

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to school districts through the offices of the district superintendents of each supervisory district in the State and to the chief school officers of the five big city school districts for review and comment.

Rural Area Flexibility Analysis

The purpose of the proposed rule is to implement Part OO of Chapter 58 of the laws of 2023, which amended General Municipal Law § 103 to facilitate the purchase of New York State food products and milk produced in New York State by school districts or board of cooperative educational services. The proposed amendments to sections 114.3 and 114.4 were developed in consultation with the Commissioner of Agriculture and Markets (as required by General Municipal Law § 103(9) (9-a)) to accommodate and promote the provisions of the farm-to-school program established pursuant to Education Law § 305 and Agriculture and Markets Law § 16(5-b). The amendments to the General Municipal Law provide districts and BOCES with greater flexibility for exemptions to bidding requirements for food products and milk produced in New York State.

Since proposed amendment merely implements statutory changes that are applicable to all school districts and BOCES, including those located in rural areas, and such amendments provide greater flexibility for exemptions to bidding requirements for food products and milk produced in New York State, the Department does not anticipate that the proposed rule will adversely impact regulated entities in rural areas of New York State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural flexibility analysis is not required and one has not been prepared.

These amendments will not require any new reporting, record keeping or compliance requirements on school districts located in rural areas, beyond those imposed by statute. It will also not impose any adverse economic impact on school districts located in rural areas. Therefore, a rural area flexibility analysis is not necessary, and one has not been prepared.

Job Impact Statement

The purpose of the proposed rule is to implement Part OO of Chapter 58 of the laws of 2023, which amended General Municipal Law § 103 to facilitate the purchase of New York State food products and milk produced in New York State by school districts or board of cooperative educational services. The proposed amendments to sections 114.3 and 114.4 were developed in consultation with the Commissioner of Agriculture and Markets (as required by General Municipal Law § 103(9) (9-a)) to accommodate and promote the provisions of the farm-to-school program established pursuant to Education Law § 305 and Agriculture and Markets Law § 16(5-b). The amendments to the General Municipal Law provide districts and BOCES with greater flexibility for exemptions to bidding requirements for food products and milk produced in New York State.

Because it is evident from the nature of the proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

State Board of Elections

NOTICE OF ADOPTION**Procedures for Failure to File Enforcement Proceedings****I.D. No.** SBE-13-23-00004-A**Filing No.** 707**Filing Date:** 2023-08-15**Effective Date:** 2023-08-30

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

Action taken: Addition of section 6218.13 to Title 9 NYCRR.**Statutory authority:** Election Law, sections 3-102(1), (17) and 3-104(8)**Subject:** Procedures for failure to file enforcement proceedings.**Purpose:** Establishes expedited procedure for exclusively failure to file proceedings.**Text or summary was published** in the March 29, 2023 issue of the Register, I.D. No. SBE-13-23-00004-P.**Final rule as compared with last published rule:** No changes.

Text of rule and any required statements and analyses may be obtained from: Brian L. Quail, Esq., New York State Board of Elections, 40 North Pearl Street, Floor 5, Albany, New York 12207-2729, (518) 474-2063, email: brian.quail@elections.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2026, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

New York State Gaming Commission

**REVISED RULE MAKING
NO HEARING(S) SCHEDULED****Purchase Location Requirements for Lottery Courier Services****I.D. No.** SGC-50-22-00009-RP

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

Proposed Action: Amendment of section 5014.7 of Title 9 NYCRR.**Statutory authority:** Tax Law, sections 1601, 1604, 1605, 1607, 1609; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)**Subject:** Purchase location requirements for lottery courier services.**Purpose:** To facilitate the proper sale of lottery tickets to generate revenue for education.**Text of revised rule:** Subdivision (a) of section 5014.7 of 9 NYCRR would be amended to read as follows:

§ 5014.7. Requirements for network.

