



**MEETING
BOOK**

SEPTEMBER 30, 2014



Meeting Agenda
September 30, 2014

1. Call to Order and Establishment of Quorum
2. Approval of Minutes, Meeting of August 21, 2014
3. Report of Executive Director
4. Rulemaking
 - a. SGC-32-14-00005-P, Rulemaking: New Monopoly® Millionaires' Club (Adoption)
 - b. SGC-28-14-00006-E-, Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)
 - c. Proposed Rulemaking: Preference in Harness Racing
5. New/Old Business
6. Scheduling of Next Meeting
7. Adjournment

**NEW YORK STATE
GAMING COMMISSION MEETING**

MINUTES

MEETING of AUGUST 21, 2014

**GENEVA, NEW YORK
SARATOGA SPRINGS, NEW YORK**

A meeting of the N.Y.S. Gaming Commission was conducted at the Gideon Putnam Resort, Saratoga Springs, New York and Hobart and William Smith Colleges, Geneva, New York. Two-way audio and visual communication was established and maintained between the two meeting locations.

1. Call to Order

The meeting was called to order at 11:12 a.m. by Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance were Chairman Mark Gearan and Commissioners John Crotty, Peter Moschetti, John Poklemba and Barry Sample.

2. Approval of the Minutes from July 28, 2014

The Commission considered draft minutes of the meeting conducted on July 28, 2014. The minutes were accepted as offered.

3. Report of Executive Director

Mr. Williams provided an update on the commercial casino development process, disqualification of one of the applicants, Lottery at the State Fair and certain proposed national uniform drug rules in horse racing.

4. Rulemaking

a. SGC-28-14-00006-EP, Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)

Chairman Gearan asked Mr. Williams to introduce for consideration the re-proposal of an emergency rule prescribing the forms for the Request for Application to Develop and Operate a Gaming Facility and related license application forms. Mr. Williams explained that the

emergency rule was first adopted on March 31, 2014, to date no public comments have been received and the text of the rules has not changed since the initial emergency adoption.

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

b. **SGC-24-14-00001-EP, Rules Pertaining to Sanctions for the Unlawful Acceptance of Public Assistance Benefits at Certain Facilities (Adoption)**

Mr. Williams introduced for consideration the adoption of a set of rules that had been adopted as emergency rules on May 27, 2014 to restrict the acceptance of federal public assistance benefits distributed by the State, as required by the federal Middle Class Tax Relief and Job Creation Act of 2012. The federal law requires 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 bingo facilities.

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

c. **SGC-24-14-00001-EP, Rulemaking on Restrictions on Acceptance of Public Assistance (Re-Adoption)**

The Commission considered the re-adoption of emergency rules described in item 4b of these minutes, which were set to expire before the rule will become effective, which would occur at the earliest on September 10, 2014.

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

5. Adjudication

a. In the Matter of Cash Me Out

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it adopted the Hearing Officer's Report and Recommendations.

b. In the Matter of Hurrikanekeelynora

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it adopted the Hearing Officer's Report and Recommendations.

6. New Business/Old Business

No new or old business was offered for discussion.

7. Scheduling of Next Meeting

It was determined the next meeting scheduled for September 22, 2014 will need to be changed to either September 29 or 30.

8. Adjournment

The meeting was adjourned at 11:29 a.m.

###



MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: September 22, 2014

Re: Rulemaking: New Monopoly™ Millionaires' Club™ multi-state lottery game
9 NYCRR § 5007.16

For Commission consideration is the adoption of a regulation governing a new multi-state lottery draw game to be launched by select state lotteries from the Mega Millions and Powerball consortia. The new game, called Monopoly™ Millionaires' Club™, affords a player three chances to win with each ticket: in the primary drawing; in a secondary drawing; and by collecting tickets, combinations of which may earn chances for further prizes. As a reminder, the top prize amount available is expected to begin at an annuitized amount of \$15 million. If a top-prize-winning ticket is not sold for the next subsequent drawing, the top prize amount will increase first to \$18 million, then to \$21 million and finally to \$25 million. The top prize will then remain at \$25 million for each subsequent drawing until a top prize ticket is sold, after which the top prize will reset to \$15 million. Top prize amounts may be adjusted by the participating lotteries as either additional state lotteries join the game or as ticket sales fluctuate. Lower-level prizes will be one-time payments ranging from \$5 to \$100,000.

