity and trust accounts
5605.8	Contestant withdrawals
5605.9	Unclaimed funds
5605.10	Anti-money laundering

§ 5605.1. Audited financial statements.

(a) *Annual audit requirement.* A registrant, unless specifically exempted by the commission in writing, shall, at such registrant's own expense, cause such registrant's annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed to practice.

(b) *Requirements for audited statements.* The annual financial statements required by subdivision (a) of this section shall be prepared on a comparative basis for a registrant's current and prior standard financial year. Such statements shall present financial position and results of operations in conformity with generally accepted accounting principles.

(c) *Other financial information.* The commission may require other financial information, in a format the commission prescribes, to be included as supplementary information in relation to the audited financial statements as a whole. Such information shall be subjected to auditing procedures as required by generally accepted auditing standards and include the independent auditors' report on such supplementary information.

(d) *Filing with commission.* A copy of a registrant's audited financial statements, together with the report thereon of the registrant's independent certified public accountant, shall be filed with the commission within 10 business days of the completion of the annual independent audit of the registrant's financial statements.

(e) *Management letter.* In addition to a registrant's audited financial statements, each registrant 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 registrant 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 such registrant's submission to the commission.

(f) *Additional requirements.* In addition to the management letter, the commission may require a registrant to engage an independent certified public accountant approved by the commission to perform an additional review of internal controls for the operation of interactive fantasy sports, cause such registrant's business and managerial practices to be audited and review specified expenditures that conform to specifications the commission prescribes. The commission shall notify a registrant of the type of report required, the scope of such report and the frequency with which such report should be performed. This review shall be performed at the expense of the registrant unless the commission determines otherwise. A registrant shall respond to recommendations in such report, noting any corrective actions taken or planned to be taken. A registrant shall submit to the commission two copies of such report, including the required response to the commission, within 120 days following the end of the periods covered by such report, unless the Commission instructs otherwise.

(g) *Publicly held registrant.* If a registrant, or any of its affiliates, is publicly held, such registrant or the affiliate shall make available and provide written notice to the commission any report. Such reports include, 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 the such agency.

(h) *Resignation or dismissal of accountant.* If an independent certified public accountant who was previously engaged as the principal accountant to audit a registrant's financial statements resigns or is dismissed as such registrant's principal accountant, or another independent certified public accountant is engaged as principal accountant, then:

(1) such registrant shall file a report with the commission within 10 days following the end of the month in which such event occurs, setting forth the following:

(i) the date of such resignation, dismissal, or engagement;

(ii) whether in connection with the audits of the two most recent years preceding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused such accountant to make reference in connection with such accountant's report to the subject matter of disagreement, including a description of each such disagreement. The disagreements to be reported shall include those resolved and those not resolved; and

(iii) whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or disclaimer of opinion or was qualified. The nature of such adverse opinion, disclaimer of opinion or qualification shall be described; and

(2) such registrant shall request the former accountant to furnish to the registrant a letter addressed to the commission stating whether that accountant agrees with the statements made by the registrant in regard to the requirements of subparagraph (ii) of paragraph (1) of this subdivision.

(i) *Additional audit.* The commission shall have the authority to conduct, or to have conducted at a registrant's expense, an audit or review of any of such registrant's financial controls and records.

§ 5605.2. Accounting and financial records.

(a) *Record of transactions.* A registrant shall maintain complete, accurate and legible records of all transactions pertaining to such registrant's revenues, expenses, assets, liabilities and equity in conformance with generally accepted accounting principles. The failure of a registrant to maintain such records according to such principles shall be a violation of this section.

(b) *Accounting requirements.* The accounting records maintained by the registrant shall be maintained using a double-entry system of accounting with transactions recorded on the accrual basis and supported by detailed subsidiary records. Such subsidiary records shall include, at a minimum, each of the following:

(1) detailed general ledger accounts identifying all revenue, expenses, assets, liabilities and equity for such registrant;

- (2) a record of all investments, advances, loans and accounts receivable balances due to such registrant;
- (3) a record of all loans and other accounts payable by such registrant;
- (4) a record of all accounts receivable written off as uncollectible by such registrant;
- (5) records that identify total entry fees and total winnings paid out:
 - (i) on each contest; or
 - (ii) by another accounting period pre-approved in writing by the commission;
- (6) records that support the revenue and tax determination of the applied New York resident percentage;
- (7) records required by such registrant's system of internal controls;
- (8) work papers supporting the monthly reconciliation of cash accountability; and
- (9) other records that the commission may require, in writing, to be maintained.

(c) *Retention period.* Notwithstanding anything in this section to the contrary, each accounting record shall be kept for a period of not less than five years from date of creation of such record.

§ 5605.3. Submission of accounting records and reports.

(a) *Maintenance of records.* Registrants shall maintain accurate and complete accounting records that correctly record and explain the transactions and financial position for the registrant's interactive fantasy sports operations. Such records shall be maintained in accordance with generally accepted accounting principles. All such records shall be made available to the commission upon request.

(b) *Submission of reports and statements.* Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1409(2), each registrant shall submit, in a form and manner approved by the commission, a monthly report and reconciliation statement to the commission on or before the 10th business day of each month with respect to gross revenues and deposits received and made during the preceding month.

§ 5605.4. Review, examination of records.

The commission or the commission's designee may:

(a) conduct periodic examinations of the accounting and financial records of registrants, and of any SPE that has performed services for the registrant as required by sections 5605.5 and 5605.6 of this Chapter;

(b) review the accounting principles and procedures used by registrants and of any SPE that has performed services for the registrant as required by sections 5605.5 and 5605.6 of this Chapter; and

(c) request the registrant and any SPE that has performed services for the registrant as required by sections 5605.5 and 5605.6 of this Chapter to file copies of tax returns, tax records and tax adjustments with the commission.

(d) The registrant shall require that any SPE performing services as required by sections 5605.5 and 5605.6 of this Chapter for the registrant shall provide the foregoing to the commission or the commission's designee directly or through the registrant.

§ 5605.5. Special purpose entity.

(a) Each interactive fantasy sports operator or registrant shall establish and maintain a special purpose segregated account that is maintained and controlled by a properly constituted entity that is not the operator or registrant and whose governing board includes one or more corporate directors who are independent of the operator or registrant and of any corporation affiliated with or controlled by the operator or registrant. Such special purpose corporate entity (which is defined as SPE in paragraph (14) of subdivision (b) of section 5600.1 of this Part) must require a unanimous vote of all corporate directors to file bankruptcy and must have articles of incorporation or organization, or other governing documents, that prohibit commingling of funds with those of the operator or registrant, except as may occur by the payment of a trust claim by the SPE pursuant to paragraph (3) of subdivision (b) of section 5605.6 of this Part. Such SPE must also be:

(1) restricted from incurring debt other than the obligation as trustee to pay trust claims, including to contestants;

(2) restricted from taking on obligations of the operator or registrant other than trust claims payable to contestants; and

(3) prohibited from dissolving, merging or consolidating with another company (other than an SPE established by another operator or registrant that meets the requirements of this section) while there are unsatisfied obligations to contestants, including, without limitation, the obligations set forth in section 5605.6 of this Part.

(b) Each operator or registrant shall implement and prominently publish procedures that:

(1) prevent unauthorized withdrawals from contestant accounts by operators or registrants or others;

(2) make clear that the funds in the segregated account do not belong to the SPE or the operator or registrant and are not available to creditors other than a contestant whose funds are being held; and

(3) prevent commingling of funds in the segregated account with other funds, including, without limitation, funds of the operator or registrant; and

(4) establish a protocol for responding to and reporting on complaints by IFS contestants that their accounts have been misallocated, compromised or otherwise mishandled.

(c) Notwithstanding anything to contrary in this Chapter, all funds of an interactive fantasy sports contestant shall be deposited directly with the SPE of the interactive fantasy sports operator or registrant. The SPE shall receive and hold such funds in trust in a trust relationship whose legal existence is created solely by this Part and that is governed by the provisions of section 5605.6 of this Part. No such funds, including any prize or award won by a contestant, shall be deposited with the interactive fantasy sports operator or registrant or otherwise paid to such operator or registrant except as may be paid as a trust claim by the SPE pursuant to subdivision (b) of section 5605.6 of this Part.

§ 5605.6. Protection of contestant funds.

(a) Contestant deposits in trust.

(1) Funds deposited by contestants with the SPE of an interactive fantasy sports operator or registrant shall be, by operation of this section, received as assets of a trust for the purposes set forth in this section, not property belonging to such SPE or the operator or registrant. Such deposits shall include, without limitation, any funds provided on a contestant's behalf by a credit card processor and any prize or award won by a contestant in a contest offered by the operator or registrant that is credited to such person's contestant account.

(2) Pursuant to the trust relationship and obligations created by operation of this Part, the funds deposited by each contestant shall be a separate trust and the SPE of the operator or registrant shall be the trustee of each such trust, commencing with deposits on or after the effective date of this section, and shall continue with respect to every asset of the trust until every trust claim arising at any time has been paid or discharged for the purposes of the trust and the trust has been terminated (e.g., by the closing of the contestant account by the contestant) and the trust assets distributed pursuant to this section. Such trust relationship is created by virtue of this section and shall apply regardless of the type of bank account that the SPE uses to hold the funds pursuant to paragraph (3) of this subdivision.

(3) Each SPE of an operator or registrant shall deposit and maintain all of the funds held in trust in an account in a branch of a national or State chartered banking institution.

(4) Funds held in trust shall not be commingled with other funds. The SPE shall not be required to keep in separate bank accounts or deposits the funds of the separate trusts of which such SPE shall be trustee pursuant to this section, so long as the books of account of such SPE for the operator or registrant shall show clearly the allocation to each trust of the deposits in and withdrawals from such account holding the funds held in trust.

(5) The books or records with respect to each trust shall contain entries of trust assets receivable, trust accounts payable, trust funds received and trust payments made with trust assets including without limitation the entry fees paid and prizes or awards won by a contestant in a contest. Such entries shall be sufficient to identify the party, amount, date, bank or depository and other pertinent information for each account entry.

(6) Failure of the SPE, as trustee, to keep the books or records required by this subdivision shall be presumptive evidence that the SPE, as trustee, has applied or consented to the application of funds actually received in trust by the SPE as money or an instrument for the payment of money for

purposes other than a purpose of the trust as specified in this section. The SPE may be assisted by the operator or registrant to maintain such records.

(b) *Trust claims.* Such trust assets shall be held and applied by the SPE, as trustee, for the payment of trust claims. *Trust claims* means the following claims for payment for which the SPE, as trustee pursuant to the trust relationship and obligations created by operation of this Part, is authorized to use, in this order, the funds held in trust:

(1) A claim by a person to withdraw from such person's contestant account any funds that are not designated as an entry fee in an ongoing contest.

(2) A claim by a contestant for the prizes or awards won in a contest offered by the operator or registrant upon the completion of the contest. Such claims shall be paid by crediting the winnings and debiting the entry fees, and recording such credits and debits in the books and records of the SPE, with respect to the contestant account of each contestant.

(3) A claim by the operator or registrant for funds held in trust that were designated as entry fees in a contest by a contestant, after paying the claims to the contestants for the prizes or awards won by the contestants, upon the completion of such contest. The SPE of the operator or registrant may delay the payment of all or part of this trust claim for the purpose of orderly bookkeeping, including to implement a standard reconciliation of funds request submitted from the operator or registrant to initiate the payment of such claims by the SPE, and ensuring the payment of superior trust claims.

(c) *Payments to contestants.* An SPE, as trustee, is not authorized to determine the order of payment of trust claims of the contestants. An SPE, as trustee, shall apply assets held in trust in the order in which the contestants request a distribution or withdrawal of each such person's contestant account funds.

(d) *Termination of accounts.* The beneficial interest in the remaining assets in each person's contestant account, upon the termination of the trust by such person having elected to close any contestant account and by payment or discharge of all the trust claims, shall vest in such person, and the SPE, as trustee, shall distribute same to such person within [two] five business days, unless the completion of fraud-prevention procedures necessitates a delay, in which case the operator shall so notify such person of the delay and the time in which the payment is anticipated to be made.

(e) *Diversion of trust assets.* Any transaction by which any contestant funds held in trust by operation of this Part are paid, transferred or applied for any purpose other than a purpose of the trust as stated in this section, before payment or discharge in order of all trust claims and the termination of the trust, is a diversion of trust assets, whether or not there are trust claims in existence at the time of the transaction. If the diversion occurs by the voluntary act of the SPE, as trustee, or operator or registrant or by the consent of the SPE, as trustee, or operator or registrant, then such act or consent is a breach of trust.

(f) *Embezzlement referrals.* The commission shall report to the gaming inspector general and to appropriate law enforcement officials, for possible action in regard to the embezzlement of such funds:

(1) any activity that constitutes an application or consent to an application of trust funds received in trust pursuant to this Part by the SPE, as trustee, as money or an instrument for the payment of money for any purpose other than the purposes of that trust; and

(2) any accessorial conduct, facilitation, solicitation, conspiracy or attempt by an operator or registrant to cause or benefit from a misapplication of such trust funds.

