



**MEETING AGENDA
FEBRUARY 27, 2023**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES FOR MEETING OF JANUARY 17, 2023
3. REPORT OF THE EXECUTIVE DIRECTOR
4. RULEMAKING
 - A. ADOPTION: LOTTERY COURIER ADVERTISING
 - B. PROPOSED: MOBILE SPORTS WAGERING ADVERTISING MARKETING AND PROMOTIONS
5. ADJUDICATION
 - A. IN MATTER OF SARAH A M DELI GROCERY CORPORATION
 - B. IN MATTER OF TONY'S DELI AND GROCERY II CORPORATION
6. NEW & OLD BUSINESS
 - A. NEW BUSINESS
 - B. OLD BUSINESS
 1. DISCUSSION ON MOBILE SPORTS WAGERING ADVERTISING MARKETING AND PROMOTIONS
7. ADJOURNMENT

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**New York State
Gaming Commission**

Minutes

Meeting of January 17, 2023

A meeting of the Commission was conducted in New York, New York and Schenectady, New York. Two-way audio and video communications were maintained between locations for the duration of the meeting.

1. Call to Order and Establishment of Quorum

Executive Director Robert Williams called the meeting to order at 1:36 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance in Manhattan were Chairman Brian O'Dwyer, and Members John Crotty, Christopher Riaño, Marissa Shorenstein, and Jerry Skurnik. In physical attendance in Schenectady was Member Peter Moschetti.

2. Consideration of Minutes for Meeting of December 12, 2022

The Commission considered previously circulated draft minutes of the meeting conducted on December 12, 2022. The minutes were accepted as circulated.

3. Report of the Executive Director

The Executive Director discussed the December 28, 2022, opening in Newburgh of Resorts World Hudson Valley.; the Request for Application issued on January 3, 2023 by the Gaming Facility Location Board; the recent statutory amendments to the Horseracing Integrity and Safety Act and an optimistic timeline when their Anti-Doping and Medication Program might be implemented; and the success of the full year of mobile sports wagering operation.

4. Rulemaking

a. Proposed Rulemaking for Casino Application (9 NYCRR § 5301.1 and 5301.2)

The Commission considered amendments to rules governing the content of casino license applications, to conform existing rules with

the changes in State law that enabled the commercial casino additional license process and the issued Request For Application.

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

5. Consideration of Employment Restriction Waiver

The Commission unanimously found that there were no other qualified candidates with the desired experience and flexibility for the position of Supervising Racing Veterinarian and thusly waived for good cause the pre-employment restrictions for Anthony N. Verderosa, D.V.M. to be employed in such position.

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

6. New & Old Business

a. New Business

i. Request For Application Restricted Period

Chairman O'Dwyer noted that the Commission members and employees are in a Procurement Lobbying Law restricted period which imposes certain restrictions on communications during the procurement and award process. The Chairman request staff circulate a list of all known interested parties and their legislative and legal representatives to best inform Members of potential concerns.

ii. Mobile Sports Wagering

Chairman O'Dwyer reiterated his concern, first raised during the December Meeting, regarding casino and sports wagering promotions being directed towards university and college students. He stated that he extended until February his request that the General Counsel provide a memorandum regarding possible actions the Commission might take.

iii. Fund Update.

Chairman O'Dwyer also provided an update regarding the New York State Thoroughbred and Breeding Development Fund

Corporation's contributions to qualified Thoroughbred horse retirement organizations. He noted that the Thoroughbred Fund was holding a reception to award the contributions on February 21, 2023 at the National Museum of Racing in Saratoga Springs and invited all his fellow Commissioners to attend.

iv. NYRA Backstretch

Chairman O'Dwyer announced his intention to visit the Belmont backstretch during this season to examine worker housing conditions. He acknowledged that NYRA's capital plans will include a new dormitory at Belmont Park, and he noted that approval has already been received for a new dormitory at Saratoga Race Course, but suggested he will seek additional concrete worker housing improvement proposals.

v. Facility Visits

Chairman O'Dwyer announced that he had recently visited the Resorts World New York City at Aqueduct Racetrack and was favorably impressed by the facility. He also suggested further visitations to other gaming facilities would be scheduled in the springtime.

b. Old Business.