Lump-sum prizes of \$1 million will be awarded in secondary drawings only if a top-level prize ticket has been sold for the primary drawing. In such an instance, a secondary drawing of numbers will occur. A ticket holder will win if the secondary number matches the unique transactional number printed on the holder's ticket. The number of secondary winners selected at each drawing will be not less than 10 and may increase, dependent upon sales.

Players may collect tickets with associated MONOPOLY properties and, depending upon the combination of properties, earn chances to win other prizes. Players will collect the properties (as identified on their game tickets) and attempt to make sets and use those collected property sets on the MONOPOLY Millionaires' Club microsite. Completed property sets will generate entries for the player into random drawings for selection to be on a televised game show. A contestant on the show may win up to \$1 million. Overall, \$2.5 million in prizes will be available on each show.

This game is projected to generate more than \$34 million annually in additional aid to education in New York State. If the game launches on October 19 as anticipated, the estimated aid to education this game will generate through the end of the current fiscal year on March 31, 2015 will be \$10 million, based an anticipated initial sales growth period.

The text of the proposed amendment is attached, along with the excerpt on the August 13, 2014 State Register, where the notice of proposed rulemaking appeared. The only change to the text is to the trademark designations of the Monopoly trademark and of this game.

The public comment period will expire on September 29, 2014. No public comment has been received to date.



attachment

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

Title 9 of the NYCRR is amended to add a section 5007.16 to read as follows:

§ 5007.16. Monopoly™ Millionaires' Club™.

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

- (1) *Agent* means a person who has been licensed and authorized by the commission to sell lottery tickets pursuant to this Subchapter.
- (2) *Annuity option* means the manner in which the MONOPOLY Millionaires' Club top prize may be paid in annual installments.
- (3) *Claimant* means any person or entity submitting a claim form within the required time period to collect a prize for any MONOPOLY Millionaires' Club ticket.
- (4) *Lump-sum option* means the manner in which MONOPOLY Millionaires' Club top prize may be paid in a single payment as set forth in this section.
- (5) *Millionaires' Club prize* means a single payment prize (prize level 11) with a value of \$1,000,000 drawn independently from the other MONOPOLY Millionaires' Club prizes (prize levels 1-10).
- (6) *MONOPOLY Millionaires' Club play slip* means a computer-readable form, printed and issued by the commission, used to mark a player's numbered selection when purchasing a MONOPOLY Millionaires' Club ticket, having up to four separate play areas.
- (7) *MONOPOLY Millionaires' Club ticket* means a game ticket, produced on official paper stock, by an agent in an authorized manner, bearing player- or computer-selected numbers, game name, drawing date, amount of wager and validation data. Each such ticket shall bear a unique non-repeating transactional number associated with that play.
- (8) *Pari-mutuel* means, for this section, the total amount of prize money allocated to pay prize claimants, at the designated prize level, divided among the number of winning MONOPOLY Millionaires' Club ticket.
- (9) *Party lotteries* mean one or more of the state lotteries established and operated pursuant to the laws of any state that are part of the national premium game product group that offers the MONOPOLY Millionaires' Club lottery game.
- (10) A *play* is one entry into a MONOPOLY Millionaires' Club drawing.
- (11) *Play area* is the area on a MONOPOLY Millionaires' Club play slip containing one field of 52 one- or two-digit numbers (1 to 52, inclusive). This is the area from which the player selects five numbers from the first field of 52 if the player is not using the quick pick option and allowing the computer system to select up to five numbers at random.
- (12) *Prize pool* means that portion of MONOPOLY Millionaires' Club gross sales set aside for the payment of prizes.
- (13) *Purchaser* means a player of MONOPOLY Millionaires' Club who purchases a ticket within New York State in accordance with MONOPOLY Millionaires' Club rules and New York State governing laws and regulations.

(14) *Quick pick* means a method in which some or all MONOPOLY Millionaires' Club number selections are determined at random by the computer system at the time of purchase. Quick pick is a player option for selection of up to five number selections ranging from one through 52, but the number ranging from one through 28, representing a MONOPOLY property, must be selected by quick pick.

