



**Meeting Agenda  
March 25, 2024**

1. Call to Order and Establishment of Quorum
2. Consideration of Minutes for Meeting of December 4, 2023
3. Report of the Executive Director
4. Rulemaking
  - A. Adoption: SGC-52-23-00014-P, Lottery Prize Payment and Subscription Amendments
  - B. Consensus: Commission Address Update
  - C. Proposed: Amendment to Commission Rule 4117.8
5. Adjudications
  - A. In the Matter of Asim Convenience Corp
  - B. In the Matter of Norman Follett and Alexander Kazdan
  - C. In the Matter of Thomas LaMarca
  - D. In the Matter of Todd Pletcher
  - F. In the Matter of Jaime A. Torres
  - G. In the Matter of 7721 SM Deli & Grocery Inc.
6. New & Old Business
7. Adjournment

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**New York State  
Gaming Commission**

**Minutes**

**Meeting of December 4, 2023**

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

**1. Call to Order and Establishment of Quorum**

Executive Director Robert Williams called the meeting to order at 1:23 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance in Manhattan were Chairman Brian O'Dwyer, and Members John Crotty, Sylvia Hamer, Marissa Shorenstein, and Jerry Skurnik. In physical attendance in Schenectady was Member Peter Moschetti.

**2. Consideration of Minutes for Meeting of October 3, 2023**

The Commission considered previously circulated draft minutes of the meeting conducted on October 3, 2023. The minutes were accepted as circulated.

**3. Report of the Executive Director**

The Executive Director presented an update on the commercial casino Additional License Process, the proposed New York City Zoning Text Amendment, and the Commission's participation in the National Council on Problem Gambling's annual Gift Responsibly campaign.

**4. Rulemaking**

**A. SGC-34-23-00012-P, Lottery Prize Assignment Processing Fee**

The Commission considered adoption of a regulation to set forth the processing fee authorized by N.Y. Tax Law § 1613(d)(7) for review of documentation concerning proposed lottery prize assignments.

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

B. SGC-50-22-00009-RP, Purchase Location Requirements for Lottery Courier Services

The Commission considered adoption of an amendment to regulations governing the purchase of lottery courier services.

ON A MOTION BY: Commissioner Shorenstein

APPROVED: 5-0, Commissioner Crotty abstaining.

C. Proposal: Lottery Prize Payment and Subscription Amendments

The Commission considered amendments to the lottery prize payment and subscription rules, to change guaranteed “for life” payouts to a specific annual amount rather than being obligated to reconcile and adjust for a final year payment, to limit the Lottery subscription program to individuals by eliminating provisions relating to subscriptions by groups to make explicit that a subscription is void if payment for the ticket is rejected for non-sufficient funds and to reserve authority to suspend a subscription in the event of suspicious transactions, to clarify certain responsibilities, and to and make technical stylistic edits to sections.

ON A MOTION BY: Commissioner Crotty

APPROVED: 6-0

**5. Adjudications**

A. In the Matter of Todd Pletcher and In the Matter of the Disqualification of Forte from the 11th Race at Saratoga Race Course on September 5, 2022

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had determined upon a 6-0 vote to adopt the Hearing Officer’s findings of fact and conclusions of law, and imposing upon Mr. Pletcher a fine of \$1,000 and a suspension of 10 days, and that *Forte* be disqualified from the Hopeful Stakes conducted September 5, 2022, and from any share of the purse in that race.

B. In the Matter of Joseph J. Chindano, Jr.

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had determined upon a 6-0 vote to adopt the Hearing Officer's findings of fact, conclusions of law and to modify the recommendation that the licensee be fined \$1,000 and his license as a driver be suspended for 10 days and instead impose a fine of \$1,000 and that Mr. Chindano's drivers' license be suspended 20 days. The Commissioners also directed staff to review Mr. Chindano's record as a driver and to make appropriate recommendations to the Commissioners regarding his qualifications to continue to hold a license.

C. In the Matter of Hillside Mini Mart I Corp.

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had determined upon a 6-0 vote to adopt the Hearing Officer's findings of fact, conclusions of law. And recommendation that the Hillside license be revoked.

**6. Consideration and Appointment of Gaming Facility Location Board Member**

The Commissioners considered and appointed Carlos Naudon as a member of the Gaming Facility Location Board for the Additional Casino Licensing Process authorized by Part RR of Chapter 56 of the Laws of 2022.

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

**7. New & Old Business**

A. New Business

The Chairman advised that he and Commissioner Hamer had visited the Belmont backstretch visit to review developments of dormitories being undertaken by The New York Racing Association, Inc. He also mentioned that since the last meeting he had met with the President of DraftKings N.A., Matt Kalish regarding DraftKings distasteful advertising on 9/11, and informed the Commissioners that DraftKings had made several incremental changes to ensure a similar

advertisement would not be exposed. The Chairman also advised that he would be scheduling meetings with the Lottery's advertising partner to further explore messaging regarding Lottery benefits to education and would be conducting a meeting with Everi to discuss the circumstances of the Jake's 58 October shutdown.

The Chairman concluded by introducing Sarah Klein as the new Director, Division of Horse Racing and Pari-Mutuel Wagering.

B. Old Business

No old business was presented.

8. **Adjournment**

The meeting was adjourned at 1:52 p.m.

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## Gaming Commission

354 Broadway, P.O. Box 7500, Schenectady, NY 12301-7500  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** March 12, 2024

**Re:** Adoption of Proposed Rulemaking for Lottery Prize Payment and Subscription Amendments (9 NYCRR §§ 5000.2, 5002.1, 5002.3, 5002.4, 5002.5, 5002.7, 5002.10, 5002.11, 5002.13, 5004.5, 5005.1, 5005.2, 5005.3, 5005.4, 5005.5, 5005.6, 5005.7, 5005.8, 5005.9, 5005.10, 5007.2, 5007.5, 5007.15, 5007.16, 5008.2, 5008.11, 5013.3, 5014.3 and 5014.14)

For Commission consideration is the adoption of amendments to the lottery prize payment and subscription rules. The amendments would:

- change the manner in which “for life” prizes are paid to group claims, claims by entities and claims on behalf of minors under the age of 18, to create uniformity across the “for life” games;
- change the guaranteed amount for individual claimants from a fixed dollar amount over 20 years to 20 equal payments over 20 years, creating uniformity in payment processing;
- limit the Lottery subscription program to individuals only;
- eliminate provisions relating to subscriptions by groups;
- make explicit that a subscription is void if payment for the ticket is rejected for non-sufficient funds;
- reserve authority to suspend a subscription in the event of suspicious transactions;
- require prizes of \$600 to be presented directly to the Commission for payment, rather than allowing them to be paid at a licensed lottery sales agent location, to ensure that statutory offsets are applied correctly;
- codify existing practice of allowing a claimant to direct payment to a bank account;
- allow delivery of a prize by means other than the United States Postal Service;
- add a reference to the statutory offset for past-due State tax liabilities; and
- make technical stylistic edits to sections relating to prize payments and subscriptions, such as adding titles to subdivisions, improving word choices and using Department of State style conventions.

The Commission published a Notice of Proposed Rulemaking in the December 27, 2023 State Register, an excerpt of which is attached. The text of the proposed amendments is attached. The public comment period expired on February 26, 2024. No comments were received.

Commissioners  
March 12, 2024  
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attachment

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

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**Sections 5000.2, 5002.1, 5002.3, 5002.4, 5002.5, 5002.7, 5002.10, 5002.11, 5002.13, 5004.5, 5005.1, 5005.2, 5005.3, 5005.4, 5005.5, 5005.6, 5005.7, 5005.8, 5007.2, 5007.5, 5007.15, 5007.16, 5008.2, 5008.11, 5013.3, 5014.3 and 5014.14 of 9 NYCRR would be amended, subdivisions (d) through (p) of section 5000.2 would be re-lettered as (e) through (q), respectively, and new sections 5005.9 and 5005.10 would be added, to read as follows:**

**§ 5000.2. Definitions.**

Unless the context indicates otherwise, the following definitions are applicable throughout this chapter.

\* \* \*

(d) *Claimant* means any person or entity submitting a prize claim within the required time period of a game to collect a prize relating to a ticket. A claimant may be a person or entity named on a signed ticket or may be the bearer of an unsigned ticket. No claimant may assert rights different from the rights acquired by the original purchaser of the ticket at the time of purchase.

\* \* \*

**PART 5002**

**Payment of Prizes**

|         |  |
|---------|--|
| Section |  |
| 5002.1  | Information furnished by winning ticket holder               |
| 5002.2  | Requirement of additional information                        |
| 5002.3  | Time of payment of prize                                     |
| 5002.4  | Place of payment   |
| 5002.5  | Manner of payment  |
| 5002.6  | Discharge of State liability upon payment                    |
| 5002.7  | [Payments to single claimant only] <u>Claim requirements</u> |
| 5002.8  | Payment of prizes to persons under 18 years of age           |
| 5002.9  | Prizes payable after death of prizewinner                    |
| 5002.10 | Unclaimed and abandoned prize money                          |
| 5002.11 | Prize rights non-assignable                                  |
| 5002.12 | Publicity release  |
| 5002.13 | Prize payable for life                                       |

\* \* \*

**§ 5002.1. Information furnished by winning ticket holder.**

Each claimant shall fill out a prize claim form [as specified in the rules of each game], unless the prize is less than \$600 and is claimed at a licensed lottery sales agent, and surrender such claimant's winning ticket. Nothing in this section shall prohibit the commission from authorizing a courier service licensed pursuant to Part 5014 of this subchapter to provide a claimant with an electronic version of a prize claim form.



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\* \* \*

### **§ 5002.3. Time of payment of prize.**

Payment of [prizes] a prize shall be [awarded as soon as reasonably possible] made only after the prize claim form has been filed, validated and verified, and the claimant has been identified to the satisfaction of the commission.