No old business was presented.

7. Adjournment

The meeting was adjourned at 2:03 p.m.

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Resolution No. 01-2023

To Waive Pre-Employment Restriction

WHEREAS, the New York state legislature passed a law prohibiting any person from being appointed to or employed by the Commission if, during the period commencing three years prior to appointment or employment, such person held any direct or indirect interest in, or employment by, any corporation, association or person engaged in gaming activity within the state; and

WHEREAS, said law was amended by Part BB of Chapter 59 of the Laws of 2019 in relation to pre-employment restrictions for certain prospective Commission employees; and

WHEREAS, under the amended law the Commission may, by resolution adopted by unanimous vote at a properly noticed public meeting, waive for good cause the pre-employment restrictions for a prospective employee whose duties and responsibilities are primarily on racetrack grounds so long as the resolution details the reasons for waiving the pre-employment conditions for the prospective employee and includes a finding that there were no other qualified candidates with the desired experience for the specified position.

WHEREAS, the Commission has experienced difficulty – despite substantial recruitment efforts – in identifying licensed veterinarians to work as a Supervising Racing Veterinarian in Test Barns of Thoroughbred and Standardbred racetracks to collect biologic specimens and to supervise the sealing, labeling, storage and shipment of these samples to the New York State Drug Testing and Research Laboratory for drug testing purposes and to perform certain lameness examinations, as regulations require; and

WHEREAS, the Commission is in dire need of full-time and part-time veterinarians with flexibility to work irregular schedules and fulfill the requirement of veterinary staffing at racetracks operating throughout the State; and

WHEREAS, the Commission has been presented with the opportunity to flexibly employ a uniquely qualified applicant possessing decades of experience and training with a deep understanding of New York laws and medication regulations as well as substantial knowledge of racing and backstretch operations;

WHEREAS, this veterinarian has, during the period commencing three years prior to potential State employment, been employed by an association conducting horseracing within the State; and

WHEREAS, the Commissioners find the position of Supervising Racing Veterinarian to be integral to the execution of certain on-track duties and responsibilities of the Commission; and

WHEREAS, the prospective employee duties and responsibilities are primarily limited to racetrack grounds; and

WHEREAS, only one uniquely qualified candidate has identified who possesses the desired experience and flexibility for vacant veterinary positions; and

NOW, THEREFORE BE IT RESOLVED, that the Commission hereby finds that there were no other qualified candidates with the desired experience and flexibility to perform the requisite duties of a Supervising Racing Veterinarian and at this properly noticed public meeting waives for good cause the pre-employment restrictions for **Dr. Anthony N. Verderosa** to be employed as a Supervising Racing Veterinarian.

BE IT FURTHER RESOLVED, that the Commission chair be authorized to sign this resolution indicating the unanimous assent of the Commission to the contents herein.

Brian O'Dwyer	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
John Crotty	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
Peter Moschetti	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
Christopher Riano	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
Marissa Shorenstein	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
Jerry Skurnik	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay

Brian O'Dwyer / 

Brian O'Dwyer
Chair

New York, New York
January 17, 2023



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: February 21, 2023

Re: Proposed Rulemaking for Lottery Courier Service Advertising (9 NYCRR § 5014.17)

For Commission consideration is the adoption of regulations to govern advertising by lottery courier services. The proposal aims to prevent false, deceptive or misleading advertising, such as stating or implying that a customer may “play” the lottery through the courier service’s platform or purchase a lottery ticket directly from the courier service. A courier service, instead, may market its actual services: fulfilling orders for the purchase of a lottery ticket from a licensed lottery sales agent and delivering tickets to the customer. The proposal would incorporate the advertising guidelines of the North American Association of State and Provincial Lottery Advertising Guidelines, which encourage responsible lottery advertising practices. In addition, the proposed rule would require problem gambling assistance messaging, similar to advertising requirements for casinos. A courier service would be required to submit draft advertisements to the Commission at least 15 days prior to publication or other dissemination, and Commission staff would have 10 days to determine whether the draft complies with the regulations and, if the draft does not, prohibit publication or dissemination of the proposed advertisement.

