

# RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency  
01 -the *State Register* issue number  
96 -the year  
00001 -the Department of State number, assigned upon receipt of notice.  
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

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## Office of Alcoholism and Substance Abuse Services

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### NOTICE OF ADOPTION

#### Update Provisions Consistent with Treatment Developments; Definitions; Technical Gender Language

**I.D. No.** ASA-51-18-00023-A

**Filing No.** 243

**Filing Date:** 2019-03-21

**Effective Date:** 2019-04-10

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

**Action taken:** Amendment of Part 815 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

**Subject:** Update provisions consistent with treatment developments; definitions; technical gender language.

**Purpose:** Patient Rights.

**Substance of final rule:** 1. 815.4(e): Amended text from substance use disorder services to addiction services for consistency.

2. 815.11(b)(3): Added problem gambling to clarify that regulations pertaining to participation in research projects by patients receiving substance use disorder services are also applicable to patients receiving service for problem gambling.

3. 815.12: One comment identified confusion and inconsistency within the language in this new section. Edits made for clarity and consistency of terms.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 815.4(e), 815.11(b)(3) and 815.12.

**Text of rule and any required statements and analyses may be obtained from:** Carmelita Cruz, NYS OASAS, 1450 Western Avenue, Albany, NY 12203, (518) 485-2312, email: Carmelita.Cruz@oasas.ny.gov

#### **Revised Regulatory Impact Statement**

A revised regulatory impact statement is not required because the non-substantive changes to the regulation were minor and do not impact the content of this statement.

#### **Revised Regulatory Flexibility Analysis**

OASAS has determined that the content in this statement in lieu of regulatory flexibility analysis for small businesses and local governments does not need to be changed by the non-substantive changes to the regulation.

#### **Revised Rural Area Flexibility Analysis**

OASAS has determined that the content of this statement in lieu of rural area flexibility analysis will not need to be changed due to the non-substantive changes to the regulation.

#### **Revised Job Impact Statement**

No change is necessary for the job impact statement due to the non-substantive changes made to the regulation.

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

1. 815.4(e): Amended text from substance use disorder services to addiction services for consistency with all regulations.

2. 815.11(b)(3): modified language to “addiction services” to clarify that regulations pertaining to participation in research projects by patients receiving both substance use disorder and gambling disorder services.

3. 815.12: Comments identified confusion and inconsistency within the language. Edits made for clarity. No substantial changes to the text.

4. One public comment requested maintaining deleted language requiring consequences of failing to meet the treatment/recovery plan goals. This language reflects a punitive and strict abstinence model and is inconsistent changes in OASAS programmatic regulations.

5. One public comment requesting maintaining text requiring providers to develop policies and procedures consistent with federal and state confidentiality rules. This is already required by 814.4(e).

6. One public comment requested amending language from “chemical dependence” to “substance use disorder” which would be inconsistent with the intent of the provision.

7. One comment requested references be included that this regulation is applicable to integrated programs which is already included at 815.3 identifying applicability.

8. One comment requested clarity that naloxone education and kits be limited to only individuals with a diagnosed opioid use disorder. This would be inconsistent with the OASAS policy of offering naloxone education, training and a kit or prescription to every individual and their family/significant other.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-02-19-00001-A

**Filing No.** 249

**Filing Date:** 2019-03-21

**Effective Date:** 2019-04-10

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class.

**Text or summary was published** in the January 9, 2019 issue of the Register, I.D. No. CVS-02-19-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-02-19-00003-A

**Filing No.** 246

**Filing Date:** 2019-03-21

**Effective Date:** 2019-04-10

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the exempt class.

**Text or summary was published** in the January 9, 2019 issue of the Register, I.D. No. CVS-02-19-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-02-19-00004-A

**Filing No.** 248

**Filing Date:** 2019-03-21

**Effective Date:** 2019-04-10

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the exempt class.

**Text or summary was published** in the January 9, 2019 issue of the Register, I.D. No. CVS-02-19-00004-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-02-19-00005-A

**Filing No.** 247

**Filing Date:** 2019-03-21

**Effective Date:** 2019-04-10

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the non-competitive class.

**Text or summary was published** in the January 9, 2019 issue of the Register, I.D. No. CVS-02-19-00005-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF EXPIRATION

The following notices have expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the NYS Register.

#### Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-12-18-00012-P	March 21, 2018	March 21, 2019
CVS-12-18-00025-P	March 21, 2018	March 21, 2019
CVS-12-18-00030-P	March 21, 2018	March 21, 2019
CVS-12-18-00035-P	March 21, 2018	March 21, 2019

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

#### Jurisdictional Classification

**I.D. No.** CVS-15-19-00001-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by adding thereto the positions of Equal Opportunity Specialist 2 (2), Equal Opportunity Specialist 3 (1) and Equal Opportunity Specialist 4 (1) and by increasing the number of positions of Deputy Superintendent of Correctional Mental Health Care Facility from 2 to 3.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel,

Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov  
**Public comment will be received until:** 60 days after publication of this notice.

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

### **Jurisdictional Classification**

**I.D. No.** CVS-15-19-00002-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health under the subheading "Office of the Medicaid Inspector General," by deleting therefrom the position of øMedicaid Investigator 5 (1) and by adding thereto the position of øManager Medicaid Investigations (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

### **Jurisdictional Classification**

**I.D. No.** CVS-15-19-00003-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "State Insurance Fund," by adding thereto the position of Information Systems Auditor 1 (ITS) (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

### **Jurisdictional Classification**

**I.D. No.** CVS-15-19-00004-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the exempt class and to delete a position from the non-competitive class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by deleting therefrom the position of Assistant Chief Investigations (OPWDD) (5) and by adding thereto the positions of Assistant Chief Investigations (6); and

Amend Appendix 2 of the Rules for Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by decreasing the number of positions of Internal Investigator 1 (OPWDD) from 65 to 64.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov  
**Public comment will be received until:** 60 days after publication of this notice.