### **§ 5002.4. Place of payment.**

Payment of [prizes] a prize shall be made to the claimant or claimants at the address or addresses furnished to the commission on the prize claim form or as authorized by the claimant or claimants for deposit in another manner, on such supplemental forms as the commission may require.

### **§ 5002.5. Manner of payment.**

\* \* \*

(b) *Prizes at or above threshold claimed in person.* Any prize paid at an office of the commission, or by an agent designated by the commission to pay prizes of [more than] \$600 or more each on behalf of the commission, shall be paid by check or by any alternative method of payment determined by the commission (such as a commission-issued debit card). Any prize of [more than] \$600 or more must be claimed directly from the commission or an agent designated by the commission for such payment, pursuant to this subdivision or subdivision (a) of this section.

(c) *Prizes [at or] below threshold claimed in person.* Any prize of less than \$600 [or less] may be claimed at any licensed lottery [retailer] sales agent location or at an office of the commission, or by an agent designated by the commission, and the prize shall be paid in cash or by any alternative method of payment determined by the commission (such as a commission-issued debit card). A prize of such amount resulting from a ticket issued on behalf of a courier customer to a courier service may be claimed pursuant to section 5014.14 of this chapter.

(d) *Subscriptions.* Any prize won by a subscriber through a subscription pursuant to Part 5005 of this Chapter shall be payable as follows:

(1) by check or alternative method of payment determined by the commission (such as a commission-issued debit card), if the prize is [more than] \$600 or more; or

(2) the prize amount shall be made available in the subscriber's [player] account, if the prize is less than \$600 [or less].

\* \* \*

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**§ 5002.7. [Payments to single claimant only] Claim requirements.**

(a) One prize claim form per claimant. [A] Each prize claim form shall be filed in the name of a single legal entity as claimant, either one individual or one [organization] entity. [Multiple payees are not permitted, except as may be authorized pursuant to subdivision (d) of this section.]

(b) Entity as claimant. A prize claim may be entered in the name of an [organization] entity (e.g., a limited liability company, partnership, corporation, trust) only if the [organization] entity possesses a Federal employer identification number [(FEIN)] (FEIN) issued by the Internal Revenue Service and such number is shown on the prize claim form. Each person who will receive any beneficial interest in a portion of the prize through the claiming entity shall submit such personal identifying information as the commission may require, to assist the commission in applying any offset liability required by Tax Law sections 1613-a, 1613-b and 1613-c. Groups[, family units, clubs,] or [organizations] entities without [a Federal employer identification number shall designate one individual in whose name the claim is to be filed] an FEIN are not permitted to claim in the name of the group or entity.

[(c)If a claim is erroneously entered with multiple claimants, the claimants shall designate one of them as the individual recipient of the prize, or, if they fail to designate an individual recipient, the commission may designate any one of the claimants as the sole recipient. In either case, the claim shall then be considered as if such claim were originally entered in the name of the designated individual and payment of any prizes won shall be made to that single individual.]

[(d) Under exceptional circumstances, payment may be made to multiple payees at the discretion of the commission.]

\* \* \*

**§ 5002.10. Unclaimed and abandoned prize money.**

\* \* \*

(b) The commission may determine that a prize has been abandoned whenever more than 18 months have elapsed since a prize payment check was mailed to the last known address of the claimant and either such check has been returned undelivered [by the United States Postal Service] and the claimant cannot be located or such check has not been returned undelivered and has not been presented for payment. Any prize so determined to have been abandoned shall be paid to the State Comptroller for administration pursuant to the Abandoned Property Law.

\* \* \*

**§ 5002.11. Prize rights non-assignable.**

(a) No right of any person to a prize shall be assignable, except that[: (1)] any prize may be paid to the estate of a deceased prize winner[:], and except that any assignee,

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pursuant to an appropriate judicial order of a court of competent jurisdiction, may be paid the prize to which the winner is entitled. For the purposes of this section, payment of a prize or a portion thereof to any of the agencies described in this section shall be deemed to be paid pursuant to an appropriate judicial order of a court of competent jurisdiction. The commission shall be discharged of all liability upon payment of a prize pursuant to this section. [(2) any] A prize, or a portion thereof, may be paid to:

(1) [the Department of Social Services either] the Office of Temporary and Disability Assistance, pursuant to an agreement under Tax Law section 1613-a [or] where the Office of Temporary and Disability Assistance has informed the commission that the claimant has failed to obey a court order requiring the claimant to pay past-due support;

(2) the Office of Temporary and Disability Assistance, pursuant to an agreement under Tax Law section 1613-b where the Office of Temporary and Disability Assistance has identified the claimant as a recipient of public assistance benefits who is liable to reimburse the State for such benefits;

(3) [any prize, or portion thereof, may be credited against] the Department of Taxation and Finance, pursuant to an agreement under Tax Law section 1613-c where the Department of Taxation and Finance has informed the commission that the claimant has past-due tax liabilities [pursuant to Tax Law 1613-c; and

(4) any person, pursuant to an appropriate judicial order, including, without limitation, an order issued pursuant to Tax Law 1613(d), may be paid a prize, or portion thereof, to which the winner is entitled.

[(b) The commission shall be discharged of all liability upon payment of a prize pursuant to this section.]

[(c)] (b) Any potential assignee seeking a court-ordered assignment pursuant to Tax Law section 1613(d) shall pay to the commission a processing fee of \$435 per assignment in connection with consideration of such assignment, as authorized by Tax Law section 1613(d)(7). If the Commission incurs costs exceeding such fee for a particular assignment, the Commission may assess and collect from the potential or actual assignee an additional fee of \$86.50 for each hour expended in relation to the consideration or administration of such proposed or ordered assignment, less the original processing fee.

\* \* \*

### **§ 5002.13. Prize payable for life.**

[(a) When a claim has been filed on behalf of multiple claimants on a jackpot ticket eligible for a prize payable for life, such as the "\$1,000 a week for life" prize, prior to the jackpot drawing wherein such prize is to be awarded:]

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[(1) The multiple claimants shall designate in writing which one of them is to be identified as the person on whose life the prize is to be paid and execute an agreement evidencing such intent.]

[(2) In the event that the multiple claimants fail to execute such an agreement as provided in subdivision (a) of this section, the commission shall designate the youngest of such multiple claimants as the person on whose life such prize is to be paid.]

[(b) The age of the person on whose life the prize is to be paid may be initially determined by that which is shown on a driver's license or other official document, subject to later verification by the commission of birth records. Initial payments may be made based on the first determination of age but once official birth records are established the prize payment will be based on that date.]

[(c) When there are multiple claimants for a "\$1,000 a week for life" prize, and the life on which the prize is payable pursuant to subdivision (a) of this section, is terminated by death, the payment on the prize is immediately established as a top limit of \$1,000,000. The pro rata share of the decedent will be paid to the decedent's estate and in accordance with commission rules and regulations. Pro rata payments to each other living multiple claimant or claimants for the same prize will continue until a total of \$1,000,000 in prize money has been paid.]

[(d) The term life as used in this section means the life of a natural person.]

[(e) In the event that a claim is filed on behalf of a legal entity, other than a natural person, and such legal entity is eligible for a prize payable for life, the legal entity shall designate an officer or member of that legal entity as the person on whose life such prize is to be paid, and shall execute an agreement evidencing such designation. If for any reason the legal entity fails to execute evidence of such designation, the commission may designate the chief officer of such legal entity, or some other person if deemed more appropriate in the discretion of the commission, as the person on whose life the prize is to be paid.]

When a prize claim is filed on a jackpot ticket eligible for a prize payable for life, such as the "\$1,000 a week for life" prize, payments shall be made annually for:

(a) the natural life of the person filing the prize claim, if the claimant is a single natural person who is not a minor under the age of 18, provided, however, that if the person filing the prize claims dies before 20 annual payments elapse, the prize shall continue to be paid, to the decedent's estate or otherwise as provided by law, until a total of 20 annual payments have been made for the prize claim, at which time such prize payment shall cease and the State shall have no further obligation with respect to such prize claim; and

(b) 20 annual payments, if the claimant is:

(1) an entity;

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(2) a group comprising, directly or indirectly, more than one natural person, without regard to the lifespan of any natural person with an interest in such prize claim; or

(3) a minor under the age of 18.

In the event of death of any natural person who is a member of a group claiming the prize, such decedent's interest in such prize claim shall be paid to the decedent's estate or otherwise as provided by law.

(c) Prize claims filed before April 1, 2024 for a prize payable for life shall be governed by the rules and regulations in effect at the time such prize claim is filed, notwithstanding anything to the contrary in this section.

\* \* \*

### **§ 5004.5. Number and amount of prizes.**

For each lottery game, the commission shall designate the number and type of prizes to be awarded [in a directive]. The number of winners in each drawing may vary depending upon game design, the distribution of tickets sold, the number of tickets sold, and the number of valid winning tickets claimed.

\* \* \*

## **PART 5005**

### **Lottery Subscriptions**

|                |                                       |
|----------------|---------------------------------------|
| Section        |                                       |
| 5005.1         | Subscription program                  |
| 5005.2         | Subscription definitions              |
| 5005.3         | Subscription [costs] <u>cost</u>      |
| 5005.4         | Subscription application requirements |
| 5005.5         | Valid subscription entry              |
| 5005.6         | Payment of subscription prizes        |
| 5005.7         | Subscription disputes                 |
| 5005.8         | Subscription miscellaneous            |
| <u>5005.9</u>  | <u>Non-sufficient funds</u>           |
| <u>5005.10</u> | <u>Suspicious transactions</u>        |

### **§ 5005.1. Subscription program.**

(a) Subscription play. The commission may establish a commission-administered [A] subscription program [may be established at the discretion of the commission] for any commission [game(s)] game or games. The subscription program may permit a subscriber to play the same game character selections for a period of consecutive drawings over a stated period in such games as the commission may decide.