The Notice of Proposed Rulemaking was published in the December 14, 2022 State Register, an excerpt of which is attached. The public comment period for the proposed rulemaking expired on February 13, 2023. Three public comments were received, two from the Commission’s current lottery courier service licensees (Jackpocket and Lotto.com) and one from Briana Doura, self-described as the founder of a firm “that specializes in problem and responsible gambling policy.” Doura discloses that Doura was retained by Jackpocket to comment on these proposed regulations but states that the comments are the commentators own.

Jackpocket objects to the proposed regulations. Jackpocket asserts that “a new way to play is exactly what a lottery courier service provides” and that in authorizing lottery courier services, the Commission was “aware” that it was “establishing a new method for playing the lottery” and regulated “with that goal in mind.” Jackpocket argues that “a convenient new way for everyone to play the lottery’ is an accurate description and that describing yourself as a ‘digital lottery courier’ does not properly address the underlying lottery gaming activity actually taking place.” Jackpocket asserts that the proposed rules would be confusing to customers in light of references to the lottery “player” in Commission Rules 5014.7 and 5014.8. Jackpocket provides results of a survey it

conducted to show that 88.6% of its sampled customers believe that its service is a “[c]onvenient way to play NY lottery games.” Jackpocket states that precluding a licensed lottery courier from “solicitations of ‘playing the lottery’ are an unnecessary overreach that will lead to unintended consequences and unfavorable economic conditions,” though it does not explain what such unintended consequences might be. Jackpocket asserts that the “end effect would be less participation in the lottery system.” Jackpocket suggests that “clarifying language around this issue” would be “more transparent” than “prohibiting the use of a single word.”

Staff response

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Lotto.com states that it “supports the desire to protect the public from ‘false, deceptive or misleading advertising,’” but believes existing rules and practices are sufficient, citing current Rule 5014.17 concerning advertising and marketing, the Commission’s courier service license application requirement to disclose marketing plans and the Commission’s ability in current Rule 5014.20(a)(1) to suspend or revoke a license for conduct inconsistent with the public interest. Lotto.com objects to the proposed rule that would require submission of proposed advertisements for Commission review prior to public dissemination. Lotto.com states that a jackpot may be fleeting and “there may not be the ability to review and respond to marketing requests in a timely manner.” Lotto.com also objects to the proposed requirement to submit samples of advertisements within five days of use and to the proposed retention requirements for advertising. Lotto.com asserts that the Commission does not require anything comparable for licensed retail sales agents, who “largely remain free to advertise in an unfettered manner.” Lotto.com asserts that “there is no rational basis for treating retail licensee advertising and courier licensee advertising differently.”

Staff response

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Brianna Doura “commend[ed] the Commission for designing and deploying such an impressive and robust infrastructure and process for licensure” of lottery courier services. Doura states that proposed Rule 5014.17(e)(3) “is very important” because “ensuring truth and transparency in advertising is crucial in a quest to properly combat problematic gambling.” Doura states that the marketing restrictions in proposed Rule 5014.17(f)—for example, prohibiting the use of the word “play” in connection with lottery courier services—is “potentially worrisome” in that, in Doura’s opinion, courier service customers “are in fact engaging in legal gambling and playing the lottery.” Doura asserts that “[t]he terminology of ‘play the lottery’ is ubiquitous and any variation thereof could lead to confusion by the public.” Additionally, Doura states “it would seem a bit contradictory that the courier services be promoting things such as ‘responsible play’...if they weren’t communicating that customers were playing the lottery through their service.” Doura supports the requirement to publish the problem gambling helpline “and in such a manner that makes it prominent,” stating that it is “essential that all stakeholders within the gaming ecosystem (courier services included) do their part in informing the wider public that help and hope exists.” Doura states that “it’s critical that the customer understands that they are in fact ‘gambling’ and ‘playing’ the lottery even when using a courier service.”