(a) Location of courier customers within the State. A network shall employ a method of restricting requests for courier services to only those made by courier customers physically located in the State of New York at the time of purchase of courier services. *The purchase of courier services, within the meaning of this subdivision, shall occur when the courier customer:*

(1) *requests the courier service purchase and deliver a particular lottery ticket or tickets on behalf of the courier customer; and*

(2) *initiates the transfer of funds to such courier service to cover the cost in full of the lottery ticket or tickets requested to be purchased. For avoidance of doubt, the element described in this paragraph is satisfied if the courier service, at the time the courier customer initiates the transfer of funds, verifies the courier customer's physical location in New York and:*

(i) *the courier customer pays for the full amount of the ticket order;*

(ii) *the courier service commits or segregates funds in the customer's courier service account for the purpose of covering the full cost of the ticket order; or*

(iii) *the courier service debits the customer's method of payment (e.g., credit card, debit card, customer's courier service account) to cover the cost of the ticket order.*

Both of the elements described in paragraphs (1) and (2) of this subdivision must occur while the courier customer is physically located in the State of New York.

Revised rule compared with proposed rule: Substantial revisions were made in section 5014.7.

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

Data, views or arguments may be submitted to: Same as above.**Public comment will be received until:** 45 days after publication of this notice.**Revised Regulatory Impact Statement**

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

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this revised rulemaking because it will not adversely affect small businesses, local governments, rural areas, or jobs.

The revised rulemaking would amend regulations governing the purchase of lottery courier services. The amendment would clarify the requirements for customer presence in New York State.

The revised rulemaking does not impact local governments and will not have an adverse impact on small businesses.

The revised rulemaking imposes no adverse impact on rural areas. The rule applies uniformly throughout the state.

The revised rulemaking will have no adverse impact on job opportunities.

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

Assessment of Public Comment

Jackpocket, a licensed lottery courier service in New York, stated that it was “requesting clarity on the proposed rule.” Jackpocket’s model requires its customers to fund a digital “wallet” maintained by Jackpocket. Jackpocket stated, “Funding the Jackpocket wallet is not an act of purchasing a lottery ticket. It is a completely separate transaction, akin to taking out cash from an ATM machine to purchase a ticket.” A customer uses funds from such digital wallet to purchase Jackpocket’s courier services. Jackpocket explained, by way of example, that “funds can be deposited while someone is in New Jersey. In the event such person subsequently travels to New York State, that person can then use the funds deposited in New Jersey to purchase a New York lottery ticket or game while physically present in New York.” Jackpocket geolocates the customer in New York at the time the customer makes the request for courier services. Jackpocket stated that it “is concerned that this proposed rule will have the unintended consequence of prohibiting customers from funding their wallets outside of New York State, which is permissible under federal law and existing regulations.” Jackpocket argued that “lottery courier services should be treated like all other operators regulated by the Commission such as online sports wagering operators, daily fantasy sports operators and advance deposit wagering systems,” which Jackpocket believes are permitted to use funds in a digital wallet that were deposited outside of New York State. Jackpocket stated a concern that “the result of this proposed rule would be that lottery courier services must require a separate digital wallet just for New York State,” which Jackpocket asserted would be inconvenient for lottery players and would “result in a material loss of revenue.”

The Commission agrees that a lottery courier customer must be located in New York State in order to comply with the Federal-law prohibitions on interstate lottery activity. The Commission believes that those interstate-lottery-activity prohibitions are also implicated if a lottery courier service customer directs the funds to be removed from the customer’s digital wallet for a designated lottery ticket purchase while the customer is in a different state than the one in which the lottery ticket purchase is effected. The proposed regulation would require a customer’s presence in New York both (1) at the time the customer requests the delivery of a New York lottery ticket through the courier service network and (2) at the time the customer directs the courier to apply existing customer funds to such New York ticket-delivery order.

The Commission agrees that a customer may fund a Jackpocket digital wallet in New Jersey, then travel to New York and, while in New York, direct the courier service to remove funds from the digital wallet to purchase a New York lottery ticket on the customer’s behalf, and that this example would remain compliant under the proposed rule. In order to ensure compliance with the Federal interstate-lottery-activity prohibitions, however, the proposed regulation would prevent a lottery courier service from allowing a customer to order a lottery ticket in New York without having funded it, leave the State, and then, while elsewhere, fund such New York ticket purchase.