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

### **Jurisdictional Classification**

**I.D. No.** CVS-15-19-00005-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service under the subheading "Public Employment Relations Board," by deleting therefrom the positions of øAssistant Trial Examiner and øTrial Examiner and by adding thereto the positions of øAssistant Trial Examiner 1, øAssistant Trial Examiner 2, øAssistant Trial Examiner 3, øAssociate Trial Examiner and øSenior Trial Examiner.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

### **Jurisdictional Classification**

**I.D. No.** CVS-15-19-00006-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the positions of Assistant Commissioner (7) and by increasing the positions of Associate Commissioner from 10 to 17.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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## **New York State Gaming Commission**

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### **NOTICE OF ADOPTION**

#### **Regulation of Courier Services That Purchase and Claim Certain Lottery Tickets and Prizes As Agent for Customers**

**I.D. No.** SGC-17-18-00002-A

**Filing No.** 296

**Filing Date:** 2019-03-26

**Effective Date:** 2019-04-10

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

**Action taken:** Amendment of sections 5000.2, 5001.25, 5001.27, 5002.1, 5002.5, 5004.9, 5007.2 and 5007.15; addition of Part 5014 to 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:** Regulation of courier services that purchase and claim certain Lottery tickets and prizes as agent for customers.

**Purpose:** Permit and regulate the sale of Lottery tickets through licensed courier services to generate more revenue for education.

**Substance of final rule:** This amendment of Subtitle T of Title 9 NYCRR implements requirements for the authorization of a new category of lottery licensee to take requests through a computer or mobile device to purchase lottery draw game tickets, purchase the tickets from a licensed New York Lottery retailer as the customer's agent and deliver purchased tickets to the customer or credit the customer with winnings cashed by the courier service as agent of the customer, if the winnings are under or at a \$600 threshold. This new category of license will enable the New York State Gaming Commission ("Commission"), operator of the New York Lottery, to generate additional revenue for education in New York State.

Section 5000.2 is repealed and replaced, to include new definitions applicable to the purchasing of lottery tickets through courier services, update the definition of person and omit unnecessary definitions. The phrase lottery revenue is not used in the lottery Chapter of regulations and is not needed. The former definition of lottery ticket is superseded by the new definition of ticket.

Section 5001.27 is amended to specify that a courier service is permitted to charge a convenience fee to an interactive customer if approved by the Commission and that such fee shall be deemed to be independent of the ticket price.

Section 5002.1 is amended to specify that nothing in such section shall prohibit the Commission from authorizing a licensed courier service to provide a claimant with an electronic version of a prize claim form.

Section 5002.5 is amended to provide that a prize of \$600 or less resulting from a ticket issued on behalf of a courier customer by a courier service may be validated and redeemed on behalf of the courier customer and disbursed to the player by crediting the courier customer's account; the prize may be paid by direct deposit to the courier customer's bank account; or the prize may be redeemed for cash or by other means approved by the Commission as provided in new section 5014.14.

Section 5004.9 is amended to provide that a draw game ticket or bet ticket is deemed validly issued at the time such ticket is generated by a lottery terminal authorized by the Commission whether by play card, quick pick option, manual entry or other means approved by the Commission.

Section 5007.2 is amended to provide that the use of any non-manual method of marking Mega Millions play slips is permitted only if such method is approved by the Commission.

New Part 5014 governs the licensing of courier services by the Commission. Section 5014.1 provides that no person shall carry on a business in which such person acts as agent for another person in purchasing a lottery ticket unless such person is duly licensed as a courier service by the Commission.

Section 5014.2 provides that a courier license applicant must file an application in a form provided by the Commission that sets forth the factors that the Commission shall consider in evaluating an application for a courier license. License applicants are evaluated considering factors similar to those in place for traditional lottery sales agents, as well as business experience operating a network, proposed internal audit and financial controls and technical standards and whether the applicant's business plan demonstrates that compliance with the Commission requirement is achievable. Section 5014.2 also allows for the issuance of a temporary license upon satisfactory completion of a criminal history check.

Section 5014.3 sets forth conditions and requirements of licensure for courier services. A courier service is required, as conditions of licensure, to display prominently on any platform a warning of the risk of being defrauded by lottery scams; to maintain a customer self-exclusion list; and to provide a mechanism for customers to register to exclude themselves from using the network. According to section 5014.3, such licensee is required to ensure that any customer placed on the self-exclusion list is prevented from purchasing tickets through the network, implement a daily customer purchase request limit of an amount approved by the Commission, maintain a secure database of all tickets requested through the network, maintain at a separate physical location a secure backup database and not use Commission or multi-state lottery trademarks except with the express approval of the Commission. Licensees are required to undergo independent third-party testing of their systems before operating in New York. A courier service licensee is required, as a condition of licensure, to indemnify, hold harmless, release and defend the State for claims relating to courier services, both from third parties and for possible damages to the Commission's systems. Section 5014.3 also requires licensees to obtain insurance satisfactory to the Commission, which may include cyber liability insurance and errors and omissions insurance.

Section 5014.4 requires a licensed courier service to make available on such licensee's website and platform a true copy of the license issued by the Commission.