Staff response

[REDACTED]

[REDACTED]

Commissioners
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cc: Robert Williams, Executive Director
Gweneth Dean, Director, Division of Lottery

Subject: Limits on Executive Compensation.

Purpose: To remove the limits on executive compensation and administrative expenses.

Text or summary was published in the August 17, 2022 issue of the Register, I.D. No. CFS-33-22-00003-P.

Final rule as compared with last published rule: No changes.

Revised rule making(s) were previously published in the State Register on September 7, 2022.

Text of rule and any required statements and analyses may be obtained from: Lisa Vasnani, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 474-8310, email: regcomments@ocfs.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 2025, 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.

Division of Criminal Justice Services

ERRATUM

A Notice of Proposed Rule Making, I.D. no. CJS-47-22-00002-P, published in the November 23, 2022 issue of the *State Register* inadvertently contained the incorrect Subject and Statutory Authority. The correct headings are as follows:

Statutory authority: Executive Law, section 243(1); Family Court Act, art. 7

Subject: Intake for Article 7 (PINS)

NOTICE OF ADOPTION

NYS Forensic Laboratory Accreditation Standards

I.D. No. CJS-32-22-00028-A

Filing No. 974

Filing Date: 2022-11-29

Effective Date: 2022-12-14

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

Action taken: Amendment of section 6190.1(a)(7) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13), 995-b(1) and 995-c(1)

Subject: NYS Forensic Laboratory Accreditation Standards.

Purpose: To add ISO/IEC 17020 as a standard.

Text or summary was published in the August 10, 2022 issue of the Register, I.D. No. CJS-32-22-00028-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Natasha Harvin-Locklear, NYS Division of Criminal Justice Services, Alfred E. Smith Building, 80 South Swan Street, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Regulations Governing the Recreational and Commercial Shortfin Mako Fisheries

I.D. No. ENV-32-22-00026-A

Filing No. 970

Filing Date: 2022-11-28

Effective Date: 2022-12-14

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0105 and 13-0338

Subject: Regulations governing the recreational and commercial shortfin mako fisheries.

Purpose: To revise regulations to implement a prohibition on commercial and recreational take of shortfin mako in State waters.

Text or summary was published in the August 10, 2022 issue of the Register, I.D. No. ENV-32-22-00026-EP.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Christopher Scott, Department of Environmental Conservation, 123 Kings Park Blvd., Kings Park, NY 11754, (631) 444-0429, email: christopher.scott@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the ECL, the State Environmental Quality Review Act, a Coastal Assessment Form and a Short Environmental Assessment Form with a negative declaration have been prepared, and are on file with the Department.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2025, 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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lottery Courier Service Advertising

I.D. No. SGC-50-22-00008-P

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

Proposed Action: Amendment of section 5014.17 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: Lottery courier service advertising.

Purpose: To regulate advertising by lottery courier services in order to protect consumers.

Text of proposed rule: New subdivisions (e), (f) and (g) would be added to section 5014.17 of 9 NYCRR, to read as follows:

§ 5014.17. Advertising and marketing.

* * *

(e) Advertising restrictions.