For Jackpocket, the conflict related to interstate lottery activity arises with the interplay of its “autoplay” and “autofund” features. Jackpocket wishes to continue to allow a customer, while in New York, to select those features after linking the customer’s Jackpocket digital wallet to a bank account or to a credit or debit card. Thus, Jackpocket wishes to allow, for example, a customer to order, while in New York, the delivery of a ticket for an unlimited number of lottery draws, even if the customer lacks the current funds in the customer’s digital wallet to fund such purchases. Then, once the customer’s digital wallet is depleted in the future, Jackpocket wishes to allow the customer to fund future purchases at the future date at which the digital wallet is depleted, at which time the customer may be outside the State. Allowing such automatic replenishment of funds to purchase lottery tickets when requesting delivery, staff believes, unduly risks violating the Federal prohibitions on interstate lottery activity.

The Commission interprets the proposed regulation to require the customer to be in New York State at the time the ticket-delivery request is made (which Jackpocket does not dispute) and be in New York State at the time the customer “funds” the ticket-delivery request by directing the lot-

tery courier service to segregate existing money from the customer’s digital wallet toward such ticket-delivery request. In this manner, the Commission can be assured that the entire lottery-related transaction occurs only within New York, as Federal law requires.

In the Commission’s lottery subscription program, by contrast, a player must fully fund the series of future ticket purchases at the time of the purchase request, and be in New York State at the time of such funding.

The Commission disagrees that the proposed rule would require a lottery courier service to establish a separate New York digital wallet. The proposed rule would, instead, require the customer’s presence in New York at the time existing money is dedicated from the customer’s digital wallet toward a New York purchase.

The Commission also notes that Jackpocket is misplaced in comparing its activity with mobile sports wagering and horse racing advance-deposit wagering. Title 18, section 1953 of Federal law explicitly carves out sports wagering, including horse racing, from its generally broad prohibition on interstate wagering activity. Similarly, the Federal Unlawful Internet Gambling Enforcement Act of 2006 explicitly carves out horse-racing wagering from its prohibitions. 31 U.S.C. § 5362(10)(D).

Lotto.com, a licensed lottery courier service in New York, urged the Commission to not adopt the proposed rule, stating that the proposed rulemaking “fails to recognize that the actual courier transaction, and funding for that transaction, always occurs within New York”; “creates inconsistencies with the lottery’s own administrative rules and prior practice, as well as those addressing funding of plays for other authorized gaming in New York”; “does not reflect industry practice within the lottery industry”; and “would convert New York to a cash only lottery state.” Lotto.com stated that lottery couriers do not sell lottery tickets and that “federal law concerns cited as justification for this rule simply don’t apply.” Lotto.com notes that the purchase of the actual New York Lottery ticket “always occurs within the state...as a purely intrastate transaction between licensed retailer and licensed courier.” Lotto.com asserts “[t]here is no federal law that requires the transfer of funds which may be used for a lottery ticket purchase or a lottery courier services transaction to occur within the confines of a state.”

Lotto.com asserted that New York has “permitted” the only other licensed lottery courier (meaning Jackpocket) to offer its “Autoplay” and “Auto Fund” functionality without requiring geolocation. Lotto.com stated that the Commission has “denied lotto.com the ability to perform similar actions within the state.” Lotto.com asserted that the Commission’s lottery subscription program has allowed customers to fund subscriptions without having to be physically present in the State. Lotto.com also noted that horse racing and mobile sports wagering customers may fund wagers without ensuring that they are within the State when gaming orders are funded. Lotto.com asserted that several other lottery jurisdictions operate without geolocation requirements or allow for funding via mail.

Lotto.com argued that the proposed rule is “unworkable” and “would create widespread unintended consequences on traditional lottery practices.” Lotto.com asserted that “the lottery can only be assured of the purchaser’s physical presence in New York for funding purposes with an all cash transaction.” Lotto.com stated that “funding for electronic transactions, such as debit and credit card purchases, always trail the actual purchase” because of the settlement of the transaction, while a check may not clear for days after having been delivered.