(b) Application or renewal forms. Entry into a subscription program will require the completion and submission of [either a paper or] an electronic [version of:

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(1) a] subscription application form[;] or

[(2) a] an electronic subscription renewal form.

The subscriber may provide the subscriber's social security number or taxpayer identification number on the respective application form so that prizes requiring [Federal] tax reporting or withholding may be [automatically] sent or credited to the winning subscriber. [An application for a group subscription must contain the names and addresses of each group member.]

(c) Social security number or taxpayer identification number. By providing the social security number or taxpayer identification number, the subscriber [is authorizing] authorizes the commission to retain and use the number for the purpose of tax reporting and any other lawful purpose of the commission. [No group may exceed 10 members if such group's application was made by mail.]

## **§ 5005.2. Subscription definitions.**

\* \* \*

(b) *Confirmation* means the [paper or] electronic correspondence sent to a subscriber from, or on behalf of, the commission confirming the [game(s)] game or games, game characters for each game panel played, [the type of plan,] the effective date and the expiration date.

\* \* \*

[(g) *Group* means two or more individuals sharing a game subscription whose combined qualifications meet that of an individual subscriber.]

[(h) *Group representative* means the individual designated on a group application as the person selected by the group subscribers to act on behalf of the group in handling any communications and prize payments related to the subscription.]

[(i) *Plan* means the game(s) played, the number of consecutive drawings played and the duration of the subscription as determined by the number of weeks selected by the subscriber.]

[(j)] (g) *Quick Pick* means the option for a subscriber to have game characters randomly selected by a computer. Once selected, the same quick pick characters [remain valid and] will be used for each drawing for the duration of the subscription.

[(k)] (h) *Subscriber* means [either] the individual [or the group] identified on an application as the [person(s)] person entitled to any prize the individual [or group] may win.

[(l)] (i) *Subscriber identifying information* means the name, address, subscription number and, taxpayer identification number (if provided) of the subscriber [or each member of a group].

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[(m) *Subscription costs* means the cost of the subscription purchased by the subscribers as defined section 5005.3 of this Part.]

[(n)] (i) *Subscription file* means a file maintained by the commission or the commission's contractors containing subscription information and used in the determination of sales and prizes.

[(o)] (k) *Subscription number* means the number assigned by the commission to a subscription record when the original application is processed.

[(p)] (l) *Valid subscription entry* means one that includes the following: subscriber identifying information (as defined [herein] in this section), game characters entered on the appropriate commission or contractor computer system that is the official record of subscription entry.

[(q) *Valid group subscription entry* means one that includes the following: subscriber identifying information for each member of the group, game numbers entered on the appropriate commission or contractor computer system, which is the official record of group subscription entry.]

### **§ 5005.3. Subscription [costs] cost.**

(a) Minimums. For each subscription, a minimum of one game panel must be selected for a minimum number of weeks or drawings, as determined by the commission.

(b) Game panels. A subscription may be for one or more game panels, as may be determined by the commission.

(c) Cost. The cost of a subscription [plan] shall be determined by the commission. The commission may establish a subscription account program through which a [player or players] subscriber may purchase a subscription or subscriptions and receive payment of a prize, as determined by the commission. The commission may require that a [player or players] subscriber maintain a minimum balance in such a subscription account to continue to participate in the program.

(d) Reservation of commission rights. The commission reserves the right to alter, temporarily or permanently, the [costs] cost of a subscription [plan] at the discretion of the commission. The commission reserves the rights to suspend or cancel any drawing or the game itself[,] or change the prize structure, frequency of draws or draw dates. In the event of such a change, an affected subscriber will receive participation in a revised game, equivalent in value to the remainder of such subscriber's subscription, or a refund, at the sole option of the commission.

(e) Commission determinations. Any determination by the commission described in this section may be made for any of the following reasons:

- (1) to make the subscription program more appealing or convenient for players;

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- (2) to further the commission's mission of raising revenue for aid to education; or
- (3) to allow the commission to administer the subscription program more effectively.

**§ 5005.4. Subscription application requirements.**

(a) [To be accepted for entry without changes, a subscription application must meet the following requirements:]

[(1) Each game panel must contain the required amount of unduplicated game numbers selected from the numbers available for the game that the applicant indicates on his or her application. If a game panel submitted by an applicant contains no game numbers or fewer than the required amount of game numbers, the quick pick option may be used to randomly select game numbers. If an applicant submits an application with more than the required amount of game numbers circled in a game panel, the commission may select the required number of game numbers consecutively from among such selected numbers. All other numbers may be disregarded.]

[(2) The application must include the applicant's identifying information, including identifying information for each member of a group applicant. If an application is submitted without complete applicant identifying information, the commission may seek additional information from the applicant. Regardless of whether the applicant responds with additional information requested by the commission, the application may, nevertheless, be accepted if there is sufficient information to identify by name at least one individual applicant or one individual member of a group applicant. In such case, the commission may pay any prize won by the subscription to any person identifiable as an applicant or as a member of a group applicant from the incomplete applicant identifying information submitted with the application, and such payment may be reported to the appropriate taxing authorities as income paid to such person with any required withholding tax to be credited to such person.]

[(b) An] Rejection of application. A subscription application may be rejected for any of the following reasons:

- (1) [if the application is illegible in whole or in part] all information required by the commission is not provided;
- (2) [if] the application includes a form of payment that is not acceptable to the commission or the form of payment is rejected;
- (3) [if] the applicant is under [the age of] 18 years of age; [or]
- (4) [if the applicant does not submit a New York State address for a subscription submitted through the U.S. Mail] the applicant's identity cannot be verified;
- (5) the applicant's physical location cannot be identified at time of attempted purchase;



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(6) the applicant's physical location is outside the State or any commission-designated prohibited sales area at time of attempted purchase; or

(7) the applicant is on the commission's voluntary self-exclusion list.

[(c)] (b) Termination. A subscription may be terminated after acceptance if, before or after the start date, the commission is notified that the payment for the subscription is invalid[,]  
(e.g., a [check] payment returned for [insufficient] non-sufficient funds). In such event, the subscription shall be deemed invalid, and no prizes will be paid to the applicant [during] relating to any period in which the subscription was invalid.

#### **§ 5005.5. Valid subscription entry.**

To be a valid entry, a subscription must meet the following requirements:

(a) Official record. To be eligible to win a prize, an application, including the [subscriber identification] subscriber-identification information, and the game [numbers] character selections must be entered into the [division's] commission's subscription file to create the official record of subscription entry.

(b) Confirmation. A confirmation [(paper or electronic)] shall be issued by the commission to the subscriber confirming a [valid] subscription entry [has been received] is valid and has been processed.

#### **§ 5005.6. Payment of subscription prizes.**

(a) Amount below a threshold. [Prizes] A prize that [are] is less than [the threshold withholding amount for Federal tax reporting] \$600 will be placed into the [player] subscriber account created prior to purchase of the [player's] subscriber's first subscription. Such [prizes] prize may be used to purchase additional subscriptions or the [player] subscriber may request a cash-out and receive payment for any unpaid prizes. Payment will be made to the individual subscriber [or group representative] whose name appears on the application.

(b) Amount at or above a threshold. [Prizes] A prize that [meet or exceed the threshold amount for Federal withholding for an individual] is \$600 or more will be remitted to the individual subscriber whose name appears on the application minus [the] any required withholding amount and offsets.

[(c)] For payment of a prize that meets or exceeds the threshold amount for Federal withholding to a group subscriber, a payment representing the designated share of the prize will be remitted to each individual member of the group. If the subscription or renewal application does not show the taxpayer identification number (social security number or Federal employer identification number) of each group member, the division will withhold appropriate income taxes in accordance with the applicable back-up withholding rules.]

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[(d) A group subscription entry will be treated as a single entry in the prize pool and shall also be treated as a single entry when determining if a prize in the game is payable in annual installments as provided in this Title.]

#### **§ 5005.7. Subscription disputes.**

(a) [The commission is not responsible for disputes between or among subscription group members.

(b)] Remedy. In any dispute with the commission concerning the right to a subscription prize, the commission shall have the right to resolve such dispute by [paying the prize or] refunding the price of the disputed subscription [fee] panel. If a refund is paid, the refund [shall be based on the remaining unused value of the subscription and] shall be the sole and exclusive remedy of the [subscriber(s)] subscriber.

[(c)] (b) Resolution of discrepancies. If there is a discrepancy between the information set forth on an application and the information set forth in a confirmation [letter] notification, the subscriber may ask the commission, by written or electronic communication, to resolve the discrepancy. After such a report is received by the commission, the commission shall resolve the discrepancy as soon as possible and issue a revised confirmation [letter] notification. Resolution may include, [but is not limited to] without limitation, cancellation of the subscription. No change in the subscription shall be effective until a revised confirmation [letter] notification is issued. No request to resolve a subscription panel game character selection or subscription date range discrepancy shall be accepted after the effective date in the confirmation [letter] notification issued.

#### **§ 5005.8. Subscription miscellaneous.**

(a) Games. The commission, pursuant to the commission's statutory authority, may from time to time add games to the commission's subscription program.

(b) Renewal. A subscription renewal must be processed prior to the expiration date of a current subscription in order to avoid a lapse in the subscription. A renewal application containing current subscription number, games, game numbers, [plan,] effective date and expiration date will be sent to the subscriber [either] electronically [or by mail]. The commission will make reasonable efforts to process renewal applications to assure no interruptions; however, the commission shall not be responsible for an interruption if a renewal application is not processed in sufficient time.

(c) Non-refundability. Once a subscription is entered into the subscription file, the funds paid for the subscription are not refundable.

(d) Promotions. If the commission offers any promotional offer for a subscription, the commission reserves the right to limit the number of promotional subscriptions that may be received by a [person or group] subscriber.

(e) Reservation of commission rights. The commission reserves the right to exclude subscribers from participation in a promotion offering special payments or prizes.