(1) Definitions. As used in this subdivision:

(i) advertisement means any notice or communication to the public or any information or statement concerning the lottery or courier-service-related business presented through telecasting, publication or any other means of dissemination, including electronic dissemination. Social media, promotional activities content on the courier-service platform, targeted communication such as newsletters and alerts, press releases, and statements made about the lottery or courier-service-related business are considered advertisements for purposes of this subdivision; and

(ii) direct advertisement means any advertisement as described in subparagraph (i) of this paragraph that is disseminated to a specific individual or individuals.

(2) Any advertisement for a courier service shall be submitted to the commission in draft form for review at least 15 days prior to publication or other dissemination. If the commission determines, in the commission's discretion, that such draft does not comply with this subdivision, the commission may so notify such courier service, within 10 days of submission of the draft, and such courier service then is not permitted to publish or otherwise disseminate such advertisement. The commission may authorize continual use of a particular advertising template (e.g., a form of jackpot announcement).

(3) Advertising shall be based upon fact and shall not be false, deceptive or misleading.

(4) Advertisements shall comply with the advertising guidelines issued by the North American Association of State and Provincial Lotteries (approved March 19, 1999), 7757 Auburn Rd. Unit #7, Concord, OH 44077, which is hereby incorporated by reference. Such advertising guidelines are available for public inspection at the New York State Gaming Commission located at One Broadway Center, Suite 500, Schenectady, NY 12305 and at the Department of State, 99 Washington Avenue, Albany, NY 12210.

(5) No advertising by or on behalf of a lottery courier service licensee shall:

(i) use any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact;

(ii) fail to clearly and conspicuously specify and state any material conditions or limiting factors;

(iii) depict any person under the age of 18 engaging in lottery and related activities;

(iv) contain content that contradicts contest guidelines or terms and conditions of the courier service site; or

(v) conflict with New York Lottery brand messaging, as determined in the commission's discretion.

(6) Each advertisement shall, clearly and conspicuously, contain a problem gambling assistance message comparable to one of the following:

(i) If you or someone you know has a gambling problem, help is available. Call the HOPEline at 1-877-8-HOPENY (1-877-846-7369) or text HOPENY (467369);

(ii) Gambling Problem? Call 1-877-8-HOPENY (1-877-846-7369) or text HOPENY (467369); or

(iii) any other message approved in writing by the commission.

(7) Each direct advertisement shall, clearly and conspicuously, describe a method or methods by which an individual may notify the courier service that the individual does not wish to receive any future direct advertisement.

(i) The described methods must include at least two of the following:

(a) telephone;

(b) regular U.S. mail; or

(c) electronic mail.

(ii) Upon receipt of an individual's request to discontinue receipt of future direct advertisements, a courier service shall block the individual in the courier service's database so as to prevent the individual from receiving future direct advertisements, with such block to take effect within 15 days of the courier service's receipt of the individual's request.

(8) Each courier service shall provide to the commission at its main office a complete and accurate copy of all advertisements within five business days of the advertisement's public dissemination. Courier services shall discontinue the public dissemination upon receipt of notice from the commission to discontinue an advertisement.

(9) A courier service shall maintain a complete record of all of its advertisements for a period of at least two years. Records shall be made available to the commission upon request.

(10) A courier service shall prevent self-excluded customers and self-excluded former customers from receiving direct advertisements.

(f) Marketing restrictions.

(1) A courier service shall not market nor advertise such courier ser-

vice's platform as providing an opportunity to "play" lottery games or "buy" lottery tickets directly from the courier service through such platform. A courier service may market or advertise services such as the procurement or delivery of a lottery ticket, for example, referring to itself as a "digital lottery courier." A courier service shall not market services as "digital lottery."

(2) A courier service shall not use misleading embedded keywords or similar methods in its platform to:

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

(ii) accomplish any other misleading or deceptive purpose.

(g) Directive to cease use. The commission may direct a courier service to cease using any advertisement that does not comply with either or both of subdivisions (e) or (f) of this section. Any such directive, and any violation issued for failure to comply with such directive, may be in addition to any other sanction the commission may impose pursuant to applicable law for a violation or violations.