The Commission agrees that lottery couriers do not sell lottery tickets and that the purchase of the actual New York Lottery ticket always occurs within the State, but disagrees that the courier transaction function does not implicate the Federal interstate-lottery-activity prohibitions. See, e.g., *Pic-A-State Pa, Inc. v. Reno*, 76 F.3d 1294, 1296-97 (3d Cir. 1996) (18 USC § 1301 prohibits “transmission in interstate commerce of information to be used for the purpose of procuring a lottery ticket”); *United States v. Stuebben*, 799 F.2d 225 (5th Cir. 1986) (18 USC § 1953(a) applies to prohibit interstate lottery couriers, even where courier’s purchase of actual lottery tickets occurred in-state).

Lotto.com is mistaken that New York has “permitted” Jackpocket to offer its autoplay and auto-fund functionality without requiring geolocation. To the contrary, it is the interplay of such functionality that raises the federal-law concerns that give rise to this proposed rule making. The Commission, through the adoption of this proposed rule making, will prevent Jackpocket from allowing the funding of lottery-purchase-related services while the lottery courier customer is outside of New York.

Lotto.com is mistaken in stating that the Commission has “denied lotto.com the ability to perform similar actions within the state.” To the contrary, Commission staff informed lotto.com that it, too, may utilize the same digital wallet model that Jackpocket employs, and lotto.com has determined to do so. What lotto.com had sought is permission to allow its customers to purchase a subscription for lottery courier services through a payment method that might be charged while the customer is outside of New York. Such proposal is dissimilar to the digital-wallet model and, the Commission believes, is impermissible under Federal law.

The Commission confirms that the New York Lottery currently does not allow customers in its subscription program to fund purchases while the customer is outside of New York.

Like Jackpocket, lotto.com is misplaced in comparing its activity with mobile sports wagering and horse racing, as such activity is carved out of the relevant federal statutes.

The Commission confirmed with several other jurisdictions that they employ geolocation functionality in connection with their lotteries, contrary to assertions made by lotto.com. Nevertheless, even if lotto.com's assertions about another state's practices were accurate, the Commission cannot credit another jurisdiction's potential noncompliance as evidence of a law's proper interpretation.

The Commission disagrees that the proposed rule would require all-cash lottery transactions. The proposed rule provides that the location requirement applies "when the customer initiates the transfer of funds to the courier service in connection with" a delivery request, not when the transfer of funds ultimately settles.

Jackpot.com proposed that a customer physically located in New York should be able, through Jackpot.com's platform, to purchase a subscription for a series of courier service deliveries, have the customer's location verified, opt to "Auto Renew," have the customer's location verified at the time of renewal, and have the renewal canceled if the customer is not in New York at the time of the renewal.

Staff believes the process Jackpot.com described would comply with the proposed rule, if adopted.

Brianne Doura complimented the Commission for having "done a tremendous job in accounting for and incorporating advances in technology to better protect customers, via items such as self-exclusion, relevant and modern advertising guidelines, comprehensive [know-your-customer], and Geolocation requirements, just to name a few." Doura stated that a "traveling universal wallet would allow couriers to better monitor, flag, or even intervene any problematic play of users." Doura stated that a "central wallet would allow for holistic limit thresholds to be set and enforced. It is far more difficult for vendors and problem gambling experts alike to monitor problematic play when customer funds are distributed across multiple accounts."

The Commission believes the proposed rule would not eliminate the possibility for a lottery courier service to employ a customer wallet model that a customer could use when traveling from state to state to order delivery of lottery tickets within the state in which the customer is located. Rather, the proposed rule would prevent such a customer from funding a purchase in one state while the customer is located in another state.

Department of Health

NOTICE OF ADOPTION

Inclusion of a Health Equity Impact Assessment As Part of the Certificate of Need (CON) Process

I.D. No. HLT-15-23-00008-A

Filing No. 709

Filing Date: 2023-08-16

Effective Date: 2023-08-30

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

Action taken: Addition of section 400.26; amendment of sections 600.1 and 710.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Inclusion of a Health Equity Impact Assessment as Part of the Certificate of Need (CON) Process.

Purpose: To ensure community members and stakeholders are meaningfully engaged and considered in proposed facility projects.

Text of final rule: A new section 400.26 is added, to read as follows:

Section 400.26. Health Equity Impact Assessments.