(g) *Disclosure of terms and conditions of trust accounts.* Each operator or registrant shall display prominently on such operator or registrant's platform a complete and unambiguous description that contestant deposits are held in trust and of the obligations of the SPE, as trustee, established by this section.

(h) *Unrelated services and products.* This section shall not apply to the purchase by a person from an interactive fantasy sports operator or registrant of any service or product that is unrelated to interactive fantasy sports or whose purchase is independent from entering any such contest.

§ 5605.7. Bond in lieu of special purpose entity and trust accounts.

In lieu of establishing an SPE and trust accounts as required by sections 5605.5 and 5605.6 of this Part, an operator or registrant may furnish a bond, with sufficient sureties, in an amount equal to the total value of all funds deposited by contestants (including any prizes and awards credited to contestant accounts) and sufficient to pay all claims including all prizes and awards offered. Such bond, if any, shall be in favor of the State of New York, which shall distribute, by the commission, such funds to contestants in the event the State collects from the surety. A copy of the surety bond shall be filed with the commission and shall be in a form approved by the commission. The monies secured by such surety bond shall at all times equal the total amount of outstanding funds deposited by contestants.

§ 5605.8. Contestant withdrawals.

Each interactive fantasy sports registrant shall establish a protocol by which contestants can withdraw funds maintained in their accounts, whether such accounts are open or closed. Such requests for withdrawals must be honored by the later of five business days of the request or 10 business days of submission of any tax reporting paperwork required by law, unless the registrant believes in good faith that the contestants engaged in either fraudulent conduct or other conduct that would put the registrant in violation of this Chapter, in which case the registrant may decline to honor the request for withdrawal for a reasonable investigatory period until such investigation is resolved if such registrant provides notice of the nature of the investigation to the contestant. For the purposes of this paragraph, a request for withdrawal will be considered honored if such request is processed by the registrant but delayed by a payment processor, credit card issuer or by the custodian of a financial account.

§ 5605.9. Unclaimed funds.

A registrant shall remit all unclaimed funds in dormant accounts of customers domiciled in New York in accordance with Abandoned Property Law section 1315.

§ 5605.10. Anti-money laundering.

(a) *Minimum requirements.* For purposes of this section, a registrant 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;

(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.

(b) *Submissions to commission.* To ensure compliance with this section, each registrant shall submit to the commission by June 30 of each year a compliance finding statement on a form issued by the commission and duly executed by the registrant's designated anti-money laundering compliance officer. Nothing in this section shall relieve the registrant from any related reporting requirements under any other state or Federal laws.

PART 5606

Internal Controls

Section	
5606.1	Submission of internal controls
5606.2	Data security
5606.3	Retention requirements

§ 5606.1. Submission of internal controls.

In addition to the requirements set forth in Part 5601 of this Chapter, a registration applicant shall submit to the commission for approval a written description of its initial system of internal controls that meets the requirements set forth in this Part.

§ 5606.2. Data security.

(a) *Cybersecurity program requirements.* Each registrant shall establish a cybersecurity program designed to ensure the confidentiality, integrity and availability of information systems that performs five core cybersecurity functions:

(1) identification of cyber risks;

(2) implementation of policies and procedures to protect unauthorized access or use or other malicious acts;

(3) detection of cybersecurity events;

(4) responsiveness to identified cybersecurity events to mitigate any negative events; and

(5) recovery from cybersecurity events and restoration of normal operations and services.

(b) *Cybersecurity standards.* A cybersecurity program as set forth in subdivision (a) of this section shall meet or exceed industry standards for website and payment data security, as the commission may announce by bulletin.

(c) *Chief information security officer.* Each registrant shall designate a chief information security officer responsible for overseeing and implementing the registrant's cybersecurity program and enforcing such registrant's cybersecurity policy. The chief information security officer shall make a written report to the commission every two years or upon commission request, to:

(1) assess the confidentiality, integrity and availability of information systems;

(2) detail exceptions to cybersecurity policies and procedures;

(3) identify cyber risks;

(4) assess the effectiveness of the cybersecurity program;

(5) propose steps to remediate any inadequacies identified; and

(6) include a summary of all material cybersecurity events that affected the registrant during the time period addressed by the report.

(d) *Policies and procedures.* Each registrant shall establish and implement policies and procedures designed to ensure the security of information systems and nonpublic information accessible to, or held by, third parties and include the following:

(1) identification and risk assessment of third parties with access to such information systems or such nonpublic information;

(2) minimum cybersecurity practices required to be met by such third parties;

(3) due diligence processes used to evaluate the adequacy of cybersecurity practices of such third parties;

(4) changes to the provision of services, including maintaining and improving existing information security policies, procedures and controls, taking into account the criticality of business systems and processes involved and re-assessment of risks;

(5) periodic assessment, at least annually, of third parties and the continued adequacy of the cybersecurity practices of such parties; and

(6) the access rights of third-party service providers shall be removed upon termination of contract or agreement or adjusted upon change.

(e) *Contestant location.* A registrant shall ensure that a platform reasonably detects the physical location of an authorized contestant attempting to access such platform and blocks contestants who attempt to enter contests from the IP addresses of known proxy servers.

(f) *Disaster recovery plan.* Each registrant shall prepare a disaster recovery plan that minimizes loss to contestant funds and prize winnings in the event the interactive fantasy sports system is rendered inoperable.

(g) *Technical standards.* The commission, by directive, may issue technical standards, or adopt existing technical standards, for the certification of a registrant's platform.

§ 5606.3. Retention requirements.

(a) *Information required.* Each registrant shall retain the following information for five years, with the platform clock used for time stamping. The information required under this section shall be made available, in report format, within two business days of such request by the commission:

(1) For each contestant account, the information to be maintained, backed up and made available upon commission request shall include, without limitation, the following:

(i) unique contestant identification number not associated with the contestant's personal identifying information;

(ii) contestant identity details including verification method;

(iii) contestant agreement to the terms and conditions and privacy policy;

(iv) account history and current balance. Such account history shall include all credits and debits to an account for a period of no less than six months, or from the time the account was opened, if account has been opened for fewer than six months;

(v) contestant experience category for each sport, where applicable;

(vi) any self-imposed restrictions and exclusion status;

(vii) previous accounts, if any, and reason for de-activation; and

(viii) date of registration and physical address associated with the account.

(2) For each contestant account transaction, the information to be maintained, backed up and made available upon commission request shall include the following:

- (i) the date and time of the transaction;
- (ii) unique transaction identification;
- (iii) unique contestant identification number not associated with the contestant's personal identifying information;
- (iv) type of transaction;
- (v) amount of transaction;
- (vi) total account balance before transaction;
- (vii) total account balance after transaction;
- (viii) total amount of fees paid for transaction (if applicable);
- (ix) transaction status;
- (x) name of contestant's financial institution and last four digits of account number for deposit and withdrawal transactions, if applicable;
- (xi) method of deposit/withdrawal;
- (xii) user identification and employee name handling the transaction, if assisting contestant; and
- (xiii) the location, identified by ZIP code or latitude and longitude, of where a contest entry was placed.

(3) For each entry purchased, the information to be maintained, backed up and made available upon commission request shall including the following:

- (i) the date and time the contest started and ended;
- (ii) the contestant's selected roster of athletes, individual contest salary of the selected athletes and salary cap for the contest, if applicable pursuant to the rules of such contest;
- (iii) the total number of points earned for the fantasy team;
- (iv) total account balance at the start of the contest;
- (v) total account balance at the end of the contest;
- (vi) total amount of entry fees paid;
- (vii) total amount won for the prize;
- (viii) amount of any promotional credits paid;

- (ix) amount of any promotional credits won;
- (x) unique contestant identification; and
- (xi) contest identifier.

(4) For each fantasy sports contest the information to be maintained, backed up and made available upon commission request shall include the following:

- (i) the date and time the contest started and ended;
- (ii) unique contestant identification for each contestant participating, points earned, amount of entry fee paid and date paid;
- (iii) total amount of entry fees collected;
- (iv) the results of the contest in a format that displays the aggregation of all statistics used to arrive at the winning result;
- (v) unique contestant identification of each winning contestant, points earned, amount paid to winner and date paid;
- (vi) total amount of winnings paid to contestants;
- (vii) total amount refunded;
- (viii) amount of any promotional credits received;
- (ix) amount of any promotional credits awarded;
- (x) amount collected by the registrant for administering the contest;
- (xi) contest identifier; and
- (xii) the rules applicable to such contest.

(5) Significant event information to be maintained, backed up and made available upon commission request shall include the following:

- (i) failed system side login attempts;
- (ii) program error or authentication mismatch;
- (iii) firewall audit log full, where supported;
- (iv) remote access;
- (v) significant periods of unavailability of the platform or any critical component;

- (vi) wins in excess of \$5,000;
- (vii) transfers of funds, single and aggregate over one year, in excess of \$5,000;
- (viii) system voids, overrides and corrections;
- (ix) mandatory deactivation of a contestant;
- (x) changes to live data files occurring outside of normal program and operating system execution;
- (xi) changes to operating system, database, network and application policies and parameters;
- (xii) changes to date and/or time on master time server;
- (xiii) adjustments to a contestant account balance;
- (xiv) changes made to information recorded in a contestant account;
- (xv) any other activity requiring employee intervention and occurring outside of the normal scope of system operation;
- (xvi) changes made by the registrant to contest parameters;
- (xvii) contestant exclusions including reason for exclusion, requests to lift exclusion and actual lifting of exclusion;
- (xviii) irrecoverable loss of contestant-related data; and
- (xix) other significant or unusual events.

(b) *Advertisements*. All registrants shall retain copies of all advertisements for at least four years from the date of the last use of that advertisement and shall retain records sufficient to identify where such advertisements were placed. If an advertisement cannot be maintained in its original form, the advertising copy shall be retained.

(c) *Complaints*. Each registrant shall maintain for a period of two years a record of each user complaint, the inquiry or investigation undertaken by the registrant, action taken by the registrant 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 registrant and the complainant, all documents or telephone recordings created in connection with a complaint and any documentation provided to the consumer by the registrant. Such consumer complaint records shall include:

- (1) the name and address of the complainant;
- (2) the purpose of the complaint;
- (3) the date the complaint was received by the registrant;

(4) the complaint denial whenever a complaint is denied

(5) any additional information used by the registrant in determining how to resolve the complaint;
and

(6) how the complaint was resolved by the registrant, including any adjustment to a customer's account. In the event of an adjustment to a customer's account in excess of \$500, the registrant shall [notify] log each such adjustment and provide to the commission [within 48 hours of the] an annual report listing each such adjustment, the reasons therefore and the time taken to finalize such adjustment [having occurred], unless the commission requests a registrant to make more frequent reports.

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

(d) *Disclosures.* A registrant shall retain for review for all contestants the disclosures required under this section for one month after a contest is completed.

(e) *Duration.* Such records as required under this Chapter shall be maintained for at least five years after the relationship is terminated between the contestant and the registrant, unless otherwise provided in this Chapter.

PART 5607

Advertising and Marketing

Section

5607.1	Advertisements generally
5607.2	Advertisement restrictions
5607.3	Marketing, promotion and advertising disclosures
5607.4	Marketing restrictions

§ 5607.1. Advertisements generally.

(a) *Requirements.* Advertisements and promotions used by a registrant shall comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1404(3) and contain a compulsive play assistance message as set forth in section [5604.3] 5604.2 of this Chapter.

(b) *Print.* For signs, direct-mail marketing materials, posters and other print advertisements, the height of the font used for the compulsive play assistance message shall be the greater of:

(1) the same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; and

(2) two percent of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement.

(c) *Billboards.* For billboards, the height of the font used for the compulsive play assistance message shall be at least five percent of the height or width, whichever is greater, of the face of the billboard[;].

(d) *Video and television.* For video and television, the compulsive play assistance message shall be visible for either the entire time the video or television advertisement is displayed, in which case the height of the font used for the compulsive play assistance message must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; or

(e) *Websites.* For websites, including platforms, social media sites, mobile phone applications, third-party platforms over which the registrant has actual or constructive control:

(1) the compulsive play assistance message shall be posted on each landing page, website homepage, customer account page and contest entry page or pages and on any interactive fantasy sports-related advertisement posted on the webpage or profile page;

(2) the height of the font used for the compulsive play assistance message shall be at least the same size as the majority of the text used in the webpage or profile page; and

(3) for advertisements posted on the webpage or profile page, the height of the font used for the compulsive play assistance message shall comply with paragraph (2) of this subdivision.

§ 5607.2. Advertisement restrictions.

(a) *Prohibitions.* A registrant shall not display advertisements or promotions that:

(1) contain content that contradicts contest rules or terms and conditions of the site;

(2) depict a person under the age of 18, students, schools or colleges, or school or college settings, except where such images may incidentally depict a minor;

(3) state or imply an endorsement by a person under the age of 18, college athletes or college athletics or associations; or

(4) represent that a contestant is a winner or has been selected, or is otherwise being involved in a select group for receipt of a prize or that a contestant is entering a contest from which a winner or select group of winners will receive a prize or opportunity, when, in fact, the contest is simply a promotional scheme designed to make contact with prospective contestants or a substantial number of those entering to receive the same prize.