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

Additional matter required by statute: Advertising guidelines issued by the North American Association of State and Provincial Lotteries (approved March 19, 1999).

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, 1605, 1607 and 1609, and Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1) and (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 1605 authorizes the licensing of lottery sales agents and lottery vendors and sets forth criteria for licensing, while Tax Law Section 1607 establishes that a lottery license may be suspended or revoked. Tax Law Section 1609 provides that no ticket shall be sold by any person other than a licensed lottery sales agent.

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. Racing Law Section 104(19) authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. LEGISLATIVE OBJECTIVES: To regulate advertising by lottery courier services in order to protect customers.

3. NEEDS AND BENEFITS: The proposed rulemaking will amend regulations governing advertising by lottery courier services to prevent false, deceptive or misleading advertising, such as stating or implying that a customer may "play" the lottery through the courier service's platform or purchase a lottery ticket directly from the courier service. There have been instances of a lottery courier service using marketing such as "play the lottery on your phone," "easy to play," "play from your phone," "digital lottery" and "win the lottery from your couch" in connection with its courier service application. With this rulemaking, a courier service, instead, may market its actual services: fulfilling orders for the purchase of a lottery ticket from a licensed lottery sales agent and delivering tickets to the customer. In addition, the proposed rule would require problem gambling assistance messaging, similar to advertising requirements for casinos. A courier service would be required to submit draft advertisements to the Commission at least 15 days prior to publication or other dissemination, and Commission staff would have 10 days to determine whether the draft complies with the regulations and, if the draft does not, prohibit publication or dissemination of the proposed advertisement.

4. COSTS:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to the regulated parties or stakeholders.

b. Costs to the regulated 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 using existing resources.

5. LOCAL GOVERNMENT MANDATES: The proposed rulemaking 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: Licensed lottery courier services would need to submit their advertisements for approval, keep a record of advertisements and keep records of those customers who might request to not receive courier service advertisements.

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

8. ALTERNATIVES: The alternative of not proposing amendments to regulations governing advertising by lottery couriers was considered and rejected. This proposed rulemaking would prevent false, deceptive or misleading advertising.

9. FEDERAL STANDARDS: The proposed rule 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 rulemaking.

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

The proposed rulemaking will not have any adverse impact on small businesses, local governments, jobs or rural areas. The proposed rulemaking would govern advertising by lottery courier services to prevent false, deceptive or misleading advertising, such as stating or implying that a customer may “play” the lottery through the courier service’s platform or purchase a lottery ticket directly from the courier service.

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

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

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

The proposed 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.

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

Purchase Location Requirements for Lottery Courier Services

I.D. No. SGC-50-22-00009-P

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

Proposed Action: Amendment of section 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 proposed 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. *A purchase of courier services within the meaning of this subdivision occurs when the customer requests delivery of a particular lottery ticket or tickets from the courier service and when the customer initiates the transfer of funds to the courier service in connection with such ticket or tickets, both of which must occur while the courier customer is physically located in the State of New York. A courier service may not accept a delivery request from a customer physically located outside of the State at the time of the request. A courier service may not accept the transfer of funds from, by or on behalf of a courier customer who is physically located outside of the State at the time such customer initiates the transfer.*

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. STATUTORY AUTHORITY: The New York State Gaming Commission (“Commission”) is authorized to promulgate this rule by Tax Law Sections 1601, 1604, 1605, 1607 and 1609, and Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) Sections 103(2) and 104(1) and (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 1605 authorizes the licensing of lottery sales agents and lottery vendors and sets forth criteria for licensing, while Tax Law Section 1607 establishes that a lottery license may be suspended or revoked. Tax Law Section 1609 provides that no ticket shall be sold by any person other than a licensed lottery sales agent.

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. Racing Law Section 104(19) authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. LEGISLATIVE OBJECTIVES: To clarify the lottery courier-service-purchase-location requirements.

