



# MEETING BOOK

MAY 27, 2014



**AGENDA**

**MEETING OF MAY 27, 2014**

**NEW YORK, NEW YORK**

- 1. Call to Order**
- 2. Approval of Commission Meeting Minutes for March 12, 2014 and March 31, 2014**
- 3. Report of Acting Executive Director**
- 4. Rulemaking**
  - a. Extension of Emergency Rulemaking for Commercial Casino Forms and Applications**
  - b. Proposed Rulemaking for Commercial Casino Forms and Applications**
  - c. Emergency Rulemaking on Restrictions on Acceptance of Public Assistance**
  - d. Proposed Rulemaking on Restrictions on Acceptance of Public Assistance**
  - e. Adoption of New Lottery Game: Cash 4 Life**
- 5. Adjudications**
  - a. In the Matter of Gregory J. Annaloro**
  - b. In the Matter of Anthony W. Dutrow/Peter Kazamias**
  - c. In the Matter of Luis A. Gutierrez**
  - d. In the Matter of Robert S. Messina**
- 6. Racing Fan Advisory Council Presentation**
- 7. New/Old Business**
- 8. Scheduling of Next Meeting**
- 9. Adjourn**

**NEW YORK STATE  
GAMING COMMISSION**

**MINUTES**

**MEETING of MARCH 12, 2014**

**GENEVA, NEW YORK  
NEW YORK, NEW YORK**

A meeting of the N.Y.S. Gaming Commission was conducted at Hobart and William Smith College, Geneva, New York and at Empire State Development, New York, New York. Bilateral visual and oral communication was sustained between locations.

**1. Call to Order**

The meeting was called to order at 3:34 p.m. by Acting Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Buckley. In physical attendance were Chairman Mark Gearan and Commissioners John Crotty, John Poklemba, Barry Sample and Todd Snyder.

**2. Approval of the Meeting Minutes for November 4, 2013**

Minutes of the Commission meetings conducted on November 4, 2013, were considered. Chair Gearan requested edits, corrections or amendments. None were offered and the minutes were accepted as offered.

**3. Report of Acting Executive Director**

Mr. Williams reported on several matters previously discussed, including Commission staff preparation for the Commercial Casino Development process, certain issues relative to The New York Racing Association, Inc. and a draft report submitted by Camelot Global Services North America regarding the future of the New York Lottery.

**4. Appointment of the Gaming Facility Location Board Members**

Chairman Gearan asked Mr. Williams to introduce for consideration the appointment of the Gaming Facility Location Board Members. Mr. Williams noted that N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 109-a required the Commission to appoint five individuals to serve as members of the Gaming Facility Location Board. It was observed that in February, the Commission announced three of the five members: Paul Francis, Stuart Rabinowitz and William C. Thompson, Jr. The Commission then considered a motion to formally appoint the three the nominees.

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

## 5. Rulemaking

- a. Permanent Adoption Notice of Corticosteroid Injections in Claimed Thoroughbred Horses. The Commission considered permanent adoption of a rule first proposed at the September 9, 2013. The rule requires the previous trainer of the claimed horse provide to the new owner within 48 hours after a claiming race is made official all records of corticosteroid joint injections administered to the horse within the 30 days prior to the claiming race.

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

- b. Permanent Adoption Regulation of Shock Wave & Similar Therapies. The Commission considered permanent adoption of a rule first proposed at the November 4, 2013 meeting. The proposal restricts the use of extracorporeal shock wave therapy, radial pulse wave therapy and similar physiological treatments on thoroughbred racehorses.

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

- c. Proposed Rulemaking for Standardbred Out-Of-Competition Testing. The Commission considered a proposed amendment to the Commission's standardbred out-of-competition testing rules, designed

to clarify the existing rule and define the protocols of the Commission. This rule clarified that a trainer or owner must apprise the Commission when he or she is not training the horse to race in New York, which excuses the horse from sampling. The proposed rule also amended its application to a category of prohibited substances that the appellate court had struck down because the existing rule contained one inconsistency.

ON A MOTION BY: Commissioner Poklemba

APPROVED: 5-0

- d. Proposed Rulemaking for New Lottery Game “Cash 4 Life”. The Commission considered a proposed rulemaking to govern a new planned multi-state lottery game among states that participate in the Mega Millions and Powerball consortia. The game would have drawings each Monday and Thursday. For each \$2 wager, a player may select five numbers out of 60 and one number out of four. A player may also choose “quick picks.” The jackpot for this game is \$1,000 a day for life, with the second prize being \$1,000 a week for life. One-time lower level prizes would range between \$2 and \$2,500.

ON A MOTION BY: Commissioner Snyder

APPROVED: 5-0

- e. Revised Proposed Rulemaking for Controlled Therapeutic Harness and Thoroughbred Medications. The Commission considered a revised proposed rulemaking restricting the treatment of standardbred and thoroughbred racehorses originally proposed on November 4, 2013. The public comment period included several advisable recommendations. Most of the revisions were technical in nature and required an additional 30-day public comment period.

ON A MOTION BY: Commissioner Sample

APPROVED: 5-0

- f. Proposed Rulemaking for Reporting Gelding Information. The Commission considered a proposed rulemaking which would require the reporting of a horse’s status as a gelding to both the racing secretary and the official horse identifier.

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

**6. Adjudications**

- a. In the Matter of Graham Lewis. The matter involved the denial of occupational licenses as a harness owner, harness trainer and harness driver. The Commission adopted the findings and recommendation of the Hearing Officer.

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

- b. In the Matter of Greg Luther. The matter involved an appeal of discipline of a harness driver for using unauthorized equipment and subsequently threatening a racing judge. The Commission adopted the findings and recommendation of the Hearing Officer.

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

- c. In the Matter of Janet Smith. The matter involved an appeal of a tote employee occupational license denial. The Commission upheld the findings and recommendation of the Hearing Officer, with the exception of the Hearing Officer's finding of fact number 5. That finding was rejected by the Commission.

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

**7. New Business/Old Business**

- a. Stewards Practice. Commissioner Crotty raised concern with the manner of operation by thoroughbred stewards, identifying a recent stewards' decision in another jurisdiction that had large implications for wagering. Commissioner Crotty suggested the staff consider steward practices and procedures and consider whether such reforms

as publicly identifying votes on issues and decisions; identifying anyone who communicates with the stewards during their deliberations; and perhaps making publicly available video footage relied on by the stewards in their inquiries and deliberations. He stated that some procedures in this area would serve the goals of transparency and public confidence in the stewards' decision making. Chairman Gearan asked Mr. Williams to look into this issue. Mr. Williams noted that he will work with the Racing Fan Advisory Council to explore recommendations.

- b. Problem Gambling. Chairman Gearan noted that March is National Problem Gambling Awareness Month and that during his confirmation, a review of the casino gaming statues focused his attention of this issue. Chairman Gearan recommended that the Commission be proactive on this topic by working with the N.Y. Office of Alcohol and Substance Abuse Services and other various experts to discuss the best practices and approaches to the prevention and treatment of problem gambling. In furtherance of discussion, Director of Communications Lee Park reviewed Commission efforts already undertaken to enforce laws and regulations against problem gambling, such as the Under 18 "We check ID" compliance training program. Chairman Gearan asked Mr. Park to organize a public forum during April 2014 to explore approaches to combatting problem gambling.

## 8. **Scheduling of Next Meeting**

Chairman Gearan noted that the Commission had previously contemplated the establishment of a uniform meeting date (e.g., the third Wednesday of each month). All Commissioners suggested they would review their calendars to explore a date for the next meeting.

## 9. **Adjournment**

Chairman Gearan asked if any Commissioners had any additional items to discuss or present. Hearing none, the meeting was adjourned at 4:52 p.m.

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**NEW YORK STATE  
GAMING COMMISSION**

**MINUTES**

**MEETING of MARCH 31, 2014**

**GENEVA, NEW YORK  
NEW YORK, NEW YORK**

A meeting of the N.Y.S. Gaming Commission conducted on March 31, 2014. Meeting locations were Hobart and William Smith College, Geneva, New York and Empire State Development, New York, New York. Bilateral visual and oral communication was sustained between locations.

**1. Call to Order.**

The meeting was called to order at 3:13 p.m. and a quorum was noted by Acting Executive Director Robert Williams. In physical attendance were Chairman Mark Gearan and Commissioners John Crotty, John Poklemba, and Barry Sample.

