

available advertising that is not targeted to such areas; generally prohibit the depiction of underage persons, students, school or colleges, or school or college settings; and generally prohibit advertising containing endorsements by underage persons, college athletes, schools or colleges or college athletic associations.

The Commission is aware of dozens of complaints from sports wagering customers claiming to have been misled or deceived about wagers or promotions offered. Accordingly, the proposed rules would prohibit false, deceptive or misleading statements or elements. Various elements of the American Gaming Association's Responsible Code for Sports Wagering, which at least several current Commission licensees voluntarily agreed to abide by, would be incorporated into Commission rules. Marketing and promotions would be required to clearly and conspicuously disclose material facts, terms and conditions and adhere to such terms, clearly and conspicuously disclose to consumers material limitations of a promotion, and prominently disclose any associated required wager amount in connection with a promotion. Responsible gaming would be promoted by prohibiting licensees and vendors from advising and encouraging individual patrons, in targeted communications, to place specific wagers or types of wagers. Licensed operators would be required to provide individuals with an option to opt-out of future direct advertisements, as an element of promoting responsible play. Making these reasonable requirements applicable to all sports wagering operators, and not just those who are American Gaming Association members, would promote uniformity in good practices across all regulated parties.

Regulated parties would be required to retain records of advertising, to assist the Commission in investigating compliance.

Responsible play would be encouraged by prohibiting licensees to enter into agreements with third parties known as affiliate marketing partners to conduct advertising and marketing, where the manner of compensation for such services is prohibited by Racing, Pari-Mutuel Wagering and Breeding Law section 1341(1), thus appropriately disincentivizing such third parties from targeting those most vulnerable to problem gambling tendencies. Responsible gaming advertising restrictions would apply also to such affiliate marketing partners. Affiliate marketing partners would be required to disclose, in a reasonably prominent manner, whether such affiliate marketing partner has an agreement with a sports wagering operator. Sports wagering operators also would be required to cause their affiliate marketing partners to comply with such disclosure requirements.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulations is negligible.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rules will be negligible given that all such costs are the responsibility of the licensed parties. These rules will not impose any additional costs on local governments.

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

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: The rules are not expected to impose any significant paperwork or reporting requirements on the regulated entities.

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

8. ALTERNATIVES: The alternative of not proposing this rulemaking was considered and rejected. The proposed rules are necessary to protect consumers from false, deceptive, or misleading statements and contribute to the discouragement of participation by underage persons and the development of problem-gaming behaviors among young adults.

9. FEDERAL STANDARDS: There are no federal standards applicable to the regulation of gaming facilities or mobile sports wagering operators in New York; it is purely a matter of New York State law.

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

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

The proposed rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of mobile sports wagering and sports wagering at casinos in New York State.

The proposed rules do not impact local governments or small businesses as no local government or small business holds a mobile sports wagering license or sports pool license and no local government or small business is anticipated to be a mobile sports wagering or sports pool

vendor or participate in the advertising, marketing and promotions of such entities.

The proposed rules impose no adverse impact on rural areas. The rules apply uniformly throughout the state.

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

These rules 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.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Comprehensive Regulations for Interactive Fantasy Sports

I.D. No. SGC-29-22-00010-RP

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

Proposed Action: Addition of sections 5600.1 to 5613.4 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1405(1) and (2)(g)

Subject: Comprehensive regulations for interactive fantasy sports.

Purpose: To regulate interactive fantasy sports in New York.

Substance of revised rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>): These proposed new rules would implement Interactive Fantasy Sports ("IFS") contests in compliance with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law. The proposal contains the following parts:

Part 5600 (General): Definitions applicable to Chapter VI of the regulations.

Part 5601 (Registration of Interactive Fantasy Sports Operators): Procedures governing the application form, the filing, processing, investigation and determination of IFS registration applications and the issuance of registrations. Officers and directors of an applicant as well as direct and indirect owners above certain thresholds would be investigated for suitability, applying statutory disqualifying criteria as well as whether participation in IFS would be inconsistent with the public interest, convenience or necessity of the best interests of IFS generally. Proposed contest types and internal controls would be required to be disclosed. Disclosure would be required concerning special purpose entities. Applicants denied a registration would have the right to request a de novo hearing pursuant to Commission procedures. The Commission would be permitted to grant an application, grant an application with conditions or deny an application.