(b) *Deceptive or misleading statements.* In addition to the requirements set forth in subdivision (a) of this Part, an advertisement or promotion shall not contain deceptive or misleading statements as to:

(1) chances of winning;

(2) the number of winners;

(3) the value of the prizes;

(4) availability of the prize;

(5) entry fee, service charge, purchase or similar consideration in order to enter;

(6) the rules, terms or conditions of participation; and

(7) the date when the contest will terminate and the prizes that will be awarded.

§ 5607.3. Marketing, promotion and advertising disclosures.

(a) *Marketing, promoting and advertising.* In connection with the marketing, promoting, advertising or offering of any promotion or displaying or offering of such on a registrant's platform or platforms, or on any platform or platforms over which a registrant exercises actual or constructive control, such registrant shall:

(1) clearly and conspicuously disclose material facts, terms and conditions of the promotion to potential contestants;

(2) clearly and conspicuously disclose to consumers material limitations to the promotion; and

(3) obtain express informed consent from any consumer who must deposit money to take advantage of the promotion.

(b) *Contestant performance.* A registrant shall disclose to potential contestants material facts concerning the performance of contestants on such registrant's platforms where a marketing, promotion, advertisement or offering makes specific or general statements about such performance.

(c) *Winnings.* A registrant shall disclose to potential contestants material facts concerning any representations of past winnings, average winnings or expected performance or outcomes when such representations are made.

(d) *Federal rules.* A registrant shall follow all rules concerning endorsements, including, without limitation, rules of the Federal Trade Commission.

(e) *Retention.* A registrant shall maintain records of each television, radio, print, digital or other advertisement for a period of at least four years from the date such advertisement last appears and shall make each such record available to the commission upon request.

§ 5607.4. Marketing restrictions.

(a) *Marketing or advertising as gambling prohibited.* A registrant shall not market or advertise such registrant's platforms as gambling in the State of New York.

(b) *Embedded keywords.* A registrant shall not use misleading embedded keywords or similar methods in its platform to

(1) attract minors, self-excluded contestants or persons who are or may be problem gamblers; or

(2) accomplish any other misleading or deceptive purpose.

PART 5608

Misconduct, Associations and Duties to Promote Integrity

Section	
5608.1	Misconduct and improper associations
5608.2	Duties to report
5608.3	Duties to give evidence
5608.4	Prohibited actions

§ 5608.1. Misconduct and improper associations.

The commission may impose penalties or take other appropriate action against a registration if the commission finds that any registrant, or any person employed by or associated with a registrant:

- (a) is associating, consorting or negotiating with bookmakers or other persons of similar pursuits in regard to unlawful activity in the State of New York;
- (b) is associating, consorting or negotiating with persons who have been convicted of a gambling or gambling-related crime;
- (c) is guilty of any fraud or has attempted any fraud or misrepresentation in connection with interactive fantasy sports contests or otherwise;
- (d) has violated any law, rule or regulation with respect to interactive fantasy sports or sports gambling in any jurisdiction; or
- (e) has violated any rule, regulation or order of the commission.

§ 5608.2. Duties to report.

(a) *Dishonest or unlawful acts.* In the event that a registrant becomes aware, or reasonably suspects

(1) a person has obtained a personal benefit or a benefit for another person by a dishonest or unlawful act affecting the conduct or playing of a contest or a sports event, the results of which formed the basis, in whole or in part, of a contest; and/or

(2) there has been an unlawful act that has affected a contest or a sports event the results of which formed the basis, in whole or in part, of a contest,

such registrant shall immediately give the commission a written notice advising the commission of all material facts known about the matter and any documents or other evidence in the possession or control of the registrant in connection with the matter.

(b) *Bribes.* If any person employed by or associated with a registrant is approached with an offer or promise of a bribe or with a request or a suggestion for a bribe or for any improper, corrupt or fraudulent act or practice in relation to a contest or a sports event relating to a contest or with a suggestion that any contest or sports event relating to a contest be conducted otherwise than in accordance with the rules and regulations of the commission, it shall be the duty of such person to report such suggestion,

offer, promise or bribe immediately to the commission. Failure to so report shall subject such person or persons and such registrant associated with such person to the penalties and other actions the commission may take.

(c) *Suspicious activity.* A registrant shall report to the commission any other suspicious activity involving such registrant in the operation of interactive fantasy sports contests, whether such acts are committed by the registrant or its employee or agent, or whether such acts are committed against the registrant, including, without limitation, criminal activity, financial irresponsibility, fraud, misrepresentation, security breaches, breach of confidentiality of a contestant's personal information or any violation of Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Chapter.

(d) *Money laundering.* In the event the registrant becomes aware or reasonably suspects that there is a fraudulent or suspicious transaction in the operation of interactive fantasy sports contests that may involve money laundering, or an activity similar to money laundering, the registrant shall report in writing the suspicious activity to the commission. Nothing in this section shall relieve the registrant from any related reporting requirements under any other state or Federal laws. Such registrant shall make available to the commission any documents or access to computer or other data systems that the commission may request in connection with the matter.

§ 5608.3. Duties to give evidence.

(a) *Testimony and evidence.* It shall be the duty of each registrant and each employee or other person associated with each registrant to report promptly when requested or ordered to do so by any official of the commission in furtherance of an investigation or hearing pursuant to this Part and to testify under oath concerning any facts within such registrant or such person's knowledge and to produce any books, records, written matter or other evidence within such registrant or such person's possession or control relevant to such matter.

(b) *Access to documents and computer or other data systems.* A registrant shall make available to the commission any documents and access to computer or other data systems used in connection with paid-entry interactive fantasy sports contests that the commission may request in connection with any matter reported pursuant to this Part. This duty applies to activity in connection with a registrant and contests offered by a registrant, whether such acts are committed by the registrant or the registrant's employees, agents, representatives, affiliates, contractors, customers, potential customers or contestants.

(c) *Penalties.* The commission may impose such penalties or take such action as the commission may deem appropriate in the event of a failure to appear when directed to do so by any official of the commission in furtherance of an investigation or hearing or to testify under oath concerning any facts within such registrant's or person's knowledge and produce any books, records, written matter or other evidence within such person's possession or control relevant to such matter.

§ 5608.4. Prohibited actions.

(a) *Dishonest obtaining of a benefit.* No authorized or prohibited contestant shall, in relation to an authorized contest, dishonestly obtain a benefit by any act, practice or scheme or otherwise dishonestly obtain a benefit through the use of any device or item.

(b) *Alteration or falsification of information.* Any person who knowingly alters or falsifies information recorded on any record, document or report required under this Chapter, at the time of the transaction or after the fact, for any purpose, including, without limitation, for the purpose of concealment, deception, or circumvention of internal control minimum procedures, may be subject to the penalties and other actions the commission may take pursuant to law (e.g., a fine, penalty or revocation of registration by the commission).

PART 5609

Reporting and Auditing

Section	
5609.1	Reporting of changes
5609.2	Reporting of compliance
5609.3	Testing and reporting requirements
5609.4	Monitorships

§ 5609.1. Reporting of changes.

Each registrant has a continuing duty to disclose any material change or changes in such registrant's business form or activity. A registrant must disclose any change in information provided to the commission in the registration application, amendments to the application, information provided to contestants, information provided to investors or information provided in an annual report or statutory report to the commission.

§ 5609.2. Reporting of compliance.

(a) *Independent compliance review.* The commission may require any registrant to engage, at the expense of such registrant, an independent firm to review such registrant's compliance with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Chapter, or any portion thereof, and report thereon to the commission, as the commission may direct.

(b) *Requirements for independent firm.* The independent firm that intends to review a registrant's compliance shall, at a minimum:

- (1) be independent from any registrant or third-party provider of interactive fantasy sports systems;
- (2) be accredited by an international accreditation body to demonstrate that such firm is competent and qualified; and
- (3) be able to test, evaluate, conduct analyses or forensic examination, verify, certify, inspect and render opinions for portions of the interactive fantasy sports systems and any components thereof or modification thereto that the commission deems essential to the integrity of the operation.

§ 5609.3. Testing and reporting requirements.

(a) *Independent testing laboratory.* The commission, in the commission's discretion, may require a registrant to provide a certification by an independent testing laboratory approved by the commission that such registrant's platform performs as such registrant represents to the public. The commission

may consider any relevant factor in the exercise of such discretion, including, without limitation, the number of contestants who use the platform, the amount of money paid by contestants to such registrant, the amount of prize money offered by the registrant, size and complexity of the registrant's platform and the difficulty presented for the commission to conduct such technical and financial audits using commission employees, to determine when and to what extent a registrant shall be required to provide such a certification. The registrant shall be solely responsible for the expense of such certification.

(b) *Requirements for independent testing laboratory.* An independent testing laboratory that intends to test and certify interactive fantasy sports systems and any components thereof or modification thereto for use by a registrant shall be approved by the commission. An independent testing laboratory shall:

- (1) be independent from any registrant or third-party provider of interactive fantasy sports systems and any components thereof or modification thereto;
- (2) be accredited by an international accreditation body approved by the commission to demonstrate that such laboratory is competent and qualified to test scientifically and evaluate technology related to the operation and control of interactive systems;
- (3) be able to demonstrate experience in the development of technical standards and testing of interactive fantasy sports systems;
- (4) be able to test, evaluate, conduct analyses or forensic examination, verify, certify, inspect and render opinions for portions of the interactive fantasy sports systems and any components thereof or modification thereto that the commission deems essential to the integrity of the operation; and
- (5) demonstrate reasonable competence for the task at hand.

§ 5609.4. Monitorships.

(a) *Generally.* In the event the commission determines that the integrity of interactive fantasy sports, or public confidence in such integrity, requires particular supervision of a registrant's operations, compliance or other activities, the commission may require such registrant to engage, at such registrant's expense, a monitor acceptable to the commission. If the commission orders the establishment of a monitorship, such monitorship shall last for such time as the commission may prescribe. The terms and conditions of such monitorship shall be subject to the review and approval of the commission. Such monitorship may include the monitoring of activities conducted within New York State and outside of New York State, as the commission may determine. All costs and expenses of such monitorship shall be paid directly by such registrant. The commission may impose a fine or other sanctions for failure to pay the reasonable costs and expenses of a monitor.

(b) *Notice of monitorship.* The commission shall provide written notification to a registrant informing such registrant that such registrant will be placed under monitorship. Such notice shall include a brief description of the facts that serve as the rational basis for requiring such monitorship, the scope of the monitorship, actions that such registrant must take to comply with the monitorship and a description of the time period of the monitorship or the conditions that must be satisfied in order for the monitorship

to be rescinded. The commission may, for good cause, amend the terms and conditions of such monitorship at any time.

(c) *Appeal of commission determination.* A registrant may contest the imposition of a monitorship by filing with the commission a written appeal within 15 calendar days of receiving the notice of monitorship. The only bases upon which a registrant may challenge the imposition of a monitorship are:

- (1) lack of a rational basis to impose a monitorship;
- (2) a mistake of fact; and/or
- (3) a mistake of law.

A registrant bears the burden of proof to demonstrate whether any basis set forth in this subdivision is established. If such a challenge is filed, the commission shall conduct a hearing pursuant to this Subtitle.

(d) *Challenge of cost.* A registrant may contest the cost of a monitorship. Such registrant bears the burden of proof to demonstrate that the cost of such monitorship is unreasonable.

(e) *Request to suspend or terminate monitorship.* A registrant under monitorship may request that the commission suspend or terminate a monitorship upon a showing that the registrant has satisfied all the conditions that served as the basis for imposing the monitorship.

(f) *Termination of monitorship.* The commission shall terminate monitorship upon the expiration of any time period, as amended, set forth for such monitorship or upon a commission finding that all the conditions set forth for termination of such monitorship have been satisfied.

PART 5610

Taxes and Fees

Section	
5610.1	Report of gross revenue and tax
5610.2	Annual report
5610.3	Failure to file
5610.4	Payment of taxes, fees, assessments and fines

§ 5610.1. Report of gross revenue and tax.

(a) *Requirements for report.* On the 10th day of each month, each registrant shall submit a report of interactive fantasy sports gross revenue and monthly tax on Form IFS-1, as prescribed by the commission. The form shall be certified as complete and accurate and signed by an officer of the registrant. If the form is prepared by a paid preparer, the form also shall be signed by such person. Completed forms shall be returned to the commission in any manner the commission may direct.

(b) *Amended reports.* A registrant may, by written request and commission approval of said request, submit an amended monthly report for any of the following reasons:

- (1) carryover of the awarding of a claimed prize to a subsequent month;
- (2) correcting or reconciling errors, substantiated by supporting documentation, in a prior report; or
- (3) due to errors identified by another government agency or independent audit.