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[(f) Any subscription commenced prior to the effective date of the subscription regulations set forth in this Part shall be subject to the regulations that were in effect at the time such subscription was commenced. Any subscription commenced on or after the effective date of the subscription regulations set forth in this Part shall be subject to this Part.]

#### **§ 5005.9. Non-sufficient funds.**

If the commission receives notice that there are non-sufficient funds to pay for any portion of a subscription purchase, the portion of the attempted ticket purchase for which there are non-sufficient funds shall be null and void.

#### **§ 5005.10. Suspicious transactions.**

The commission may suspend a subscription account if the commission determines that transactions or attempted transactions are suspicious, excessive, or potentially fraudulent.

\* \* \*

#### **§ 5007.2. Mega Millions definitions.**

(a) The following definitions shall apply to Mega Millions.

(1) *Annuity option* is the manner in which the Mega Millions jackpot prize may be paid in 30 annual installments.

(2) *Authorized claim center* means any place designated by the commission where a ticket holder or such ticket holder's representative may file a claim for a prize in accordance with instructions of the commission.

[(3) *Claimant* means any person or entity submitting a claim form within the required time period to collect a prize for any Mega Millions ticket. A claimant may be the person or entity named on a signed Mega Millions ticket, or the bearer of an unsigned Mega Millions ticket. No claimant may assert rights different from the rights acquired by the original purchaser at the time of purchase.]

[(4)] (3) *Jackpot prize* means, for the Mega Millions game, the prize awarded for selecting all the numbers drawn from both fields. If more than one player from all participating lottery states has selected all the numbers drawn, the jackpot prize shall be divided among those players. Jackpot prize may also be referred to from time to time as *grand prize*. For any other game, the jackpot prize will be identified in game rules issued for such game.

[(5)] (4) *Lump sum option* means the manner in which the Mega Millions jackpot prize may be paid in a single payment.

[(6)] (5) *Mega Millions play area* is, for the on-line Mega Millions game, the areas on a Mega Millions play slip identified by an alpha character, A through E, containing two

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separate fields—one field of 70 and a second field of 25—both containing one- or two-digit numbers each. This is the area where the player, or computer if the player is using the quick pick option, will select five one- or two-digit numbers from the first field and will select one one- or two-digit number from the second field.

[(7)] (6) *Mega Millions play slip* means, for the Mega Millions game, a computer-readable form, printed and issued by the New York Lottery, used in purchasing a Mega Millions ticket, having up to five separate play areas. The play slip also provides for multiple drawing wagering up to 26 draws.

[(8)] (7) *Mega Millions ticket* means a game ticket, produced on official paper stock, by a lottery sales agent in an authorized manner, bearing player- or computer-selected numbers, game name, drawing dates, amount of wager, jackpot prize payment option and validation data.

[(9)] (8) *Mega Millions winning numbers* are, for the on-line Mega Millions game, five one- or two-digit numbers, from one through 70 and one one- or two-digit number from one through 25, randomly selected at each Mega Millions drawing, which shall be used to determine winning Mega Millions plays contained on Mega Millions tickets.

[(10)] (9) *Pari-mutuel* means, for the Mega Millions game total amount of prize money allocated to pay prize claimants, at the designated prize level, divided among the number of winning Mega Millions tickets.

[(11)] (10) *Party lottery* or *party lotteries* means one or more of the State lotteries established and operated pursuant to the laws of any State lottery that becomes a signatory to the Mega Millions game agreement.

[(12)] (11) *Prize fund* means that portion of Mega Millions gross sales set aside for the payment of prizes.

[(13)] (12) *Purchaser(s)* means player(s) of Mega Millions who purchase tickets within New York State in accordance with Mega Millions rules and New York State governing laws and regulations.

[(14)] (13) *Quick pick* has the meaning set forth in paragraph (11) of subdivision (a) of section 5004.9 of this Subchapter.

\* \* \*

### **§ 5007.5. Play characteristics and restrictions.**

\* \* \*

(d) Under no circumstances will a prize claim be paid for either the jackpot prize or the second prize without a Mega Millions ticket matching all game play, serial number and other validation data residing in the commission's [draw] computer gaming system

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[computer] and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize.

\* \* \*

### § 5007.15. Cash 4 Life.

(a) *Definitions.* The following definitions apply to the Cash 4 Life game:

(1) *Annuity option* means the manner in which the Cash 4 Life jackpot prize or second-level prize level may be paid in annual installments.

(2) *Cash 4 Life play slip* means a computer-readable form, printed and issued by the commission, used in purchasing a Cash 4 Life ticket, having up to five separate play areas. The play slip shall also provide for multiple-drawing wagering up to a specified number of draws.

(3) *Cash 4 Life ticket* means a game ticket, produced on official paper stock, by a lottery sales agent in an authorized manner, bearing player- or computer-selected numbers, game name, drawing date (or dates), amount of wager and validation data.

[(4) *Claimant* means any person or entity submitting a claim form within the required time period to collect a prize for any Cash 4 Life ticket.]

[(5)] (4) *Jackpot prize* means the prize awarded for selecting all the winning numbers drawn from both fields for the Cash 4 Life. If more than one player from all participating lottery states has selected all the winning numbers drawn, the jackpot prize shall be divided among those players, as set forth in subdivision (h) of this section.

[(6)] (5) *Liability limit* means a pre-established upper threshold, as determined and announced by the party lotteries before sales commence for a drawing to which such threshold applies, equal to a fixed percentage of the gross ticket sales receipts for a particular drawing (or such fixed percentage plus an additional reserve amount), according to the established procedures agreed to by the party lotteries.

[(7)] (6) *Lump sum option* means the manner in which particular Cash 4 Life prize levels may be paid in a single payment, as set forth in this section.

[(8)] (7) *Measuring life* means the period over which a jackpot or second-level annuitized prize is paid out. For each winning ticket, the measuring life shall be [the natural life of the individual determined by the commission to be a valid prize winner. If:] determined according to the period in which payments shall be made pursuant to section 5002.13 of this Subchapter.

[(i) a minor under the age of 18 claims a prize;]

[(ii) a legal entity other than an individual claims a prize; or]

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[(iii) more than one natural person claims a prize on the same ticket,]

[the measuring life for such prize shall be 20 years.] The measuring life shall be determined at the time a jackpot or second-level prize is claimed.

[(9)] (8) *Party lotteries* mean one or more of the State lotteries established and operated pursuant to the laws of any state that becomes a signatory to the Cash 4 Life agreement.

[(10)] (9) *Play area* is the area on a Cash 4 Life play slip containing two separate fields: one field of 60 one- or two-digit numbers (1 to 60 inclusive) and a separate and distinct second field of four one-digit numbers (1 to 4 inclusive) (which may be referred to as the *Cash Ball number*). This is the area from which the player, or computer, if the player is using the quick pick option, selects five numbers from the first field and one number from the second field.

[(11)] (10) *Prize pool* means that portion of Cash 4 Life gross sales set aside for the payment of prizes.

[(12)] (11) *Purchaser* means a player of the Cash 4 Life game who purchases a ticket within New York State in accordance with Cash 4 Life rules and New York State governing laws and regulations.

[(13)] (12) *Quick pick* has the meaning set forth in paragraph (11) of subdivision (a) of section 5004.9 of this Subchapter.

[(14)] (13) *Winning numbers* are five one- or two-digit numbers (1 to 60, inclusive) and one Cash Ball number (1 to 4, inclusive), randomly selected at each Cash 4 Life drawing, that shall be used to determine winning Cash 4 Life plays contained on Cash 4 Life tickets.

\* \* \*

(g) *Jackpot and second-level prize payment options.* A claimant of a valid winning jackpot or second-level prize in New York must select either an annuity option or lump sum option. A jackpot or second-level prize shall be paid as an annuity prize, unless a winner elects, within 60 days after the claimant becomes entitled to such prize, to be paid a lump sum payment or unless a lump sum payment is required as set forth in subdivision (h) of this section. If a lump sum payment is selected the prize amount shall be determined according to a methodology that shall be established by the party lotteries. An election made by a claimant is final and cannot be revoked, withdrawn or otherwise changed without the approval of the commission. [Unless a lump sum payment is paid in accordance with this section, annuitized prize payments shall be made for the measuring life of the jackpot prize or second-level prize winner or for a minimum of 20 years.] The schedule of payments for an annuity prize shall be determined by the commission. If paid in a lump sum payment, a jackpot prize or second-level prize amount shall be rounded to the nearest whole dollar.

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## § 5007.16. Monopoly™ Millionaires' Club™.

(a) *Definitions.* The following definitions apply to the MONOPOLY Millionaires' Club:

(1) *Annuity option* means the manner in which the MONOPOLY Millionaires' Club top prize may be paid in annual installments.

[(2) *Claimant* means any person or entity submitting a claim form within the required time period to collect a prize for any MONOPOLY Millionaires' Club ticket.]

[(3)] (2) *Lump-sum option* means the manner in which MONOPOLY Millionaires' Club top prize may be paid in a single payment as set forth in this section.

[(4)] (3) *Millionaires' Club prize* means a single payment prize (prize level 11) with a value of \$1,000,000 drawn independently from the other MONOPOLY Millionaires' Club prizes (prize levels 1-10).

[(5)] (4) *MONOPOLY Millionaires' Club play slip* means a computer-readable form, printed and issued by the commission, used to mark a player's numbered selection when purchasing a MONOPOLY Millionaires' Club ticket, having up to four separate play areas.

[(6)] (5) *MONOPOLY Millionaires' Club ticket* means a game ticket, produced on official paper stock, by a lottery sales agent in an authorized manner, bearing player- or computer-selected numbers, game name, drawing date, amount of wager and validation data. Each such ticket shall bear a unique non-repeating transactional number associated with that play.

[(7)] (6) *Pari-mutuel* means, for this section, the total amount of prize money allocated to pay prize claimants, at the designated prize level, divided among the number of winning MONOPOLY Millionaires' Club ticket.