Part 5602 (Permissible Contests): Criteria for permissible contests. These would include statutory standards as well as a requirement that contests shall not be based on proposition betting and shall not have the effect of mimicking proposition betting. Contests in which a contestant chooses whether an individual athlete or a single team will surpass an identified statistical achievement would be prohibited. Contest types would be subject to approval by the Commission, including proposals to offer contests for a sport, league, association or organization not previously offered, allowing the Commission to gauge corruption risk to underlying athletic competitions. Registrants would be required to disclose fees, the value of prizes offered, how many contestants have entered each contest and the amount of prizes distributed following the conclusion of each contest. Registrants would be required to identify any highly experienced player entering a contest. The proposed rule would prescribe a maximum number of entries per contestant in any contest.

Part 5603 (Requirements for Contests): Required disclosures to contestants. These rules are designed to assist contestants in understanding fully the nature and rules of the contests they may enter. Required information would include data on relevant rates of success of contestants, identification of experience level of contestants and lock times for contest rosters. Prohibited contestants, including employees of registrants and athletes and officials of underlying athletic competitions, would be prohibited from disclosing insider information to potential contestants. Registrants would be prohibited from knowingly permitting a prohibited player associated with such registrant from making any such insider disclosure and would be required to take reasonable measures to prevent any such disclosures. To ensure that contest entries are based on skill, auto-picks of roster athletes for an IFS entry would be prohibited, but an assisted-draft mode would be permitted if based on automated selection based on criteria set by the contestant. Unauthorized computer scripts would be prohibited. Registrants would be prohibited from offering credit.

Part 5604 (Restrictions on play): Registrants would be required to adopt procedures to prevent play by prohibited contestants, such as employees of registrants and their families, athletes in underlying athletic events,

sports agents and team and leagues employees and minors. Registrants would be strictly liable for violations, but would have the opportunity to present mitigating factors in regard to a violation, such as good-faith reliance on false or misleading information provided by the prohibited person and good-faith compliance with appropriate internal controls designed to prevent play by a prohibited person. Mandatory, escalating sanctions for violations are proposed. A registrant would be required to submit a compulsive play plan and implement self-exclusion procedures. A registrant would be authorized to exclude a contestant from the registrant's platform, such as for violations of disclosed terms and conditions of participation. Prizes won by prohibited persons would be null and void and, if discovered within one year, would require a registrant to recalculate contest winnings and compensate other contestants appropriately.

Part 5605 (Accounting Controls): Registrants would be required to have annual independent audits conducted of their financial statements and file such audited statements with the Commission. Registrants would be required to submit a copy of the management letter of an independent auditor listing any internal control or operational weaknesses and recommendations for improvement. The Commission would be authorized to order a registrant to conduct an additional review of internal controls, at the registrant's expense, and take appropriate corrective action. Certain accounting records would be required to be prepared and maintained. Registrants would be required to establish a special purpose entity to hold contestant funds in trust to establish protections from mismanagement of such funds and protect them from a registrant's creditors. The Commission would report irregularities in regard to the management of contestant trust monies to the Gaming Inspector General and to appropriate law enforcement officials for possible action in regard to the embezzlement of such funds. Registrants would have the option of posting an appropriate bond in lieu of establishing a contestant trust account. Registrants would be required to establish anti-money laundering policies, procedures and controls.

Part 5606 (Internal Controls): A registrant would be required to submit for Commission approval a system of internal controls, including a cybersecurity program, data retention requirements and complaint resolution procedures.

Part 5607 (Advertising and Marketing): Advertisements would be required to contain a compulsive play assistance message. Other requirements and restrictions would apply to advertising and marketing promotions to foster transparency and avoid association with minors.

Part 5608 (Misconduct, Associations and Duties to Promote Integrity): Registrants would be prohibited from associations with illegal gamblers. Registrants would be required to disclose material facts to the Commission in regard to dishonest and unlawful acts and suspicious activity.