**2. Emergency Rulemaking for Commercial Casino Applications Forms and Procedures**

Chairman Gearan asked Mr. Williams to introduce for consideration proposed emergency rule prescribing the forms for the Request for Application to Develop and Operate a Gaming Facility, commonly referred to as the RFA. Mr. Williams explained the proposal established a new Part exclusively for Gaming Facility Applications. He added that the new rules included provisions for the Application to Develop and Operate a Gaming Facility; Background Investigations of the Applicants; Fingerprinting of the Applicant's Principals and Offers; Requires Applicants Update their Applications throughout the process, and Sets and Application Fee.

ON A MOTION BY: Commissioner Poklemba  
APPROVED: 4-0

**3. Approval of Forms for Commercial Casino Applications**

Chairman Gearan asked Mr. Williams to introduce for consideration a proposal to adopt various Forms for use in Commercial Casino Gaming. Mr. Williams advised Commission staff had been working with Gaming Facility Location Board's Gaming Advisory Services consultant and the N.Y. State Police to refine the various Forms. Four forms were considered collectively: the Request for Applications to Develop and Operate a Gaming Facility in New York State; a Gaming Facility License Application Form; the Multi-Jurisdictional Personal History Disclosure Form; and a New York Supplement to the Multi-Jurisdictional Personal History Disclosure Form.

ON A MOTION BY: Commissioner Crotty  
APPROVED: 4-0

Chairman Gearan publicly indicated that for purposes of the Request for Application the Commission is now in the Restricted Period.

**4. Adjourn**

Chairman Gearan asked if any Commissioners had any additional items to discuss or present. Hearing none, the meeting was adjourned at 3:25 p.m.

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MEMORANDUM

**To:** Mark D. Gearan, Chairman  
John A. Crotty, Commissioner  
Peter J. Moschetti, Jr., Commissioner  
John J. Poklemba, Commissioner  
Barry C. Sample, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** May 22, 2014

**Re:** Proposed Rulemaking for Gaming Facility Application Forms (9  
NYCRR Part 5300)

New York Racing, Pari-Mutuel Wagering and Breeding Law §1307.2. requires the Commission to prescribe by regulation application forms in regard to the commercial casino Request For Applications process. In furtherance of this requirement, on March 31, 2014 the Commission promulgated emergency rules (codified as Part 5300) in regard to prescribing the forms for the Request for Applications to Develop and Operate a Gaming Facility and several forms necessary to consider and process Applications for Gaming Facility Licenses. This emergency rule was published in the *State Register* on April 16, 2014.

The New York State Administrative Procedures Act allows adoption of an emergency rule for a maximum of 90 days. An emergency rule may be re-adopted, but each such re-adoption will be effective for a maximum of 60 days. To file a re-adoption, action must be initiated to adopt the rule as permanent. Accordingly for Commission consideration are (1) the proposed adoption of Part 5300 as permanent rules and (2) re-adoption of Part 5300 as an emergency rule, with such re-adoption to be filed with the Department of State prior to the expiration of the current emergency rule.

A copy of the proposed text is attached.



attachment

cc: Robert Williams, Acting Executive Director  
James Nielsen, Acting Director, Division of Gaming

**Subchapter C of Chapter IV of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new Part 5300 as follows:**

**PART 5300**

**Gaming Facility Applications**

**§ 5300.1. Application to Develop and Operate a Gaming Facility.**

The form of application to develop and operate a gaming facility shall include, without limitation, the following elements:

(a) *Executive summary.* An applicant shall submit a brief executive summary with its application, highlighting the principal terms of the application.

(b) *Applicant information.*

(1) An applicant shall provide identifying information including, without limitation:

(i) Full name (including trade name or d/b/a) of the applicant. If the applicant is a corporation, full name as it appears on the certificate of incorporation, charter, by-laws or other official document.

(ii) Name, title, email address, mailing address and telephone number of the individual to be contacted in reference to the application.

(iii) Principal business address and telephone number for an applicant and, if applicable, the manager of the proposed gaming facility, including the URL for any website maintained by or for the applicant or manager.

(iv) Type of business entity (*e.g.*, corporation, limited liability company, partnership, etc.).

(v) The state (or other jurisdiction) under the laws of which the applicant is incorporated, organized, formed or registered and the Federal tax identification number and evidence of existence or formation as an entity as of a date no later than 10 days prior to the date of submission of the application.

(vi) Ownership chart of the applicant and, if applicable, the manager and their respective affiliates, including percentage ownership interests in the applicant and the manager by their respective direct and indirect owners, illustrating the ultimate owners and real parties in interest. For a publicly traded company, disclosure of owners may be limited to owners owning five percent or more of the publicly traded company.

(vii) Organizational chart of the applicant and, if applicable, the manager, illustrating the organizational structure likely to be used by the applicant or the manager in the event that applicant is awarded a license, including all casino key employees.

(viii) Name, address and title of each director, manager or general partner of the applicant and, if applicable, the manager and each officer and casino key employee of the applicant or manager.

(ix) Name and business address of each person or entity that has a direct or indirect ownership, or other proprietary interest (financial, voting or otherwise) in the applicant and, if applicable, the manager. For a publicly traded company, disclosure of owners may be limited to owners owning five percent or more of the publicly traded company.

(x) Name and business address of all promoters, sponsors, personnel, consultants, sales agents or other entities involved in aiding or assisting the applicant's efforts to obtain a gaming facility license.

(xi) The region and locality in which the gaming facility is proposed to be located.

(2) An applicant shall identify all conflicts of interest including:

(i) Any relationship or affiliation of the applicant, manager or any of their respective affiliates that currently exist with any member, employee, consultant or agent of the New York Gaming Facility Location Board or the Commission that is a conflict of interest, or may be perceived as a conflict of interest, during the application process. Further, if any such conflict should arise during the term of the application process, the applicant shall notify the New York Gaming Facility Location Board in writing of such conflict.

(ii) Any public officials or officers or employees of any governmental entity, and immediate family members of said public officials, officers or employees, who directly or indirectly own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instruments issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the applicant, the manager, or their affiliates.

(iii) Any persons not identified in subparagraph (ii) of this paragraph who have any arrangement, written or oral, to receive any compensation from anyone in connection with the application, the application process or the obtaining of a gaming facility license.

(3) If the applicant does not identify any conflict of interest, or perceived conflict of interest, the applicant shall state that no direct or indirect conflict of interest, or potential conflict of interest, exists with respect to such proposal.

(4) If the applicant identifies a direct or indirect conflict of interest, or potential conflict of interest, the applicant shall disclose the conflict of interest or potential conflict of interest and the steps the applicant will take to resolve such conflict of interest or potential conflict of interest.

(5) The New York Gaming Facility Location Board shall make the final determination as to whether any activity constitutes a conflict of interest. The decision of such board shall be final and without recourse; however, such board shall not make any such decision without providing the applicant or manager, as applicable, with an opportunity to present comments.

(6) An applicant shall identify any current or previous contract that the applicant has had with, and any current or previous licenses that the applicant has been issued by or under, any department or agency of New York State.

(7) If the gaming facility will be managed by a manager that is different from the applicant, the applicant shall describe the relationship between the manager and the applicant including, without limitation, a summary of the terms of any and all agreements, contracts or understanding between the manager and the applicant.

(8) An applicant shall submit, as applicable, copies of the following documents that apply to the applicant, the applicant's owners, any manager or any of the manager's owners:

- (i) certified copy of its certificate of incorporation, articles of incorporation or corporate charter;
- (ii) by-laws as amended through the date of the application;
- (iii) certified copy of its certificate of formation or articles of organization of a limited liability company;
- (iv) limited liability company agreement or operating agreement as amended through the date of the application;
- (v) certified copy of its certificate of partnership;
- (vi) partnership agreement as amended through the date of the application;
- (vii) certified copy of its certificate of limited partnership;
- (viii) limited partnership agreement as amended through the date of the application;
- (ix) other legal instrument of organization;
- (x) joint venture agreement;
- (xi) trust agreement or instrument, each as amended through the date of the application;
- (xii) voting trust or similar agreement; and
- (xiii) stockholder, member or similar agreement.