[(8)] (7) *Party lotteries* mean one or more of the state lotteries established and operated pursuant to the laws of any state that are part of the national premium game product group that offers the MONOPOLY Millionaires' Club lottery game.

[(9)] (8) A *play* is one entry into a MONOPOLY Millionaires' Club drawing.

[(10)] (9) *Play area* is the area on a MONOPOLY Millionaires' Club play slip containing one field of 52 one- or two-digit numbers (1 to 52, inclusive). This is the area from which the player selects five numbers from the first field of 52 if the player is not using the quick pick option and allowing the computer system to select up to five numbers at random.

[(11)] (10) *Prize pool* means that portion of MONOPOLY Millionaires' Club gross sales set aside for the payment of prizes.

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[(12)] (11) *Purchaser* means a player of MONOPOLY Millionaires' Club who purchases a ticket within New York State in accordance with MONOPOLY Millionaires' Club rules and New York State governing laws and regulations.

[(13)] (12) *Quick pick* has the meaning set forth in paragraph (11) of subdivision (a) of section 5004.9 of this Subchapter. Quick pick is a player option in the MONOPOLY Millionaires' Club game for selection of up to five number selections ranging from one through 52, but the number ranging from one through 28, representing a MONOPOLY property, must be selected by quick pick.

[(14)] (13) *Top prize* means the game prize awarded when a player's selections matches all five winning numbers from the field of 52 and the property number drawn from the field of 28 numbered MONOPOLY properties for the MONOPOLY Millionaires' Club. If more than one player has selected all the winning numbers drawn, the top prize shall be divided equally among those players.

[(15)] (14) *Set prize or low-tier prizes* (prize levels 2-10) means, except as otherwise specified in this section, all prizes (other than the top prize and Millionaires' Club prizes) that are to be paid in a single payment as established by this section for each prize level.

[(16)] (15) *Winning numbers* are five one- or two-digit numbers (1 to 52, inclusive) and one number (1 to 28, inclusive), randomly selected at each MONOPOLY Millionaires' Club drawing, that shall be used to determine winning MONOPOLY Millionaires' Club plays contained on MONOPOLY Millionaires' Club tickets.

\* \* \*

## § 5008.2. Payment of prizes.

(a) Calculation of prizes. Prizes for the LOTTO game shall be calculated as follows:

\* \* \*

(b) First-prize payments. Each [first prize] first-prize payment shall be subject to the following provisions of this subdivision.

(1) If, pursuant to [paragraph (1) of] subdivision (a)(1) of this section, the calculated share for each game panel qualifying for a first prize in a particular LOTTO drawing would provide annual payments of \$10,000 or more, a winner shall receive an initial payment in an amount as similar as possible to the first annuity payment. After providing for such a first payment, the commission, as authorized by the comptroller, shall invest the remaining [first prize] first-prize money in securities authorized by the State Finance Law for the investment of state funds at current rates payable over a period of years. From the returns of principal and earnings on such investment, the commission shall pay annual prize installments to each [first prize] first-prize winner. Such annual prize installments shall be payable for a term of years to be determined by the commission. The number of years in the term payment schedule may be



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changed by the commission from time to time. Any such change will be publicly announced by the commission. Such announcement may be made in a news release, an advertisement, on the commission website, or in such other form as the commission, in the commission's discretion, may prescribe to maximize public awareness. LOTTO players may elect whether a first prize shall be payable in installments over a term of years in accordance with the foregoing provisions of this paragraph or, alternatively, whether a first prize shall be payable in a lump sum. If a prize is awarded in a lump sum as a result of a player having elected that option, the amount of the [lump sum] lump-sum payment shall be equal to the first prize discounted to present value based upon market rates on the business day following the drawing, divided by the number of game panels qualifying for a first prize. A jackpot prize shall be paid, at the election of a player made no later than 60 days after the player becomes entitled to the prize, with either an annuity or [lump sum] lump-sum payment. If the payment election is not made by a player within 60 days after the player becomes entitled to the prize, then the prize shall be paid as an annuity prize. An election to take a [lump sum] lump-sum payment may be made at the time of the prize claim or within 60 days after the winner becomes entitled to the prize. An election made after the winner becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed without the approval of the commission.

(2) If, pursuant to [paragraph (1) of] subdivision [(a)] (a)(1) of this section, the calculated share for each game panel qualifying for a first prize in a particular LOTTO drawing would provide annual payments of less than \$10,000, a winner shall receive the entire prize in a single payment. Such payment shall be equal to the first prize discounted to present value based upon market rates on the business day following the drawing, divided by the number of game panels qualifying for a first prize.

(c) Carryovers and guaranteed prize amounts.

(1) If in any LOTTO drawing, there is no game panel eligible for a first prize, the amount allocated from the prize pool to the [first prize] first-prize category, plus any amount brought forward from a previous drawing, shall be added to the [first prize] first-prize category for the next drawing.

(2) If the commission has announced a guaranteed [first prize] first-prize amount for any LOTTO drawing, and if the amount allocated from the winning pool to the [first prize] first-prize category, plus any amount brought forward from a previous drawing, is insufficient to pay the guaranteed first prize, then the amount necessary to fulfill the guarantee shall be added from the LOTTO [prize fund] prize-fund reserve or any other available source to the [first prize] first-prize category. If, however, there is no game panel qualifying for the [first prize] first-prize category in such drawing, no amount from the LOTTO [prize fund] prize-fund reserve shall be brought forward to the [first prize] first-prize category for the next drawing. If the commission has announced a guaranteed [first prize] first-prize amount for any LOTTO drawing, and if the amount allocated from the winning pool to the [first prize] first-prize category, plus any amount brought forward from a previous drawing, exceeds the amount necessary to pay the guaranteed first prize, then the excess may be allocated to the LOTTO [prize fund]

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prize-fund reserve established pursuant to [subdivision (c) of] section 5008.7(c) of this Part.

(3) If, in any LOTTO drawing, there is no game panel qualifying for the [second prize] second-prize category, the amount allocated from the winning pool to the [second prize] second-prize category, plus any amount brought forward from a previous drawing, shall be added to the [second prize] second-prize category for the next drawing.

[(d) Within a time period specified by the commission following the draw date, a claimant may present a valid winning LOTTO ticket valued at \$600 dollars or less for payment at a licensed retailer; thereafter, the winning ticket may only be claimed at a customer service center approved by the commission by mailing the ticket to the commission. LOTTO tickets may be purchased at any location equipped with a lottery computer terminal.]

[(e)] (d) First-prize winners. [First prize] First-prize winners shall receive payment not earlier than the 14th day after the relevant draw date.

[(f)] (e) Rounding. For the purpose of calculating any prize to be paid, the calculation shall be rounded down so the prize can be paid in multiples of one dollar.

[(g)] (f) One prize per game panel. The holder of a winning ticket may win only one prize per game panel in connection with the winning numbers drawn for a particular LOTTO game, but shall be entitled to the highest prize won by those numbers.

\* \* \*

#### **§ 5008.11. Distribution of prize money for variations of the LOTTO game.**

(a) Prize calculation. Prizes for a variation of the LOTTO game shall be calculated as follows:

(1) The first prize will be a prize of up to an amount designated by the commission, which will be paid as a lump sum. A first prize will be awarded to game panels matching six of six winning numbers for a particular drawing. The commission may limit the number of top first prizes for a particular drawing to no more than a designated number. If the limited number of top first prizes designated by the commission exceeded for a particular drawing, the winning [first prize] first-prize game panels will share equally in a maximum [first prize] first-prize pool equal to the product of the top [first prize] first-prize amount multiplied by the limited number of top first prizes designated by the commission. At the commission's discretion, the commission may change the top [first prize] first-prize amount and any such change will be publicly announced in advance of the effective date.

(2) Prizes paid to the [second] second- through [fourth prize] fourth-prize levels shall be fixed prizes as prescribed by the commission. There shall be a limit imposed on the [second] second- through [fourth prize] fourth-prize levels equal to a fixed

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percentage of the gross ticket sales receipts for that particular drawing. In the event that the limit would be exceeded for a particular draw, the [second] second- through [fourth prize] fourth-prize levels shall be calculated on a pari-mutuel basis in accordance with a formula established by the commission.

(3) The allocation of percentages of the prize pool to various prize categories may be changed by the commission from time to time. Any such change will be publicly announced by the commission.

(b) Additional version of game. In the event that the commission offers an additional version of the LOTTO game, the method of calculation and distribution of prizes shall be publicly announced in advance by the commission.

[(c)A valid winning ticket valued at \$600 or less and presented for payment within a number of days of the drawing date, as determined by the commission, may be redeemed by a lottery sales agent. All other valid winning tickets may be redeemed at a customer service center.]

[(d)] (c) Rounding. For the purpose of calculating any prize to be paid, the calculation shall be rounded down so that prize can be paid in multiples of one dollar.

\* \* \*

### **§ 5013.3. Payment of prizes; chances of winning.**

\* \* \*

(c) Payment of winning tickets. Valid winning Quick Draw bet tickets valued at less than \$600 [or less] may be presented to any licensed lottery sales agent location for payment.

\* \* \*

### **§ 5014.3. Conditions and requirements of licensure.**

(a) Conditions. A courier service shall, as a condition of licensure:

\* \* \*

(3) ensure the network includes the following features:

(i) a daily courier customer request limit of an amount approved by the commission, which may provide that prize amounts of less than \$600 [or less] awarded to a courier customer and credited to the courier customer's account may be excluded from the daily request limit;

\* \* \*

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**§ 5014.14. Notification of and payment of prizewinners in draw games.**

(a) *Notification.* A licensee shall notify a courier customer on whose behalf such licensee has purchased a winning draw game ticket of the amount of the prize within one hour of the commission's publication of the winning numbers and prize amounts. Such notification shall be made electronically through the network, secure electronic mail or other method approved by the commission. If the prize is [more than] \$600 or more, the licensee shall also notify the commission promptly of the identity of the prizewinner, the prize amount, the type of game, the date of the drawing and, for a draw game conducted more than once per day, the time of the drawing.

