

Amendments to section 4624.8 eliminate certain paperwork requirements for raffles and make stylistic and technical changes consistent with other Commission rules.

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, NY 12301, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

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

Consensus Rule Making Determination

The adoption of this proposed revision to the charitable gaming rules of the New York State Gaming Commission would eliminate verbatim repetition of statute; eliminate specific prize-limits, instead cross-referencing statutory requirements; reorganize one rule; set forth procedures to apply when an authorized organization seeks to sell raffle tickets or conduct a raffle outside its premises; eliminate certain paperwork requirements; and make stylistic and technical changes consistent with other Commission rules.

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

Job Impact Statement

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

The proposal will make only non-controversial amendments to various aspects of raffles, which must be conducted by bona fide members of authorized organizations, who are not permitted to receive any remuneration for participating in the management or operation of such games.

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

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

Racing License Hearing Requests and Service Methods

I.D. No. SGC-13-22-00005-P

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

Proposed Action: Amendment of sections 4002.9, 4101.24, 4205.1, 4300.6, 4500.2, 4500.3, 4550.3; addition of Part 5410 to Title 9 NYCRR.

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

Subject: Racing license hearing requests and service methods.

Purpose: To enhance the fairness and efficiency of adjudicatory proceedings.

Text of proposed rule: Sections 4002.9, 4101.24, 4205.1, 4300.6, 4500.2, 4500.3 and 4550.3 of Part 4550 of 9 NYCRR would be amended and a new subchapter C and Part 5410 of Chapter V of 9 NYCRR would be added to read as follows:

§ 4002.9. Grounds for refusal, suspension, revocation.

(d) A denial of or refusal to issue a license shall be subject to adjudication in accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 220 and the provisions of Part 4550 of this Chapter.

§ 4101.24. Occupational licenses.

(m) A denial of or refusal to issue a license shall be subject to adjudication in accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 321 and the provisions of Part 4550 of this Chapter.

§ 4205.1. License required.

(q) A denial of or refusal to issue a license shall be subject to adjudication in accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 420 and the provisions of Part 4550 of this Chapter.

§ 4300.6. License to provide totalisator services.

(e) In considering an application for a license, the application shall be reviewed and licenses shall be issued in accordance with the standards set

forth in Racing, Pari-Mutuel Wagering and Breeding Law Section 307(5)(a) and (b), which standards shall be applicable to the applicant entity as well as to the enumerated categories of individuals and entities set forth. Pending final determination of any question, the commission may issue a temporary license upon such terms and conditions as it may deem necessary, desirable or proper to effectuate the provisions of the Racing, Pari-Mutuel Wagering and Breeding Law and these rules. [The] A denial of or refusal to issue a license shall be subject to [appeal] adjudication, in accordance with the provisions of Section 321 of the Racing, Pari-Mutuel Wagering and Breeding Law and the provisions of Part 4550 of this Chapter.

§ 4500.2. Licensing account wagering.

(i) A denial of or refusal to issue a license shall be subject to adjudication in accordance with the provisions of Part 4550 of this Chapter.

§ 4500.3. Multi-jurisdictional account wagering providers; additional provisions.

(f) A denial of or refusal to issue a license shall be subject to adjudication in accordance with the provisions of Part 4550 of this Chapter.

§ 4550.3. Notice of adjudicatory proceedings.

(a) Commencement of an adjudicatory proceeding. An adjudicatory proceeding shall be commenced by the commission's service of a notice of hearing [or order to show cause]. A hearing in any matter as to which the commission is required to hold an adjudicatory [hearing] proceeding or otherwise determines to [do so] conduct a hearing shall be held upon reasonable notice to each party[,] and shall be conducted at such place as the commission shall determine. [Notice of such hearing, may be served on the party or provided by certified mail addressed to the party involved at the party's last known address.]

(b) Contents of notice.

(1) [Such] A notice of hearing [or order to show cause] shall contain:

(i) a statement of the time, place and nature of the hearing;

(ii) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(iii) a reference to the particular section of the statutes and rules involved;

(iv) a short and plain statement of matters asserted;

(v) a statement that interpreter services shall be made available to deaf persons at no charge;

(vi) information concerning circumstances under which an adjournment may be granted;

(vii) the consequence of a failure to appear for a scheduled hearing or proceeding; and

(viii) a statement informing the parties of the right of each party to be represented by counsel, to testify, to produce witnesses, to present documentary evidence, and to examine opposing witnesses and evidence.

(2) Such notice of hearing [or order to show cause] may be amended or superseded:

(i) prior to the commencement of the hearing; or

(ii) after commencement of the hearing, as authorized by the hearing officer.

(3) A notice of appearance by any attorney representing the party shall be filed with the counsel to the commission. A written answer to the charges, if demanded in the notice, or at the option of the party notified, shall be filed at least five days before the hearing commences.

(c) Service of notice. Service of notice of hearing shall be sufficient if accomplished pursuant to section 5410.2 of Part 5410 of Subchapter C of Chapter V of this Subtitle.