Part 5609: (Reporting and Auditing): Registrants would have a continuing duty to disclose to the Commission any material change in business form or activity. The Commission would be authorized to require a registrant to engage, at the registrant's expense, an independent firm to review compliance with law and regulation. The Commission would be permitted to require a registrant to provide certification from an independent testing laboratory that the registrant's platform performs as such registrant represents to the public. The Commission would be permitted to require a registrant to engage an independent monitor acceptable to the Commission to supervise the registrant's operations, compliance or other activities.

Part 5610 (Taxes and Fees): The proposal would prescribe procedures for tax reporting and collection.

Part 5611 (Financial Stability): A registrant would be required to demonstrate and maintain financial stability.

Part 5612 (Complaints): A registrant would be required to establish procedures for receiving and resolving promptly consumer complaints.

Part 5613 (Penalties and Sanctions): The Commission would be permitted to suspend or revoke registrations and impose and collect fines for violations of law or regulations.

Revised rule compared with proposed rule: Substantial revisions were made in sections 5600.1, 5603.1, 5605.6, 5612.2, 5602.1, 5604.1, 5606.3 and 5613.3.

Text of revised proposed rule and any required statements and analyses may be obtained from Kristen M. 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

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

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

Revised Regulatory Impact Statement

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

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not

required for this revised rulemaking because it will not adversely affect small businesses, local governments, rural areas, or jobs.

The revised rulemaking would implement the statutory mandates for permitting interactive fantasy sports (IFS) contests to be offered in New York. A dominant share of the IFS market is held by two large out-of-state IFS companies, which offer IFS contests to participants from various jurisdictions with similar regulatory requirements. The other IFS companies are much smaller and have only a few (typically five or ten) employees. The impact of this proposal on small businesses and jobs, by implementing statutory mandates and consumer protections, is minimal.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Assessment of Public Comment

Six public comments were received, four from current interactive fantasy sports ("IFS") temporary permittees (DraftKings Inc., FanDuel, Inc., Fantasy Football Players Championship and Yahoo Fantasy Sports LLC); one from Fantasy Sports & Gaming Association, a trade association that claims to represent more than 150 companies offering fantasy sports contests to consumers; and one from Vivid Seats LLC, a company that is not current temporarily permitted in New York but that may wish to seek registration as an IFS operator after the Commission adopts regulations.

A commenter objected to proposed Rule 5601.1(a), which sets forth who is required to register. The Commission believes that the suggested revision would conflict with Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1402(1)(a).

Commenters objected to the definition of "dormant account" in proposed Rule 5600.1(b)(6). The Commission agrees and proposes a revised Rule 5600.1(b)(6).

A commenter objected to the ownership disclosure requirements in proposed Rule 5601.1(b). The Commission believes that Racing Law section 1403 requires disclosures concerning "ultimate equitable owners" of registrant applicants.

A commenter objected to proposed Rule 5602.1(a)(4), which would make explicit that contests shall not be based on proposition betting or contests that have the effect of mimicking proposition betting. The Commission believes that a contest offering that is essentially sports betting, which is authorized for licensees and regulated pursuant to Racing Law Article 13 (not Article 14), cannot properly be characterized as IFS simply because an operator labels it as such.

A commenter objected to proposed Rule 5602.1(c)(3), concerning the relationship between prize value and the number of contestants. The Commission believes the proposed rule is consistent with the requirements of Racing Law section 1404(1)(n).

A commenter suggested revisions to proposed Rule 5602.1(d)(1), concerning contests with exactly 100 entries. The Commission agrees and proposes a revised Rule 5602.1(d)(1).

Commenters suggested a revision to proposed Rule 5602.2, concerning Commission approval of contest types. The Commission disagrees, because analysis of whether a proposed IFS contest conforms with statute and regulation is of utmost regulatory importance.

Commenters suggested that proposed Rule 5603.2(a)(2) be amended to account for the categorization of a contestant who has entered exactly 1,000 contests. The Commission agrees and proposes a revised Rule 5603.2(a)(2).

A commenter suggested amending proposed Rule 5603.1(g)(1), concerning disclosure of rates of success of contestants, and another commenter suggested eliminating proposed Rule 5603.1. The Commission agrees with the suggestion to amend and proposes a revised Rule 5603.1(g)(1).

A commenter suggested that the disclosure of rules for breaking contest ties, as required by proposed Rule 5603.1(a)(11), be permitted to be contained in an operator's terms of use instead of contest rules. The Commission believes that requiring a contestant to consult two sources of authority—contest rules as well as terms of use—to determine the rules of a contest would be burdensome on, and potentially confusing to, contestants.

