

regulations are important to addressing these concerns. The Department agrees that the adopted regulations are critical in reducing the adverse air pollution impacts in DACs throughout New York State. It is essential that New York State continues to adopt stringent mobile sources emissions standards and regulations to protect human health and the environment, especially in DACs that have historically borne the brunt of these impacts.

Commenters stated that adoption of the HD Omnibus regulation is necessary as the federal CTP regulation is insufficient and falls short. The Department found that the HD Omnibus regulation can provide greater NOx emission reductions from medium- and heavy-duty engines than the final federal CTP. While the Department and other stakeholder have expressed some concerns with several aspects of the CTP, the Department does recognize EPA's efforts to lower NOx emissions compared to current federal standards.

Commenters stated that while this rulemaking is a necessary and important step, additional emissions reductions are needed in NY. While portions of these comments are beyond the scope of this rulemaking, the Department will continue to assess additional regulations, control measures, programs, and potential funding sources to meet the ozone National Ambient Air Quality Standards (NAAQS), maintain compliance with the particulate matter NAAQS, and mitigate the disproportionate impacts of medium- and heavy-duty vehicle traffic on DACs.

Commenters noted the Department's regulatory definition of the HD Omnibus transit agency exemption and made suggestions of alternative regulatory definitions. The Department believes its regulatory definition is adequate.

Some Commenters mentioned other issues, such as battery electric vehicles, their usage, and their adoption. These comments are outside the scope of this rulemaking.

## New York State Gaming Commission

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

#### Claiming Rules Revisions in Thoroughbred Racing

**I.D. No.** SGC-34-23-00009-P

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

**Proposed Action:** This is a consensus rule making to amend sections 4038.1, 4038.3 and 4038.4 of Title 9 NYCRR.

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

**Subject:** Claiming rules revisions in Thoroughbred racing.

**Purpose:** To improve the claiming process in Thoroughbred racing.

**Text of proposed rule:** Sections 4038.1, 4038.3 and 4038.4 of 9 NYCRR would be amended to read as follows:

§ 4038.1. Who may make claim.

(a) Licensed and participating owners. Claims may be made by an owner licensed for the current year, or duly authorized agent, if the owner is presently registered in good faith for racing at that meeting and [has nominated a starter in the previous or current race meet of the licensed or franchised racing association, up to or including the race in which the claim is made] *the owner has started a horse:*

(1) within the previous 120 days, including the race in which such horse started, *in a race meeting of the licensed or franchised association;* or

(2) in the current or previous race meeting of the licensed or franchised racing association.

Such claim shall be in the name of the owner making the claim, or in the name of the entity of which the potential claimant is the managing owner.

(b) Holder of a certificate of eligibility to claim. A person who has not previously been licensed in any state as an owner, upon application for an owners' license in this State, may apply to the stewards for a certificate authorizing him or her to claim one horse during the next 30 racing days following the issuance of the certificate. The stewards may grant an extension [if deemed appropriate] *of 30 racing days if the certificate holder had entered a claim but had lost the disposition by lot pursuant to section 4038.5(b) of this Part.* The certificate shall be valid for claiming only at

the track of the racing association at which it was issued. Such certificate shall be issued by the stewards only after the stewards have been advised by the commission that after an initial background check, and from the face of the application, the applicant appears to be qualified to be licensed and only after the applicant has designated a licensed trainer who will assume care and responsibility for the horse to be claimed.

\* \* \*

§ 4038.3. Conditions for starting claimed horse.

If a horse is claimed the horse shall not start in a claiming race for a period of [30] 20 days from *the date of the claim* for less than 25 percent more than the amount for which such horse was claimed. For a period of 10 days thereafter, a horse is eligible to start for a claiming price equal to or greater than the price at which the horse had been claimed. On the 31st day, the horse may start in a claiming race for any price.

§ 4038.4. Sale, transfer restricted.

If a horse is claimed the horse shall not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from the date of the claim. A claimed horse shall not, unless reclaimed, remain in the same stable or under the control or management of its former owner or trainer for a like period. A claimed horse shall not race outside New York State for a period of [30] 60 days from the date of the claim or the end of the meeting at which such horse was claimed, whichever period of time is longer, except that a horse may run:

(a) in a sweepstakes elsewhere for which the horse was nominated by its former owner or trainer[.];

(b) *after a period of 30 days from the end of a Finger Lakes racing season, if the horse had been claimed at Finger Lakes racetrack; or*

(c) if permission is granted by the stewards.

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

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

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

#### Consensus Rule Making Determination

This proposed rulemaking will amend the New York State Gaming Commission's Thoroughbred claiming regulations. The proposed amendments will address concerns communicated to Commission staff by some horse owners and their representatives. Because the Commission has already consulted with industry stakeholders on this proposal, the Commission does not anticipate public comment and no person is likely to object to the proposed revisions.