(c) *Finance and capital structure.* An applicant shall:

(1) describe its finance and capital structure including:

- (i) capital investment plans;
- (ii) a study completed by an independent expert assessing the size of the potential gaming market for the proposed gaming facility;

- (iii) a detailed financial forecast annually for a period of at least 10 years after opening for gaming on a best-, average- and worst-case basis;
  - (iv) a qualitative business plan for the proposed gaming facility describing, at minimum, the components and projected results of the material revenue lines and expense categories of the proposed gaming facility, the applicant's sources and availability of financing, the principal business and financing risks of the proposed gaming facility and plans to mitigate those risks;
  - (v) a detailed description of how the project will be financed;
  - (vi) a detailed description regarding each financing source;
  - (vii) a schedule of the financing sources' anticipated capital structure after construction and first three years of operation of the proposed gaming facility;
  - (viii) an analysis of how the financing plans for the application fee, application and suitability investigation expenses, license fee, capital investment deposit, construction and first three years of operation of the proposed gaming facility will affect each financing source's compliance with the financial covenants under its current financing arrangements; and
  - (ix) all financial commitments and guarantees the applicant or, if applicable, the manager, or its affiliates is prepared to provide to the Commission over and above the deposit or bond required by subdivision 1 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law to ensure that the gaming facility is completed, license conditions are fulfilled and sufficient working capital is available to allow continuous operation in manner described in the applicant's financial forecasts;
- (2) submit an independent audit report for each of the last five fiscal years regarding the applicant and each of its parents;
- (3) submit bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies and business and personal accounting check records and ledgers and copies of securities analyst and credit rating agency reports for the past three years;
- (4) submit all United States Securities and Exchange Commission filings, if any, for the financing sources, for the three fiscal years ended before the date applications are due and any interim period between the end of the most recent fiscal year and the date applications are due;
- (5) describe any delinquencies in the payment of any fees or tax required under any federal, state or municipal law within the past 10 years by an applicant; for any payment not made because of a dispute, describe the circumstances;
- (6) describe the applicant's and, if applicable, the manager's experience, training and expertise in developing, constructing and operating gaming facilities and related facilities;
- (7) describe any destination casino resort or other gaming projects that the applicant and, if applicable, the manager, has publicly announced that it is in the process of acquiring, developing or proposing to acquire or develop;
- (8) provide any information relating to legal actions including, without limitation:
- (i) pending legal actions, whether civil, criminal or administrative in nature, to which the applicant is a party and a brief description of any such actions;
  - (ii) any settled or closed legal actions, whether civil, criminal or administrative in nature, against the applicant over the past 10 years;
  - (iii) any judgments against the applicant within the past 10 years, including the case name, number, court, and what the final ruling or determination was from the court, administrative body or other tribunal;
  - (iv) a statement whether the applicant was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past 10 years;
  - (v) a statement whether the applicant was the subject of any order, judgment or decree of any court, administrative body or other tribunal of competent jurisdiction permanently or temporarily enjoining it

from or otherwise limiting its participation in any type of business, practice or activity during the past 10 years; and

(vi) a description of any bankruptcies (voluntary or involuntary), assignments for the benefit of creditors, appointments of a receiver or custodian or similar insolvency proceedings made, commenced or pending during the past 10 years by or involving any applicant;

(9) describe any contract, loan agreement or commitment that the applicant has breached or defaulted on during the past 10 years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default;

(10) describe any gaming-related licenses issued in any jurisdiction, and provide a detailed explanation if the applicant has ever had a gaming-related license denied, suspended, withdrawn or revoked, or if there is a pending proceeding that could lead to any of these conditions; and

(11) describe any disciplinary action brought against the applicant by any gaming licensing authority during the past five years.

(d) *Economics.* An applicant shall provide:

(1) market analysis, studies and/or reports evidencing the benefits of the gaming facility including:

(i) market analysis showing benefits of the site location and the estimated recapture rate of gaming-related spending by New York residents travelling to out-of-state gaming establishments;

(ii) studies completed by an independent expert showing the proposed gaming facility's:

(a) overall economic incremental benefits to the region and New York State; and

(b) impact on the local and regional economy, including incremental job creation, the impact on cultural institutions and on small businesses in the host community and surrounding communities; and

(iii) completed studies by an independent expert showing projections for all estimated State, county, and local tax revenue each year for the first five years of operations on a best-, average- and worst-case basis, identifying the source of each element of the tax revenue;

(2) a description of the proposed gaming facility's inclusion within, and coordination with, a regional and local economic plan;

(3) a description of plans and minimum commitments for use of New York-based suppliers and materials in the construction and operational phases of applicant's project;

(4) a description of the employment opportunities created by the proposed gaming facility, including, among other things, the number of employees to be employed at the proposed gaming facility and the pay rate and benefits for employees;

(5) a description of the competitive environment in which the applicant anticipates the proposed gaming facility will operate over the 10 years after opening;

(6) a description of the target market segments of the gaming facility;

(7) the marketing plans for the proposed gaming facility with specific reference to pre-opening marketing and opening celebrations; and

(8) a description of strategies to be used by the applicant to deal with the cyclical/seasonal nature of tourism demand.

(e) *Land construction and design of physical plant.* An applicant shall:

(1) identify the location of the proposed gaming facility, including:

(i) the dimensions and total acreage of the land that will be developed for the proposed gaming facility;

(ii) the address, maps, book and page numbers from the appropriate registry of deeds;

(iii) the assessed value of the land for the proposed gaming facility at the time of application, and a description of all ownership interests in the land for the past 20 years, including all easements, options, encumbrances, and other interests in the property, together with all relevant demographic, geographic and environmental information in regard to the site and the surrounding area; and

- (iv) if the applicant does not currently possess an ownership interest in the location, describe how the applicant intends to acquire the necessary interest in the land in accordance with subdivision 2 of section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law.
  - (2) provide copies of current local zoning approvals and any rezoning, variances and/or land use approvals required for the gaming facility site, a detailed explanation of the status of any request for any of the foregoing, together with copies of all filings, including a specific schedule of applications for such approvals and anticipated approval dates;
  - (3) provide a description of, and schematics illustrating, the applicant's master plan for the land and the gaming facility site showing major activities and functions, and a phasing plan for the proposed components;
  - (4) provide designs for the proposed gaming facility including among other things, a site plan, floor plans, building elevations and perspectives;
  - (5) describe the proposed gaming area, including square footage, number and types of table games and slot machines, electronic gaming devices, poker tables and any other forms of gaming, number of gaming positions, specific location of the games and machines in the proposed gaming facility;
  - (6) provide a detailed description of the proposed amenities including hotels, meeting and convention facilities, dining facilities, entertainment venues and non-gaming amenities; in addition, provide a statement of how the proposed amenities will compare in quality to other area amenities and those offered in competitive gaming facilities;
  - (7) provide a detailed description of proposed parking and transportation infrastructure including, among other things, parking spaces for employees, patrons and buses; tour bus, taxi and valet drop-off areas; and service vehicle and satellite parking;
  - (8) provide a description of mechanical systems and other on-site infrastructure plans;
  - (9) provide the names, addresses and relevant experiences of the architects, engineers, contractors, and designers of the proposed gaming facility and related proposed infrastructure improvements;
  - (10) provide a detailed construction budget and timeline for construction, including plans for mitigating impacts during and following construction;
  - (11) provide information concerning the number and quality of construction jobs to be provided during the construction period;
  - (12) provide names of all proposed gaming equipment vendors; and
  - (13) provide a description of the proposed internal controls, electronic surveillance systems and security systems for the proposed gaming facility and any related facilities.
- (f) *Assessment of local support and mitigation of local impact.* An applicant shall:
- (1) demonstrate local support by submitting to the board a resolution passed after November 5, 2013 by a majority of the membership of the local legislative body of the host community supporting the application;
  - (2) provide completed studies and reports showing the proposed gaming facility's impact on, among other things, local and regional, social, environmental and traffic infrastructure; and
  - (3) provide plans for mitigating potential impacts on host and nearby municipalities that might result from the development or operation of the gaming facility.
- (g) *Regional tourism and attractions.* An applicant shall describe regional tourism and local promotion efforts including:
- (1) promoting local businesses in host and surrounding communities including developing cross-marketing strategies with local restaurants, small businesses, hotels and retail outlets;
  - (2) establishing partnerships with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues;

(3) contracting with local business owners for provision of goods and services to the gaming facility, including developing plans designed to assist businesses in New York State in identifying the needs for goods and services to the facility;

(4) local agreements designed to expand gaming facility draw, including the number of patrons brought to the region; and

(5) cross-marketing efforts with attractions.