3. NEEDS AND BENEFITS: The proposed rulemaking will clarify the requirements for customer presence in New York State. A licensed lottery courier service is permitted to accept orders to purchase New York lottery tickets on behalf of a courier customer. The courier service then fulfills a request by purchasing the ticket at a licensed lottery sales agent retail location on behalf of the courier customer. Federal law prevents the sale of lottery tickets across state borders. Existing regulations require a courier service to geolocate its customer as being physically in New York at the time of the purchase of courier services. The proposed amendment would clarify the courier-service-purchase-location requirement by providing that the purchase of courier services occurs when the customer requests the delivery of a ticket or tickets and when the customer initiates the transfer of funds to the courier service in connection with the purchase. Thus, a customer would not be permitted to place an order for multiple tickets while in the State without funding the purchase, then fund all or a portion of the purchase remotely while out of the State.

4. COSTS:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to the regulated parties or stakeholders.

b. Costs to the regulated 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 using existing resources.

5. LOCAL GOVERNMENT MANDATES: The proposed rulemaking 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. Licensed lottery courier services will continue to use the existing system and procedures.

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

8. ALTERNATIVES: The alternative of not proposing amendments to the regulations governing lottery courier-service-purchase-location requirements was considered and rejected. This proposed rulemaking would help clarify the requirements for a customer to be present in New York State when the customer requests the delivery of a ticket or tickets and when the customer initiates the transfer of funds to the courier service in connection with the purchase.

9. FEDERAL STANDARDS: The proposed rule 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 rulemaking.

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

The proposed rulemaking will not have any adverse impact on small businesses, local governments, jobs or rural areas. The proposed rulemaking would amend regulations governing the purchase of lottery courier services. The amendment would clarify the requirements for customer presence in New York State.



NASPL Advertising Guidelines

Approved March 19, 1999

Introduction

The producers and marketers of lottery products encourage responsible decision-making regarding lottery play by adults, and discourage abusive use of their products. The lottery industry urges that adults who choose to play the lottery, do so responsibly. Signatory NASPL members will conduct their advertising and marketing practices in accordance with the provisions of these Standards.

Content

1. Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions.
 - Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions.
 - Advertising should not portray product abuse, excessive play nor a preoccupation with gambling.
 - Advertising should not imply nor portray any illegal activity
2. Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
3. Advertising by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.
4. Advertising should not encourage people to play excessively nor beyond their means.
 - Advertising and marketing materials should include a responsible play message when appropriate.
 - Responsible play public service or purchased media messages are appropriate, especially during large jackpot periods.
 - Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising.
 - Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person's financial or personal difficulties.
 - Advertising should not exhort play as a means of recovering past gambling nor other financial losses.
 - Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.



Tone

1. The Lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment nor a way to achieve financial security.
2. Lottery advertisements should not be designed so as to imply urgency, should not make false promises and should not present winning as the probable outcome.
3. Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
4. Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
5. Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
6. Advertising should not imply that lottery games are games of skill.

Minors

1. Persons depicted as lottery players in lottery advertising should not be, nor appear to be, under the legal purchase age.
2. Age restrictions should, at a minimum, be posted at the point of sale.
3. Advertising should not appear in media directed primarily to those under the legal age.
4. Lotteries should not be advertised nor marketed at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
5. Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.
 - The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs.
 - Celebrity or other testimonials should not be used which would primarily appeal to persons under the legal purchase age.



Game Information

1. Odds of winning must be readily available to the public and be clearly stated.
2. Advertising should state alternative cash and annuity values where reasonable and appropriate.

Beneficiaries

1. Lotteries should provide information regarding the use of lottery proceeds.
2. Advertising should clearly denote where lottery proceeds go, avoiding statements that could be confusing or misinterpreted.