(b) *Draw game prizes [at or] below threshold.* For a draw game prize of less than \$600 [or less], a courier service shall validate the winning ticket and redeem the prize on behalf of the courier customer. Such prize amount shall be disbursed to the courier customer by crediting the courier customer's account, direct deposit to the courier customer's bank account, redeemed for cash or by other means approved by the commission.

(c) *Draw game prizes at or above threshold.*

(1) For a draw game prize of [more than] \$600 or more, a courier service shall deliver the physical winning ticket to the courier customer.

(2) A courier service shall provide electronically a courier customer who is a draw game prizewinner with a digitally completed prize claim form, tax withholding form and any other documentation required to redeem such prize, which the courier customer may use to claim the prize.

\* \* \*

(3) A courier service shall provide the commission with all information the commission may request in regard to a prize of [more than] \$600 or more.

\* \* \*

(d) *Printing prizewinner name on ticket.* Within a reasonable time after notifying a courier customer of winning a draw game prize of [more than] \$600 or more, a courier service shall print the prizewinner's full name, as set forth in such prizewinner's account, on the back of the draw game ticket.

New York State legislature, has already set out the steps to determine cost-effectiveness. The purpose of the proposed rule is to minimize the economic and financial impact of such changes made by the Code Council.

The proposed rule does not burden state municipalities with reporting, recording, or compliance requirements, and does not require any professional services. There are no added responsibilities or costs stemming from the proposed rule to any area of the state, rural or urban, and, as such, a Rural Area Flexibility Analysis is not being submitted with this rule.

#### **Job Impact Statement**

The proposed rule is not expected to have a substantial negative impact on jobs. It impacts solely the New York State Fire Prevention and Building Code Council (the "Code Council") and has no direct impact on the citizens or businesses of New York. The proposed rule provides specific guidance on how the cost effectiveness can be determined regarding any changes made by the Code Council to the State Energy Conservation Construction Code (the "ECCC"). NYSERDA was tasked with creating the proposed rule by the New York legislature.

Under Energy Law § 11-103(2)(a), the Code Council is to determine whether the code remains cost-effective after amendments. To make such determination, § 11-103(2)(a) requires the Code Council to consider "(i) whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis performed under methodology as established by the New York state energy research and development authority in regulations which may be updated from time to time, and (ii) secondary or societal effects, such as reductions in greenhouse gas emissions, as defined in regulations."

Accordingly, § 11-102(2)(a), which has been passed into law by the New York State legislature, has already set out the steps to determine cost-effectiveness. The purpose of the proposed rule is to minimize the economic and financial impact of such changes made by the Code Council.

Therefore, the proposed rule, by itself, will not have direct impacts on employment. It will not have any direct impact the cost of construction, as it does not set any requirements for new or existing buildings. Any indirect impacts caused by decisions by the Code Council are speculative and hypothetical, and, further, are unrelated to the language of the proposed rule, itself. For these reasons, a Job Impact Statement is not being submitted with this rule.

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## New York State Gaming Commission

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

#### **Lottery Prize Payments and Subscriptions**

**I.D. No.** SGC-52-23-00014-P

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

**Proposed Action:** Amendment of sections 5000.2, 5002.1, 5002.3, 5002.4, 5002.5, 5002.7, 5002.10, 5002.11, 5002.13, 5004.5, 5005.1, 5005.2, 5005.3, 5005.4, 5005.5, 5005.6, 5005.7, 5005.8, 5007.2, 5007.5, 5007.15, 5007.16, 5008.2, 5008.11, 5013.3, 5014.3 and 5014.14; addition of sections 5005.9 and 5005.10 to Title 9 NYCRR.

**Statutory authority:** Tax Law, sections 1601, 1604; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

**Subject:** Lottery prize payments and subscriptions.

**Purpose:** To create uniformity in payment processing, limit subscriptions to individuals, and codify existing practices.

**Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>):** Proposed amendments to sections 5007.2, 5007.15, and 5007.16 move and expand the definition of "Claimant" to section 5000.2.

Proposed amendments to sections 5002.1, 5002.5, 5002.7, 5002.11, 5013.3, 5014.3, 5014.14 change current regulations authorizing lottery sales agents to pay prizes of \$600 or less. Statutory offsets require crediting of lottery prizes of \$600 or more against either past-due support (Tax Law section 1613-a) or public assistance benefits (Tax Law sections 1613-b). The amendments would ensure that such offsets are applied, by requiring prizes of \$600 or more to be presented directly to the Commission for payment, rather than allowing them to be paid at a licensed lottery sales agent location. Corresponding amendments to thresholds pertaining to lottery courier services are proposed.

Proposed amendments to sections 5002.13, 5008.2, 5008.11 and 5007.15 change the manner in which "for life" prizes are paid to group claims, claims by entities and claims on behalf of minors under the age of 18. The proposal would make such prizes consistent with how they are paid in the Cash 4 Life game (20 payments over 20 years). This change would create uniformity across the "for life" games. The Division of Lottery proposes to change the guaranteed amount for individual claimants from a fixed dollar amount over 20 years to 20 equal payments over 20 years. This change would create uniformity in payment processing. Staff anticipates that this change will minimally increase the annual amount to an individual claimant.

Proposed amendments to sections 5005.1 through 5005.8 limit the Lottery subscription program to individuals only and eliminate provisions relating to subscriptions by groups. In addition, a new section 5005.9 is proposed to make explicit that a subscription is void if payment for the ticket is rejected for non-sufficient funds and a new section 5005.10 is proposed to reserve authority to suspend a subscription in the event of suspicious transactions.

Proposed amendments to section 5002.10 remove reference to the United States Postal Service. Proposed amendments to section 5007.5 and 5008.11 make technical stylistic edits. Proposed amendments to section 5002.4 would codify existing practice of allowing a claimant to direct payment to a bank account.

Proposed amendments to section 5002.3 make technical stylistic edits.

Proposed amendment to section 5004.5 removes the requirement for the Commission to issue a directive in order to designate the number and type of prizes to be awarded.

Other amendments would make technical stylistic edits to sections relating to prize payments and subscriptions, such as adding titles to subdivisions, improving word choices and using Department of State style conventions.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3332, email: [gamingrules@gaming.ny.gov](mailto:gamingrules@gaming.ny.gov)

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

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

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

#### **Regulatory Impact Statement**

1. **STATUTORY AUTHORITY:** The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601 and 1604, and Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1) and (19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Racing Law Section 104(19) authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. **LEGISLATIVE OBJECTIVES:** To create uniformity in lottery payment processing, limit lottery subscriptions to individuals, and codify existing practices, all of which are necessary for the effective and efficient operation of the New York State Lottery that the Commission is tasked with administering.

3. **NEEDS AND BENEFITS:** The Division of Lottery proposes to change the manner in which "for life" prizes are paid to group claims, claims by entities and claims on behalf of minors under the age of 18. The proposal would make such prizes consistent with how they are paid in the Cash 4 Life game (20 payments over 20 years). This change would create uniformity across the "for life" games. The Division of Lottery proposes to change the guaranteed amount for individual claimants from a fixed dollar amount over 20 years to 20 equal payments over 20 years. This change would create uniformity in payment processing. Staff anticipates that this change will minimally increase the annual amount to an individual claimant.

The Division of Lottery proposes to limit the Lottery subscription program to individuals only. Proposed amendments to various regulations would eliminate provisions relating to subscriptions by groups. In addition, rules are proposed to make explicit that a subscription is void if payment for the ticket is rejected for non-sufficient funds and to reserve authority to suspend a subscription in the event of suspicious transactions.

Current regulations authorize lottery sales agents to pay prizes of \$600 or less. Yet there are statutory offsets that require crediting of lottery prizes of \$600 or more against either past-due support (Tax Law section 1613-a) or public assistance benefits (Tax Law sections 1613-b). The amendments would ensure that such offsets are applied, by requiring prizes of \$600 or more to be presented directly to the Commission for payment, rather than allowing them to be paid at a licensed lottery sales agent location. Corresponding amendments to thresholds pertaining to lottery courier services are proposed.

Other amendments would codify existing practice of allowing a claimant to direct payment to a bank account, allow delivery of a prize by means other than the United States Postal Service, add a reference to the statutory offset for past-due State tax liabilities, and make technical stylistic edits to sections relating to prize payments and subscriptions, such as adding titles to subdivisions, improving word choices and using Department of State style conventions.

#### 4. COSTS:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There will be no additional costs to regulated parties for the implementation and continuing compliance with this rulemaking.

b. Costs to the regulated agency, the State, and local governments for the implementation and continuation of the rule: Staff anticipates that the rulemaking will minimally increase the annual amount to an individual lottery claimant for "for life" prizes. However, the rulemaking would create uniformity in payment processing.

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 reviewing prize payment assignments.

5. LOCAL GOVERNMENT MANDATES: The proposed rulemaking does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

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

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

8. ALTERNATIVES: The alternative of not proposing this rulemaking was considered and rejected. The Commission's Division of Lottery is investing in a new system that will modernize the way the Division processes prize and subscription claims. In the context of evaluating the new system, which includes flexible and enhanced features, staff identified regulations, included in this rulemaking, that require modification.

9. FEDERAL STANDARDS: The proposed rule does not exceed any minimum standards imposed by the federal government.

10. COMPLIANCE SCHEDULE: The Commission believes that 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 rulemaking will not have any adverse impact on small businesses, local governments, jobs or rural areas. The proposed rulemaking would create uniformity in lottery payment processing, limit subscriptions to individuals, and codify existing practices.