A commenter requested clarification that the prohibition in proposed Rule 5603.5(a) against "autopicks" would not preclude the use of pre-draft rankings or a "snake draft" feature. The Commission believes that the autopick prohibition is necessary because statute and caselaw require IFS to be skill-based, and a contestant would be exercising no skill if the contestant's roster were chosen by an IFS operator's algorithm. The proposed Rule would not preclude the use of pre-draft rankings, nor would it prohibit a "snake draft" feature.

A commenter objected to the requirement in proposed Rule 5604.1(b)(1) for an operator to provide a toll-free number. The Commission agrees and proposes a revised Rule 5604.1(b)(1).

Commenters objected to the provision of proposed Rule 5604.1(d) that

would make an operator strictly liable for allowing prohibited persons to enter its contests. The Commission believes that preventing prohibited persons from contests is an important policy goal of Article 14 and the proposed regulations. It is appropriate that an operator be strictly liable for allowing prohibited play, while mitigating any penalty or sanction when the operator can demonstrate its good-faith reliance and compliance as set forth in the proposed rule. Commission staff would evaluate any each case individually based on its merits and would have the ability to exercise discretion in determining a regulatory response.

Commenters objected to proposed Rule 5604.1(f), concerning disclosure of an operator's personnel in aid of preventing prohibited play. The Commission believes that, because Racing Law section 1401(14)(a) defines "prohibited player" to include "any member, officer, employee or agent of an operator or registrant," the proposed regulation provides a mechanism to collect the identities of such prohibited players to enable the Commission to develop a database to disseminate to IFS operators to assist them in implementing the statutory requirement to exclude prohibited players.

A commenter suggested that the requirement in proposed Rule 5604.2(c) to display a compulsive-play-assistance toll-free number approved by the Commission be modified to allow for either a local or national toll-free number. The Commission believes that the New York State Hope Line, developed by the Office of Addiction Services and Supports, is an important and valuable resource that needs to be made available explicitly to New York customers to mitigate appropriately the risk of compulsive play. The statute explicitly refers to resources for compulsive play "in New York state."

A commenter objected to proposed Rule 5604.3(d), expressing concern about the sensitivity of customer data. The Commission believes the proposed rule merely requests more detailed information than the aggregate number of self-excluded contestants, which can assist the Commission in its efforts to implement and regulate self-exclusion practices. The Commission is bound by New York's Personal Privacy Protection Law, which governs the protection of personal information.

A commenter objected to proposed Rule 5604.4(e), expressing concern about the sensitivity of customer data. The Commission believes the reporting requirement would enable staff to monitor the frequency of IFS operators excluding contestants and the reasons therefore, which would aid appropriate regulation. The Commission is bound by New York's Personal Privacy Protection Law.

A commenter objected to proposed Rule 5605.1, concerning audited financial statements. The Commission believes that auditing is an important control process that would aid in the regulation of IFS and that it would be useful for the Commission to have the power to require an audit to aid in Commission regulation.

Commenters objected to proposed Rules 5605.5 and 5605.6, concerning special purpose entities. The Commission believes that the proposed methods would best enhance protection of contestant funds in the event of bankruptcy or operator malfeasance or misfeasance. A segregated bank account controlled by the operator itself would afford no bankruptcy protection for a contestant.

Commenters suggested that proposed Rule 5605.6(a)(2) would require separate bank accounts in order for customers' funds to be held in trust. The Commission believes that contestant funds could be held in one trust bank account, with each contestant's funds being deemed to be a separate trust within such bank account. Strict trust accounting principles would be required to maintain the integrity of each contestant's funds.

Commenters suggested that the return of a customer's funds, as required by proposed Rule 5605.6(d), be required ordinarily to be accomplished in five business days, rather than two, to allow for the accomplishment of know-your-customer and fraud-prevention procedures. The Commission agrees and proposes a revised Rule 5605.6(d).