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: February 21, 2023

Re: Proposed Rulemaking for Sports Wagering Advertising (9 NYCRR §§ 5329.37 and 5330.45)

For Commission consideration are proposed rules to regulate advertising, marketing and promotions concerning sports wagering. Chair O'Dwyer has expressed concerns at Commission meetings about advertising and marketing of sports wagering to audiences at college and university campuses, where exposure to gambling messaging is likely to be directed to those under the minimum age for wagering set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1), which is 21.

This proposal addresses several topics that are of substantial state interests and tailored to protect consumers and contribute to the discouragement of participation by underage persons:

- cross-referencing general casino responsible gaming requirements, to reaffirm applicability specifically to sports wagering;
- establishing explicitly licensee responsibility for the content of their advertising, marketing and branding;
- regulating non-licensee advertising in New York, by requiring notice of non-availability in New York;
- prohibiting advertising of illegal gambling, absent a notice that it is unavailable in New York;
- prohibiting compensation of third parties based on volume of patrons, wagers placed or the outcome of wagers;
- prohibiting false, deceptive or misleading statements;
- prohibiting online methods to attract underage persons, self-excluded contestants or persons who are or may be problem gamblers;
- requiring marketing and promotions to clearly and conspicuously disclose material facts, terms and conditions to potential customers;
- prohibiting advising or encouraging individual patrons to place a specific wager or specific kind, subject or amount of wager;
- requiring opt-out functionality to block receipt of future direct advertisements;
- prohibiting designs aimed to appeal primarily to underage persons;
- prohibiting advertising to a target audience that is reasonably foreseeable to comprise underage persons;

- prohibiting use of trademarks on materials intended primarily for underage persons;
- prohibiting advertising on college and university campuses;
- prohibiting depiction of underage persons in advertisements;
- prohibiting endorsements by underage persons other than professional athletes;
- requiring reminders of the legal wagering age in advertising and marketing; and
- requiring persons or entities to cease offering advertising, marketing or promotions that violate Commission regulations, upon notice from the Commission.

Elements of the proposal are derived from the American Gaming Association's Responsible Marketing Code for Sports Wagering, which is a private trade association's voluntary self-regulation code, and sports wagering advertising regulations from other states, such as Arizona, Massachusetts, Ohio and Virginia.

The text of the proposed amendments is attached.



attachment

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

New sections 5329.37 and 5330.45 would be added to 9 NYCRR, to read as follows:

§ 5329.37. Advertising, marketing and promotions.

(a) Advertisements generally.

(1) Advertisements and promotions used by a casino sports wagering licensee or sports pool vendor shall comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1363 and comply with the responsible gaming requirements set forth in section 5325.6 of this subchapter.

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

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

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

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

(6) No casino sports wagering licensee or sports pool vendor may enter into an agreement with a third party to conduct advertising, marketing or branding on behalf of, or to the benefit of, such licensee when compensation for such services is dependent on, or related to, the volume of patrons, wagers placed or the outcome of wagers.

(b) False, deceptive or misleading statements.

(1) No advertisement or promotion for sports wagering shall contain false, deceptive or misleading statements or elements, including, without limitation, those concerning:

(i) chances of winning;

(ii) the number of winners; or

(iii) the rules, terms or conditions of wagering.

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

(2) A casino sports wagering licensee or sports pool vendor shall not:

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

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

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

(c) *Marketing and promotions.*

(1) In connection with the marketing, promoting, advertising or offering of any promotion or displaying or offering of such on a casino sports wagering licensee’s or sports pool vendor’s platform or platforms, or on any platform or platforms over

which a casino sports wagering licensee or sports pool vendor exercises actual or constructive control, such licensee shall:

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

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

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

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

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

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

(i) telephone;

(ii) regular United States mail;

(iii) online website address or mobile application at which such opt-out may be accomplished as simply as practicable; or

(iv) electronic mail.

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

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

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

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

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

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

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

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

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

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

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

* * *

§ 5330.45. Advertising, marketing and promotions.

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