Andrew M. Cuomo
Governor

Robert Williams
Acting Executive Director

Edmund C. Burns
General Counsel

Agenda

New York State Gaming Commission

July 11, 2013 5:45 p.m.

New York, New York

1. Call to Order
2. Designation of Presiding Officer
3. Rulemaking: Continuation of Emergency Rules for Equine Health and Safety
4. Adjourn

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

When New Yorkers Play Responsibly, We All Win.

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Governor

Robert Williams
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Edmund C. Burns
General Counsel

To: John A. Crotty, Commissioner
John J. Poklemba, Commissioner
Barry C. Sample, Commissioner
Todd R. Snyder, Commissioner

From: Edmund C. Burns, General Counsel

Date: July 9, 2013

Re: Continuation of emergency restrictions on clenbuterol and corticosteroid use in racehorses (Emergency amendments to 9 NYCRR §§ 4043.2(e)(9), 4043.2(g)(5-16), 4043.2(i) and 4043.4(b)).

Please consider for Commission approval the attached proposed Emergency Rulemaking that continues the emergency equine drug rules proposed by the New York Task Force on Racehorse Health and Safety and initially filed by the legacy Racing and Wagering Board on December 26, 2012 and subsequently readopted. These current emergency rules are scheduled to expire on July 13, 2013. It is anticipated that the final adoption of these rules will be presented for the Commission's consideration at its regular meeting at the end of this month. Re-authorization as emergency rules would allow them to continue in effect for an additional 60-day period to allow for Commission consideration of them as proposed permanent rules.

This rulemaking will continue the implementation of recommendations of the Task Force and the suggestions by the New York Thoroughbred Horsemen's Association. These rules impose longer time periods during which certain drugs cannot be administered to a thoroughbred horse before its next race.

Corticosteroids are potent anti-inflammatory agents that are used to promote rapid healing of bodily tissues, but these drugs can mask pain and even destroy healthy joints when overused. The Task Force concluded that the health and safety of racehorses and jockeys would be improved by increasing the period of time that a horse may not participate in racing after a corticosteroid treatment.

Clenbuterol is a potent bronchodilator, previously used only to treat respiratory inflammation and infections in horses, that recently has been overused because it has an anabolic-steroid like effect. The Task Force concluded that many trainers overuse clenbuterol and that the health and safety of

racehorses and jockeys would be improved by increasing the period of time that a horse may not participate in racing after a clenbuterol treatment.

The emergency rules restrict the administration of corticosteroids within five days before a race, for systemic administration (increased from 48 hours), or within seven days before a race, for intra-articular administration (increased from five days), and restrict the use of clenbuterol within 14 days before a race (increased from 96 hours). These rules also require trainers to report all corticosteroid joint injections to the Commission for reference during pre-race exams.

These amendments were first published as an Emergency Rulemaking on November 28, 2012 and modified as set forth in the December 26, 2012 *State Register*. Such rules were readopted as emergency rules in March and May of 2013, in each case to extend them for 60 days. These amendments were proposed as permanent rules, as published in the February 20, 2013 *State Register*. No public comment was received during the comment period of the proposed permanent rulemaking.

For your reference, attached are the pages of the February 20, 2013 *State Register* describing the proposed rules and a draft regulatory impact statement for the proposed emergency rulemaking extension. The Task Force report is found at http://www.governor.ny.gov/assets/documents/Report.pdf. Recommendations in regard to corticosteroids and clenbuterol are on pages 64-67 of the report.

attachments

cc: Robert Williams, Acting Executive Director
Ronald G. Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering
Kristen M. Buckley, Acting Secretary

small businesses. The narrow economic impact of this amendment is limited to those instances where a claim on a thoroughbred race horse is voidable if the horse is unable to walk off the race track and is transported off the track. The Board previously adopted a similar rule that allowed a claim to be voided if the horse dies on the track or is euthanized. Since that rule was adopted as an emergency rule in April 2012, there has been only one instance of a claimed horse dying on the track. The indirect economic impact of this rule is that it will discourage horse owners from entering unsound horses in claiming races. The Board believes that this limited economic impact will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This amendment is intended to reduce an incentive to race an unsound horse. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. There will be no impact for reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. A Jobs Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds

I.D. No. RWB-08-13-00006-P

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

Proposed Action: Amendment of sections 4043.2 and 4043.4 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 902(1)

Subject: Implementation of substantive changes and procedures pertaining to equine drugs and reporting requirements for thoroughbreds.

Purpose: To protect the health and safety of thoroughbred race horses, jockeys and exercise riders.

Text of proposed rule: Subdivision (g) of Section 4043.2 of 9 NYCRR is amended as follows:

4043.2 Restricted use of drugs, medication and other substances.

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

(1) acepromazine;
(2) albuterol;
(3) atropine;
(4) butorphanol;
[(5) clenbuterol;]
[(6)]*(5)* detomidine;
[(7)]*(6)* glycopyrrolate;
[(8)]*(7)* guaifenesin;
[(9)]*(8)* hydroxyzine;
[(10)]*(9)* isoxsuprine;
[(11)]*(10)* lidocaine;
[(12)]*(11)* mepivicaine;
[(13)]*(12)* pentoxifylline;
[(14)]*(13)* phenytoin;
[(15)]*(14)* pyrilamine;
[(16)]*(15)* xylazine.