(h) *Measures to address problem gambling.* An applicant shall describe measures to address problem gambling, including among other things, on-site resources available to those affected by gambling-related problems, training for facility employees to help identify those who may have gambling-related problems, exclusion policies, treatment and prevention programs, and metrics the applicant will use to measure whether the applicant is succeeding in efforts to reduce problem gambling.

(i) *Workforce development.* An applicant shall describe:

(1) its workforce development plans including:

(i) human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program;

(ii) an affirmative action program that identifies specific goals for the utilization of minorities, women, persons with disabilities and veterans on construction, service and professional jobs; and

(iii) on-the-job opportunities and training in areas and with respect to demographic groups with high unemployment; and

(2) whether the applicant has the support of organized labor for its application and detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment.

(j) *Sustainability and resource management.* An applicant shall describe its sustainability and resource management plans with respect to the gaming facility, including its plans to, among other things, mitigate traffic flow, obtain LEED certification, use energy efficient equipment, manage storm water, conserve water, use renewable energy and monitor energy consumption.

#### **§ 5300.2. Background Investigation.**

(a) The Commission may investigate the background of any applicant for a gaming facility license. This investigation may include the background of any related parties in interest to the applicant, including close associates and financial resources of the applicant. Applicants and related parties in interest, as indicated in paragraphs (1) and (2) of this subdivision, shall submit the following supplemental forms as part of a gaming facility license application:

(1) a Gaming Facility License Application Form, as prescribed in subdivision (b) of this section, for each of the applicant, any direct and indirect parent entity of the applicant (including any holding company), any manager, any entity having a beneficial or proprietary interest of five percent or more in an applicant or a manager, and any other entity that may be designated by the New York Gaming Facility Location Board or the Commission; and

(2) a Multi-Jurisdictional Personal History Disclosure Form, as prescribed by subdivision (d) of this section and a Multi-Jurisdictional Personal History Disclosure Supplemental Form, as prescribed in subdivision (f) of this section, for each natural person who is a director, manager, general partner or person holding an equivalent position with the applicant, a manager or any direct or indirect parent entity of the applicant, a casino key employee, a person having beneficial or proprietary interest of five percent or more in an applicant or a manager and any other person that may be designated by the New York Gaming Facility Location Board or the Commission.

(b) *Gaming Facility License Application Form.* A Gaming Facility License Application Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

- (1) The name, title, phone number and email address of a person to be contacted in reference to the application;
- (2) The current and former d/b/a or trade names used by the entity;
- (3) The principal business address of the entity;
- (4) The date and place of formation and information concerning each person forming the entity;
- (5) All other names under which the entity has conducted business and give the approximate time periods during which these names were being used;
- (6) All other addresses presently used by the entity and all addresses from which the entity is presently doing business;
- (7) All addresses, other than those listed in paragraph (6) of this subdivision, that the entity held or from which it was conducting business during the last 10-year period, and give the approximate time periods during which such addresses were held;
- (8) A description of the business conducted and intended to be conducted by the entity and its parent, holding, subsidiary and intermediary entities and the general development of such business during the past five years, or such shorter period as the entity or its parent, holding, subsidiary and intermediary entities may have been engaged in business. The description shall include information on matters such as the following:
  - (i) competitive conditions in the industry or industries involved and the competitive position of the entity, if known;
  - (ii) the principal products produced and services rendered by the entity and its parent, intermediary and subsidiary entities, the principal markets for said products or services and the methods of distribution;
  - (iii) the sources and availability of raw materials essential to the business of the entity;
  - (iv) the importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises and concessions held; and
  - (v) a description of any material changes in the business entity's mode of conducting the business;
- (9) A description of any former business, not listed in response to paragraph (8) of this subdivision, that the entity or any parent, intermediary or subsidiary company engaged in during the last 10-year period and the reasons for the cessation of such business. Also indicate the approximate time period during which each such business was conducted;
- (10) Information for each director, trustee, and officer of the entity for the last 10 years. Officers include all persons serving as president, secretary, treasurer, chairman of the board, vice-president, general/corporate counsel or any such other officers as may be prescribed by the entity's governing documents;
- (11) The annual compensation of directors, trustees and officers and whether such compensation is in the form of salary, wages, commissions, fees, stock options, bonuses or otherwise;
- (12) The name, business address, date of birth, and position of each person other than a director, trustee or officer, who received annual compensation of more than \$250,000 and the length of time employed and the amount of compensation;
- (13) A description of all bonus, profit sharing, pension, retirement, deferred compensation and similar plans in existence;
- (14) Describe the nature, type, number of authorized and issued shares, terms, conditions, rights and privileges of all classes of voting, non-voting and other stock issued, or to be issued, or other similar indicia of ownership by the entity including the number of shares of each class of stock authorized or to be authorized and the number of shares of each class of stock outstanding, not held by or on behalf of the issuer, or other similar information applicable to other indicia of ownership as of this date;
- (15) The name, home address, and date of birth of each shareholder, the class held, number of shares held and the percentage of outstanding voting or non-voting securities or other ownership interest held;
- (16) A description of the nature, type, terms, covenants, conditions, and priorities of all outstanding debt and security devices utilized by the entity;

- (17) A description of each person or entity holding any outstanding debt and security devices utilized by the entity;
- (18) A description of any options existing or to be created with respect to securities issued by the entity in which description shall include, but not be limited to, the title and amount of securities subject to option, the year or years during which the options were or will be granted, the conditions under which the options were or will be granted, the consideration for granting the option and the year or years during which, and the terms under which, optionees became or will become, entitled to exercise the options, and when such options expire;
- (19) The following information for each account for the last 10 years held in the name of the entity or its nominee or otherwise under the direct or indirect control of the entity:
- (i) the name and address of the financial institution;
  - (ii) the type of account;
  - (iii) the account number; and
  - (iv) the dates held;
- (20) The name and address of all persons with whom the entity has contracts or agreements of \$250,000 in value or more including employment contracts of more than one year duration, or who have supplied goods and services within the past six months and the nature of such contracts or the goods and services performed;
- (21) Information regarding any transaction within the last five years involving a change in the beneficial ownership of the entity's equity securities on the part of any current or former director, officer or beneficial owner of more than 10 percent of any class of equity security;
- (22) A description of any civil, criminal, administrative, and investigatory proceedings in any jurisdiction for the entity and each director, trustee or officer as follows:
- (i) any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
  - (ii) any criminal proceeding in which such person has been named a party or an unindicted co-conspirator;
  - (iii) any existing civil litigation that resolved within the previous five years to which the entity, its parent, or any subsidiary is a party, if damages are reasonably expected to exceed \$100,000 unless such damages involve claims against the entity that are fully and completely covered under an insurance policy;
  - (iv) any judgment order, consent decree or consent order entered against the entity pertaining to a violation or alleged violation of the federal antitrust, trade regulation, or securities laws or similar laws of any jurisdiction; and
  - (v) any judgment order, consent decree or consent order pertaining to any state or federal statute, regulation, or code that resulted in a fine or penalty of \$50,000 or more within the past 10 years;
- (23) For the entity, parent or any intermediary entity, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the federal bankruptcy code or any state insolvency law; and information regarding any receiver, fiscal agent, reorganization trustee or similar officer appointed for the property or business of the entity or its parent, holding, intermediary or subsidiaries;
- (24) During the last 10 years, whether the entity has had any license or certificate issued by any governmental agency denied, suspended, or revoked. Also, whether the entity, its parent or any subsidiary ever applied in any jurisdiction for a license, permit or other authorization to participate in lawful gambling operations (including casino gaming, horse racing, dog racing, pari-mutuel operation, lottery, sports betting, etc.);
- (25) During the last 10 years, whether the entity, its parent or any subsidiary, director, officer, or employee or any third party acting on behalf of the entity made any bribes or kickbacks or made any payments alleged

to have been bribes or kickbacks to any employee, company, organization, government official domestic or foreign to obtain favorable treatment;

(26) During the last 10 years whether the entity, its parent, any subsidiary or related entity or individual has:

- (i) donated or loaned property or anything of value for the purpose of opposing or supporting any government, political party, candidate, or committee, either foreign or domestic;
- (ii) made any loans, donations, or other disbursements to its directors, officers, or employees for the purpose of reimbursing such individuals for political contributions, either foreign or domestic; and
- (iii) maintained a bank account or other account, domestic or foreign, not reflected on the books of the entity, or maintained any account in the name of the nominee of the entity;