Section 5014.5 provides that a courier service must disclose which games the courier service intends to offer for sale and to seek Commission approval for any changes to such game offerings no later than 30 days prior to the effective date of such change.

Section 5014.6 provides that a courier customer that creates an account using the network of a courier service agrees to be bound by the Commission's regulations and to release and hold harmless the courier service from any liability related to a request for courier services that is not completed before the drawing cutoff and never results in the generation of tickets requested. Additionally, section 5014.6 provides that in the event a dispute occurs as to whether a ticket generated to complete a ticket purchase request in connection with a request for courier services placed through a network would have been a winning ticket had the ticket purchase occurred and no prize is paid, the Commission may, at the Commission's option, replace the ticket with a ticket equal in value to the price paid for the ticket that is the subject of the dispute, which remedy shall be the sole and exclusive remedy of the claimant against the Commission.

Section 5014.7 sets forth requirements for courier service networks, which include a method of restricting requests for courier services to customers physically located in the State of New York at the time of purchase of courier services, a method of restricting sales in areas designated by the Commission as prohibited sales areas, a method of informing customers of nearest lottery sales agent if requests for services cannot be completed by the drawing cutoff, a mechanism to provide users with complete ticket confirmation details, reporting of transaction details to the Commission, and the completion of unusual incident notifications to the Commission.

Section 5014.8 sets forth persons prohibited from opening an account or placing a request for courier services and requires licensees to implement procedures to prevent prohibited play. Such persons would include those under 18 years of age, employees, officers, directors or direct or indirect owners of the licensee and any spouse, child, brother or parent residing as a member of the same household in the principal place of abode of any employee, officer, director or direct or indirect owner of the licensee. Section 5014.8 also sets forth mandatory sanctions for allowing play by minors, including a \$5,000 fine for a first violation, a \$20,000 fine for a second violation within one year, a \$25,000 fine for a third violation within one year and a fine of \$25,000 for a fourth or subsequent violation within one year, along with such further action as the Commission deems appropriate.

Section 5014.9 requires each licensed courier service to submit its interactive systems, equipment and/or related components to an independent testing laboratory approved by the Commission to conduct specified testing at the licensee's expense.

Section 5014.10 requires that prior to placing a request for courier services through a network, a courier customer shall establish only one account. Section 5014.10 provides that a courier customer account may be funded through the use of a courier customer's credit or debit card, promotional or other credit issued by the licensee, or such other method as the Commission may approve. According to section 5014.10, courier services are required to establish and maintain trust accounts with balances sufficient to pay all money deposited for the purchase of tickets and courier customer prizes. A courier service shall make available within five business days funds a courier customer requests to withdraw from such courier customer's account.

Section 5014.11 provides that licensees must inform courier customers that no courier customer request for courier service and no receipt or acknowledgment of any such request constitutes evidence of a validly issued lottery ticket. A ticket, in order to be a validly issued ticket, shall be generated by a lottery terminal authorized by the Commission. Players must also be informed that a ticket is not deemed validly issued when a request for purchase is made of a courier service, when such a request is acknowledged or when a courier customer makes a payment to a courier service.

Section 5014.12 sets forth time requirements for the completion of ticket processing and the cutoff for accepting requests for courier service orders. For each request for courier services through a network placed during normal business hours, a courier service shall complete ticket processing by the sooner of 30 minutes before the relevant drawing or within 24 hours of the placement of the request. A courier service shall cease accepting requests for courier services no more than two hours and no less than a time period prior to the drawing cutoff, as specified by the Commission. In the event ticket processing is not completed prior to the drawing cutoff, section 5014.12 requires that a network shall cancel a request for courier services automatically and notify the courier customer and refund any payment, including any courier customer fee. Section 5014.12 also imposes ticket storage and retention requirements for licensed courier services.

Section 5014.13 provides that a courier service that purchases a lottery ticket on instruction from a courier customer holds such ticket in trust for such courier customer and acquires no ownership interest in such ticket, although a courier service may destroy a lottery ticket so long as such courier service complies with the ticket retention requirements of Section 5014.12.

Section 5014.14 imposes notification requirements in which a licensee must notify a courier customer on whose behalf a licensee has purchased a winning ticket. If a prize is \$600 or less, Section 5014.14 requires that a courier service shall validate the winning ticket and redeem the prize on behalf of the courier customer. If a prize is more than \$600, a courier service shall validate the winning ticket, attach the claim receipt and deliver the physical winning ticket to the courier customer and provide a courier customer who is a prizewinner electronically with a digitally completed claim form, tax withholding form and any other documentation required to redeem such prize. Section 5014.14 also requires a courier service to print the prizewinner's full name on the back of a ticket winning a prize of more than \$600.

Section 5014.15 requires a licensee to submit to an annual compliance audit, at the licensee's expense, by an independent party approved by the Commission. Licensees are required to submit an annual anti-money laundering compliance finding statement. Section 5014.15 further provides that licensees are required to submit annual audited financial statements to the Commission.

Section 5014.16 requires licensees to submit for Commission approval the licensee's internal controls.

Section 5014.17 requires licensees to offer Commission discounts and marketing features, if the Commission so requires. A licensee's platform is required to be capable of promoting lottery games that may be available only at lottery sales agent locations, such as instant tickets. Section 5014.17 further provides that courier services are prohibited from making prizewinner announcements without Commission approval.

Section 5014.18 provides that licensed courier services are required to maintain a record of customer complaints and to make such complaints available to the Commission.

Section 5014.19 provides that a courier service may charge courier customers a reasonable service charge per request for courier services and that such charge shall not be deemed to be part of the lottery ticket price. If tickets are never generated to fulfill a request for courier services, section 5014.19 provides that the service charge shall be refunded.