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

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

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

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

## Department of Health

### EMERGENCY RULE MAKING

#### Trauma Centers - Resources for Optimal Care of the Injured Patient

**I.D. No.** HLT-39-23-00026-E

**Filing No.** 1061

**Filing Date:** 2023-12-11

**Effective Date:** 2023-12-11

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

**Action taken:** Amendment of section 405.45 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2803

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** State Administrative Procedure Act (SAPA) § 202(6) authorizes state agencies to adopt emergency regulations necessary for the preservation of public health, safety, or general welfare where compliance with routine administrative procedures would be contrary to public interest. In this case, compliance with SAPA for filing of this regulation on a non-emergency basis, including the requirement for a public comment period, cannot be met because to do so would be detrimental to the health and safety of the general public.

The proposed regulatory changes to Title 10 NYCRR section 405.45 will update the publication date of Resources for Optimal Care of the Injured Patient from 2014 to 2022. This change is immediately needed because the American College of Surgeons (ACS) began using the updated edition to perform hospital trauma center verifications and re-verifications on September 1, 2023. The Bureau of Emergency Medical Services and Trauma Systems (the Bureau) works in concert with the ACS to issue preliminary verification to hospitals seeking trauma center verification. The Bureau uses the criteria and standards in the Resources for the Optimal Care of the Injured Patient to ensure that trauma center applications are compliant with the most current standards. The ACS uses these standards to issue the verification of trauma center status and once received, the Bureau issues the trauma center designation.

Failure to adopt the emergency regulation will result in a delay of verification and designation of new and existing trauma centers in New York State (NYS). It may also negatively affect trauma centers that have received notices of deficiencies in their ability to timely correct those deficiencies. The Bureau uses the standards set forth by ACS to re-inspect and assist trauma centers in resolving any deficiencies found with re-verification by the ACS. Any delays in trauma center designation may cause delays in appropriate patient care because of traumatic injury, especially in rural areas, because trauma center designation provides the guideline for emergency medical services for transport to the appropriate facility.

As such, an emergency rule is necessary to ensure that the most current standards for trauma centers are employed in preliminary and permanent trauma center designation. Updating this rule prior to September 1, 2023, was not feasible because the ACS was still conducting verifications and re-verifications of trauma centers using the 2014 version of the standards and was not prepared to incorporate the new version until now. Accordingly, current circumstances necessitate immediate action, and pursuant to SAPA § 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

**Subject:** Trauma Centers - Resources for Optimal Care of the Injured Patient.

**Purpose:** To update the edition of Resources for Optimal Care of the Injured Patient from 2014 to 2022.

**Text of emergency rule:** Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 2803 of the Public Health Law, section 405.45 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended, to be effective upon filing with the Secretary of State, to read as follows:

405.45 Trauma Centers

(a) Definitions. The following terms when used in this section shall have the following meanings:

\* \* \*



## Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** March 12, 2024

**Re:** Proposed Consensus Rulemaking for Commission address (9 NYCRR §§ 4011.29, 4043.12, 4045.1, 4081.1, 4116.4, 4122.49, 4217.16, 4627.8, 4831.8, 5000.4, 5000.8, 5014.17, 5400.1, 5401.1 and 5401.3)

Because the Gaming Commission's principal office has moved within Schenectady, staff recommends the proposal of a consensus proposed rulemaking to update the Commission's address in various rules. An unnecessary subdivision in the Division of Lottery rules is also proposed to be eliminated.

The text of the proposed rules is attached.

[REDACTED]

attachment

cc: Robert Williams, Executive Director

Text to be deleted appears in [brackets]  
Text to be added is underlined

### **§ 4011.29. Additional authorized wagers.**

In addition to the types of wagers authorized by this Part, an association or corporation may, with the prior permission of the commission, offer any type of pari-mutuel wagering as defined by chapter 9, Pari-Mutuel Wagering, Uniform Rules of Racing, as adopted and published in December 1996 by the Association of Racing Commissioners International, Inc., 1510 Newtown Pike, Suite 210, Lexington, KY 40511. Such Uniform Rules of Racing are available for public inspection at the New York State Gaming Commission located at [One] 354 Broadway [Center, Suite 600], Schenectady, NY 12305 and at the Department of State, 99 Washington Street, Albany, NY 12231.

\* \* \*

### **§ 4043.12. Prohibited substances and methods.**

(a) The substances and methods listed in the ARCI prohibited list are prohibited, may not be used at any place or time and may not be possessed on the premises of any racing or training facility under the jurisdiction of the commission except as a restricted therapeutic use. *ARCI prohibited list* means the “Prohibited List” annexed to Model Rule ARCI-011-015 Version 7.0 (approved December 9, 2016) of the Association of Racing Commissioners International, Inc., 1510 Newtown Pike, Suite 210, Lexington, KY 40511, which is hereby incorporated by reference. Such Uniform Rules of Racing are available for public inspection at the New York State Gaming Commission located at [One] 354 Broadway [Center, Suite 600], Schenectady, NY 12305 and at the Department of State, 99 Washington Street, Albany, NY 12231.

\* \* \*

### **§ 4045.1. Definitions.**

The following terms, when used in this Part, have the following meanings:

(a) *ARCI Penalty Guidelines* means the uniform classification guidelines published in “Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule,” Version 13.0 (approved December 9, 2016) of the Association of Racing Commissioners International, Inc., 1510 Newtown Pike, Suite 210, Lexington, KY 40511, which are hereby incorporated by reference. Such Uniform Rules of Racing are available for public inspection at the New York State Gaming Commission, [One] 354 Broadway [Center, Suite 600], Schenectady, NY and at the Department of State, 99 Washington Street, Albany, NY 12231.

\* \* \*

### **§ 4081.1. Definitions.**

\* \* \*

(b) *Inquiries*. Questions regarding these rules and regulations, procedures, application forms or other similar matters may be directed to the executive director of the fund at the



fund offices, [One] 354 Broadway [Center, 1<sup>st</sup> floor], Schenectady, New York 12305. Telephone (518) 388-0174.

\* \* \*

**§ 4116.4. Safety helmets.**

No one will be permitted to jog, train, warm up, or drive a horse at any time on the premises of a harness race track unless such person is properly wearing a protective safety helmet approved by either the Snell Memorial Foundation or the United States Department of Transportation. The United States Department of Transportation standards are reprinted in title 49 of the *Code of Federal Regulations*, chapter 5, section 571.218 (49 CFR, 571.218). The Snell Memorial Foundation standards are contained in the publication entitled, *Snell Memorial 2000 Standard For Protective Gear*, available from the Snell Memorial Foundation, 3628 Madison Avenue, Suite 11, North Highlands, CA 95660 or at [www.smf.org/stds](http://www.smf.org/stds). Both standards are on file in the office of the commission, located at [One] 354 Broadway [Center], Schenectady, NY [12305-2553] 12305.

\* \* \*

**§ 4122.49. Additional authorized wagers.**

In addition to the types of wagers authorized by this Part, an association or corporation may, with the prior permission of the commission, offer any type of pari-mutuel wagering as defined by chapter 9, Pari-Mutuel Wagering, Uniform Rules of Racing, as adopted and published in December, 1996 by the Association of Racing Commissioners International at 2343 Alexandria Drive, Suite 200, Lexington, KY 40504-3276. This is available for public inspection at the New York State Gaming Commission located at [One] 354 Broadway [Center], Schenectady, NY [12305-2553] 12231 and at the Department of State, 99 Washington Avenue, Albany, NY 12231.

\* \* \*

**§ 4217.16. Additional authorized wagers.**

In addition to the types of wagers authorized by this part, an association or corporation may, with the prior permission of the board, offer any type of pari-mutuel wagering as defined by Chapter 9, Pari-Mutuel Wagering, Uniform Rules of Racing, as adopted and published in December, 1996, by the Association of Racing Commissioners, International at 2343 Alexandria Drive, Suite 200, Lexington, Kentucky 40504-3276. This is available for public inspection at the New York State [Racing and Wagering Board] Gaming Commission located at [#1 Empire State Plaza, Suite 1201, Albany, New York 12223 or 1 Penn Plaza, 7th Floor, New York, New York 10119, both addresses] 354 Broadway, Schenectady, NY 12305, and at the Department of State, [41 State] 99 Washington Street, Albany, New York 12231.

\* \* \*

**§ 4627.8. How papers may be filed.**

Filing of the foregoing papers with the commission at the commission's office [in] at 354 Broadway, Schenectady NY 12305, [or in New York City,] may be either by personal service or by certified mail, return receipt requested.

\* \* \*

**§ 4831.8. How papers may be filed.**

Filing of the foregoing papers with the [New York State Gaming Commission] commission at the commission's office at 354[, One] Broadway [Center], Schenectady, NY 12305, may be either by personal service or by certified mail.

\* \* \*

**§ 5000.4. Name, official seal and offices.**

\* \* \*

[(c)The principal office of the commission shall be located at: One Broadway Center, Schenectady, New York 12305. The commission may also operate such other offices and facilities as the commission may deem appropriate to fulfill the responsibilities of the commission under the Acts.]

\* \* \*

**§ 5000.8. Declaratory rulings.**

\* \* \*

(b) A petition for a declaratory ruling must be submitted in writing to the commission by certified mail, return receipt requested, addressed to New York State Gaming Commission, [One] 354 Broadway [Center], Schenectady, NY 12305. The returned postal service receipt shall constitute proof of service, which shall be deemed effective on the day the petition is received. The petition shall state that a declaratory ruling is requested, cite the statute, rule, or regulation relied upon, and set forth a complete and precise statement of the state of facts, persons or property with respect to which a ruling is sought, together with a full disclosure of the petitioner's interest. Any facts alleged in the petition shall be verified under oath by the petitioner.