(27) Provide the names and addresses of any current or former directors, officers, employees or third parties who would have knowledge or information concerning subparagraph (iii) of paragraph (26) of this subdivision;

(28) Provide a copy of the following:

- (i) audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
- (ii) all annual financial statements prepared in the last five years, any exceptions taken to such statements by the independent auditor retained by the entity and the management response thereto;
- (iii) annual reports to shareholders for the last five years;
- (iv) any annual reports prepared within the last five years on Form 10K pursuant to Securities Exchange Act of 1934;
- (v) the last quarterly unaudited financial statements prepared by or for the entity, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed 10Q;
- (vi) any current report prepared due to a change in control of the entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the entities certifying accountant, or other material events, which, if the entity is registered with the SEC, may be satisfied by providing a copy of the most recently filed form 8K;
- (vii) each press release issued by the entity for the past five years;
- (viii) last definitive Proxy or Information Statement filed pursuant to the section 14 of the Securities Exchange Act of 1934;
- (ix) registration statements filed in the last five years pursuant to the Securities Act of 1933; and
- (x) all reports and correspondence submitted in the last five years by independent auditors for the entity that pertain to the issuance of financial statements, managerial advisory services, or internal control recommendations;

(29) The name, address, and telephone number of the current outside auditor(s);

(30) A certified copy of the articles of incorporation, charter and by-laws and all amendments and proposed thereto;

(31) A current ownership organizational chart of the entity, its parent entity and each subsidiary of the entity;

(32) A functional table of organization for the entity filing this gaming facility license application form, including position descriptions and the names of persons holding such positions; and

(33) A copy of all Federal Internal Revenue Service tax returns filed by the entity in the last five years.

(c) In addition to the information set forth in subdivision (b) of this section, a completed Gaming Facility License Application Form shall include the following documents, which shall be dated and signed by the President or any officer of the entity authorized to affirm and sign the documents:

(1) a release authorization directing all courts, probation departments, selective service boards, employers, educational institutions, banks, financial institutions and all governmental agencies, federal, state and local,

both foreign and domestic, to release any and all information pertaining to the entity as required by the Commission and its authorized agents and representatives;

(2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of any material or information acquired during the licensing or investigation process;

(3) a consent to inspections, searches and seizures and the supplying of handwriting exemplars; and

(4) a signed, dated and notarized affidavit.

(d) *Multi-Jurisdictional Personal History Disclosure Form.* A Multi-Jurisdictional Personal History Disclosure Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

(1) name, including maiden name and any aliases or nicknames and applicable dates of use;

(2) date of birth;

(3) physical description;

(4) current address and residence history;

(5) Social Security number, which information is voluntarily provided in accordance with section 552a of the United States Code;

(6) citizenship and, if applicable, information regarding resident alien status, including information regarding passports;

(7) marital history, dependents and other family data;

(8) the gaming licensee or applicant, gaming vendor licensee or applicant or holding company, as applicable, with which the applicant is affiliated, and the nature of the applicant's position with or interest in such entity;

(9) telephone number at the current place of employment;

(10) employment history of the applicant and applicant's immediate family;

(11) education and training;

(12) record of military service;

(13) government positions and offices presently or previously held, and the offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;

(14) trusteeships or other fiduciary positions held by the applicant and the applicant's spouse, and any denial or suspension of, or removal from, such positions;

(15) current memberships in any social, labor or fraternal union, club or organization; and

(16) licenses and other approvals held by or applied for by the applicant or, where specified, the applicant's spouse, in New York State or any other jurisdiction, as follows:

(i) any professional or occupational license held by or applied for by the applicant or the applicant's spouse;

(ii) motor vehicle registrations and operator licenses held by or applied for by the applicant or the applicant's spouse, and any revocation or suspension thereof;

(iii) possession or ownership of any pistol or firearm, or any application for any firearm permit, firearm dealer's license, or permit to carry a pistol or firearm;

(iv) any license, permit, approval or registration required to participate in any lawful gambling operation in New York State or any jurisdiction held by or applied for by the applicant; and

(v) any denial, suspension or revocation by a government agency of a license, permit or certification held by or applied for by the applicant or the applicant's spouse, or any entity in which the applicant or the applicant's spouse was a director, officer, partner or any owner of a five percent or greater interest;

(17) any interest in or employment presently or previously held by the applicant with any entity that has applied for a permit, license, certificate or qualification in connection with any lawful gambling or alcoholic beverage operation in New York State or any other jurisdiction; and any current employment or other

association by the applicant's family with the gambling or alcoholic beverage industries in New York State or any other jurisdiction;

(18) civil, criminal and investigatory proceedings in any jurisdiction, as follows:

- (i) arrests, charges or offenses committed by the applicant or any member of the applicant's immediate family;
- (ii) any instance where the applicant has been named as an unindicted party or co-conspirator in a criminal proceeding or held as a material witness;
- (iii) any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, grand jury or investigatory body, and any refusal to comply with a request to do so;
- (iv) any pardons, dismissals, suspensions or deferrals of any criminal investigation, prosecution, or conviction;
- (v) lawsuits to which the applicant was or is a party;
- (vi) any citation or charge for a violation of a statute, regulation or code of any jurisdiction, other than a criminal disorderly persons, petty disorderly persons or motor vehicle violation; and
- (vii) any use, distribution, or possession of any narcotic, hallucinogenic, drug, barbiturate, amphetamine or other substance other than pursuant to a valid prescription issued by a licensed physician;

(19) any exclusion or barring from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction;

(20) financial data, as follows:

- (i) all assets and liabilities of the applicant, and the applicant's spouse and dependent children as indicated on the net worth statement and supporting schedules in a format prescribed by the Commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;
- (ii) bank accounts, including any right of ownership in, control over or interest in any foreign bank account, and safe deposit boxes;
- (iii) real estate interests held by the applicant or the applicant's spouse or dependent children;
- (iv) businesses owned;
- (v) copies of Federal tax returns and related information;
- (vi) judgments or petitions for bankruptcy, insolvency or liquidation concerning the applicant or any business entity in which the applicant held a five percent or greater interest, other than a publicly traded corporation, or in which the applicant served as an officer or director;
- (vii) any business entity in which the applicant was an owner, director or officer that has been placed under some form of governmental administration or monitoring;
- (viii) any garnishment or attachment of wages, charging order or voluntary wage execution, including the amount, court, nature of the obligation and the holder of the obligation;
- (ix) any repossessions of real or personal property;
- (x) any guarantees, co-signatures or insuring of payments of financial obligations of any persons or business entities;
- (xi) status as executor, administrator or fiduciary of any estate;
- (xii) life insurance policies on the applicant's life that name someone other than the applicant's family as a beneficiary;
- (xiii) positions held, assets held, or interest received in any estate or trust;
- (xiv) whether the applicant has ever been bonded for any purpose or been denied any type of bond, including the nature of the bond and if applicable, the reason for denial;

- (xv) insurance claims in excess of \$100,000 by the applicant or the applicant's spouse or dependent children;
- (xvi) referral or finder's fees in excess of \$10,000;
- (xvii) loans in excess of \$10,000 made or received by the applicant, the applicant's spouse or dependent children;
- (xviii) gifts in excess of \$10,000 given or received by the applicant or the applicant's immediate family;
- (xix) brokerage or margin accounts with any securities or commodities dealer;
- (xx) currency exchanges in an amount greater than \$10,000;
- (xxi) information regarding any instance where the applicant or any entity in which the applicant was a director, officer or holder of a five percent or greater interest has traded in foreign currencies or in a foreign commodities exchange, sold or purchased discounted promissory notes or other commercial paper, or been a party to any leasing arrangements in excess of \$50,000; and
- (xxii) information regarding any ownership interest or financial investment by the applicant in any entity that holds or is an applicant for a license issued by the Commission, or in any gambling venture that does not require licensure by the Commission, including persons providing or reasonably anticipated to provide the applicant with support in the financing of such investment or interest; the extent and nature of the applicant's involvement in the management and operation of the entity; whether the applicant has or has agreed to assign, pledge or hypothecate such interest or investment, the nature and terms of any such transaction and a copy of any such agreement.