§ 5610.2. Annual report.

(a) *Required report.* Each registrant shall submit a report of activity to the commission on or before June 30, containing, for the 12 months ended on the preceding March 31:

- (1) the information required by Racing, Pari-Mutuel Wagering and Breeding Law section 1406;
- (2) a certification by an officer of the registrant that each report of interactive fantasy sports gross revenue and monthly tax submitted to the commission for each of the 12 months ended on the preceding March 31 is accurate and complete;
- (3) a statement of assets and liabilities of the registrant;
- (4) a statement of the aggregate balance of dormant contestants' accounts and action taken pursuant to Abandoned Property law section 1315; and
- (5) any additional information the commission requires or requests, including, without limitation, current financial statements and other reports and records of any SPE that has performed services for the registrant as required by sections 5605.5 and 5605.6 of this Part.

(b) *Audit.* If the commission determines to conduct an audit, as authorized by Racing, Pari-Mutuel Wagering and Breeding Law section 1406(2), the commission may do so with commission staff and/or an auditor contracted for such purpose. The registrant audited shall pay all costs relating to such audit. The commission shall determine the scope of the audit. The commission, in the exercise of discretion, may amend the scope of any such audit, either before or during such audit. The commission, in the exercise of discretion, may reopen any audit that has been completed.

§ 5610.3. Failure to file.

A registrant that fails to submit a monthly tax report without having first obtained in writing an extension from the commission shall be subject to penalty, as set forth in 5614.4.

§ 5610.4. Payment of taxes, fees, assessments and fines.

(a) *Remittance.* The payment of State tax required by Racing, Pari-Mutuel Wagering and Breeding Law section 1407 shall be remitted by electronic fund transfer (*EFT*) to the commission no later than 10 days after the end of each month. Electronic fund transfers shall be coordinated with the commission.

(b) *Requirements for remittance.* Payment of any fee, assessment or fine demanded or invoiced by the commission other than State tax, the collection of which is prescribed in subdivision (a) of this section, shall be remitted to the commission within 30 days of such demand or invoice. EFTs shall be acceptable

and shall be coordinated with the commission. To set up EFT payments by automated clearing house credit, a registrant shall contact the commission at a contact point the commission shall designate.

PART 5611

Financial Stability

Section	
5611.1	Criteria
5611.2	Approval required
5611.3	Failure to demonstrate financial stability

§ 5611.1. Criteria.

(a) *Financial stability required.* Each registrant, and each of such registrant's principals, shall establish and maintain throughout the duration of such registrant's registration sufficient financial stability to ensure such registrant's ability to perform the duties and responsibilities of an interactive fantasy sports operator. The commission may consider any relevant evidence of financial stability.

(b) *Sufficient funds.* Each registrant shall be able to pay, as and when due, all local, State and Federal taxes, including the tax on gross revenues and regulatory costs imposed by Racing, Pari-Mutuel Wagering and Breeding Law sections 1407 and 1408, and any costs associated with the registration process. Registrants shall establish and maintain an account with sufficient funds to cover regulatory cost estimates, as provided by the commission. Such account shall be used solely for the purpose of maintaining balances to pay regulatory expense estimates. The commission may adjust regulatory expense estimates at any time. The registrant shall provide records demonstrating the ability to pay regulatory cost estimates upon request of the commission.

(c) *Debt.* Each registrant shall be able to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, that will mature or otherwise come due and payable during the registration term, or to otherwise manage such debts and any default with respect to such debts. Each registrant shall advise the commission of such registrant's plans to meet this standard with respect to any material debt or debts coming due and payable within 12 months after the end of the registration term.

§ 5611.2. Approval required.

No registrant shall consummate any transaction, including a material debt transaction, that would preclude such registrant's ability to meet the requirements set forth in section 5611.1 of this Part, without prior written approval by the commission.

§ 5611.3. Failure to demonstrate financial stability.

In the event a registrant fails to demonstrate financial stability as required by this Part to the satisfaction of the commission, the commission may take such action as is necessary to fulfill the purposes of the Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law and to protect the public interest, including, without limitation, issuing conditional or temporary registrations, approvals or determinations; establishing an appropriate cure period; imposing reporting requirements in excess of those otherwise

mandated by this Chapter; requiring the maintenance of reasonable reserves or the establishment of dedicated or trust accounts to insure future compliance with the financial stability standards; requiring a special audit, with such audit plan to be approved by the commission and conducted by an independent accounting firm at the expense of the registrant; suspending, revoking or denying registration; and such other action as the commission determines appropriate in accordance with this Chapter.

PART 5612

Complaints

Section

5612.1	Receipt of complaints
5612.2	Duty to investigate, report and resolve
5612.3	Proof of compliance
5612.4	Registrant flexibility

§ 5612.1. Receipt of complaints.

(a) *Procedures.* Each registrant shall establish a procedure for receiving and responding to all consumer complaints, including, without limitation, complaints by contestants that their contestant accounts have been misallocated, compromised or otherwise mishandled. Such complaint resolution procedures shall be easy to locate on a registrant’s platform or platforms and help links of the registrant.

(b) *Details of complaint.* A complaint shall contain clear and unequivocal information about the complainant’s identity and shall give all relevant details that gave rise to the complaint.

(c) *Investigation or referral.* Where a complaint is made to the commission, the commission may investigate the complaint or may refer the complaint to the registrant.

§ 5612.2 Duty to investigate, report and resolve.

(a) *Timing.* A registrant shall inquire immediately into any complaint made to the registrant in respect to the operation of a contest and shall resolve diligently each and every complaint as soon as practicable.

(b) *Investigation and corrective action.* A registrant shall investigate all complaints promptly and fully and also shall take corrective action with respect to any matter that such registrant determines is not in compliance with the law or the rules and orders of the commission.

(c) *Status of complaint.* A registrant shall inform each complainant, and the commission where a complaint was referred to the registrant by the commission, by notice in writing or telecommunication of the status of the inquiry of the registrant within 10 days from the date such complaint was made to the registrant.

(d) *Dispute resolution.* A complainant who is not satisfied with the resolution of a complaint within 21 days shall be offered by the registrant the option of dispute resolution in a neutral and expeditious forum, such as arbitration, to be completed within 60 additional days, unless the registrant notifies the

commission that unusual circumstances exist, explains such circumstances and proposes an alternative timeframe for resolution, subject to commission approval.

§ 5612.3. Proof of compliance.

The registrant shall maintain any information and materials necessary to demonstrate such registrant's compliance with this Part. Registrants may be required by the commission to maintain additional records and information where there is cause to believe the registrant is not complying with this Part.

§ 5612.4. Registrant flexibility.

Each registrant shall establish a procedure for receiving and responding to all consumer complaints. Except as may be directed otherwise by the commission, each registrant may determine the specific policies and procedures such registrant will adopt and the methods by which such registrant will implement such policies and procedures so long as such policies and procedures are designed reasonably to achieve the objectives set forth in this Part. A registrant shall have flexibility to determine such policies and procedures and methods in light of the size, nature and scope of the registrant's operations, including, for example, the volume of contestants and entries, the aggregate amount of prize offerings and the number and the registrant's history of consumer complaints.

PART 5613

Penalties and Sanctions

Section	
5613.1	Commission authority
5613.2	Suspension and revocation
5613.3	Effect of suspension or revocation
5613.4	Penalties for non-payment of fines, assessment and other fees

§ 5613.1. Commission authority.

The commission may impose on any person, including an entity, any penalty or sanction authorized by the Racing, Pari-Mutuel Wagering and Breeding Law or this Chapter.

§ 5613.2. Suspension and revocation.

The commission may suspend or revoke a registration for:

- (a) fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the fairness or integrity of any interactive fantasy sports contest;
- (b) violation of the commission's instructions or directives pursuant to law;
- (c) failure to file any report, to keep records or to pay any tax or regulatory cost as required by Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Chapter;
- (d) failure to demonstrate financial stability; or

(e) violation of any provision of Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Chapter.

§ 5613.3. Effect of suspension or revocation.

(a) *Blocking of access.* If a registration is suspended or revoked, a registrant, or former registrant, in the case of a revocation, immediately shall block access to all platforms of such registrant or former registrant, in the case of a revocation, to any potential contestant located in New York State and shall take such action with respect to contestant accounts as the commission may direct.

(b) *Posting of notice.* A registrant whose registration is suspended or revoked immediately shall post, verbatim, on such registrant's website, viewable to anyone who obtains access to the registrant's website while located in New York, whatever notice of the suspension or revocation that the commission directs to be so posted.

(c) *Pending contests.* In the event of a suspension or revocation of registration, the commission may direct the cancellation or suspension of any pending contests of such registrant from being offered to customers within New York State and the refunding of entry fees collected from contestants located within New York State at the time of a contest entry.

§ 5613.4. Penalties for non-payment of taxes, fines, assessments and other fees.

If a registrant fails to submit payment of:

(a) State tax within 10 days after the 10th day of the month; or

(b) a fine or fee within 30 days of the date such fine or fee is due pursuant to written notice from the Commission,

the commission shall charge interest as permitted by law and impose a fine of at least \$100 for each day that such payment is late. The commission may take such other action against such registrant as the commission deems appropriate, including, without limitation, the suspension or revocation of a registration.

available advertising that is not targeted to such areas; generally prohibit the depiction of underage persons, students, school or colleges, or school or college settings; and generally prohibit advertising containing endorsements by underage persons, college athletes, schools or colleges or college athletic associations.

The Commission is aware of dozens of complaints from sports wagering customers claiming to have been misled or deceived about wagers or promotions offered. Accordingly, the proposed rules would prohibit false, deceptive or misleading statements or elements. Various elements of the American Gaming Association's Responsible Code for Sports Wagering, which at least several current Commission licensees voluntarily agreed to abide by, would be incorporated into Commission rules. Marketing and promotions would be required to clearly and conspicuously disclose material facts, terms and conditions and adhere to such terms, clearly and conspicuously disclose to consumers material limitations of a promotion, and prominently disclose any associated required wager amount in connection with a promotion. Responsible gaming would be promoted by prohibiting licensees and vendors from advising and encouraging individual patrons, in targeted communications, to place specific wagers or types of wagers. Licensed operators would be required to provide individuals with an option to opt-out of future direct advertisements, as an element of promoting responsible play. Making these reasonable requirements applicable to all sports wagering operators, and not just those who are American Gaming Association members, would promote uniformity in good practices across all regulated parties.

Regulated parties would be required to retain records of advertising, to assist the Commission in investigating compliance.

Responsible play would be encouraged by prohibiting licensees to enter into agreements with third parties known as affiliate marketing partners to conduct advertising and marketing, where the manner of compensation for such services is prohibited by Racing, Pari-Mutuel Wagering and Breeding Law section 1341(1), thus appropriately disincentivizing such third parties from targeting those most vulnerable to problem gambling tendencies. Responsible gaming advertising restrictions would apply also to such affiliate marketing partners. Affiliate marketing partners would be required to disclose, in a reasonably prominent manner, whether such affiliate marketing partner has an agreement with a sports wagering operator. Sports wagering operators also would be required to cause their affiliate marketing partners to comply with such disclosure requirements.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulations is negligible.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rules will be negligible given that all such costs are the responsibility of the licensed parties. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating gaming activities within the State.

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

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

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

8. ALTERNATIVES: The alternative of not proposing this rulemaking was considered and rejected. The proposed rules are necessary to protect consumers from false, deceptive, or misleading statements and contribute to the discouragement of participation by underage persons and the development of problem-gaming behaviors among young adults.

9. FEDERAL STANDARDS: There are no federal standards applicable to the regulation of gaming facilities or mobile sports wagering operators in New York; it is purely a matter of New York State law.

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

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

The proposed rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of mobile sports wagering and sports wagering at casinos in New York State.

The proposed rules do not impact local governments or small businesses as no local government or small business holds a mobile sports wagering license or sports pool license and no local government or small business is anticipated to be a mobile sports wagering or sports pool

vendor or participate in the advertising, marketing and promotions of such entities.

The proposed rules impose no adverse impact on rural areas. The rules apply uniformly throughout the state.

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

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

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Comprehensive Regulations for Interactive Fantasy Sports

I.D. No. SGC-29-22-00010-RP

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

Proposed Action: Addition of sections 5600.1 to 5613.4 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1405(1) and (2)(g)

Subject: Comprehensive regulations for interactive fantasy sports.

Purpose: To regulate interactive fantasy sports in New York.

Substance of revised rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>): These proposed new rules would implement Interactive Fantasy Sports ("IFS") contests in compliance with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law. The proposal contains the following parts:

Part 5600 (General): Definitions applicable to Chapter VI of the regulations.

Part 5601 (Registration of Interactive Fantasy Sports Operators): Procedures governing the application form, the filing, processing, investigation and determination of IFS registration applications and the issuance of registrations. Officers and directors of an applicant as well as direct and indirect owners above certain thresholds would be investigated for suitability, applying statutory disqualifying criteria as well as whether participation in IFS would be inconsistent with the public interest, convenience or necessity of the best interests of IFS generally. Proposed contest types and internal controls would be required to be disclosed. Disclosure would be required concerning special purpose entities. Applicants denied a registration would have the right to request a de novo hearing pursuant to Commission procedures. The Commission would be permitted to grant an application, grant an application with conditions or deny an application.