Section 5014.20 governs the suspension and revocation of courier service licenses.

Sections 5001.8, 5001.22 and 5001.23 are repealed as obsolete.

Technical corrections are made to Sections 5000.1, 5001.1, 5001.2, 5001.3, 5001.4, 5001.5, 5001.6, 5001.7, 5001.10, 5001.11, 5001.12, 5001.13, 5001.14, 5001.16, 5001.17, 5001.18, 5001.19, 5001.20, 5001.21, 5001.24, 5001.26, 5001.28, 5001.29, 5003.2, 5004.6, 5006.6, 5006.10, 5006.14, 5007.3, 5007.5, 5007.8, 5007.9, 5007.10, 5007.12, 5007.13, 5007.14, 5007.15, 5007.16, 5008.5, 5008.12, 5009.2, 5010.2, 5011.5, 5012.1, 5013.1, 5013.2 and 5013.3.

Several non-substantive changes are made since the Notice of Proposed Rule Making was published. These changes are as follows:

in Section 5000.1, "New York State Gaming Commission" is changed to "commission"; and "licensing of agents" is changed to "licensing of lottery sales agents";

in Section 5001.20, the heading is changed from "Agent accountability for lottery tickets" to "Lottery sales agent accountability for lottery tickets";

in Section 5003.2(e), a portion of the language is changed from "an authorized sales agent" to "a lottery sales agent";

in Sections 5007.2(14), 5007.15(a)(13) and 5007.16(a)(13), the references to paragraph "(7)" are changed to paragraph "(11)";

in Section, 5007.14(a)(2), "the sales agent location authorized by the Gaming Commission" is changed to "a lottery sales agent location authorized by the commission";

in Section 5014.1, a typographical error in the proposed language was corrected from "duly licensed as courier service" to "duly licensed as a courier service";

in Sections 5014.3(a)(1) and (6), 5014.8(a)(4), 5014.12(e), 5014.14(b) and 5014.17(d), typographical errors in the proposed language were corrected from "Commission" to "commission"; and

in Section 5014.7(a), language was added to this provision, for clarity, to change "at the time of purchase" to "at the time of purchase of courier services".

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 5000.1, 5001.20, 5001.28, 5003.2, 5007.2, 5007.14-16, 5014.1, 5014.3, 5014.7, 5014.8, 5014.12, 5014.14 and 5014.17.

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, 5th Floor, Schenectady, NY 12305, (518) 388-3332, email: gamingrules@gaming.ny.gov

### **Revised Regulatory Impact Statement**

The changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS"). The only changes made to the last published rule in 9 NYCRR Subtitle T are for clarity, uniformity of terminology used throughout this Subtitle with regard to licensed sales agents, and to correct internal references to section numbers changed as a result of changes made to the previous rule structure in the proposed rule. Because no substantive changes have been made to the last published rule, a revised RIS is not required.

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

The changes made to the last published proposed rule do not necessitate revision to the previously published consolidated statement of regulatory flexibility analysis, rural area flexibility analysis and job impact. The only changes made to the last published rule in 9 NYCRR Subtitle T are for clarity, uniformity of terminology used throughout this Subtitle with regard to licensed sales agents, and to correct internal references to section numbers as a result of changes made to the previous rule structure in the proposed rule. Because no substantive changes have been made to the last published rule, no change is required to the consolidated statement of regulatory flexibility analysis, rural area flexibility analysis and job impact. The proposed rule as revised will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities.

### **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 2024, which is no later than the 5th year after the year in which this rule is being adopted.

### **Assessment of Public Comment**

The Gaming Commission received comments from four groups in regard to this proposed rulemaking. The Commission has considered each of the comments and decided that only one non-material change is appropriate at this time. Requests for interpretations of rules were not considered to be public comments and, therefore, are not addressed in this assessment. Two potential courier licensees, Jackpocket, Inc. ("Jackpocket") and NJ Lotto LLC ("NJL"), and two trade associations, the New York Association of Convenience Stores ("NYACS") and the New York State Association of Service Stations & Repair Shops, Inc. ("NYSASSRS"), each submitted comments. NYACS is a trade association representing the convenience store industry in New York State. NYSASSRS is a trade association representing independent automotive service stations and repair shops throughout New York State, through various affiliated associations.

Jackpocket is in favor of the proposed regulations. NJL is in favor of the proposal generally, but suggested various revisions. NYACS and NYSASSRS each opposed the proposed regulations. These comments are assessed as follows:

NJL suggested that the regulations add a provision that establish a licensed courier service as "the merchant of record for the Lottery" and recommended language from New Jersey's regulations in that regard. The Commission believes the amendment would be inappropriate, because the contemplated role of a courier service is to provide a service to Lottery customers on behalf of such customers, not on behalf of the Lottery.

NJL suggested that the regulations eliminate the "daily courier customer request limit," in proposed section 5014.3(a), but supported a courier service allowing a customer to establish his or her daily request limit. Because it is industry standard for a Lottery to establish reasonable and balanced measures to protect the interests of customers and vulnerable persons, the Commission believes that having a customer establish his or her daily limit would be an appropriate control for responsible play.

NJL suggested a \$1 million limit to required insurance to be maintained by courier services. The Commission believes that the flexibility to determine appropriate insurance limits as needs and circumstances may dictate is appropriate and would better protect the State and all interested parties.