(e) In addition to the information set forth in subdivision (d) of this section, a completed Multi-Jurisdictional Personal History Disclosure Form shall include the following:

- (1) the name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;
- (2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the license or investigation process;
- (3) a consent to inspection, searches and seizures and the supplying of handwriting exemplars; and
- (4) a signed, dated and notarized affidavit of truth.

(f) *Multi-Jurisdictional Personal History Disclosure Supplemental Form.* A Multi-Jurisdictional Personal History Disclosure Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

- (1) name and nature of position with or interest in a gaming facility license applicant or licensee, a gaming vendor applicant or licensee, or a holding company as applicable;
- (2) current photograph;
- (3) citizenship, and if applicable, resident alien status, including any certificate of naturalization, United States Citizenship and Immigration Services documentation, employment authorization with expiration date, country of which the applicant is a citizen, place of birth, proof of entry to the United States, and name of address of sponsor upon arrival;
- (4) any ownership interest, financial interest, or financial investment in any business entity applying to or presently licensed by the Commission; and
- (5) an applicant shall disclose whether, during the last 10 years, any entity in which it had been a director, officer, or principal employee or a holder of five percent or greater interest has:
  - (i) made or been charged with (either itself or through third parties acting for it) bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;
  - (ii) held a foreign bank account or has had authority to control disbursements from a foreign bank account;

- (iii) maintained a bank account, or other account, whether domestic or foreign, that is not reflected on the books or records of the business;
  - (iv) maintained a domestic or foreign numbered bank account or other bank account in a name other than the name of the business;
  - (v) donated or loaned corporate funds or corporate property for the use or benefit of, or for the purpose of opposing, any government, political party, candidate or committee either domestic or foreign;
  - (vi) compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposition to any government or political party domestic or foreign; and
  - (vii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign.
- (g) An applicant shall provide copies of Federal and state tax returns and related information for the last five years, including:
- (1) United States Internal Revenue Service forms 1040, 1040X and related schedules;
  - (2) an audit narrative or failure to file narrative; and
  - (3) foreign tax returns and schedules.
- (h) An applicant shall provide a signed, dated and notarized release authorization that shall direct all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, Federal, state and local, both foreign and domestic, to release any and all information pertaining to the applicant as requested by the Commission, the New York State Gaming Facility Location Board, or any employee, agent or representative, thereof.
- (i) In addition to the information set forth in subdivision (f) of this section, a completed Multi-Jurisdictional Personal History Disclosure Supplemental Form shall include the following:
- (1) the name, address, occupation, phone number, email address and years known of persons who can attest to the good character and reputation of the applicant;
  - (2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the licensing process, or during any inquiries, investigations or hearings;
  - (3) a consent to inspection, searches and seizures and the supplying of handwriting exemplars;
  - (4) a notification and authorization form for employment credit report; and
  - (5) a signed, dated and notarized affidavit.

### **§ 5300.3. Fingerprinting.**

An applicant for a gaming facility occupational license, shall, at the time of application be fingerprinted under the supervision of the Commission or by a person or agency acceptable to the Commission and shall pay to the Commission an amount set by the Commission to cover the costs of such fingerprinting. The Commission may, for good cause shown, permit an applicant or licensee alternatively to submit sets of classifiable fingerprints on fingerprint impression cards provided by the Commission.

### **§ 5300.4. Duty to Update Application.**

- (a) Upon completion of an application prescribed in section 5300.1 of this Part and prior to the award of a gaming facility license, an applicant has a continuing duty to disclose to the New York Gaming Facility Location Board promptly, in writing (and electronically), any changes or updates to the information submitted in the application or any related materials submitted in connection therewith.
- (b) The New York Gaming Facility Location Board may in its sole discretion determine to accept the update as an amendment to an application. The New York Gaming Facility Location Board shall not be required to accept any such information.

(c) An applicant's failure to promptly notify the New York Gaming Facility Location Board of any changes or updates to information previously submitted may be grounds for disqualification of an applicant from consideration by the New York Gaming Facility Location Board.

**§ 5300.5. Application Fees.**

An applicant to develop and operate a gaming facility in New York State shall pay the \$1 million fee prescribed by subdivision 8 of section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law by electronic fund transfer as the Commission may direct. An applicant shall submit this fee on a date established by the Commission, which shall be posted on the Commission's website as well as included in the schedule provided in the application to develop and operate a gaming facility in New York State. The application fee shall be non-refundable, except that the unexpended portion of the fee shall be returned to an applicant, minus any reasonable processing or investigative costs the Commission has incurred, including overhead, administrative expenses, and any other costs directly or indirectly incurred.



MEMORANDUM

**To:** Mark D. Gearan, Chairman  
John A. Crotty, Commissioner  
Peter J. Moschetti, Jr., Commissioner  
John J. Poklemba, Commissioner  
Barry C. Sample, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** May 22, 2014

**Re:** Proposed Emergency and Standard Rulemaking for Restrictions on Acceptance of Public Assistance (9 NYCRR §§ 4009.3, 4122.3, 4404, 4500.9, 4822.25, 5113.1, 5113.5, 5113.7, 5113.8 and 5117)

For Commission consideration is emergency rulemaking and proposed rulemaking in regard to restrictions on the acceptance of public benefits at certain facilities the Commission regulates. The impetus for these rulemakings is a change in State law. Part F of Chapter 58 of the Laws of 2014 restricts the acceptance of federal public assistance benefits distributed by the State at such locations. The legislation becomes effective May 30, 2014. Section 3 of the Part F authorizes the Commission to promulgate regulations on an emergency basis to implement the provisions of the act.

The federal Middle Class Tax Relief and Job Creation Act of 2012 (Pub.L. 112–96, 126 Stat. 156, enacted February 22, 2012) required states to put in place policies and procedures to prevent federal public assistance benefits from being used in any electronic benefits transaction at designated types of businesses, including liquor stores, adult entertainment establishments, casinos, racetracks, off-track betting facilities and commercial bingo facilities. New York State issues its cash public assistance to eligible citizens through a system known as Electronic Benefit Transfer (“EBT”). The Commission and its predecessor agencies had already directed relevant facilities that it regulates to restrict EBT acceptance. This restriction is now State law, codified in sections 21-a and 151 of the N.Y. Social Services Law. These proposed regulations would provide for a range of possible sanctions for regulated parties that accept EBT transactions improperly. Such sanctions could include license revocation, license suspension, fines or written reprimands.

A copy of the proposed text is attached.

Commissioners  
May 22, 2014  
Page Two



attachment

cc: Robert Williams, Acting Executive Director  
Stacy Harvey, Acting Director, Division of Charitable Gaming  
James Nielsen, Acting Director, Division of Gaming  
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

**Section 4009.3 of Part 4009 of Subchapter A of Chapter I of Subtitle T of Title 9, Executive, of the NYCRR is amended to classify the exiting text as subdivision (a) and add a new subdivision (b) as follows:**

**PART 4009**  
**Pari-Mutuel Operation**

**§ 4009.3. Sales, exchange of tickets.**

(a) No pari-mutuel tickets shall be sold except at regular ticket windows, properly designated by signs, except that tickets may be issued by automated ticket machines or bets may be sold by designated couriers according to procedures approved by the commission. No such tickets shall be exchanged.

(b) Any track conducting pari-mutuel wagering that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission. Such discipline may include one or more of the following actions:

- (1) revocation of a license;
- (2) suspension of a license;
- (3) a fine; or
- (4) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

**Section 4122.3 of Part 4122 of Subchapter B of Chapter I of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new subdivision (d) as follows:**

**PART 4122**  
**Pari-Mutuel Wagering**

**§ 4122.3. Sale of pari-mutuel tickets.**

(a) Only one method of selling pari-mutuel tickets shall be used for the sale of tickets on individual heats or races during any racing day.

(b) No pari-mutuel tickets shall be sold except through regular ticket windows properly designated by signs showing type of tickets sold at that particular window, except that tickets may be issued by automated ticket machines, or bets may be sold by designated couriers, according to procedures approved by the commission.

(c) No pari-mutuel selling windows shall be closed nor shall the sale of pari-mutuel tickets be limited or restricted in any way for the purpose of impeding public participation in any wagering pool.