Part 5602 (Permissible Contests): Criteria for permissible contests. These would include statutory standards as well as a requirement that contests shall not be based on proposition betting and shall not have the effect of mimicking proposition betting. Contests in which a contestant chooses whether an individual athlete or a single team will surpass an identified statistical achievement would be prohibited. Contest types would be subject to approval by the Commission, including proposals to offer contests for a sport, league, association or organization not previously offered, allowing the Commission to gauge corruption risk to underlying athletic competitions. Registrants would be required to disclose fees, the value of prizes offered, how many contestants have entered each contest and the amount of prizes distributed following the conclusion of each contest. Registrants would be required to identify any highly experienced player entering a contest. The proposed rule would prescribe a maximum number of entries per contestant in any contest.

Part 5603 (Requirements for Contests): Required disclosures to contestants. These rules are designed to assist contestants in understanding fully the nature and rules of the contests they may enter. Required information would include data on relevant rates of success of contestants, identification of experience level of contestants and lock times for contest rosters. Prohibited contestants, including employees of registrants and athletes and officials of underlying athletic competitions, would be prohibited from disclosing insider information to potential contestants. Registrants would be prohibited from knowingly permitting a prohibited player associated with such registrant from making any such insider disclosure and would be required to take reasonable measures to prevent any such disclosures. To ensure that contest entries are based on skill, auto-picks of roster athletes for an IFS entry would be prohibited, but an assisted-draft mode would be permitted if based on automated selection based on criteria set by the contestant. Unauthorized computer scripts would be prohibited. Registrants would be prohibited from offering credit.

Part 5604 (Restrictions on play): Registrants would be required to adopt procedures to prevent play by prohibited contestants, such as employees of registrants and their families, athletes in underlying athletic events,

sports agents and team and leagues employees and minors. Registrants would be strictly liable for violations, but would have the opportunity to present mitigating factors in regard to a violation, such as 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. Mandatory, escalating sanctions for violations are proposed. A registrant would be required to submit a compulsive play plan and implement self-exclusion procedures. A registrant would be authorized to exclude a contestant from the registrant's platform, such as for violations of disclosed terms and conditions of participation. Prizes won by prohibited persons would be null and void and, if discovered within one year, would require a registrant to recalculate contest winnings and compensate other contestants appropriately.

Part 5605 (Accounting Controls): Registrants would be required to have annual independent audits conducted of their financial statements and file such audited statements with the Commission. Registrants would be required to submit a copy of the management letter of an independent auditor listing any internal control or operational weaknesses and recommendations for improvement. The Commission would be authorized to order a registrant to conduct an additional review of internal controls, at the registrant's expense, and take appropriate corrective action. Certain accounting records would be required to be prepared and maintained. Registrants would be required to establish a special purpose entity to hold contestant funds in trust to establish protections from mismanagement of such funds and protect them from a registrant's creditors. The Commission would report irregularities in regard to the management of contestant trust monies to the Gaming Inspector General and to appropriate law enforcement officials for possible action in regard to the embezzlement of such funds. Registrants would have the option of posting an appropriate bond in lieu of establishing a contestant trust account. Registrants would be required to establish anti-money laundering policies, procedures and controls.

Part 5606 (Internal Controls): A registrant would be required to submit for Commission approval a system of internal controls, including a cybersecurity program, data retention requirements and complaint resolution procedures.

Part 5607 (Advertising and Marketing): Advertisements would be required to contain a compulsive play assistance message. Other requirements and restrictions would apply to advertising and marketing promotions to foster transparency and avoid association with minors.

Part 5608 (Misconduct, Associations and Duties to Promote Integrity): Registrants would be prohibited from associations with illegal gamblers. Registrants would be required to disclose material facts to the Commission in regard to dishonest and unlawful acts and suspicious activity.

Part 5609: (Reporting and Auditing): Registrants would have a continuing duty to disclose to the Commission any material change in business form or activity. The Commission would be authorized to require a registrant to engage, at the registrant's expense, an independent firm to review compliance with law and regulation. The Commission would be permitted to require a registrant to provide certification from an independent testing laboratory that the registrant's platform performs as such registrant represents to the public. The Commission would be permitted to require a registrant to engage an independent monitor acceptable to the Commission to supervise the registrant's operations, compliance or other activities.

Part 5610 (Taxes and Fees): The proposal would prescribe procedures for tax reporting and collection.

Part 5611 (Financial Stability): A registrant would be required to demonstrate and maintain financial stability.

Part 5612 (Complaints): A registrant would be required to establish procedures for receiving and resolving promptly consumer complaints.

Part 5613 (Penalties and Sanctions): The Commission would be permitted to suspend or revoke registrations and impose and collect fines for violations of law or regulations.

Revised rule compared with proposed rule: Substantial revisions were made in sections 5600.1, 5603.1, 5605.6, 5612.2, 5602.1, 5604.1, 5606.3 and 5613.3.

Text of revised proposed rule and any required statements and analyses may be obtained from Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

Public comment will be received until: 45 days after publication of this notice.

Revised Regulatory Impact Statement

A revised regulatory impact statement (RIS) is not required for this revised rulemaking because changes made to the last published rule do not necessitate revision to the previously published RIS.

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

The revised rulemaking would implement the statutory mandates for permitting interactive fantasy sports (IFS) contests to be offered in New York. A dominant share of the IFS market is held by two large out-of-state IFS companies, which offer IFS contests to participants from various jurisdictions with similar regulatory requirements. The other IFS companies are much smaller and have only a few (typically five or ten) employees. The impact of this proposal on small businesses and jobs, by implementing statutory mandates and consumer protections, is minimal.

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.

Assessment of Public Comment

Six public comments were received, four from current interactive fantasy sports ("IFS") temporary permittees (DraftKings Inc., FanDuel, Inc., Fantasy Football Players Championship and Yahoo Fantasy Sports LLC); one from Fantasy Sports & Gaming Association, a trade association that claims to represent more than 150 companies offering fantasy sports contests to consumers; and one from Vivid Seats LLC, a company that is not current temporarily permitted in New York but that may wish to seek registration as an IFS operator after the Commission adopts regulations.

A commenter objected to proposed Rule 5601.1(a), which sets forth who is required to register. The Commission believes that the suggested revision would conflict with Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1402(1)(a).

Commenters objected to the definition of "dormant account" in proposed Rule 5600.1(b)(6). The Commission agrees and proposes a revised Rule 5600.1(b)(6).

A commenter objected to the ownership disclosure requirements in proposed Rule 5601.1(b). The Commission believes that Racing Law section 1403 requires disclosures concerning "ultimate equitable owners" of registrant applicants.

A commenter objected to proposed Rule 5602.1(a)(4), which would make explicit that contests shall not be based on proposition betting or contests that have the effect of mimicking proposition betting. The Commission believes that a contest offering that is essentially sports betting, which is authorized for licensees and regulated pursuant to Racing Law Article 13 (not Article 14), cannot properly be characterized as IFS simply because an operator labels it as such.

A commenter objected to proposed Rule 5602.1(c)(3), concerning the relationship between prize value and the number of contestants. The Commission believes the proposed rule is consistent with the requirements of Racing Law section 1404(1)(n).

A commenter suggested revisions to proposed Rule 5602.1(d)(1), concerning contests with exactly 100 entries. The Commission agrees and proposes a revised Rule 5602.1(d)(1).

Commenters suggested a revision to proposed Rule 5602.2, concerning Commission approval of contest types. The Commission disagrees, because analysis of whether a proposed IFS contest conforms with statute and regulation is of utmost regulatory importance.

Commenters suggested that proposed Rule 5603.2(a)(2) be amended to account for the categorization of a contestant who has entered exactly 1,000 contests. The Commission agrees and proposes a revised Rule 5603.2(a)(2).

A commenter suggested amending proposed Rule 5603.1(g)(1), concerning disclosure of rates of success of contestants, and another commenter suggested eliminating proposed Rule 5603.1. The Commission agrees with the suggestion to amend and proposes a revised Rule 5603.1(g)(1).

A commenter suggested that the disclosure of rules for breaking contest ties, as required by proposed Rule 5603.1(a)(11), be permitted to be contained in an operator's terms of use instead of contest rules. The Commission believes that requiring a contestant to consult two sources of authority—contest rules as well as terms of use—to determine the rules of a contest would be burdensome on, and potentially confusing to, contestants.

A commenter requested clarification that the prohibition in proposed Rule 5603.5(a) against "autopicks" would not preclude the use of pre-draft rankings or a "snake draft" feature. The Commission believes that the autopick prohibition is necessary because statute and caselaw require IFS to be skill-based, and a contestant would be exercising no skill if the contestant's roster were chosen by an IFS operator's algorithm. The proposed Rule would not preclude the use of pre-draft rankings, nor would it prohibit a "snake draft" feature.

A commenter objected to the requirement in proposed Rule 5604.1(b)(1) for an operator to provide a toll-free number. The Commission agrees and proposes a revised Rule 5604.1(b)(1).

Commenters objected to the provision of proposed Rule 5604.1(d) that

would make an operator strictly liable for allowing prohibited persons to enter its contests. The Commission believes that preventing prohibited persons from contests is an important policy goal of Article 14 and the proposed regulations. It is appropriate that an operator be strictly liable for allowing prohibited play, while mitigating any penalty or sanction when the operator can demonstrate its good-faith reliance and compliance as set forth in the proposed rule. Commission staff would evaluate any each case individually based on its merits and would have the ability to exercise discretion in determining a regulatory response.

Commenters objected to proposed Rule 5604.1(f), concerning disclosure of an operator's personnel in aid of preventing prohibited play. The Commission believes that, because Racing Law section 1401(14)(a) defines "prohibited player" to include "any member, officer, employee or agent of an operator or registrant," the proposed regulation provides a mechanism to collect the identities of such prohibited players to enable the Commission to develop a database to disseminate to IFS operators to assist them in implementing the statutory requirement to exclude prohibited players.

A commenter suggested that the requirement in proposed Rule 5604.2(c) to display a compulsive-play-assistance toll-free number approved by the Commission be modified to allow for either a local or national toll-free number. The Commission believes that the New York State Hope Line, developed by the Office of Addiction Services and Supports, is an important and valuable resource that needs to be made available explicitly to New York customers to mitigate appropriately the risk of compulsive play. The statute explicitly refers to resources for compulsive play "in New York state."

A commenter objected to proposed Rule 5604.3(d), expressing concern about the sensitivity of customer data. The Commission believes the proposed rule merely requests more detailed information than the aggregate number of self-excluded contestants, which can assist the Commission in its efforts to implement and regulate self-exclusion practices. The Commission is bound by New York's Personal Privacy Protection Law, which governs the protection of personal information.

A commenter objected to proposed Rule 5604.4(e), expressing concern about the sensitivity of customer data. The Commission believes the reporting requirement would enable staff to monitor the frequency of IFS operators excluding contestants and the reasons therefore, which would aid appropriate regulation. The Commission is bound by New York's Personal Privacy Protection Law.

A commenter objected to proposed Rule 5605.1, concerning audited financial statements. The Commission believes that auditing is an important control process that would aid in the regulation of IFS and that it would be useful for the Commission to have the power to require an audit to aid in Commission regulation.

Commenters objected to proposed Rules 5605.5 and 5605.6, concerning special purpose entities. The Commission believes that the proposed methods would best enhance protection of contestant funds in the event of bankruptcy or operator malfeasance or misfeasance. A segregated bank account controlled by the operator itself would afford no bankruptcy protection for a contestant.

Commenters suggested that proposed Rule 5605.6(a)(2) would require separate bank accounts in order for customers' funds to be held in trust. The Commission believes that contestant funds could be held in one trust bank account, with each contestant's funds being deemed to be a separate trust within such bank account. Strict trust accounting principles would be required to maintain the integrity of each contestant's funds.

Commenters suggested that the return of a customer's funds, as required by proposed Rule 5605.6(d), be required ordinarily to be accomplished in five business days, rather than two, to allow for the accomplishment of know-your-customer and fraud-prevention procedures. The Commission agrees and proposes a revised Rule 5605.6(d).

Commenters suggested eliminating the specific minimum anti-money-laundering ("AML") requirements beyond proposed Rule 5605.10(a)(1) or eliminating AML requirements entirely. The Commission believes that money-laundering compliance is an important policy consideration with IFS, whether the federal Bank Secrecy Act does or does not impose specific AML requirements on an IFS operator. For example, IFS operators often allow for "closed" contests among acquaintances, operated by an IFS registrant. Money changing hands among contestants in such a closed system does present an AML risk, even in a season-long contest. The proposed regulations specifically allow for an IFS operator to tailor its AML program to the particular risks posed by the contests it offers. An IFS operator's AML compliance officer need not be a full-time role, and the required audits would be for compliance with the operator's own policies, which it will have tailored to its particular needs and risks. The proposed annual compliance statement is intended to heighten the awareness of a registrant of the need to maintain vigilance in this important area of concern and is a minimal paperwork burden. Staff does not believe that an IFS operator's AML program, tailored to the risks its contests may cre-

ate, would impose any unduly burdensome or costly compliance requirements on an IFS operator.