NJL suggested language changes to courier network requirements in proposed section 5014.7. The Commission agrees that the regulations are intended to require that a courier customer be located in New York at the time of purchase of courier services, but not necessarily at the time the courier purchases the ticket on the customer's behalf. A clarifying amendment is made accordingly to language in section 5014.7(a) as a non-substantive change that does not necessitate a revised proposed rule making. The Commission disagrees with the other suggested changes to this section.

NJL suggested that the courier customer location requirement is inconsistent with online Lottery subscriptions in New York and other states. The

proposed rules would not permit a subscription model through a licensed courier service. Lottery customers may continue to establish a subscription through the Lottery directly pursuant to Part 5005 of the Commission's rules.

NJL expressed the opinion that the geolocation requirement in section 5014.7 improperly "indicates that the courier service is being paid for the actual sale of lottery tickets." The Commission believes that this comment misunderstands the proposed rule. The geolocation requirement in proposed rule 5014.7(c) is designed to provide the location of nearby licensed Lottery sales agents as another option of where customers could obtain tickets when the deadline has passed to request a ticket through courier services.

NJL suggested language changes to proposed section 5014.8, which governs prevention of use by prohibited persons. The Commission disagrees that the suggestions would improve the rule.

NJL suggested revisions to proposed rule 5014.10(d), which governs required trust accounts for courier customer funds. The Commission disagrees with the proposed revisions.

NJL commented that proposed rule 5014.14(a) requiring a courier service to notify a courier customer of the amount of a prize within one hour of the Commission's publication of the winning numbers and prize amounts is insufficient time to verify the information and provide notification. Based on the Commission's prior consultation with several potential courier licensees on this requirement, it is the Commission's position that such notification is feasible, given current technology.

Proposed rule 5014.14(b) sets forth permissible options for paying prizes to courier customers who have won them, including redemption for cash. NJL suggested removing the option to redeem for cash. The Commission notes that there is no requirement in the regulation that a licensed courier service must transport cash to a customer, so the safety risk NJL asserts is not present. Lottery customers should have the option of obtaining their lower-level prizes in cash from the courier service, if that is their preference.

NJL suggested eliminating the prohibition on per-ticket fees charged by a licensed courier service. Pursuant to section 5014.19, a licensed courier service may charge its customers a reasonable service charge per request for courier services, but not per ticket requested to be purchased on the customer's behalf. The Commission disagrees with the comment because a per-ticket charge would imply the re-sale of a lottery ticket at a price other than its face value, which is prohibited by Tax Law section 1609(a) and Section 5001.27(a) of the Commission's regulations.

NYACS and NYSASSRS expressed "serious doubts" as to whether the Commission has the statutory authority to promulgate these regulations. NYACS noted that Article 34 of the Tax Law authorizes the Commission to license sales agents but does not expressly authorize the licensing of agents of Lottery customers. The Commission believes that statutory authority under which the rule is adopted, as set forth in this Notice of Adoption, is sufficient authority to promulgate this rule making.

NYACS and NYSASSRS characterized the age-verification requirements set forth in the proposed regulations as a "troubling new standard" because the use of online resources for age verification "is far less reliable than live, face-to-face interaction." The Commission believes that current age-verification technology is used routinely to reject transactions with minors in the Lottery subscription program and horse racing account wagering and, in the non-gambling context, in interactive fantasy sports. This language will allow the Commission to require use of industry-standards as such standards evolve, to ensure the appropriate confirmation of a customer's age.

NYACS and NYSASSRS noted that there is no provision for a criminal penalty for a lottery courier transacting with a minor, while Tax Law section 1610 provides that the sale or offer for sale of a Lottery ticket to a minor by a Lottery sales agent is a misdemeanor, resulting in a double standard. The Commission lacks the power to provide for criminal sanctions through regulation, and only legislation may impose criminal penalties. The regulations would allow the Commission to suspend or revoke a courier service's license, or otherwise discipline a licensee, should there be sales of courier services to minors.

NYACS disagreed that the establishment of licensed Lottery couriers would result in "minimal cannibalization" of existing sales agents because such purchasers would not contribute to sales of non-Lottery products. The Commission believes that because courier purchases must be purchased from a licensed Lottery sales agent, there can be no diminished aggregate sales commissions to sales agents. The marketing of non-Lottery products is the business of individual Lottery sales agents, not the Lottery.

NYACS and NYSASSRS each asserted that the proposed regulations would take an "ill-advised step" to redefine what a lottery ticket is, because a ticket would not need to be tangible. The Commission notes that this proposal does not authorize the online sale of Lottery products. The definition of a lottery ticket is amended to be consistent with how the Lottery represents purchased tickets in the lottery subscription program, consistent with Tax Law section 1609(a) and applicable case law.

NYACS objected to allowing a courier service to charge a convenience charge for what NYACS characterizes as a "re-sold ticket" to customers, because the commission provided to Lottery sales agents had not increased. Lottery products purchased by couriers, however, would not be "re-sold" to courier customers, but rather a licensed courier would be acting as the agent of a customer for the purchase of Lottery products and charging a reasonable fee for its services.

NYACS questioned why the regulations do not require a courier service to demonstrate its ability to increase Lottery sales, because applicants for Lottery sales agent licenses must do so. The Commission notes that licensed couriers and licensed sales agents would perform different functions. Because licensed courier services would not demand the same marketing, on-site equipment, training and regulatory supervision and staffing that licensed sales agents require, there is not an apparent need to require a licensed courier to establish its ability to increase Lottery sales to support additional regulatory costs to the Lottery program.