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

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

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

(b) *Ticket price and sales.*

(1) A MONOPOLY Millionaires' Club ticket may be purchased for \$5 per play per drawing. The purchaser receives one ticket for each \$5 wagered in MONOPOLY Millionaires' Club. The commission may authorize the sale of MONOPOLY Millionaires' Club 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 MONOPOLY Millionaires' Club tickets at a discount for promotional purposes.

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

(4) A MONOPOLY Millionaires' Club 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 MONOPOLY Millionaires' Club 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) MONOPOLY Millionaires' Club play slips shall be available at no cost to a player, shall have no pecuniary or prize value, shall not constitute evidence of purchase and shall not constitute evidence of a player's number selections. An 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) *Primary drawing.* To play MONOPOLY Millionaire's Club, a player shall select five different numbers (from 1 to 52, inclusive); the terminal or selling system shall always quick pick one additional number in the range from one through 28, to comprise the second value in the player's selection for each play. The additional number may be the same as one of the five numbers a player selects in the first field. The second number shall be represented on the player's ticket both as a number and as the associated MONOPOLY game board property. A player may select numbers by:

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

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

(2) *Secondary drawing.* If a top-prize-winning ticket has been sold, a secondary drawing shall occur to select winners of Millionaires' Club prizes. A ticket holder wins such a prize if a randomly selected Millionaire's Club number drawn in the secondary drawing matches the unique transactional number printed on such ticket. The number of winners to be selected shall be not less than 10 and may increase based upon sales. The number of winners to be selected in the secondary drawing, if any, shall be announced publicly prior to each drawing.

(3) A MONOPOLY Millionaires' Club game feature may be added at the discretion of the commission. A *game feature* is an alternative or additional method for awarding prizes using MONOPOLY Millionaire ticket information.

(4) A MONOPOLY Millionaires' Club subscription sales program may be offered at the discretion of the commission.

(5) Except for Millionaires' Club Prizes, the holder of a winning ticket may win only one prize for the primary drawing for such ticket and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(d) *Play characteristics.* A MONOPOLY Millionaires' Club 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.

(e) *Drawings.* MONOPOLY Millionaires' Club drawings shall be conducted once per week at a time and at a location authorized by the party lotteries. The day, time, frequency and location of the MONOPOLY Millionaires' Club 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 levels one through 11 shall consist of 50 percent of the sales for each drawing period after the prize reserve accounts are funded to predetermined amounts.

(2) *Prize Reserve.* The prize reserve 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. The prize reserve is used to guarantee payment of the minimum or starting top prize and Millionaires' Club prizes, guarantee the payment of valid, but unanticipated, top prize and Millionaires' Club prize claims and to fund deficiencies in set prize payments (subject to the limitations of an agreement among the party lotteries). If the MONOPOLY Millionaires' Club 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 11 prize levels in the MONOPOLY Millionaires' Club. The prize payout percentage and prize structure are as follows, unless there are multiple winners in a prize category that leads to an excess prize liability, in which case prize amounts may be reduced as set forth in paragraph (4) of subdivision (f) of this section:

Match Field 1	Match Field 2	Odds 1 in	Prize Category	Level
5	1	72,770,880.0000	Top	1
5	0	2,695,217.7778	\$100,000	2
4	1	309,663.3191	\$20,000	3
4	0	11,469.0118	\$500	4
3	1	6,731.8113	\$250	5
3	0	448.7874	\$25	6
2	1	249.3263	\$20	7
1	1	81.5977	\$10	8
0	1	47.4405	\$7	9
2	0	16.6218	\$5	10
Millionaires' Club prize		Varies with sales	\$1 million	11

Overall chances of winning for levels 1-10: 1 in 10.0025

Total aggregate payout for levels 1-11: 50%

(4) *Pari-mutuel prize determinations.*

(i) If the total of the set prizes awarded in a drawing (prize levels 2-10) exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:

(A) the amount allocated to the set prizes and carried forward from previous drawings, if any;

(B) an amount from the prize reserve, if available, not to exceed \$20,000,000 per drawing.

(ii) If, after the sources described in subparagraph (i) of this paragraph are depleted, there are not sufficient funds to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels.

(g) *Top prize payment options.* A claimant of a valid winning top prize in New York must select either an annuity option or lump sum option. A top 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. 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 paid annually in 30 payments with the initial payment being followed by 29 payments funded by the annuity. If paid in a lump-sum payment, a top prize shall be rounded to the nearest whole dollar. An annuity claimant shall have no recourse to any party lottery or to MUSL (as defined in paragraph (1) of subdivision (b) of section 5007.13 of this Subchapter), other than to the commission.