(d) Time to request hearing. If the commission denies or refuses to grant a license applied for pursuant to this Chapter, such action shall be reviewable at a hearing before the commission:

(1) upon the applicant filing a written request for a hearing within 10 days of the commission's service of notice of the denial or refusal had been made pursuant subdivisions (a) through (d) or (f) of section 5410.2 of Part 5410 of Subchapter C of Chapter V of this Subtitle; or

(2) upon the applicant filing a written request for a hearing within 15 days of the commission's service of notice of the denial or refusal, if the commission's service of notice of the denial or refusal had been made pursuant to subdivision (e) of section 5410.2 of Part 5410 of Subchapter C of Chapter V of this Subtitle.

A license applicant who fails to file such a request within the time set forth in this subdivision shall have waived the applicant's right to have

any administrative review, including a hearing before the commission, of the license action.

* * *

Subchapter C

[Office of Racing Promotion and Development] General

PART 5410

General

Section

5410.1 Duty to update address

5410.2 Service methods

§ 5410.1. Duty to update address.

A commission licensee or applicant for a license has a continuing duty to inform the commission of any change of address, including a change in an electronic mail address (if such person or entity provides an electronic mail address to the commission), in connection with an application or otherwise.

§ 5410.2. Service methods.

Service of any notice of hearing or any action of the commission, including without limitation a determination of the commission in an adjudicatory proceeding, directed to a person or entity shall be sufficient if:

(a) delivered to the person or entity to be served;

(b) delivered to a person of suitable age and discretion at the last residential or business address the person or entity to be served provided to the commission;

(c) sent by private delivery services provider to the last residential or business address the person or entity to be served provided to the commission, so long as such provider obtains a signature upon delivery and the delivery is not returned by such provider to the commission;

(d) served on an attorney who represents the person or entity in the matter by first class mail, electronic mail to the last electronic mail address the attorney provided to the commission, or by any other means of communication authorized by such attorney;

(e) mailed by first class mail to the last residential or business address the person or entity to be served provided to the commission and sent by electronic mail to the last electronic mail address the person or entity to be served provided to the commission; or

(f) in such manner as the commission determines, if:

(1) the commission receives actual notice that the methods set forth in subdivision (e) of this section have both resulted in undeliverable service; or

(2) the commission otherwise determines that service pursuant to subdivisions (a) through (e) of this section is impracticable.

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

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

Regulatory Impact Statement

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

2. **LEGISLATIVE OBJECTIVES:** To enable the Commission to conduct adjudicatory proceedings in racing matters fairly and efficiently and establish standards for service of notices of hearing and actions by the Commission.

3. **NEEDS AND BENEFITS:** This rule making proposes to amend the Commission’s regulations to establish a standard time period for requesting a hearing on horse racing license determinations, set forth acceptable service methods for the Commission, and set forth the duty of licensees to keep addresses updated for the Commission. Establishing a standard time period in regulation for requesting a hearing is necessary because the Racing, Pari-Mutuel Wagering and Breeding law does not provide for such a time period for challenging the denial of certain types of licenses and the Commission believes it is desirable to standardize hearing request time periods and assurances of finality of Commission decisions that are not challenged. Regulations on acceptable service methods are needed to put

regulated parties on notice of how the Commission will communicate certain notices and actions to them and avoid unnecessary disputes about whether a notice has been delivered. In support of that goal, it is beneficial to establish a requirement that regulated parties keep the Commission updated about their current addresses, so unnecessary disputes about whether an address is current can be avoided.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: None anticipated. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate horse racing.

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

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

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

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

8. **ALTERNATIVES:** The alternative of not revising the rules pertaining to hearing requests and service methods was considered and rejected. Establishing a standard time period in regulation for requesting a hearing is necessary because the Racing, Pari-Mutuel Wagering and Breeding law does not provide for such a time period for challenging the denial of certain types of licenses and the Commission believes it is desirable to standardize hearing request time periods and assurances of finality of Commission decisions that are not challenged. Regulations on acceptable service methods are needed to put regulated parties on notice of how the Commission will communicate certain notices and actions to them and avoid unnecessary disputes about whether a notice has been delivered.

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

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

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

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

The proposed rule making would establish a standard time period for requesting a hearing on horse racing license determinations, set forth acceptable service methods for the Commission, and set forth the duty of licensees to keep addresses updated for the Commission.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities. No local government activities are involved.

Industrial Board of Appeals

NOTICE OF ADOPTION

Rules of Procedure and Practice for Administrative Hearings; Freedom of Information Law

I.D. No. IBA-45-21-00003-A

Filing No. 163

Filing Date: 2022-03-14

Effective Date: 2022-03-30

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

Action taken: Repeal of Parts 65, 66; addition of new Part 65; amendment of Parts 68, 70, 71, 72 and 73 of Title 12 NYCRR.

Statutory authority: Labor Law, section 100(5)(a)

Subject: Rules of Procedure and Practice for administrative hearings; Freedom of Information Law.

Purpose: To update the Rules of Procedure and Practice for administrative review and to correct address for Freedom of Information Law.