\* \* \*

**§ 5014.17. Advertising and marketing.**

\* \* \*

(e) *Advertising restrictions.*

\* \* \*

(4) Advertisements shall comply with the advertising guidelines issued by the North American Association of State and Provincial Lotteries (approved March 19, 1999), 7757 Auburn Rd. Unit #7, Concord, OH 44077, which is hereby incorporated by reference. Such advertising guidelines are available for public inspection at the [New York State Gaming Commission] commission's office located at [One] 354 Broadway [Center, Suite 500], Schenectady, NY 12305, and at the Department of State, 99 Washington Avenue, Albany, NY [12210] 12231.

\* \* \*

#### **§ 5400.1. Public inspection of records.**

In accordance with article 6 of the Public Officers Law, the Freedom of Information Law, the following procedures are prescribed for making available to the public for inspection and copying all of the records and materials mandated by such law for such purposes.

(a) Application shall be made on printed forms prescribed by the commission and submitted either personally or by mail to the New York State Gaming Commission, [One] 354 Broadway [Center], Schenectady, NY 12305, Attention: Records Access Officer.

\* \* \*

#### **§ 5401.1. Access to personal information.**

In accordance with article 6-A of the Public Officers Law, the Personal Privacy Protection Law, the following procedures are prescribed by which members of the public may assert rights granted by the Personal Privacy Protection Law:

(a) Applications shall be made on printed forms prescribed by the board and submitted either personally or by mail to the New York State Gaming Commission, [One] 354 Broadway [Center], Schenectady, NY 12305, Attention: Privacy Compliance Officer.

\* \* \*

(c) Records shall be made available at the main office of the commission, which is located at [One] 354 Broadway [Center], Schenectady, NY 12305.

\* \* \*

#### **§ 5401.3. Amendment of records.**

\* \* \*

(d) Any such denial may be appealed to:

Privacy Compliance Law Appeals Officer  
c/o Counsel  
New York State Gaming Commission  
[One] 354 Broadway [Center]  
Schenectady, NY 12305



## Gaming Commission

354 Broadway, P.O. Box 7500, Schenectady, NY 12301-7500  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

**To:** Commissioners

**From:** Edmund C. Burns  
Sarah Klein

**Date:** March 21, 2024

**Re:** Proposed Rulemaking for Whips; use of whips, kicking, foot out of stirrups, goads, and head poles; penalties (9 NYCRR § 4117.8)

For Commission consideration are amendments to the Commission's rules on the use of whips in harness racing. The proposed amendments would require that a driver keep a line in each hand, except as necessary to adjust equipment, while racing or training or at any time the horse is being driven on the track. The amended rule would establish uniformity across the State and promote the health and safety of racehorses.

The proposal would further define the allowable urging during a race and conduct that would be considered excessive or indiscriminate use of the whip. Kicking and foot-out-of-stirrup also would be further defined for clarity in that a driver who removes a foot from the stirrups would be treated as if the driver were found to have kicked a horse, and conduct would be considered a kick violation if a driver makes contact with a horse while feet are in or out of the stirrup. The proposed regulation would also establish penalties for these offenses, would allow for consideration of offenses in other jurisdictions and would constrain judges' discretion in setting such penalties.

Commission rules currently provide that drivers may carry a whip of a certain length, which may be used in a conventional manner. Drivers are prohibited from kicking, and drivers must keep a line in each hand from the start of the race until one quarter of one mile before the finish of the race. Adding the requirements that lines must be kept in separate hands while racing, training or at any other time when driving a horse on track premises, and that use of the line must be restricted to forearm and wrist action (not raised above the shoulder) will clearly provide what is permissible and will also bring New York in line with many other racing jurisdictions such as New Jersey, Pennsylvania, Ohio, Maine, Massachusetts and Kentucky, as well as the United States Trotting Association Model Rules.

Adding a set penalty structure for any violation of this rule would ensure that any successive offense within one year concerning whipping, kicking or urging, after an offense at any United States or Canadian racetrack, would result in an increased penalty. Furthermore, any indiscriminate use of the whip could subject the driver to license revocation. This structure would provide greater consideration of past offenses, establish

Commissioners  
March 21, 2024  
Page 2

uniformity across New York's tracks, and would be a further safeguard to ensure the health and welfare of racehorses and maintain the integrity of the sport.

Text of a proposed rule is attached.

[REDACTED]

attachment

cc: Robert Williams, Executive Director

Text to be deleted appears in [brackets]

Text to be added is underlined

### **§ 4117.8. Whips, goads and head poles.**

(a) Whip specifications. A driver [Drivers may] is permitted to carry only a black whip that shall not exceed [three] four feet [nine inches] in length, plus a snapper [no] not longer than six inches. No leather or unusual materials may be used. The conventional snapper shall not be knotted. Tape is permitted only on the handle of the whip. All other modifications of the whip are prohibited.

(b) Prohibitions on urging. No person shall possess or use any goading device or mechanical or electric device or appliance[,] other than a whip specified in subdivision (a) of this section, [may be used upon a horse] either while racing, training or at any other time on the track premises.

(c) Allowable urging during a race. A driver may use a whip or the lines only in the conventional manner, in accordance with the following:

(1) the driver must keep a line in each hand, except as may be necessary to adjust equipment (i.e., pulling plugs, dropping blinkers, etc.) while racing, training or at any other time when driving a horse on the track premises;

(2) lines shall remain reasonably taut during a race;

(3) use of the whip shall be restricted to forearm and wrist action only such that a driver's elbows must remain reasonably tucked and not raised above the driver's shoulder. For avoidance of doubt, raising the lines and using the whip with wrist-action only is permissible;

(4) a driver is permitted to use the whip to hit the wheel disc or shaft so long as the whip does not interfere with another horse or driver; and

(5) a driver is permitted to use a hand or the whip in a sliding, gliding or tapping manner about the level of the arch.

(d) Excessive or indiscriminate use of whip. While on the track premises at any time, no one shall use a whip in an[. Brutal,] excessive, [unnecessary or] indiscriminate, injurious, abusive or unnecessary manner, as the judges may determine in their discretion. [use of the whip, is prohibited.] The following actions shall be considered as excessive or indiscriminate use of the whip:

(1) causing [visible] an injury to the horse with the whip;

[(2) whipping a horse after a race; and]

(2) using the whip more than three times in succession without giving the horse time to respond to the urging;

(3) using the whip on a horse that is not visibly responding;

(4) using the whip on a tired horse or continuing to use the whip when the horse is not reasonably advancing or maintaining its position in the race;

(5) using the whip after the finish line;

(6) using the handle of the whip on a horse in any manner;

(7) striking another horse or driver with the whip or using the whip in a manner that interferes with another horse or driver;

(8) movement by the driver of their body or arms in an exaggerated manner;

[(3)] (9) whipping under the arch or shafts of the sulky;

(10) placing the whip between a horse's legs; or

(11) contacting the horse with the whip on the horse's hocks or below.

Notwithstanding the prohibitions described in this section, a driver may use the whip in any reasonable manner to ensure the safety of the horses and drivers in the race.

(e) Kicking prohibited. [Drivers are] The kicking of a horse is prohibited [from kicking, punching, or jabbing a horse, or using the whip so as to interfere with or cause disturbance to any other horse or driver in a race. The use of the whip shall be confined to an area above and between the sulky shafts to include the sulky shafts and the outside wheel discs. Drivers shall keep a line in each hand from the start of the race until one-quarter of one mile before the finish of the race.] Kicking, for purposes of this subdivision, means delivering a blow or thrust with the foot against any part of the horse's body or impelling by striking with the foot at any time on the track premises, including before, during or after a race.

(f) Foot out of stirrup. A driver found to have removed a foot from the stirrups shall be punished as if the driver were found to have kicked a horse. Additionally, it shall be considered a kicking violation if a driver makes any contact with a horse while both feet are in or out of the stirrups or any foot supports. Notwithstanding the foregoing, a driver is allowed, in the discretion of the judges, to remove a foot from the stirrup temporarily for the purpose of pulling earplugs or to adjust equipment.

[(d)] Under the supervision of the judges, there shall be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip.]

[(e)] (g) Head poles. Head poles may be used on a horse but shall not protrude more than 10 inches beyond the horse's nose.

(h) Penalties.

(1) The initial penalty for kicking shall be a suspension of seven days, with subsequent violations doubling the last penalty imposed.

(2) The penalties for a non-kicking violation of this rule are as follows, depending on the severity of the violation:

|                                    | <u>Suspension</u>   | <u>Fine</u>    |
|------------------------------------|---|----------------|
| <u>First offense</u>               | <u>none</u>   | <u>\$100</u>   |
| <u>Second offense</u>              | <u>3 days</u>   | <u>\$250</u>   |
| <u>Third offense</u>               | <u>7 days</u>   | <u>\$500</u>   |
| <u>Fourth offense</u>              | <u>15 days</u>  | <u>\$1,000</u> |
| <u>Fifth or subsequent offense</u> | <u>For each subsequent offense, the penalty for both suspension days and the amount of the fine shall be double the last penalty imposed.</u> |                |

When calculating penalties for successive non-kicking violations under this section, any kicking violation that occurs between non-kicking violations shall be considered and equated to three non-kicking offenses for purposes of calculating escalating penalties for non-kicking violations.

(3) A driver's penalty shall be based on the number of offenses that the driver has had across all racetracks in the United States and, to the extent records are available to the judges, Canada, over the 365-day period that includes and immediately precedes the date of the most recent offense.

(4) Any brutal or indiscriminate use of the whip or excessive number of offenses may subject a driver to license revocation, without regard to the number of offenses.

(5) In addition to the penalties set forth in this subdivision, the violation of any of the provisions in this section may result in loss of placement or disqualification if, in the discretion of the judges, the driver and horse gained an unfair advantage due to such violation.

(6) Nothing in the penalties set forth in this subdivision shall preclude a judge, as the circumstances may warrant, from referring a licensee to the Commission for a review of the character and fitness of such licensee to hold a racing license.

(i) Publication required. All harness racing corporations or associations conducting a pari-mutuel meet shall publish this section in each day's official racing program.