A commenter objected to the definition of "cybersecurity event" in proposed Rule 5600.1(b)(5) and to the requirement to report material cybersecurity events to the Commission at least every two years, as set forth in proposed Rule 5606.2(c)(6). The Commission does not interpret the proposed regulation to require reporting of cybersecurity events unrelated to IFS operations. The proposed Rule would not require an IFS operator to hire a separate chief information security officer, but, rather, would require an operator to designate someone to perform that role, in order to ensure that appropriate cybersecurity measures are in place.

A commenter suggested eliminating the requirement in proposed Rule 5606.3(c)(6) to notify the Commission within 48 hours of any adjustment made to a customer's account in response to a customer complaint. The Commission believes that prompt resolution of customer complaints is important to maintain the public perception of confidence in the integrity of IFS, but agrees that reporting to the Commission of adjustments made to customers' account could be required to be made less frequently and, accordingly, proposes a revised Rule 5606.3(c)(6).

A commenter suggested that proposed Rule 5607.1(a) regulating advertisements be limited to advertisements specifically targeting persons located in New York and that a typographical error in a cross-reference should be corrected. The revised proposal corrects the cross-reference. The Commission believes that IFS advertisements that reasonably are anticipated to be seen in New York should be regulated appropriately.

Commenters suggested that proposed Rule 5607.1(e) be revised to exclude requiring compulsive-play assistance messaging on a customer account page, on contest entry pages and on an operator's social-media sites, limiting such messaging to each landing page and homepage. A commenter suggested a revision to proposed Rule 5607.3(a)(1) and (2) governing promotion disclosures, to allow for hyperlinking to full terms and conditions. The Commission believes that while access to the full terms and conditions is essential, consumer protection would be enhanced if an IFS operator were required to clearly and conspicuously disclose "material" terms to potential customers, as a customer may be reluctant to peruse a link to full terms and conditions.

Commenters objected to proposed Rule 5609.2. The Commission believes that the proposed rule would not require routine independent compliance reviews. Rather, it would give the Commission discretion to require such a review. The Commission believes that eliminating this discretionary power would be detrimental to appropriate regulation.

Commenters objected to the requirement in proposed Rule 5609.3 that an independent testing laboratory certify that a registrant's platform performs as the registrant represents to the public. The Commission believes that independent laboratory testing is commonplace in gaming and is available for IFS as well. Allowing testing to be performed by an entity that is not independent may compromise public confidence in the integrity of IFS.

A commenter objected to proposed Rule 5611.1(b). The Commission believes the financial and administrative burden would be minimal for an IFS operator of commercially reasonable size and would be an appropriate control to minimize risk from a smaller operator that regulatory costs might not be paid as required.

A commenter objected to proposed Rule 5612.1, concerning operator investigation of complaints. The Commission disagrees with lengthening the time period for addressing customer complaints, because prompt resolution of complaints would promote public confidence in the integrity of IFS. The Commission agrees, however, that there should be a mechanism to relax such requirements in unusual circumstances and, accordingly, proposes a revised Rule 5612.2(d).

A commenter objected to proposed Rule 5613.3(b). The Commission agrees to limit the rule's scope to New York and, accordingly, proposes a revised Rule 5613.3(b).

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Expanded Syringe Access Programs (ESAPs)

I.D. No. HLT-31-23-00008-P

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

Proposed Action: Amendment of section 80.137 of Title 10 NYCRR.



Gaming Commission

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

To: Commissioners
From: Edmund C. Burns
Date: September 27, 2023
Re: Adoption of Proposed Rulemaking for Sports Wagering Advertising and Marketing (9 NYCRR §§ 5329.37 and 5330.45)

For Commission consideration is the adoption of revised proposed rules to govern sports wagering advertising and marketing. The Commission published a Notice of Proposed Rulemaking in the August 2, 2023 State Register, a copy of which is attached. The public comment period expires October 2, 2023. One public comment has been received to date. If any additional public comment is received before the public comment period expires, such comment will be provided to the Commissioners.

FanDuel Group, Inc. (“FanDuel”), a mobile sports wagering licensee of the Commission, commented on several aspects of the proposal. FanDuel objected to the aspect of proposed Rule 5329.37(c)(1)(iv) that would require an operator, if offering a complimentary item or promotional credit, to disclose the amount the patron is required to wager in the same size and style of font as the amount of the complimentary item or promotional credit. FanDuel stated “it is possible to ensure fair disclosure without mandating identical size and font requirements” and instead suggested that the rule require only that any required wager amount be “clearly and conspicuously disclosed.”

Staff response:

[REDACTED]

FanDuel objected to proposed Rules 5329.37(b)(2) and (4). Paragraph (2) would make a sports wagering licensee or vendor responsible for the false, deceptive or misleading statements made indirectly through an affiliate marketing partner, and paragraph (4) would require a sports wagering licensee or vendor to cause each of its affiliate marketing partners to comply with the disclosure requirements in such rule. FanDuel stated that only marketing affiliates themselves, and not their sports-wagering-licensee partners, should be held responsible for the regulatory compliance of the marketing affiliates.

Staff response:

[REDACTED]

[REDACTED]

FanDuel requested, with respect to proposed Rule 5329.37(a)(6), which would prohibit agreements with affiliate marketing partners that would violate the statutory prohibition on casino revenue-sharing agreements contained in Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) section 1341(1), “greater clarification on whether agreements that compensate affiliates with a flat fee for every patron referral are authorized.”

Staff response:

[REDACTED]

FanDuel objected to the requirement in proposed Rule 5329.37(b)(3)(i) that would prohibit the use of keywords or similar methods in a licensee’s platform to “attract persons...who are or may be problem gamblers.” FanDuel stated that the requirement “is extremely subjective and impractical to enforce” and that it is “analogous to a liquor store not being able to advertise to customers who ‘may be’ alcoholics.” FanDuel suggested eliminating that aspect of the rule or, in the alternative, amending the proposal to make the rule apply, with respect to problem gamblers, only to “known” problem gamblers.

Staff response:

[REDACTED]

FanDuel requested a more specific threshold in proposed Rule 5329.37(e)(2), which would prohibit sports wagering advertising “where the reasonably foreseeable percentage of the composition of the audience that is under the [casino] minimum wagering age...is greater than the percentage of the population in the State that is under such age.” FanDuel suggests amending the proposed Rule to set the audience-composition threshold to 73.6 percent being 21 years of age or older, consistent with

the American Gaming Association's voluntary Responsible Marketing Code for Sports Wagering, or 75% of legal wagering age, consistent with Massachusetts regulation.

Staff response:

[REDACTED]

FanDuel objected to the portion of proposed Rule 5329.37(e)(4) that would prohibit advertising or promotion in the "area of a college or university campus." FanDuel stated that the Rule language was "vague and could be read to include unaffiliated residential and commercial areas that border a college or university campus."

Staff response:

[REDACTED]

[REDACTED]

attachment

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

also adopts and publishes from time to time certain policy, procedure, and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2021] 2023¹ (accounting manual), includes a body of accounting guidelines referred to as statements of statutory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2021] 2023, which will be filed in [2022] 2024.

Section 83.4(f) and (p) are amended as follows:

(f)(1) Paragraph 6 of SSAP No. 25, "Affiliates and Other Related Parties", is not adopted. Insurance Law section 1501(c) provides that the superintendent may determine upon application that any person does not, or will not upon the taking of some proposed action, control another person. 10 NYCRR 98-1.9(d) authorizes the Commissioner of Health to make a similar determination with respect to organizations with a certificate of authority pursuant to Public Health Law article 44.

(2) Paragraphs [9 and 10] 11 and 12 of SSAP No. 25 are not adopted. Insurance Law section 4310(b) provides that certain article 43 corporations described therein may invest, in the aggregate, not more than three percent of their admitted assets in obligations, shares or other securities issued by a parent corporation which is organized as a not-for-profit entity or a corporation which is an affiliate or will be an affiliate after direct or indirect acquisition by the parent corporation. Insurance Law section 1407(a)(4) prohibits accident and health insurers and property/casualty insurers from investing in obligations, shares or other securities issued by a parent corporation or a corporation which is an affiliate or will be an affiliate after direct or indirect acquisition by the insurer. Further, loans and advances between a domestic controlled insurer and any person in its holding company system are subject to the reporting and approval thresholds prescribed in Insurance Law section 1505. Insurance Law section 1411(f) prohibits loans to officers and directors, except as permitted under Insurance Law section 1411(h)(2).

(p) Paragraph 9 of SSAP No. 73, "Health Care Delivery Assets and Leasehold Improvements in Health Care Facilities", is [not] adopted[,] with the following exception: Durable medical equipment, furniture, medical equipment and fixtures, and leasehold improvements shall be depreciated utilizing a depreciation schedule no less conservative than that set forth in the latest revision of ESTIMATED USEFUL LIVES OF DEPRECIABLE HOSPITAL ASSETS (REVISED 2018 EDITION).² The document may also be viewed at the New York State Department of Financial Services' New York City office at One State Street, New York, NY 10004. Lease improvements in health care facilities shall be amortized against net income over the shorter of their estimated useful life or the remaining life of the original lease excluding renewal or option periods, using methods detailed in SSAP No. 19.

¹ ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2021] 2023. © Copyright 1999 – [2021] 2023 by National Association of Insurance Commissioners, Kansas City, Missouri.

² Reproduced, with permission, from Estimated Useful Lives of Depreciable Hospital Assets, Revised 2018 Edition. Copyright 2018 by Health Forum, Inc. All right reserved. Printed with permission of Health Forum, Inc., in Chicago.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Campanelli, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5290, email: Michael.Campanelli@dfs.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.

Consensus Rule Making Determination

No person is likely to object to amendment of the rule that adopts the most recent edition of the Accounting Practices and Procedures Manual as of March 2023 ("2023 Accounting Manual"), published by the National Association of Insurance Commissioners ("NAIC"), and replaces the rule's current reference to the NAIC's Accounting Practices and Procedures Manual as of March 2021. The rule also makes non-substantive changes to subdivisions (f) and (p) of section 83.4 by updating the numbering of the paragraphs referenced in SSAP 25 of the 2023 Accounting Manual and clarifying language.

Adoption of the rule is necessary for the Department of Financial Services ("Department") to maintain its accreditation status with the NAIC. NAIC accreditation is a certification given to a state insurance regulator once the regulator has demonstrated that it has met and continues to meet baseline solvency regulation standards and various legal, financial, and organizational standards as determined by a committee of its peers.

The Department determines this rule to be a consensus rule, as defined

in State Administrative Procedure Act ("SAPA") § 102(11), and it is proposed pursuant to SAPA § 202(1)(b)(i). Accordingly, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Area Flexibility Analysis.

Job Impact Statement

This rulemaking will not have any impact on jobs and employment opportunities, including self-employment opportunities. The amendment adopts the most recent edition published by the National Association of Insurance Commissioners ("NAIC") of the Accounting Practices and Procedures Manual as of March 2023 ("2023 Accounting Manual"), replacing the rule's current reference to the Accounting Practices and Procedures Manual as of March 2021. The rule also makes non-substantive changes to subdivisions (f) and (p) of section 83.4 by updating the numbering of the paragraphs referenced in SSAP 25 of the 2023 Accounting Manual and clarifying language.

Adoption of the rule is necessary for the Department of Financial Services to maintain its accreditation status with the NAIC. NAIC accreditation is a certification given to a state insurance regulator once the regulator has demonstrated that it has met and continues to meet baseline solvency regulation standards and various legal, financial, and organizational standards as determined by a committee of its peers.

New York State Gaming Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. SGC-29-23-00004-P, regarding Attending Veterinarian Examinations in Thoroughbred Racing, published in the July 19, 2023, issue of the *State Register*, contained a formatting error. Rule text in section 4007.5(a), "No horse shall be qualified to start in any race unless entered by a licensed owner and in the charge of a licensed trainer," was inadvertently italicized. Only new material being proposed to be added to NYCRR should be italicized and this sentence already appears in the current section 4007.5 of Title 9 NYCRR.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sports Wagering Advertising and Marketing

I.D. No. SGC-31-23-00010-P

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

Proposed Action: Amendment of section 5329.1; addition of sections 5329.37 and 5330.45 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), (24), 1307(1), (2)(p), 1367(4), (13), 1367-a(4)(a)(iii), (xiv), (xv), (e); L. 2021, ch. 59, part Y, section 7

Subject: Sports wagering advertising and marketing.

Purpose: To regulate advertising, marketing and promotions concerning sports wagering.