#### Job Impact Statement

A job impact statement is not required for this consensus rulemaking proposal because the proposed amendments will not adversely affect jobs or employment opportunities.

This proposed rulemaking will amend the New York State Gaming Commission's Thoroughbred claiming regulations. The proposed amendments will address concerns communicated to Commission staff by some horse owners and their representatives.

The proposed amendments will not have an impact on jobs or employment opportunities and will not impose any adverse impact on jobs or employment opportunities.

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

#### Lottery Prize Assignment Processing Fee

**I.D. No.** SGC-34-23-00012-P

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

**Proposed Action:** Amendment of section 5002.11 of Title 9 NYCRR.

**Statutory authority:** Tax Law, sections 1601, 1604, 1613(d)(7); Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

**Subject:** Lottery prize assignment processing fee.

**Purpose:** To defray administrative expenses associated with a prizewinner's assignment.

**Text of proposed rule:** Section 5002.11 of Subtitle T of Title 9 of the NYCRR would be amended, as follows:

§ 5002.11. Prize rights [un-assignable] *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 person, pursuant to an appropriate judicial order, may be paid the prize to which the winner is entitled. For the purposes of this section, payment of a];

(2) any prize, or portion thereof, *may be paid* to the Department of Social Services either: (a) pursuant to [an agreement under] Tax Law section 1613-a [where the Department of Social Services has informed the commission that the winner has failed to obey a court order requiring the winner to support the winner's dependents; or (b) pursuant to an agreement under] or Tax Law section 1613-b [where the Department of Social Services has identified the winner as a recipient of public assistance benefits who is liable to reimburse the State for such benefits, shall be deemed to be payment pursuant to an appropriate judicial order];

(3) any prize, or portion thereof, *may be credited against 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) *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.*

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

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

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

#### Regulatory Impact Statement

1. STATUTORY AUTHORITY: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601, 1604, and 1613(d)(7), 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 by Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1613(d)(7) authorizes the Commission to establish a reasonable fee to defray any administrative expenses associated with a lottery prizewinner's assignment of an annuity prize won and directs that the "fee amount shall reflect the direct and indirect costs associated with processing assignments."

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 defray administrative expenses incurred by the Commission, associated with a prizewinner's assignment.

3. NEEDS AND BENEFITS: The proposed rulemaking will establish a reasonable fee to defray any administrative expenses associated with a lottery prizewinner's assignment, taking into account the direct and indirect costs associated with the Commission processing such assignments. The fee would be charged to the potential prize payment assignee, which is typically a commercial business that provides a lump-sum payment to a prizewinner who had initially chosen to receive the lottery prize in installments, in exchange for the prizewinner's assignment to such prize payment assignee of the right to collect the future installments of the prize payment. Tax Law section 1613 requires any such voluntary assignment to be reviewed and, to be effective, approved by the Supreme Court of the county where the assigning prize winner resides or where the headquarters of the Commission is located. In connection with Supreme Court review of a proposed assignment, the Commission receives the proposed assignment, reviews it for conformity with law, researches whether the future payments are available for assignment and not subject to competing liens

or claims, and prepares and submits an affidavit to assist the court with its review of the assignment petition. This Commission review takes staff time and effort, resulting in direct and indirect costs to the Commission that should be borne by the potential prize payment assignee that petitions for, and seeks to benefit from, the prize assignment.

#### 4. COSTS:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: Potential prize payment assignees would, through the implementation of this fee, bear the reasonable cost of Commission review of the proposed assignments that would benefit them, as authorized by Tax Law section 1613(d)(7).

b. Costs to the regulated agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated.

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 determined that it would be reasonable to have the party petitioning for, and seeking to benefit from, a prize-payment assignment bear the reasonable costs the Commission incurs in reviewing the assignment and advising the Supreme Court as the court implements the review required by Tax Law section 1613 to protect prizewinners. This proposed rulemaking would set forth the processing fee authorized by Tax Law section 1613(d)(7).

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 set forth the processing fee for lottery prize payment assignments. This fee is authorized by Tax Law section 1613(d)(7).

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.

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## Public Service Commission

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### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-03-08-00006-P	January 16, 2008
PSC-35-14-00005-P	September 3, 2014
PSC-44-18-00016-P	October 31, 2018
PSC-08-20-00003-P	February 26, 2020
PSC-18-21-00008-P	April 20, 2021
PSC-28-21-00012-P	July 14, 2021
PSC-37-22-00005-P	September 14, 2022
PSC-39-22-00008-P	September 28, 2022