(d) Any track conducting pari-mutuel wagering that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission. Such discipline may include one or more of the following actions:

- (1) revocation of a license;
- (2) suspension of a license;
- (3) a fine; or
- (4) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

**Part 4404 of Subchapter F of Chapter I of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new section 4404.18 as follows:**

**PART 4404**  
**Operation of a Corporation**

**§ 4404.18. Restrictions on acceptance of public assistance.**

Any organization conducting bingo in a leased premises, or any lessor of premises for the conduct of bingo, that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social

Services Law, shall be disciplined by the commission. Such discipline may include one or more of the following actions:

- (a) revocation of a license;
- (b) suspension of a license;
- (c) a fine; or
- (d) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

**Subdivision (c) of section 4500.9 of Part 4404 of Subchapter G of Chapter I of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new paragraph (6) as follows:**

## **PART 4500**

### **Internet and Telephone Account Wagering**

#### **§ 4500.9. Conduct of wagering.**

- (a) Account wagers shall be transacted through only an account wagering center.
- (b) The authorized pari-mutuel wagering entity may accept account wagers via any wired or wireless communications device, including but not limited to wireline telephones, wireless telephones, and the internet subject to applicable laws, rules and the approved plan of operation.
- (c) The authorized pari-mutuel wagering entity shall:
  - (1) require the account holder to provide the account wagering identification number and PIN before an account wager is accepted.
  - (2) confirm all account wagering transactions before acceptance of an account wager.
  - (3) verify that the account has sufficient funds to pay for the wager. No wager or portion of wager shall be accepted if the account fails to have sufficient funds to cover the wager.
  - (4) debit the total amount of the wager from the account immediately after verifying wager.
  - (5) not accept any account wager if the recording devices are inoperable; and
  - (6) not cash or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law. Any entity that violates this paragraph shall be disciplined by the commission. Such discipline may include one or more of the following actions:
    - (i) revocation of a license;
    - (ii) suspension of a license;
    - (iii) a fine; or
    - (iv) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

**Part 4822 of Subchapter E of Chapter II of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new section 4822.25 as follows:**

## **PART 4822**

### **General Conduct of Bingo in Leased Premises**

#### **§ 4822.25. Restrictions on acceptance of public assistance.**

Any organization conducting bingo in a leased premises, or any lessor of premises for the conduct of bingo, that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission. Such discipline may include one or more of the following actions:

- (a) revocation of a license;
- (b) suspension of a license;
- (c) a fine; or
- (d) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

Sections 5113.1, 5113.5, 5113.7 and 5113.8 of Part 5113 and the title of Part 5113 of Subchapter A of Chapter IV of Subtitle T of Title 9, Executive, of the NYCRR are amended as follows:

**PART 5113**

**Suspensions,~~[ and]~~ Revocations and other Discipline**

**§ 5113.1. Suspension and revocation of a license [~~issued pursuant to the video lottery gaming law~~] or discipline of a licensee.**

(a) Acceptance of a video lottery gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by these regulations and the policies and procedures of the commission. It is the affirmative responsibility of all licensees to keep informed of the content of all such regulations, policies and procedures and amendments thereto. Any licensee, other than a natural person, may be held accountable for the violations of such licensee's principals or key employees. The commission may suspend or revoke any license issued by the commission for any violation of these regulations.

(b) At the discretion of the commission, a license issued under these regulations may be subjected to suspension or revocation, ~~or~~ the renewal of such license may be rejected[,] or a licensee may be fined for any of the following reasons, or any combination thereof:

- (1) Any violation of any provision of such license, the act, other applicable law or these regulations;
- (2) Failure to comply with instructions of the commission concerning a licensed activity;
- (3) Conviction of any:
  - (i) Felony offense, as such term as defined in [State] Penal Law Section 10.00(5), or an equivalent offense committed in another jurisdiction;
  - (ii) A misdemeanor related to gambling, gaming, bribery, fraud, or any other offense prejudicial to public confidence in the State lottery;
- (4) Failure to file any returns or reports or to keep records or to pay any fee or submit revenue as may be required;
- (5) Fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the commission;
- (6) Failure to furnish a surety or other bond in such amount as may be required by the commission;
- (7) A material change since issuance of the license with respect to any matter required to be considered by the commission;
- (8) Violation of the provisions of the Act and/or these regulations;
- (9) Whenever the commission finds that the licensee's experience, character, and general fitness are such that participation in video lottery gaming is inconsistent with the public interest or convenience or for any other reason within the discretion of the commission;
- (10) The failure to notify the commission, in writing, within a reasonable time of any arrest for a misdemeanor or a felony, indictment, or service of a summons, or conviction for any felony whether within or without the State, or within or without the United States, occurring during the term of the license or the renewal thereof.

(c) Prior to commencing a disciplinary proceeding, each licensee shall have the opportunity to correct and/or explain the issue raised by the commission.

\* \* \*

**§ 5113.5. Penalties imposed by commission prior to reissuance of license.**

The commission may require a person or business entity who is subjected to disciplinary proceedings, or who formerly held a license pursuant to these regulations, to meet certain conditions before reissuing a license to that person or business entity, including but not limited to the following:

- (a) [~~Restitution]~~ restitution of money;
- (b) [~~Restitution]~~ restitution of property;
- (c) [~~Suspension]~~ suspension or revocation of the payment to the video lottery gaming agent of any portion of the video lottery gaming marketing allowance;
- (d) [~~Making]~~ making periodic reports to the commission as required; and
- (e) payment of outstanding fines imposed by the commission.

Any or all of the conditions imposed by the commission pursuant to this Part may be imposed jointly and/or severally.

\* \* \*

**§ 5113.7. Disciplinary hearings.**

Any disciplinary hearing commenced pursuant to these regulations shall be conducted substantially in accordance with the provisions of section 5000.[7]6 of this subtitle. In the event of a conflict between that section and these regulations, these regulations shall control.

**§ 5113.8. Final action by commission.**

After notice and hearing, in the event the commission finds insufficient evidence to support the violations claimed, the commission may find the licensee not guilty of any of the grounds alleged for disciplinary action; in which event the disciplinary proceedings shall be terminated. The commission may, however, find the licensee guilty by a preponderance of the evidence of some or all of the grounds alleged for disciplinary action[;], in which event the commission may take one or more of the following actions:

- (a) revoke the license; [and/or]
- (b) suspend the license for a period of time not to exceed six months; [and/or]
- (c) fine the licensee; or
- (d) issue a public or private letter of reprimand to be placed in the file of the licensee.

This section does not prevent the commission from compromising or settling at any time a formal hearing. Written findings of fact, conclusions of law, and an order must be entered before any decision of the commission shall be considered final.

**PART 5117**

**[Underage Gaming; Alcoholic Beverages; Firearms; Responsible Gaming; Undesirable Persons] Restrictions at Facilities**

**§ 5117.7. Restrictions on acceptance of public assistance.**

Any video lottery gaming agent that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission pursuant to Part 5113 of this Subchapter.



MEMORANDUM

**To:** Mark D. Gearan, Chairman  
John A. Crotty, Commissioner  
Peter J. Moschetti, Jr., Commissioner  
John J. Poklemba, Commissioner  
Barry C. Sample, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** May 22, 2014

**Re:** Rulemaking for New Multi-Jurisdiction Lottery Game Cash 4 Life (9 NYCRR § 5007.15)

For Commission consideration is adoption of a regulation governing New York's participation in a new multi-jurisdiction lottery game called Cash 4 Life. The game is designed in conjunction with other state lotteries within the Mega Millions consortium, including the Michigan, New Jersey, Ohio and Virginia lotteries. The Commission authorized proposed rulemaking for this game on March 12, 2014. Notice of Proposed Rulemaking was published in the *State Register* on April 9, 2014. No public comments were received in regard to the proposal. The proposed text of the rules for this game is attached.

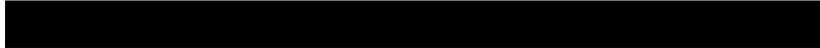
As you may recall, Cash 4 Life drawings will occur each Monday and Thursday and will be conducted at the New Jersey lottery headquarters. For each \$2 wager, a player in one of the participating states may select five numbers out of a field of 60 and one number out of a field of four, or the player may place a wager allowing the computer terminal to generate random numbers for selections. Generally, the jackpot prize would be \$1,000 a day for life, and the second prize would be \$1,000 a week for life. These top two prizes would be paid "for life," or a guaranteed prize amount would be paid to the prize winner's estate for up to 20 years in the event of the winner's death before the guaranteed prize amount is paid. Lower-level prizes would be one-time prize payments ranging from \$2 to \$2,500 in amount.