Text of proposed rule: Section 5329.1 of 9 NYCRR would be amended, and new sections 5329.37 and 5330.45 would be added to 9 NYCRR, to read as follows:

§ 5329.1. Definitions.

(a) *Affiliate marketing partner means an entity or person who promotes, refers potential customers to, or conducts advertising, marketing or branding on behalf of, or to the benefit of, a casino sports wagering licensee or sports pool vendor pursuant to an agreement with such licensee or vendor. This definition shall not apply to general news media that are not focused on gaming, gambling or wagering matters.*

Current subdivisions in section 5329.1 would be re-lettered as (b) through (q).

§ 5329.37. Advertising, marketing and promotions.

(a) *Advertisements generally.*

(1) *Advertisements and promotions used by a casino sports wagering licensee or sports pool vendor shall comply with Racing, Pari-Mutuel Wa-*

gaming and Breeding Law section 1363 and comply with the responsible gaming requirements set forth in section 5325.6 of this Subchapter.

(2) Advertisements and promotions used by a casino sports wagering licensee or sports pool vendor shall disclose the identity of the casino sports wagering licensee or sports pool vendor.

(3) Each casino sports wagering licensee or sports pool vendor shall be responsible for the content and conduct of any and all advertising, marketing or branding done on its behalf or to its benefit, whether conducted by such licensee, an employee or agent of such licensee, or an affiliated entity of agent of such licensee pursuant to contract or agreement.

(4) No person who, or entity that, is not a casino sports wagering licensee or sports pool vendor shall advertise sports gambling in the State, unless the advertisement disclaims conspicuously that the wagering offerings are not available in the State.

(5) No person or entity shall advertise forms of illegal gambling in the State, unless the advertisement disclaims conspicuously that the wagering offerings are not available in the State.

(6) No casino sports wagering licensee or sports pool vendor may enter into an agreement with an affiliate marketing partner when the manner of compensation for such services is prohibited by Racing, Pari-Mutuel Wagering and Breeding Law section 1341(1).

(b) False, deceptive or misleading statements.

(1) No advertisement or promotion for sports wagering, including any material published or disseminated by an affiliate marketing partner, shall contain false, deceptive or misleading statements or elements, including, without limitation, those concerning:

- (i) chances of winning;
- (ii) the number of winners; or
- (iii) the rules, terms or conditions of wagering.

A false, deceptive or misleading statement or element includes, without limitation, one that reasonably would be expected to confuse or mislead patrons in order to induce them to engage in sports wagering.

(2) A casino sports wagering licensee or sports pool vendor shall not, directly or indirectly (such as through an affiliate marketing partner):

- (i) promote irresponsible or excessive participation in sports wagering;
- (ii) suggest that social, financial or personal success is guaranteed by engaging in sports wagering;
- (iii) imply or promote sports wagering as free of risk in general or in connection with a particular promotion or sports wagering offer;
- (iv) describe sports wagering as “free”, “cost free” or “free of risk” if the patron needs to incur any loss or risk the patron’s own money to use or withdraw winnings from the wager;
- (v) encourage patrons to “chase” losses or re-invest winnings;
- (vi) suggest that betting is a means of solving or escaping from financial, personal, or professional problems;
- (vii) portray, suggest, condone or encourage sports wagering behavior as a rite of passage or signifier of reaching adulthood or other milestones;
- (viii) portray, suggest, condone or encourage sports wagering behavior that is socially irresponsible or could lead to financial, social or emotional harm;
- (ix) state or imply that the chances of winning increase with increased time spent on sports wagering or increased money wagered; or
- (x) be placed on any website or printed page or medium devoted primarily to responsible gaming.

(3) A casino sports wagering licensee, sports pool vendor, or affiliate marketing partner, shall not use misleading embedded keywords or similar methods in its platform to:

- (i) attract persons under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1), self-excluded contestants or persons who are or may be problem gamblers; or
- (ii) accomplish any other misleading or deceptive purpose.

(4) Each affiliate marketing partner shall disclose in its media, in a reasonably prominent manner (e.g., after a writer’s byline, after editorial content, in an “about” link on a webpage that is accessible from the page on which editorial content appears), whether such affiliate marketing partner has agreed to promote, refer potential customers to, or conduct advertising, marketing or branding on behalf of, or to the benefit of, one or more casino sports wagering licensees or sports pool vendors. Each casino sports wagering licensee or sports pool vendor shall cause each of its affiliate marketing partners to comply with this paragraph.

(c) Marketing and promotions.

(1) In connection with the marketing, promoting, advertising or offering of any promotion or displaying or offering of such on a casino sports

wagering licensee’s or sports pool vendor’s platform or platforms, or on any platform or platforms over which a casino sports wagering licensee or sports pool vendor exercises actual or constructive control, such licensee shall:

(i) clearly and conspicuously disclose material facts, terms and conditions of the promotion to potential contestants and adhere to such terms;

(ii) clearly and conspicuously disclose to consumers material limitations to the promotion;

(iii) obtain express informed consent from any consumer who must deposit money to take advantage of the promotion; and

(iv) if an offer requires a patron to wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to wager of the patron’s own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free.

(2) No casino sports wagering licensee or sports pool vendor, or any employee, agent or vendor thereof, shall advise or encourage individual patrons to place a specific wager of any specific type, kind, subject or amount. The prohibition in this paragraph shall not apply to general advertising or promotional activities.

(3) Each direct advertisement of sports wagering shall clearly and conspicuously describe a method by which an individual may opt out of receiving future direct advertisements. Any request to opt out must be accomplished as soon as practicable and, in any event, no later than 15 days from the date of such request. If a direct advertisement is sent via electronic mail, the described opt-out method must include either an electronic mail address that will accomplish such opt-out or a link to an online website address at which such opt-out may be accomplished as simply as practicable. A direct advertisement sent other than by electronic mail shall include at least one of the following methods to opt out:

- (i) telephone;
- (ii) regular United States mail;
- (iii) online website address or mobile application at which such opt-out may be accomplished as simply as practicable; or
- (iv) electronic mail.

(d) Federal rules. A casino sports wagering licensee or sports pool vendor shall follow all rules concerning endorsements, including, without limitation, rules of the Federal Trade Commission.

(e) Marketing to underage persons. A casino sports wagering licensee or sports pool vendor shall not allow, conduct or participate in any advertising, marketing or branding for sports wagering that is aimed at persons under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1).

(1) Design. No sports wagering message shall be designed to appeal primarily to those below the legal age for sports wagering by depicting cartoon characters or by featuring entertainers or music that appeal primarily to audiences under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1), nor should any message suggest or imply that persons under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1) engage in sports wagering.

(2) Composition of audience. Sports wagering advertising and marketing shall not be placed in broadcast, cable, radio, print or digital communications where the reasonably foreseeable percentage of the composition of the audience that is persons under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1) is greater than the percentage of the population in the State that is under such age, such population as measured by the most recent competed decennial census.

(3) Use of logos, trademarks and brand names. No sports wagering messages, including logos, trademarks or brand names, shall be used or licensed for use on clothing, toys, games or game equipment intended primarily for persons below the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1). To the extent that promotional products carry sports wagering messages or brand information, a sports pool licensee and its employees shall use commercially reasonable efforts to distribute such products only to those who have reached the legal age for sports wagering.

(4) College and university media. Sports wagering shall not be promoted or advertised in college- or university-owned news assets (e.g., school newspapers, radio, telecasts) or advertised on college or university campuses, except that generally available advertising that is not targeted to the area of a college or university campus shall not be prohibited by this paragraph.

(5) *Depiction of underage persons.* No advertisement for sports wagering shall depict a person under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1); students; schools or colleges; or school or college settings, except where such image may incidentally depict a person under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1) or is an image of a professional athlete during a type of sporting event on which wagering is permitted.

(6) *Endorsements.* No advertisement for sports wagering shall state or imply an endorsement by a person under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1) (other than professional athletes); college athletes; schools or colleges; or college athletic associations.

(f) *Age notices in online content.* Owned websites or profiles that include sports betting content, including social media pages and sites, shall include a reminder of the legal age for sports wagering in the State.

(g) *Retention.* A registrant shall maintain records of each television, radio, print, digital or other advertisement for a period of at least four years from the date such advertisement last appears and shall make each such record available to the commission upon request.

(h) *Direction to cease.* Any person or entity, upon notice from the commission, shall cease, as expeditiously as possible, to offer advertising, marketing or a promotion that violates this section.

§ 5330.45. Advertising, marketing and promotions.

The provisions of section 5329.37 of this Subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee and mobile sports wagering vendor licensee.

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.

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 104(24) authorizes the Commission to regulate sports wagering.

Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1307(2)(p) authorizes the Commission to govern the gaming-related advertising of licensees, their employees and agents, with the view toward assuring that such advertisements are not deceptive.

Racing Law section 1367(4) authorizes the Commission to promulgate regulations to govern the conduct of sports wagering.

Racing Law sections 1367(13) and 1367-a(4)(a)(xiv) and (xv) authorize the Commission to promulgate rules concerning responsible play and problem gaming information in regard to mobile sports wagering.

Racing Law section 1367-a(4)(a)(iii) authorizes the Commission to promulgate rules concerning prohibiting minors from participating in sports wagering.

Racing Law section 1367-a(4)(e) provides that mobile sports wagering operators shall not target prohibited sports bettors, minors, or self-excluded persons.

Section 7 of Part Y of Chapter 59 of the Laws of 2021 authorizes the Commission to promulgate any rules and regulations it deems necessary to regulate mobile sports wagering.

2. **LEGISLATIVE OBJECTIVES:** The above referenced statutory provisions carry out the legislature’s stated goals “to tightly and strictly” regulate casinos “to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state.” The regulation of sports wagering advertising, marketing, and promotions helps protect consumers and contributes to the discouragement of participation by underage persons and the development of problem gaming behaviors among young adults.

3. **NEEDS AND BENEFITS:** The proposed rules are necessary because statutes direct the Commission to implement statutory requirements through rulemaking and develop regulations in regard to sports wagering advertising, marketing, and promotions. The proposed rules are tailored to protect consumers and contribute to the discouragement of participation

by underage persons and the development of problem gaming behaviors among young adults.

Peer-reviewed research suggests that young people are particularly susceptible to developing problem gambling behaviors and are particularly influenced by advertising and marketing messages. Globally, up to 12% of youth and young adults experience gambling problems and up to 14% are at risk of developing them. Calado et al., “Prevalence of adolescent problem gambling: a systematic review of recent research,” 33 J. GAMBLING STUD. 397 (2017); Turner et al., “Traumatic brain injuries and problem gambling in youth: evidence from a population-based study of secondary students in Ontario, Canada,” 15 PLOS ONE (2020). The International Center for Responsible Gambling states that studies show anywhere from 2 to 7% of young people experience a gambling addiction, compared to about 1% of adults, and that an estimated 6% to 15% of youth have gambling problems that are less severe, while 2% to 3% percent of adults fall into that category. ICRG, “Talking with children about gambling” fact sheet. Youth and young adults are increasingly turning to online gambling, Shi et al., “A perspective on age restrictions and other harm reduction approaches targeting youth online gambling, considering convergences of gambling and videogaming,” 11 FRONTIERS IN PSYCHIATRY (2020), and problematic gambling is more prevalent among youth who gamble online. Floros et al., “Adolescent online gambling in Cyprus: associated school performance and psychopathology,” 31 J. GAMBLING STUD. 367 (2015). Early involvement in gambling may be predictive of experiencing gambling harms later in life. Freund et al., “Exposure to other people’s gambling and gambling behaviors in Australian secondary school students,” PSYCHOLOGY OF ADDICTIVE BEHAVIORS (2022); Shaffer et al., “The epidemiology of college alcohol and gambling policies,” 2 HARM REDUCTION J. 1 (2005). Comparatively fewer colleges and universities have policies on gambling activity, compared to alcohol policies, which are ubiquitous. Shaffer et al. There are legitimate concerns about problem gambling risks among young people that regulation could address.

Reasonable restrictions on advertising and marketing directed to more vulnerable young people are regulations tailored to address these risks, as are requiring responsible gambling messaging. Exposure to gambling advertising is associated with more positive gambling-related attitudes, greater gambling intentions and increases in problem gambling behavior. Bouguettaya et al., “The relationship between gambling advertising and gambling attitudes, intentions and behaviours: a critical and meta-analytic review,” 31 CURRENT OPINION IN BEHAVIORAL SCIENCES 89 (2020). A German research study with 13-25-year-olds found a positive correlation between exposure to gambling advertising and gambling frequency, noting that a resulting perception from advertisements is that gambling leads to winning money and having fun. Clemens et al., “Exposure to gambling advertisements and gambling behavior in young people,” 33 J. GAMBLING STUDIES 1 (2017). Influences from advertising are associated with increased gambling problems among those who bet on sports. Freund et al., “The prevalence and correlates of gambling in Australian secondary school students,” 38 J. GAMBLING STUD. 1173 (2022); Lamont and Hing, “Sports betting motivations among young men: an adaptive theory analysis,” 42 LEISURE SCIENCES 185 (2020); Nyemcsok et al., “Viewing young men’s online wagering through a social practice lens: implications for gambling harm prevention strategies,” 33 CRITICAL PUB. HEALTH 241 (2023). Sponsorship of sports teams can communicate that betting is a harmless activity, like watching sports can be. Pitt et al., “Factors that influence children’s gambling attitudes and consumption intentions: lessons for gambling harm prevention research, policies and advocacy strategies,” 14 HARM REDUCTION J. 11 (2017). Young people’s awareness of gambling marketing can lead them to believe that gambling is a normal part of sports and that gambling has little risk. Djohari et al., “Recall and awareness of gambling advertising and sponsorship in sport in the UK: a study of young people and adults,” 16 HARM REDUCTION J. 24 (2019). People with gambling problems are significantly more likely than other gamblers to be influenced by gambling promotions and incentives. Gainsbury et al., “How risky is Internet gambling? A comparison of subgroups of Internet gamblers based on problem gambling status,” 17 NEW MEDIA & SOCIETY 861 (2015).