NYACS objected to allowing a courier service to operate on a temporary license, asserting that Lottery sales agents are not so permitted. Section 5001.9(a) of the Commission's current regulations, however, authorize the Commission to issue a temporary license under such terms and conditions as the Commission may deem necessary and proper.

NYACS questioned whether Lottery courier services would be subject to State and local sales taxes. The issue of State and local sales taxation is not within the jurisdiction of the Commission.

NYACS suggested that Lottery couriers be required to indemnify licensed sales agents from whom they purchase Lottery tickets. While the State wishes to ensure that it not be held responsible to potential Lottery customers for the action or inaction of a licensed courier service in the performance of the courier service's obligations to courier customers, there is no similar risk for a licensed sales agent, because its only interaction with the Lottery courier would involve the courier's purchase of lottery tickets.

NYACS questioned whether Lottery couriers should be permitted to present multiple smaller winning tickets (\$600 or less, for each ticket), thereby defeating, in its view, a policy not requiring lottery sales agents to keep large amounts of cash on hand to pay smaller prize-winning tickets. The \$600 prize payment threshold is established to enable the Commission to enforce offset provisions in Tax Law sections 1613-a, 1613 b and 1613-c, and to enforce the United States Internal Revenue Code. A prizewinner must submit identification information to a Lottery representative directly to enable the Commission to enforce those laws. A licensed sales agent may also refer a customer to the nearest Lottery customer service center to process prizewinner transactions if an unreasonable amount of cash is required for prize payouts.

NYACS noted that Tax Law section 1605 prohibits a Lottery sales agent from engaging in business "exclusively as a lottery sales agent" and questioned whether "that policy" will "also apply to courier services." A licensed courier service would not be acting as a Lottery sales agent, and therefore could not be engaging in business exclusively as a sales agent.

NYACS stated it is "dismayed" by the Commission's proposed regulations. The Commission believes the proposed regulations constitute a comprehensive and sensible regime to regulate this novel activity.

NYSASSRS also expressed general support for the "other" reasons that are submitted to oppose the proposed regulation.

## NOTICE OF ADOPTION

### Casino Fees and Payments

**I.D. No.** SGC-38-18-00003-A

**Filing No.** 298

**Filing Date:** 2019-03-26

**Effective Date:** 2019-04-10

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

**Action taken:** Addition of Part 5302 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103, 104, 1307(1), (2)(f), (m), (n), (o), 1348, 1349, 1350, 1351, 1352, 1353 and 1354

**Subject:** Casino fees and payments.

**Purpose:** Implementation of rules governing procedures for submission of fees and payments by gaming facilities to the Gaming Commission.

**Text or summary was published** in the September 19, 2018 issue of the Register, I.D. No. SGC-38-18-00003-P.

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

**Revised rule making(s) were previously published in the State Register** on January 16, 2019.

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3332, email: gamingrules@gaming.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 2024, which is no later than the 5th year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

One comment was received during the public comment period, from Rivers Casino, a commercial casino. Rivers Casino provided a comment about the proposed language of subdivision (d) of section 5302.6, which provides a mechanism to assess pre-opening regulatory costs. Rivers Casino does not comment with regard to specific rule language, but rather notes that the license fee it paid was sufficient, and that said fee was \$50 million in addition to the \$1 million application fee.

Rivers Casino had previously suggested, in a preceding public comment period, eliminating subdivision (d), asserting that the license fee it paid pursuant to Racing Pari-Mutuel Wagering and Breeding Law section 1306(4) and 9 NYCRR section 6001.1(a) was sufficient.

The Commission elected not to institute any changes to the proposed rule language based on this comment. Subdivision (d) provides a mechanism to recover regulatory costs incurred prior to the opening of facilities, such as developing and ensuring compliance with gaming regulations. The casino license fee was collected for the privilege of conducting casino gaming and was distributed according to the requirements of State Finance Law section 97-nnnn. The regulatory costs contemplated by subdivision (d) are those not already covered by statute or regulation.

### NOTICE OF ADOPTION

#### **Self-Exclusion and Casino Advertising**

**I.D. No.** SGC-47-18-00009-A

**Filing No.** 299

**Filing Date:** 2019-03-26

**Effective Date:** 2019-04-10

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

**Action taken:** Addition of Parts 5402 and 5403 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103, 104(19), 111 and 1344

**Subject:** Self-exclusion and casino advertising.

**Purpose:** To centralize Commission self-exclusion policies and make self-exclusion universal throughout the various forms of gaming.

**Text or summary was published** in the November 21, 2018 issue of the Register, I.D. No. SGC-47-18-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3332, email: gamingrules@gaming.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 2024, which is no later than the 5th year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

One comment was received during the public comment period, from Churchill Downs Technology Initiatives Company ("CDTIC"), an advance deposit wagering operator that is licensed to offer pari-mutuel wagering in New York on horse races. CDTIC advocates keeping the current self-exclusion regime in place and not expanding it statewide. CDTIC wishes to maintain its own self-exclusion list and not share the names of self-excluded patrons with other gaming operators. CDTIC also asserts that proposed Part 5403, which would require multi-jurisdictional account wagering providers in horse racing to permit customers to place limits on the amounts of their betting, as New York tracks and off-track betting corporations are currently required to do, would be unduly burdensome and "is a paradigm shift to how we currently operate."

The Commission elected not to institute any changes to the proposed rule language based on this comment. There are no privacy concerns with a Statewide self-exclusion program, because requesting to join such a program would be entirely voluntary. The effectiveness of the program would be diminished if a person could self-exclude from one platform and not from others. The ability to self-impose limits on the amount of horse

racing wagering exists for on-track and off-track betting-operated account wagering in current regulation. The currently duplicative provisions in 9 NYCRR 4044.3, 4123.3, 4237.3 and 4411.3 with regard to limit-setting on wagers on Thoroughbred racing, harness racing, Quarter horse racing and off-track betting would be consolidated into the proposed Rule 5403.2 and apply those regulations to all account wagering providers.