Commenters suggested eliminating the specific minimum anti-money-laundering ("AML") requirements beyond proposed Rule 5605.10(a)(1) or eliminating AML requirements entirely. The Commission believes that money-laundering compliance is an important policy consideration with IFS, whether the federal Bank Secrecy Act does or does not impose specific AML requirements on an IFS operator. For example, IFS operators often allow for "closed" contests among acquaintances, operated by an IFS registrant. Money changing hands among contestants in such a closed system does present an AML risk, even in a season-long contest. The proposed regulations specifically allow for an IFS operator to tailor its AML program to the particular risks posed by the contests it offers. An IFS operator's AML compliance officer need not be a full-time role, and the required audits would be for compliance with the operator's own policies, which it will have tailored to its particular needs and risks. The proposed annual compliance statement is intended to heighten the awareness of a registrant of the need to maintain vigilance in this important area of concern and is a minimal paperwork burden. Staff does not believe that an IFS operator's AML program, tailored to the risks its contests may cre-

ate, would impose any unduly burdensome or costly compliance requirements on an IFS operator.

A commenter objected to the definition of "cybersecurity event" in proposed Rule 5600.1(b)(5) and to the requirement to report material cybersecurity events to the Commission at least every two years, as set forth in proposed Rule 5606.2(c)(6). The Commission does not interpret the proposed regulation to require reporting of cybersecurity events unrelated to IFS operations. The proposed Rule would not require an IFS operator to hire a separate chief information security officer, but, rather, would require an operator to designate someone to perform that role, in order to ensure that appropriate cybersecurity measures are in place.

A commenter suggested eliminating the requirement in proposed Rule 5606.3(c)(6) to notify the Commission within 48 hours of any adjustment made to a customer's account in response to a customer complaint. The Commission believes that prompt resolution of customer complaints is important to maintain the public perception of confidence in the integrity of IFS, but agrees that reporting to the Commission of adjustments made to customers' account could be required to be made less frequently and, accordingly, proposes a revised Rule 5606.3(c)(6).

A commenter suggested that proposed Rule 5607.1(a) regulating advertisements be limited to advertisements specifically targeting persons located in New York and that a typographical error in a cross-reference should be corrected. The revised proposal corrects the cross-reference. The Commission believes that IFS advertisements that reasonably are anticipated to be seen in New York should be regulated appropriately.

Commenters suggested that proposed Rule 5607.1(e) be revised to exclude requiring compulsive-play assistance messaging on a customer account page, on contest entry pages and on an operator's social-media sites, limiting such messaging to each landing page and homepage. A commenter suggested a revision to proposed Rule 5607.3(a)(1) and (2) governing promotion disclosures, to allow for hyperlinking to full terms and conditions. The Commission believes that while access to the full terms and conditions is essential, consumer protection would be enhanced if an IFS operator were required to clearly and conspicuously disclose "material" terms to potential customers, as a customer may be reluctant to peruse a link to full terms and conditions.

Commenters objected to proposed Rule 5609.2. The Commission believes that the proposed rule would not require routine independent compliance reviews. Rather, it would give the Commission discretion to require such a review. The Commission believes that eliminating this discretionary power would be detrimental to appropriate regulation.

Commenters objected to the requirement in proposed Rule 5609.3 that an independent testing laboratory certify that a registrant's platform performs as the registrant represents to the public. The Commission believes that independent laboratory testing is commonplace in gaming and is available for IFS as well. Allowing testing to be performed by an entity that is not independent may compromise public confidence in the integrity of IFS.

A commenter objected to proposed Rule 5611.1(b). The Commission believes the financial and administrative burden would be minimal for an IFS operator of commercially reasonable size and would be an appropriate control to minimize risk from a smaller operator that regulatory costs might not be paid as required.

A commenter objected to proposed Rule 5612.1, concerning operator investigation of complaints. The Commission disagrees with lengthening the time period for addressing customer complaints, because prompt resolution of complaints would promote public confidence in the integrity of IFS. The Commission agrees, however, that there should be a mechanism to relax such requirements in unusual circumstances and, accordingly, proposes a revised Rule 5612.2(d).

A commenter objected to proposed Rule 5613.3(b). The Commission agrees to limit the rule's scope to New York and, accordingly, proposes a revised Rule 5613.3(b).

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Expanded Syringe Access Programs (ESAPs)

I.D. No. HLT-31-23-00008-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 80.137 of Title 10 NYCRR.