The participating states are empowered to decide, before sales for a particular drawing commence, to limit the aggregate liability for prizes in a drawing, in which case the otherwise fixed amounts for a prize level may be adjusted lower so that the specified aggregate liability limit is not exceeded by prize payouts for a drawing. Consistent with N.Y. Tax Law section 1612 a.(3), the total aggregate prize liability for the Cash 4 Life shall not generally exceed 55% of ticket sales. The prize liability

may be supported as necessary using “lapsed” prize funds (prizes that were not claimed prior to their expiration).

This Cash 4 Life game would replace the current New York Lottery game Sweet Million, a game also drawn on Mondays and Thursday evenings. Sweet Million has had limited success, experiencing slowing sales and declining consumer interest.

Based on other similar “for life” life-based prizes, we anticipate the net effect for aid to education to reach \$8 to \$9 million on a full annual basis.



attachment

cc: Robert Williams, Acting Executive Director  
Gardner Gurney, Acting Director, Division of Lottery

**Part 5007 of Subchapter A of Chapter III of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new section 5007.15 as follows:**

**§ 5007.15. Cash 4 Life.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) *Quick pick* means a player option in which Cash 4 Life number selections are determined at random by the computer system at the time of purchase.

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

(b) *Ticket price and sales.*

(1) A Cash 4 Life ticket may be purchased for \$2 per play per drawing. The purchaser receives one entry into a Cash 4 Life drawing (a play) for each \$2 wagered in Cash 4 Life. Tickets may contain multiple plays. The commission may authorize the sale of Cash 4 Life tickets at a different purchase price. Such a change in the purchase price shall be announced publicly by the commission prior to the effective date of such change.

(2) From time to time, the commission may authorize the sale of Cash 4 Life tickets at a discount for promotional purposes.

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

(4) A Cash 4 Life ticket may not be cancelled.

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

(6) A play may be entered only

(i) manually using a lottery terminal keypad or touch screen;

(ii) by means of a play slip provided by the commission and hand-marked by the player; or

(iii) by other means approved by the commission.

(7) Cash 4 Life play slips shall be available at no cost to a player, shall have no pecuniary or prize value, shall not constitute evidence of purchase and shall not constitute evidence of a player's number selections. An agent shall not permit the use of facsimiles of play slips, copies of play slips or other materials that are

not printed or approved by the commission to be inserted into a terminal's play slip reader. An agent shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the commission.

(c) *Game Description.*

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

(2) The commission reserves the right to change the field of numbers in the Cash 4 Life. Any change in the field of numbers shall be publicly announced by the commission in advance of the effective date.

(3) A Cash 4 Life subscription sales program may be offered at the discretion of the commission.

(4) A Cash 4 Life feature may be added at the discretion of the commission. A game feature is an alternative or additional method for playing the game within the same basic design.

(d) *Play characteristics and restrictions.*

(1) A Cash 4 Life ticket matching all game play, serial number and other validation data recorded in the commission's gaming system computer shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize.

(2) A Cash 4 Life ticket may be purchased for a specified number of future drawings.

(3) A Cash 4 Life ticket may not be purchased in any other state by any commission employee or any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any commission employee.

(e) *Drawings.* Cash 4 Life drawings shall be conducted twice per week at a time and at a location authorized by the party lotteries. The day, time, frequency and location of the Cash 4 Life drawings may be changed following a public announcement.

(f) *Pool, Prize Structure and Probability of Winning.*

(1) *Prize Pool.* The prize pool for the aggregate of all prize categories shall consist of 55 percent of the sales for each drawing period after the prize reserve accounts are funded to predetermined amounts. If the Cash 4 Life is no longer offered in New York State, any amount remaining in the prize pool at the end of the game shall be carried forward to a replacement game or used in a manner as permitted by New York State law.

(2) *Prize Reserve Accounts.* The prize reserve account may be adjusted as needed to maintain an approved maximum balance and shares from each of the party lotteries as specified by the party lotteries. If the Cash 4 Life is no longer offered in New York State, any amount remaining in a prize reserve account at the end of the game shall be carried forward to a replacement prize reserve account or used in a manner as permitted by New York State law.

(3) *Prize Payout and Structure.* There are nine prize levels in the Cash 4 Life. The prize payout percentage and prize structure are as follows, unless there are multiple winners in a prize category, in which case prize amounts may be reduced as set forth in subdivision (h) of this section:

<u>Match Field 1</u>	<u>Match Field 2</u>	<u>Odds 1 in</u>	<u>Prize Category</u>	<u>Level</u>
5	1	21,846,048	\$1,000/day for life	Jackpot
5	0	7,282,016	\$52,000/year for life	2
4	1	79,440	\$2,500	3
4	0	26,480	\$500	4
3	1	1,471	\$100	5
3	0	490	\$25	6
2	1	83	\$10	7
2	0	28	\$4	8
1	1	13	\$2	9
Overall chances of winning:		1 in 8		

Total aggregate payout: 55%

(4) *Odds.* The odds of winning a prize may be modified if such changes are publicly announced by the commission in advance of the effective date.

(g) *Jackpot and second-level prize payment options.* A claimant of a valid winning jackpot or second-level prize in New York must select either an annuity option or lump sum option. A jackpot or second-level prize shall be paid as an annuity prize, unless a winner elects, within 60 days after the claimant becomes entitled to such prize, to be paid a lump sum payment or unless a lump sum payment is required as set forth in subdivision (h) of this section. If a lump sum payment is selected the prize amount shall be determined according to a methodology that shall be established by the party lotteries. An election made by a claimant is final and cannot be revoked, withdrawn or otherwise changed without the approval of the commission. Unless a lump sum payment is paid in accordance with this section, annuitized prize payments shall be made for the measuring life of the jackpot prize or second-level prize winner or for a minimum of 20 years. The schedule of payments for an annuity prize shall be determined by the commission. If paid in a lump sum payment, a jackpot prize or second-level prize amount shall be rounded to the nearest whole dollar.

(h) *Prize Liability Limits.* In the event that a liability limit would be exceeded for a particular draw, the prize amounts for each level shall be adjusted in accordance with a formula established by the party lotteries so that the aggregate liability for prizes in such draw shall not exceed the liability limit.

(1) *Jackpot prize level.* A jackpot prize payout shall be divided equally among the number of jackpot winning plays as set forth in this paragraph.

(i) *One jackpot prize winner.* If there is one jackpot prize winner, the annuitized prize value shall be \$7,000 per week for life and the lump sum payment shall be based on the measuring life of the winner.

(ii) *Two to 14 jackpot prize-winning plays.* If there is more than one and less than or equal to 14 jackpot prize-winning plays, the annuitized payment option, based on a total annuitized prize value of \$7,000 per week, shall be divided by the total number of jackpot prize-winning plays. Any of these winners may choose the lump sum option as an alternative to the annuitized payment option, pursuant to subdivision (g) of this section. The amount of a lump sum option for this prize category shall be the amount of the lump sum option if there were only one winner, divided by the total number of jackpot prize winning plays.

(iii) If a prize liability limit is exceeded and the annuity prize value of a second-level prize falls below \$500 per week for life, then all winning plays will be paid in one lump sum payment to each winner, without an annuitized payment option.

(2) *Second-level prizes.* A second-level prize payout shall be paid as follows:

(i) Each winning play shall be paid \$52,000 per year for life or a lump-sum payment based on the measuring life of such claimant, unless a liability limit would be exceeded.

(ii) The minimum prize value for a second-level prize shall be not less than any lower-tier prize in regard to the same drawing.

(3) A third-level prize shall be paid as a \$2,500 lump sum payment, unless a liability limit would be exceeded. A third-level prize shall be rounded to the nearest whole dollar.

(4) Each of the prize levels from four through nine shall be paid as a set, lump sum payment, as set forth in paragraph (3) of subdivision (f) of this section, unless a liability limit would be exceeded.

(5) In addition to the prize structure set forth in this section, the commission may offer special prizes from time to time.

(i) Neither the commission nor the party lotteries shall be responsible for any Cash 4 Life ticket that is not deemed to be a valid or winning draw-game ticket pursuant to Parts 5003 and 5004 of this subchapter.

(j) This section applies to the Cash 4 Life game only.