To address the risks that targeted advertising and marketing to young people pose, the proposed regulations would: prohibit advertising, marketing or branding aimed at underage persons; prohibit the use of designs to appeal primarily to underage persons by depicting cartoon characters or by featuring entertainers or music that appeal primarily to underage audiences; prohibit advertising and marketing where the reasonably foreseeable percentage of the composition of the audience that is underage is greater than the percentage of the population of the State that is underage; prohibit sports wagering messaging, logos, trademarks or brand names on items intended primarily for underage persons; prohibit promotion or advertisement of sports wagering in college- or university-owned news assets or advertised on college or university campuses, other than generally

available advertising that is not targeted to such areas; generally prohibit the depiction of underage persons, students, school or colleges, or school or college settings; and generally prohibit advertising containing endorsements by underage persons, college athletes, schools or colleges or college athletic associations.

The Commission is aware of dozens of complaints from sports wagering customers claiming to have been misled or deceived about wagers or promotions offered. Accordingly, the proposed rules would prohibit false, deceptive or misleading statements or elements. Various elements of the American Gaming Association's Responsible Code for Sports Wagering, which at least several current Commission licensees voluntarily agreed to abide by, would be incorporated into Commission rules. Marketing and promotions would be required to clearly and conspicuously disclose material facts, terms and conditions and adhere to such terms, clearly and conspicuously disclose to consumers material limitations of a promotion, and prominently disclose any associated required wager amount in connection with a promotion. Responsible gaming would be promoted by prohibiting licensees and vendors from advising and encouraging individual patrons, in targeted communications, to place specific wagers or types of wagers. Licensed operators would be required to provide individuals with an option to opt-out of future direct advertisements, as an element of promoting responsible play. Making these reasonable requirements applicable to all sports wagering operators, and not just those who are American Gaming Association members, would promote uniformity in good practices across all regulated parties.

Regulated parties would be required to retain records of advertising, to assist the Commission in investigating compliance.

Responsible play would be encouraged by prohibiting licensees to enter into agreements with third parties known as affiliate marketing partners to conduct advertising and marketing, where the manner of compensation for such services is prohibited by Racing, Pari-Mutuel Wagering and Breeding Law section 1341(1), thus appropriately disincentivizing such third parties from targeting those most vulnerable to problem gambling tendencies. Responsible gaming advertising restrictions would apply also to such affiliate marketing partners. Affiliate marketing partners would be required to disclose, in a reasonably prominent manner, whether such affiliate marketing partner has an agreement with a sports wagering operator. Sports wagering operators also would be required to cause their affiliate marketing partners to comply with such disclosure requirements.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulations is negligible.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rules will be negligible given that all such costs are the responsibility of the licensed parties. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating gaming activities within the State.

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

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

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

8. ALTERNATIVES: The alternative of not proposing this rulemaking was considered and rejected. The proposed rules are necessary to protect consumers from false, deceptive, or misleading statements and contribute to the discouragement of participation by underage persons and the development of problem-gaming behaviors among young adults.

9. FEDERAL STANDARDS: There are no federal standards applicable to the regulation of gaming facilities or mobile sports wagering operators in New York; it is purely a matter of New York State law.

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

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

The proposed rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of mobile sports wagering and sports wagering at casinos in New York State.

The proposed rules do not impact local governments or small businesses as no local government or small business holds a mobile sports wagering license or sports pool license and no local government or small business is anticipated to be a mobile sports wagering or sports pool

vendor or participate in the advertising, marketing and promotions of such entities.

The proposed rules impose no adverse impact on rural areas. The rules apply uniformly throughout the state.

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

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

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Comprehensive Regulations for Interactive Fantasy Sports

I.D. No. SGC-29-22-00010-RP

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

Proposed Action: Addition of sections 5600.1 to 5613.4 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1405(1) and (2)(g)

Subject: Comprehensive regulations for interactive fantasy sports.

Purpose: To regulate interactive fantasy sports in New York.

Substance of revised rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>): These proposed new rules would implement Interactive Fantasy Sports ("IFS") contests in compliance with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law. The proposal contains the following parts:

Part 5600 (General): Definitions applicable to Chapter VI of the regulations.

Part 5601 (Registration of Interactive Fantasy Sports Operators): Procedures governing the application form, the filing, processing, investigation and determination of IFS registration applications and the issuance of registrations. Officers and directors of an applicant as well as direct and indirect owners above certain thresholds would be investigated for suitability, applying statutory disqualifying criteria as well as whether participation in IFS would be inconsistent with the public interest, convenience or necessity of the best interests of IFS generally. Proposed contest types and internal controls would be required to be disclosed. Disclosure would be required concerning special purpose entities. Applicants denied a registration would have the right to request a de novo hearing pursuant to Commission procedures. The Commission would be permitted to grant an application, grant an application with conditions or deny an application.

Part 5602 (Permissible Contests): Criteria for permissible contests. These would include statutory standards as well as a requirement that contests shall not be based on proposition betting and shall not have the effect of mimicking proposition betting. Contests in which a contestant chooses whether an individual athlete or a single team will surpass an identified statistical achievement would be prohibited. Contest types would be subject to approval by the Commission, including proposals to offer contests for a sport, league, association or organization not previously offered, allowing the Commission to gauge corruption risk to underlying athletic competitions. Registrants would be required to disclose fees, the value of prizes offered, how many contestants have entered each contest and the amount of prizes distributed following the conclusion of each contest. Registrants would be required to identify any highly experienced player entering a contest. The proposed rule would prescribe a maximum number of entries per contestant in any contest.

Part 5603 (Requirements for Contests): Required disclosures to contestants. These rules are designed to assist contestants in understanding fully the nature and rules of the contests they may enter. Required information would include data on relevant rates of success of contestants, identification of experience level of contestants and lock times for contest rosters. Prohibited contestants, including employees of registrants and athletes and officials of underlying athletic competitions, would be prohibited from disclosing insider information to potential contestants. Registrants would be prohibited from knowingly permitting a prohibited player associated with such registrant from making any such insider disclosure and would be required to take reasonable measures to prevent any such disclosures. To ensure that contest entries are based on skill, auto-picks of roster athletes for an IFS entry would be prohibited, but an assisted-draft mode would be permitted if based on automated selection based on criteria set by the contestant. Unauthorized computer scripts would be prohibited. Registrants would be prohibited from offering credit.

Part 5604 (Restrictions on play): Registrants would be required to adopt procedures to prevent play by prohibited contestants, such as employees of registrants and their families, athletes in underlying athletic events,



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: September 18, 2023

Re: Proposed Rulemaking for Thoroughbred Claiming Rules Amendments (9 NYCRR §§ 4038.1, 4038.3 and 4038.4)

For Commission consideration is a proposed rule to amend Thoroughbred claiming regulations. The Commission authorized this proposal as a consensus rulemaking based on consultation with industry stakeholders, including the Thoroughbred tracks, and horsemen's associations and breeder's organization in New York. The consensus rulemaking proposal was published in August 23, 2023 edition of the State Register, an excerpt of which is attached for your convenience. The State Administrative Procedure Act ("SAPA") provides that if any public comment is received that contains an objection to the adoption of a consensus rule, the agency must withdraw the notice of proposed rulemaking for the consensus rule and may, instead, submit a standard notice of proposed rulemaking. SAPA § 202(1)(b)(ii).

The Commission received a public comment from Michael Lauer, disagreeing with the proposal. Lauer commented that 30 days "was plenty" to require a claimed horse to not race outside New York State after a claim. Lauer cites the "free enterprise system" and states that this aspect of the proposed rule would make it "more difficult for horse ownership to be cost efficient."

Because the proposal was developed after consultation with personnel of The New York Racing Association, Inc.; Finger Lakes Racing Association, Inc.; New York Thoroughbred Breeders, Inc.; New York Thoroughbred Horsemen's Association, Inc.; and the Finger Lakes Horsemen's Benevolent and Protective Association, staff recommends the Commission advance this proposal as a standard proposed rulemaking.

The text of the proposed rule is in the August 23, 2023 State Register excerpt.

attachment

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

regulations are important to addressing these concerns. The Department agrees that the adopted regulations are critical in reducing the adverse air pollution impacts in DACs throughout New York State. It is essential that New York State continues to adopt stringent mobile sources emissions standards and regulations to protect human health and the environment, especially in DACs that have historically borne the brunt of these impacts.

Commenters stated that adoption of the HD Omnibus regulation is necessary as the federal CTP regulation is insufficient and falls short. The Department found that the HD Omnibus regulation can provide greater NOx emission reductions from medium- and heavy-duty engines than the final federal CTP. While the Department and other stakeholder have expressed some concerns with several aspects of the CTP, the Department does recognize EPA's efforts to lower NOx emissions compared to current federal standards.

Commenters stated that while this rulemaking is a necessary and important step, additional emissions reductions are needed in NY. While portions of these comments are beyond the scope of this rulemaking, the Department will continue to assess additional regulations, control measures, programs, and potential funding sources to meet the ozone National Ambient Air Quality Standards (NAAQS), maintain compliance with the particulate matter NAAQS, and mitigate the disproportionate impacts of medium- and heavy-duty vehicle traffic on DACs.

Commenters noted the Department's regulatory definition of the HD Omnibus transit agency exemption and made suggestions of alternative regulatory definitions. The Department believes its regulatory definition is adequate.

Some Commenters mentioned other issues, such as battery electric vehicles, their usage, and their adoption. These comments are outside the scope of this rulemaking.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Claiming Rules Revisions in Thoroughbred Racing

I.D. No. SGC-34-23-00009-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 sections 4038.1, 4038.3 and 4038.4 of Title 9 NYCRR.

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

Subject: Claiming rules revisions in Thoroughbred racing.

Purpose: To improve the claiming process in Thoroughbred racing.

Text of proposed rule: Sections 4038.1, 4038.3 and 4038.4 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] *the owner has started a horse:*

(1) within the previous 120 days, including the race in which such horse started, *in a race meeting of the licensed or franchised association;* or

(2) in the current or previous race meeting of the licensed or franchised racing association.

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) 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] *of 30 racing days if the certificate holder had entered a claim but had lost the disposition by lot pursuant to section 4038.5(b) of this Part.* 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.

* * *

§ 4038.3. Conditions for starting claimed horse.

If a horse is claimed the horse shall not start in a claiming race for a period of [30] 20 days from *the date of the claim* for less than 25 percent more than the amount for which such horse was claimed. For a period of 10 days thereafter, a horse is eligible to start for a claiming price equal to or greater than the price at which the horse had been claimed. On the 31st day, the horse may start in a claiming race for any price.

§ 4038.4. Sale, transfer restricted.

If a horse is claimed 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] 60 days from the date of the claim or the end of the meeting at which such horse was claimed, whichever period of time is longer, except that a horse may run:

(a) in a sweepstakes elsewhere for which the horse was nominated by its former owner or trainer[.];

(b) *after a period of 30 days from the end of a Finger Lakes racing season, if the horse had been claimed at Finger Lakes racetrack; or*

(c) if permission is granted by the stewards.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State 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.

Consensus Rule Making Determination

This proposed rulemaking will amend the New York State Gaming Commission's Thoroughbred claiming regulations. The proposed amendments will address concerns communicated to Commission staff by some horse owners and their representatives. Because the Commission has already consulted with industry stakeholders on this proposal, the Commission does not anticipate public comment and no person is likely to object to the proposed revisions.

Job Impact Statement

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

This proposed rulemaking will amend the New York State Gaming Commission's Thoroughbred claiming regulations. The proposed amendments will address concerns communicated to Commission staff by some horse owners and their representatives.

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lottery Prize Assignment Processing Fee

I.D. No. SGC-34-23-00012-P

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

Proposed Action: Amendment of section 5002.11 of Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1613(d)(7); Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Lottery prize assignment processing fee.

Purpose: To defray administrative expenses associated with a prizewinner's assignment.

Text of proposed rule: Section 5002.11 of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 5002.11. Prize rights [un-assignable] *non-assignable.*

* * *