(a) *In accordance with Public Health Law § 2802-b, applications under Article 28, meeting the criteria set forth in this section, shall include a health equity impact assessment. The purpose of the health equity impact assessment is to demonstrate how a proposed project affects the accessibility and delivery of health care services to enhance health equity and contribute to mitigating health disparities in the facility's service area, specifically for medically underserved groups.*

(b) *Definitions. For the purposes of this section the following terms shall have the following meaning:*

(1) *"Independent entity" means individual or organization with demonstrated expertise and experience in the study of health equity, anti-racism, and community and stakeholder engagement, and with preferred expertise and experience in the study of health care access or delivery of health care services, able to produce an objective written assessment using a standard format of whether, and, if so, how, the facility's proposed project will impact access to and delivery of health care services, particularly for members of medically underserved groups.*

(2) *"Conflict of Interest" means having a financial interest in the approval of an application or assisting in drafting any part of the application on behalf of the facility, other than the health equity assessment.*

(3) *"Stakeholders" shall include individuals or organizations currently or anticipated to be served by the facility, employees of the facility including facility boards or committees, public health experts including local health departments, residents of the facility's service area and organizations representing those residents, patients or residents of the facility, community-based organizations, and community leaders.*

(4) *"Meaningful engagement" shall mean providing advance notice to stakeholders and an opportunity for stakeholders to provide feedback concerning the facility's proposed project, including phone calls, community forums, surveys, and written statements. Meaningful engagement must be reasonable and culturally competent based on the type of stakeholder being engaged (for example, people with disabilities should be offered a range of audiovisual modalities to complete an electronic online survey).*

(c) *In accordance with Public Health Law 2802-b, applications for the construction, establishment, change in establishment, merger, acquisition, elimination or substantial reduction, expansion or addition of a hospital service or health-related service of a hospital that require review or approval by the public health and health planning council or the commissioner, shall include a health equity impact assessment; provided, however, that a health equity impact assessment shall not be required for the following:*

(1) *projects that do not require prior approval but instead only require a written notice to be submitted to the Department prior to commencement of a project pursuant to Part 710 of this Title;*

(2) *minor construction and equipment projects subject only to limited review pursuant to Part 710 of this Title, unless such project would result in the elimination, reduction, expansion or addition of beds or services;*

(3) *establishment (new or change in ownership) of an operator, including mergers and acquisitions, unless such establishment would result: (i) the elimination of a hospital service or health-related service; (ii) a 10 percent or greater reduction in the number of certified beds, certified services, or operating hours or (iii) a change of location of a hospital service or health-related service; and*

(4) *applications made by a diagnostic and treatment center whose patient population is over fifty percent combined patients or residents enrolled in Medicaid or uninsured, unless the application includes a change in controlling person, principal stockholder, or principal member of the facility.*

(d) *A health equity impact assessment shall be performed by an independent entity without a conflict of interest, using a standard format provided by the Department, and shall include:*

(1) *meaningful engagement of stakeholders commensurate to the size, scope and complexity of the facility's proposed project and conducted throughout the process of developing the health equity impact assessment, to incorporate and reflect community voices;*

(2) *a description of the mechanisms used to conduct meaningful engagement;*

(3) *a documented summary of statements received from stakeholders through meaningful engagement as submitted to, or prepared by, the facility or independent entity. The Department reserves the right to request and review individual statements as submitted, or prepared by the facility or independent entity, while reviewing the health equity impact assessment.*

(4) *documentation of the contractual agreement between the independent entity and the facility;*

(5) *a signed attestation from the independent entity that there is no conflict of interest; and*

(6) *a description of the independent entity's qualifications.*

(e) *When submitting an application to the Department requiring a health equity impact assessment, the application must include:*

(1) *a full version of the application and a version with proposed redactions, if any, to be shared publicly; and*

(2) *a signed written acknowledgment that the health equity impact assessment was reviewed by the facility, including a narrative explaining how the facility has or will mitigate potential negative impacts to medically underserved groups identified in the health equity impact assessment. The narrative must also be made available to the public and posted conspicuously on the facility's website until a decision on the application is rendered by the public health and health planning council or the commissioner.*