(h) Neither the commission nor the party lotteries shall be responsible for any MONOPOLY Millionaires' Club ticket that is not deemed to be a valid or winning draw-game ticket pursuant to Parts 5003 and 5004 of this subchapter.

(i) This section applies to the MONOPOLY Millionaires' Club game only.

because it is not supported by a mortality table. The Department's Life Bureau reached out to a number of insurers that write term life policies, which included discussions with the affected insurers' trade association, The Life Insurance Council of New York, on a prior version of these amendments. The Department considered the comments, which focused primarily on tax concerns, it received from the insurers and LICONY when it drafted these proposed amendments. Additionally, the Department considered and made changes to the amendments based on comments that it received from LICONY and an insurer during the public comment period.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: These amendments apply to policies issued on or after January 1, 2015 and will impact statements due May 15, 2015 and filed thereafter.

Revised Regulatory Flexibility Analysis

The revisions made to the earlier proposed rule have no special bearing on small businesses and no bearing on local governments; therefore, changes made to the last published rule do not necessitate revision to the previously published RFA.

Revised Rural Area Flexibility Analysis

The revisions made to the earlier proposed rule have no bearing on persons or businesses in rural areas who are affected by this rule; therefore, changes made to the last published rule do not necessitate revision to the previously published RAFA.

Revised Job Impact Statement

The revisions made to the earlier proposed rule have no bearing on jobs or employment opportunities; therefore, changes made to the last published rule do not necessitate revision to the previously published JIS.

Assessment of Public Comment

The Department received public comments on its proposed fifth amendment to Insurance Regulation 147 (11 NYCRR 98). One commentator, noting that subdivisions (a) and (t) of section 98.3 apply only to varying premium term life insurance involving a level premium rate guarantee ending before age 80, suggested that the Department change the "ending before age" to 91. The Department reviewed data currently available and found that there is no data to support mortality improvement at the higher age limit suggested. Therefore, no changes were made to section 98(a) and (t).

A commentator remarked that it is unclear whether section 98.4(b)(5)(vii)(b) applies the mortality improvement to deficiency reserves as well as basic reserves. To make clear that the mortality improvement applies to both basic and deficiency reserves, section 98.4(b)(5)(ii), (iii) and (vii)(b) have been amended.

Another commentator similarly remarked that it is unclear whether section 98.6 applies the mortality improvement to both basic and deficiency reserves. To clarify that the mortality improvement applies to both basic and deficiency reserves, section 98.6(b)(1) and (2) have been revised.

The Department received a comment recommending that section 98.4(b)(5) be revised to include mortality improvement in the X factor tests. The Department agrees with this comment and revised section 98.4(b)(5) accordingly.

The Department disagrees with another commentator's contention that the reserve methodology prescribed by section 98.6(a)(9) contravenes New York Insurance Law Section 4217. Insurance Law Section 4217(c)(6)(C) allows for reserves set according to the commissioner's reserve valuation method for life insurance policies to provide for a varying amount of insurance or require the payment of varying premiums to be calculated by a method consistent with the principles of paragraph (6). The methodology described in section 98.6(a)(9) is consistent with the principles espoused in Insurance Law Section 4217. The commentator also recommended that if the new reserve methodology provided in section 98.6(a)(9) is to be used, then it should be referred to as something other than the "commissioners reserve valuation method." The Department revised the reference to "the commissioners reserve valuation method for varying premium term life insurance."

One commentator requested that the Department confirm that the proposed formulas in section 98.6(a)(9)(ii)(a) and (b) are intended to represent a single year payment (at the beginning of the first and second years, respectively) of the net level premium for the coverage period after the first two years. The Department confirms that the commentator's interpretation is correct.

Third Amendment to Insurance Regulation 179 (11 NYCRR 100)

The Department received public comments on its proposed third amendment to Insurance Regulation 179. One commentator, noting that section 100.3(v) applies only to varying premium term life insurance involving a level premium rate guarantee ending before age 80, suggested that the Department change the "ending before age" to 91. The Department reviewed data currently available and found that there is no data to support

mortality improvement at the higher age limit suggested. Therefore, no changes were made to section 100.3(v).