### NOTICE OF ADOPTION

#### **Standards for Backstretch Housing and Related Facilities**

**I.D. No.** SGC-01-19-00018-A

**Filing No.** 297

**Filing Date:** 2019-03-26

**Effective Date:** 2019-04-10

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

**Action taken:** Addition of Part 4047 to Title 9 NYCRR.

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

**Subject:** Standards for backstretch housing and related facilities.

**Purpose:** To create minimum standards for housing and related facilities offered to backstretch workers by racing associations.

**Text or summary was published** in the January 2, 2019 issue of the Register, I.D. No. SGC-01-19-00018-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kristen M. Buckley, Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, New York 12031-7500, (518) 388-3332, email: gamingrules@gaming.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 2024, which is no later than the 5th year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

The Commission received one public comment, which was submitted by the New York Thoroughbred Horsemen's Association, Inc. (NYTHA) in support of the proposed rules. NYTHA also recommended supplementing the proposal with future rulemaking that prohibits residents from smoking or installing air conditioners in the housing units and has procedures that require sufficient staff of The New York Racing Association, Inc. (NYRA) to overseeing the housing, a better system to submit and track housing maintenance requests, air conditioning installed by NYRA for sleeping areas, access to the backstretch for a Dormitory Advocate should NYTHA hire one, and allowing a NYTHA representative to assist residents at NYRA hearings to remove a person from the housing.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### **Gas Metering Equipment**

**I.D. No.** PSC-30-18-00005-A

**Filing Date:** 2019-03-20

**Effective Date:** 2019-03-20

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

**Action taken:** On 3/14/19, the PSC adopted an order approving New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to use the Honeywell RVP-FI meter reading module in gas metering applications in New York State.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Gas metering equipment.

**Purpose:** To approve NYSEG and RG&E's modified petition to use gas metering equipment.

**Substance of final rule:** The Commission, on March 14, 2019, adopted an order approving New York State Electric and Gas Corporation and Roch-

ester Gas and Electric Corporation's modified petition to use the Honeywell RVP-FI meter reading module in gas metering applications in New York State, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-G-0198SA1)

## NOTICE OF ADOPTION

### Electric Metering Equipment

**I.D. No.** PSC-30-18-00006-A

**Filing Date:** 2019-03-20

**Effective Date:** 2019-03-20

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

**Action taken:** On 3/14/19, the PSC adopted an order approving Artech USA's (Artech) petition to use the IRH-1, IRH-5, IRH-7 and IRH-10 current transformers in electric metering applications in New York State.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Electric metering equipment.

**Purpose:** To approve Artech's petition to use electric metering equipment.

**Substance of final rule:** The Commission, on March 14, 2019, adopted an order approving Artech USA's petition to use the IRH-1, IRH-5, IRH-7 and IRH-10 current transformers in electric metering applications in New York State, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-E-0324SA1)

## NOTICE OF ADOPTION

### Submetering of Electricity

**I.D. No.** PSC-51-18-00013-A

**Filing Date:** 2019-03-20

**Effective Date:** 2019-03-20

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

**Action taken:** On 3/14/19, the PSC adopted an order approving 63rd & 3rd NYC LLC's (63rd & 3rd) notice of intent to submeter electricity at 1059 3rd Avenue, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Submetering of electricity.

**Purpose:** To approve 63rd & 3rd's notice of intent to submeter electricity.

**Substance of final rule:** The Commission, on March 14, 2019, adopted an order approving 63rd & 3rd NYC LLC's notice of intent to submeter electricity at 1059 3rd Avenue, New York, New York., located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social

security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-E-0714SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Notice of Intent to Submeter Electricity

**I.D. No.** PSC-15-19-00008-P

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

**Proposed Action:** The Commission is considering the notice of intent of 1818 Nadlan LLC to submeter electricity at 505 West 43rd Street, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Notice of intent to submeter electricity.

**Purpose:** To ensure adequate submetering equipment and consumer protections are in place.

**Substance of proposed rule:** The Commission is considering the notice of intent filed by 1818 Nadlan LLC, on March 7, 2019, to submeter electricity at 505 West 43rd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, 1818 Nadlan LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(19-E-0170SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Cancellation of Society's Tariff

**I.D. No.** PSC-15-19-00009-P

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

**Proposed Action:** The Commission is considering a petition of the Society for the Preservation of Long Island Antiquities (Society) for a tariff cancellation as their customers are now served by the Suffolk County Water Authority.

**Statutory authority:** Public Service Law, section 89-c

**Subject:** Cancellation of Society's tariff.

**Purpose:** To consider whether cancellation of Society's tariff is in the public service.

**Substance of proposed rule:** The Public Service Commission is consider-

ing a petition filed on March 8, 2019 by the Society for the Preservation of Long Island Antiquities (Society), requesting authorization to cancel its tariff schedule, P.S.C. No. 2 – Water, because its customers are now served by the Suffolk County Water Authority.

The Society acquired the water distribution system in 1974, which served five customers in the Village of Lloyd Harbor, Town of Huntington. The Society states that the Suffolk County Water Authority began providing water service to the customers in 2009 and that the Society's wells no longer provide service to any customers. For this reason, the Society requests that its tariff be cancelled and its name be removed from the list of water utilities.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related issues.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [John.Pitucci@dps.ny.gov](mailto:John.Pitucci@dps.ny.gov)

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(19-W-0179SP1)

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

**Tariff Provisions for Interruptible and Off-Peak Firm Service Customers**

**I.D. No.** PSC-15-19-00010-P

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

**Proposed Action:** The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. to modify its gas tariff schedule, P.S.C. No. 9, regarding the Interruptible Gas Service Program.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** Tariff provisions for Interruptible and Off-Peak Firm Service Customers.

**Purpose:** To amend certain penalties for non-compliant Interruptible and Off-Peak Firm Customers.

**Substance of proposed rule:** The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) on March 14, 2019, to amend its gas tariff schedule, P.S.C. No. 9, to modify its Interruptible Service Program pursuant to Commission Order issued December 14, 2018 in Case 18-G-0565.

Con Edison proposes to add the following provisions: (1) Interruptible and Off-Peak Firm Service Customers (Interruptible Customers) must submit a signed affidavit by the close of business on October 1 or be subject to a daily, flat-fee penalty from that date until the Company is in receipt of the affidavit or until March 31, whichever is earlier; (2) when an Interruptible Customer incurs two violations during the current winter period, the Interruptible Customer will be subject to a Non-Compliance Charge for all gas consumed from the time of the second violation to end of the current winter period; (3) any Interruptible Customer with two violations during the current winter period will have the option of applying for Firm Service or remaining on Interruptible Service subject to certain conditions, which, if not met, will subject to the Interruptible Customer to the Daily Penalty Charge until the conditions are satisfied; (4) any Interruptible Non-Critical Care Customer with two violations in two consecutive winter periods will be directed to immediately apply for Firm Service and, if Firm Service cannot be offered by the Company, the customer's gas service will be terminated at the end of the current winter period; and (5) Interruptible Customers will be responsible for any restoration of service costs due to a loss of pressure caused by the customer if so determined by the Public Service Commission after a duly instituted investigation.

Con Edison also proposes to add definitions for Winter Period and Crit-

ical Care Customer. The Company further proposes to redefine the charges for Unauthorized Use for Interruptible Customers and the Non-Compliance Charge for Interruptible Customers. Lastly, Con Edison proposes housekeeping changes to reformat General Information Section II - Definitions and Abbreviations. The proposed amendments have an effective date of October 1, 2019.

The full text of the proposal and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [john.pitucci@dps.ny.gov](mailto:john.pitucci@dps.ny.gov)

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(19-G-0191SP1)

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**State University of New York**

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**NOTICE OF ADOPTION**

**University Faculty Senate**

**I.D. No.** SUN-49-18-00008-A

**Filing No.** 294

**Filing Date:** 2019-03-25

**Effective Date:** 2019-04-10

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

**Action taken:** Amendment of Part 331.9 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 353 and 355(2)(b)

**Subject:** University Faculty Senate.

**Purpose:** To clarify that the vice-president/secretary of the University Faculty Senate ("UFS") shall be a voting member of the UFS.

**Text or summary was published in** the December 5, 2018 issue of the Register, I.D. No. SUN-49-18-00008-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: [Lisa.Campo@SUNY.edu](mailto:Lisa.Campo@SUNY.edu)

**Assessment of Public Comment**

The agency received no public comment.

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

**Proposed Amendments to Appointment of Employees and Leave of Absences for Employees in the Professional Service**

**I.D. No.** SUN-15-19-00007-P

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

**Proposed Action:** This is a consensus rule making to amend sections 335.4(d), 335.8(c) and Part 337 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 353 and 355

**Subject:** Proposed amendments to Appointment of Employees and Leave of Absences for Employees in the Professional Service.

**Purpose:** Allow a temporary cessation of service credit during birth/adoption/foster care placement of child and update leave accruals.

**Substance of proposed rule (Full text is posted at the following State website: <https://system.suny.edu/proposed-regulations>):** The State of New York and the United University Professions have reached a collective bargaining agreement for 2016-2022 for members of the professional services negotiating unit. Revision of certain provisions of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York must be effected to comport with provisions of the collective bargaining agreement.

**8 NYCRR 335.4(d) and 335.8(c) - SUMMARY**

The regulations regarding eligibility for continuing and permanent appointment have been amended to allow for a temporary cessation of service credit, at the employee's request, commencing with the birth/adoption/foster care placement of a child.

**8 NYCRR 337.2 - SUMMARY**

The regulations regarding accrual of vacation leaves for employees in the professional service have been amended to address newly negotiated accrual rates for part-time employees.

**8 NYCRR 337.7 - SUMMARY**

The regulations regarding accrual of sick leaves for employees in the professional service have been amended to address newly negotiated accrual rates for part-time employees.

**8 NYCRR 337.13 - SUMMARY**

The regulations regarding holiday leave have been amended to add an option to pay instead of compensatory time for working on certain holidays.

**8 NYCRR 337.30 - SUMMARY**

The regulations regarding disability leave have been amended to modify the length of time for leave due to disability.

**Text of proposed rule and any required statements and analyses may be obtained from:** Lisa Campo, State University of New York, System Administration, State University Plaza, S-313, Albany, NY 12246, (518) 320-1400, email: [Lisa.Campo@SUNY.edu](mailto:Lisa.Campo@SUNY.edu)

**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 State University of New York has determined that no person is likely to object to this rule as written because it addresses appointment of employees and leave of absence of employees in the professional service at the State University of New York.

**Job Impact Statement**

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses appointment of employees and leave of absence of employees in the professional service at the State University of New York.