A commentator remarked that the mortality improvement scale is referenced inconsistently in the proposed amendment. The Department agrees with this comment, and section 100.11 has been revised to correct the inconsistencies.

Another commentator opined that it is unclear whether the mortality rates as improved by the formula for LT in section 100.11(c)(2) apply to policy years beginning in a specified calendar year. Section 100.3(o) and 100.11(c) have been revised to clearly indicate that the improvement should apply by policy year and not by calendar year.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Addition of a New Multi-Jurisdiction Lottery Game

I.D. No. SGC-32-14-00005-P

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

Proposed Action: Addition of section 5007.16 to Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1612(a) and 1617; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Addition of a new multi-jurisdiction lottery game.

Purpose: To permit the Commission to raise revenue for education with a new lottery game.

Substance of proposed rule (Full text is posted at the following State website: <http://www.gaming.ny.gov>): This amendment of Part 5007, Multi-Jurisdictional Games, of Subtitle T of Title 9 NYCRR will add a new Section 5007.16, to allow the New York State Gaming Commission ("Commission") to offer the Monopoly® Millionaires' Club game.

The purpose of this rule making is to generate additional revenue for education in New York through operation of the new MONOPOLY Millionaires' Club multi-state lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings.

The new section of the Gaming Commission regulations describes the MONOPOLY Millionaires' Club as a multi-jurisdictional lottery game similar to the Powerball and the Mega Millions games that have been offered in New York and other states since 2002 and the Cash 4 Life game introduced in 2014. Subdivision (a) sets forth some definitions. Subdivision (b) governs ticket pricing and the terms and conditions of ticket sales. Subdivision (c) describes the game, including the primary and secondary drawings and additional game feature(s). The number of winners to be selected in a secondary drawing shall be not less than 10 and may increase based upon sales.

Subdivision (d) sets forth play characteristics and restrictions. Subdivision (e) describes the time and place of drawings. Subdivision (f) details the prize structure and probabilities of winning. Subdivision (g) describes the payment options that may be chosen by a winner. Subdivision (h) provides that Parts 5003 and 5004 govern this new game. Subdivision (i) states that this new section applies only to the new MONOPOLY Millionaires' Club game.

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

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601, 1604, 1612(a) and 1617 and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax

Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1612(a) describes the distribution of revenues for a joint, multi-jurisdiction, and out-of-state lottery. Tax Law Section 1617 authorizes the Commission to enter into an agreement with a government-authorized group of one or more other jurisdictions for the operation and administration of such a joint, multi-jurisdiction and out-of-state lottery.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. Legislative objectives: To permit the Commission to operate a new multi-jurisdiction lottery game that will raise revenue for education.

3. Needs and benefits. This rulemaking will permit the Commission to offer a new multi-jurisdiction lottery game to increase lottery revenue for education.

The proposed amendment will permit the Commission to offer Monopoly® Millionaires' Club, a premium multi-state lottery draw game with an alternative jackpot prize structure that is expected to raise revenue for education by appealing to players with different preferences than players of existing lottery games offered by the Gaming Commission.

The Commission operates and administers joint, multi-jurisdiction, and out-of-state lottery games as a member of the Mega Millions and Powerball Consortia, a government-authorized group formed by an agreement of the Commission with state lotteries from other jurisdictions. Such Consortia take concepts for possible new games and subjects them to consumer research, and then develops new multi-jurisdiction lottery games of interest to one or more members of the Consortia. This allows jurisdictions in the Consortia to introduce new multi-jurisdiction lottery games that appeal to consumer interest and increase lottery sales and revenue.

Monopoly® Millionaires' Club is a new multi-state draw game developed by the Consortia that is similar to successful multi-jurisdiction lottery games played in Europe and Canada. Drawings will occur once per week on Friday. For each \$5 wager, a player in one of the participating states may have up to three chances to win: in the primary drawing; in a secondary drawing; and by collecting tickets associated with properties from the traditional MONOPOLY game board, combinations of which may earn chances for further prizes. The primary drawing may award a top prize with an annuitized value of \$15 million to \$25 million or lower-level prizes ranging from \$5 to \$100,000. Lump-sum prizes of \$1 million will be awarded in secondary drawings only if a top prize-winning ticket has been sold for the primary drawing. In such an instance, a secondary drawing of numbers will occur. A ticket holder will win if the secondary number matches the unique transactional number printed on the holder's ticket. The number of secondary winners selected at each drawing will be not less than 10 and may increase substantially, dependent upon sales. Players may also collect tickets with associated MONOPOLY properties and, depending upon the combination of properties, earn chances to win other prizes.

This game is expected to be successful because it is similar to popular lottery games offered in Europe and Canada and because MONOPOLY-themed instant lottery games and promotions typically attract a substantial following. Furthermore, market research has shown that players would like a game that creates multiple millionaires as an alternative to ones with an extremely large jackpot winner.

This proposal would authorize such lottery game in New York.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. Existing lottery agents will be able to sell these tickets the same as they do other lottery games.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated. The Commission can administer this game using existing resources.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Commission's experience operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements. Lottery agents will be able to report the sales of this game using the same electronic reporting system.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending these multi-jurisdiction regulations is to continue offering the games presently offered. This alternative was rejected because offering new games is proven to generate greater revenue for education by attracting the interest of players and providing them with another game choice.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

The rulemaking allows the Commission to offer customers a new play option, a multi-jurisdiction lottery game known as MONOPOLY Millionaires' Club. This addition will impose no significant technological changes. No local government activity is involved. Lottery sales agents offer new or different lottery games only in order to increase sales. Customers are not required to play. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The new lottery game will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rulemaking.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Blood Banks

I.D. No. HLT-32-14-00001-P

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

Proposed Action: Amendment of Subpart 58-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3121(5)

Subject: Blood Banks.

Purpose: Update practice standards, reflect changes and provide clarification of regulation provisions for blood banks and transfusion services.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): This proposed amendment to Subpart 58-2 updates practice standards, reflects changes in nomenclature and technology, and provides clarification of provisions pertinent to blood banks and transfusion services. The title of the Subpart is also expanded to clarify that laboratories performing immunohematology testing are subject to these requirements.

Section 58-2.1 definitions for the terms blood bank, blood donation center, transfusion service and reinfusion procedure are amended. The definition of blood components is revised to include plasma frozen within 24 hours after phlebotomy and specifically exclude lymphocytes collected from a hematopoietic progenitor cell donor. The definition for holding facility is replaced by a definition for distribution facility. Ambulance transfusion service and hospital are defined in new subdivisions (ae) and (af), respectively.

Section 58-2.2 as modified, alters the qualifications for allogeneic blood donors by removing an obsolete provision pertaining to acute respiratory diseases, expanding options for review and acceptance of donors who are 76 years of age or older, and clarifying the timing of opportunities provided for donor self-exclusion.

Section 58-2.3(e) is amended to permit infectious disease testing to be performed on a donor blood specimen collected prior to the donation of such a component.

Section 58-2.4(a) clarifies the locations at which blood collection activities may be conducted, to include a blood donation center, a self-contained blood collection vehicle, and a temporary collection operation conducted by a blood bank. A new subdivision (d) stipulates that persons collecting



MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: September 22, 2014

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

On March 31, 2014 the Commission promulgated emergency rules prescribing both 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

By publication in the State Register on July 16, 2014 and again on September 10, 2014, the Commission extended the emergency adoption. The emergency rule will expire October 23, 2014. Accordingly, for Commission consideration is the 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. The text of the rules has not changed since the initial emergency adoption on March 31, 2014. A copy of the proposed text is attached.

The public comment period for a companion notice of proposed rulemaking has expired and no public comment was received. Permanent adoption of this rule should be considered when the Commission has before it the broad set of proposed commercial casino regulations that are still being drafted.


attachment

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.

8. In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rule making does not include a cure period because the Gaming Commission is promulgating this regulation to implement Part F of Chapter 58 of the Laws of 2014.

Rural Area Flexibility Analysis

A rural flexibility analysis is not attached because the rules do not impose any adverse impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The rules apply uniformly throughout the State to any party operating horse racetracks, off-track horse betting facilities, video lottery facilities and commercial bingo establishments.

Job Impact Statement

The Gaming Commission has no reason to believe that these rules will have any adverse impact on any jobs or employment opportunities. The rules prescribe sanctions for a regulated party that does not comply with statute. The rules will not impact jobs and employment and a full Job Impact Statement is not necessary.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

**EMERGENCY
RULE MAKING**

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-28-14-00006-E

Filing No. 751

Filing Date: 2014-08-25

Effective Date: 2014-08-25

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

Action taken: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The Gaming Commission (“Commission”) has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law, issued a Request for Applications (“RFA”) for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the “Act”). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York, completed applications were due to the Gaming Facility Location Board by June 30, 2014. The immediate re-adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted in response to the RFA. Standard rule making procedures would prevent the Commission from commencing the fulfillment of its statutory duties.

Subject: Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Substance of emergency rule: This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission (“Commission”) to prescribe the form of the application for a gaming facility license.

The new Part of the Gaming Commission regulations describes the form of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all ap-

plicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant’s duty to update its application as necessary, following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. SGC-28-14-00006-EP, Issue of July 16, 2014. The emergency rule will expire October 23, 2014.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) section 104(19) grants authority to the Gaming Commission (“Commission”) to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board (“Board”), which is established by the Commission, shall issue a request for applications (“RFA”) for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant’s family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. **LEGISLATIVE OBJECTIVES:** This emergency rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. **NEEDS AND BENEFITS:** This emergency rule making is necessary to enable the Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of \$1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the \$1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

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

5. **PAPERWORK:** The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. **LOCAL GOVERNMENT:** The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

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

8. **ALTERNATIVES:** The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which will occur upon filing.

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

This emergency rule making will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rules prescribe the

method and form of the application for a gaming facility license; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant. It is not expected that any small business or local government will apply for a gaming facility license.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

New York Gaming Facility Location Board

EMERGENCY RULE MAKING

Rules Pertaining to Gaming Facility Request for Application and Related Fees and Related Hearings

I.D. No. GFB-21-14-00008-E

Filing No. 750

Filing Date: 2014-08-25

Effective Date: 2014-08-25

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

Action taken: Addition of Parts 600 and 601 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(4), (9) and 1319

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The New York State Gaming Facility Location Board (the "Board") has determined that immediate re-adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Board, which was established by the New York State Gaming Commission ("Commission"), issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in Upstate New York. The immediate re-adoption of these rules is necessary to prescribe required fee information for applicants that submitted an application in response to the RFA that was due June 30, 2014 and to enable the Board to have hearing procedures in place before any potential public hearing occurs. Standard rule making procedures would prevent the Board from commencing the fulfillment of its statutory duties.

Subject: Rules pertaining to gaming facility request for application and related fees and related hearings.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Text of emergency rule: Subtitle R of Title 9, Executive, of the NYCRR is amended to name such Subtitle "Gaming Facility Location Board" and add new Parts 600 and 601 as follows:

PART 600

PUBLIC HEARINGS

§ 600.1. Public Hearings.

(a) If the New York Gaming Facility Location Board conducts a public hearing, it shall cause the New York State Gaming Commission to post a notice of such hearing on the Gaming Commission's website a reasonable period of time before such hearing.

(b) Any member of the New York Gaming Facility Location Board may preside over a public hearing as chair of the meeting. The conduct of the meeting shall be in the sole and absolute discretion of the chair, who may decide whom to recognize to speak and limit the time allowed to any speaker and the number of speakers. The chair of the meeting may receive written testimony in the discretion of the chair.

PART 601

GAMING FACILITY LICENSE FEES

§ 601.1. Gaming Facility License Fees.

(a) The license fee for a gaming facility license issued by the Gaming Commission pursuant to subdivision 4 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be as follows, unless a gaming facility licensee has agreed to pay an amount in excess of the fees listed below:

(1) In Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:

(i) \$70,000,000 for a gaming facility in Dutchess or Orange Counties;

(ii) \$50,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and

(iii) \$35,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.

(2) \$50,000,000 in Zone Two, Region Two (Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law;

(3) In Zone Two, Region Five (Counties of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14)), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:

(i) \$35,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties;

(ii) \$50,000,000 for a gaming facility in Wayne or Seneca Counties; and

(iii) \$20,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties, if a license is awarded for a gaming facility located in Wayne or Seneca Counties.

(b) A gaming facility licensee shall pay the required license fee by electronic fund transfer according to directions issued by the Gaming Commission.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. GFB-21-14-00008-P, Issue of May 28, 2014. The emergency rule will expire October 23, 2014.

Text of rule and any required statements and analyses may be obtained from: Corey Callahan, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: sitingrules@gaming.ny.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Gaming Commission ("Commission"), shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1306(4) authorizes the Board to determine a gaming facility license fee to be paid by an applicant.

Racing Law 1306(9) authorizes the Board to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

Racing Law section 1319 authorizes the Board to conduct hearings concerning the conduct of gaming and applicants for gaming facility licenses.

2. LEGISLATIVE OBJECTIVES: This emergency rule making carries out the legislative objectives of the above referenced statutes by implementing the requirements of Racing Law section 1306(4) and section 1319.

3. NEEDS AND BENEFITS: This emergency rule making is necessary



MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: September 22, 2014

Re: Proposed Rulemaking for Preferences in Harness Races (9 NYCRR § 4108.8)

For Commission consideration is a staff recommendation to propose amendments to the rule on types of harness races offered, in order to conform to legislation recently enacted.

Chapter 258 of the laws of 2014, enacted this summer and codified at Section 307-a of the Racing, Pari-Mutuel Wagering and Breeding Law, allows harness tracks to run races solely for New York-bred horses and further provides that conditions may be written for such races “notwithstanding any preference date requirements.” The text of the new Section 307-a is as follows:

New York bred harness races. Any association or corporation licensed to conduct harness race meetings at which pari-mutuel betting is permitted may, if in its sole discretion such association or corporation determines, that it would be beneficial to run races which are limited to New York bred horses. These races may be written on such terms and conditions as any other race authorized pursuant to law or regulation of the board, notwithstanding any preference date requirements. If in the opinion of the corporation or association sufficient competition cannot be had among such restricted class of horses, said race may be eliminated for said day and a substitute race provided instead. The board shall be authorized to promulgate regulations to effectuate the intent of this section.

Commission regulations already establish “preference” requirements for entry to harness races. *See* 9 NYCRR §§ 4108.9, 4111.9. The horses declared for a race are posted with “preference dates,” 9 NYCRR § 4108.9(a), which allow horses a fair opportunity to enter a race, based on when the horses have last raced. An existing regulation exempts from preference rules races that limit entries only to horses that have competed at licensed New York tracks for the majority of their most recent starts. 9 NYCRR § 4108.8(b).

The new rule would amend section 4108.8 to add a new subdivision (c), to lift the preference date requirements consistent with the new statute. The rule would be amended as follows (including some stylistic changes):

(a) In presenting a program of racing, the racing secretary shall use the following types of races only:

(1) stakes and futurities;

(2) early closing events;

(3) overnight events:

(i) conditioned races;

(ii) claiming races;

(iii) preferred races limited to the fastest horses at the meeting. These may be open races, free-for-all races, invitational races, conditioned races. Horses to be eligible in such races shall be posted in the declaration room, and listed with the presiding judge. Horses so listed shall not be eligible to conditioned races unless such conditions specifically include horses on the preferred list. Not more than 12 such preferred races may be conducted during a racing week. Purses offered for such preferred races shall be at least 25 percent higher than the highest purse offered for other conditioned races or letter class races scheduled the same racing week. A two or three year old horse may not be used in such races, without the consent of the owner, unless such horse has won three races at the track during the year or has lifetime earnings of \$15,000;

(iv) classified races but only with the express written permission of the commission and only if the track offers and schedules sufficient claiming races to give those horses authorized for claiming races and intended to be so raced an equal opportunity to race; and

(v) invitational races for two- or three-year-olds.

(b) Notwithstanding any preference requirements set forth in section 4108.9 of this Part and section 4111.9(a) of this Title, the racing secretary may offer condition races or claiming races that limit entries only to horses that have competed at licensed New York State tracks for the majority of their most recent starts. The racing secretary may establish the limitation for each race. The limitation shall not exceed 75 percent of the most recent starts for an individual race. At least one race must be carded in the same class without the New York limitation on the same or the next race date for each race that is carded with the New York limitation. The previous trainer of a claimed horse shall, within 48 hours after the race is made official, provide to the new owner an accurate record of all corticosteroid joint injections that were administered to the horse within 30 days before the race.

(c) Notwithstanding any preference date requirements set forth in section 4108.9 of this Part and section 4111.9(a) of this Subchapter, the racing secretary may offer condition races or claiming races that limit entries only to New York-bred horses, pursuant to Section 307-a of the Racing, Pari-Mutuel Wagering and Breeding Law.



Commissioners
September 22, 2014
Page 3

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