[They] *Such substances* may not be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such [96 hours] *96-hour period.*

Paragraph 9 of Subdivision (e) of Section 4043.2 of 9 NYCRR is amended as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadatropin[, glucocorticoids])[, except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part];

Subdivision (i) of section 4043.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse [which has had a joint aspirated (in conjunction with a steroid injection)] may not race for [at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race] *the following periods of time:*

(1) for at least five days following a systemic administration of a corticosteroid;

(2) for at least seven days following a joint injection of a corticosteroid; and

(3) for at least 14 days following an administration of clenbuterol.

In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such time periods.

New Subdivision (b) is added to Section 4043.4 of 9 NYCRR to read as follows:

(b) Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the Board, by the trainer to the Board within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.

Text of proposed rule and any required statements and analyses may be obtained from: John Googas, NYS Racing and Wagering Board/NYS Gaming Commission, One Broadway Plaza, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101(1) and 902(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel betting activities in the State, both on track and off-track, and the persons engaged therein, including the authority to regulate the use of drugs that can manipulate race performance. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Board to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties for anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Racing and Wagering Board has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths were more than double the expected frequency rate. The Task Force's investigation revealed troubling aspects with the way horses are examined and managed in this State and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

The amendments to Board Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys/riders. The withdrawal periods in the rule were prescribed explicitly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. The intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can frustrate the pre-race clinical examination. For these reasons, regulation of intra-articular administration of corticosteroids is appropriate. The term "intra-articular" has been revised to "joint injection" in the rule text to more accurately reflect a vernacular of the trade.

The Task Force also identified the need to tighten controls over the use of clenbuterol, which is currently permitted as a 96-hour rule under the Board's rules. It is a potent bronchodilator that is approved by the Food and Drug Administration for treatment of lower airway inflammation and upper respiratory infections in a horse. The drug is used to prevent respiratory infections in horses experiencing exercise-induced pulmonary hemorrhage (respiratory bleeding). Some trainers have indicated that their horses look better and have increased appetites when treated with clenbuterol. The amendments will replace the existing 96-hour time restriction, prompting the change to subdivision (g) of 4043.2 of 9 NYCRR to remove any reference to clenbuterol, with a 14-day restriction to be found in a new paragraph (3) of subdivision (i) of 9E NYCRR.

The report stated that in addition to its pharmacological effect on the respiratory tract, clenbuterol mimics anabolic steroids in that it increases muscle and decreases fat in cattle, pigs, poultry and sheep. The report stated that there is a belief that illegally compounded clenbuterol has been used in thoroughbred horses as an alternative to prohibited anabolic steroids. The Task Force found: "It was abundantly clear to the Task Force that while the NYSRWB's time limit regarding clenbuterol was being followed, the medication is in common use as a substitute for anabolic steroids and not for the legitimate therapeutic purpose for which it is intended."

The Board also amended paragraph (9) of subdivision (e) of 4043.2 of 9 NYCRR to remove any references to steroids. This was not a recommendation by the Task Force, but in light of the Board's existing rule limiting the administration of anabolic steroids (Rule 4043.15) and the restrictions placed on corticosteroids in this rulemaking, the Board believes that Rule 4043.2(e)(9) should contain no reference to steroids, in order to avoid confusion.

The Task Force reported: "The failure of trainers to report intra-articular injections as required prevented the NYRA veterinarians from identifying a pattern of redundant...treatments that had the potential to misrepresent the true clinical condition of a horse." Therefore, in order to ensure proper notification, the Board amends Section 4043.4 of 9 NYCRR, which is commonly known as the "Trainer's Responsibility Rule," to require that a trainer maintain accurate records of all corticosteroid joint injections to a horse he or she trains. The corticosteroid reporting will require that a trainer submit a corticosteroid joint injection record to the Board within 48 hours of treatment so that examining veterinarians will have access to that information as part of the pre-race examinations. This amendment will improve the quality of pre-examinations, provide the Board with timely notice of any potential ailments and ensure that documentation is available in the event a horse's fitness comes into question.

In response to input from the New York Thoroughbred Racing Association, the Board added a provision in the CJI reporting rule, the new 9 NYCRR 4043.4(b), authorizing trainers to delegate the reporting responsibility to the treating veterinarians.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for the New York Drug Testing and Research Program will be substantial. The cost for conducting administration trials necessary for Cortisone Testing will be $36,000. The cost of related laboratory testing of samples for corticosteroids is $18,000 per year. The cost of trial administrations of clenbuterol is $6,000. The related laboratory testing of clenbuterol samples is $5,000 per year.

(b) Costs to the agency, the State and local governments for the implementation and continuation of the rule: None. The amendments will require the New York State Racing and Wagering Board to develop a filing system for corticosteroid reporting.

There will be no costs to local government because the New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel horse racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Board relied on its experience in collecting information and based upon its experience in the equine drug testing program. The costs associated with clenbuterol and corticosteroid testing was provided directly from the New York Drug Testing and Research Program.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers will be required submit paperwork to the Board in a manner prescribed by the Board.

7. Duplication: None.

8. Alternatives. These rule amendments are based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: This rule can be implemented upon publication in the State Register. The Board expects that this will be adopted as a final rule in either May or June 2013. It is currently in effect as an emergency rule.

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

As is evident by the nature of this rulemaking, this will not have an adverse affect on jobs or rural areas. This proposal concerns the restricted administration of certain drugs to thoroughbred race horses, the testing procedures to ensure compliance with those restrictions, and reporting of the administration of certain drugs. These medications – corticosteroids and clenbuterol – are currently permitted and will continue to be permitted but under different administration schedules. These schedules will have no impact on jobs or rural areas. This amendment is intended to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State. This will not adversely impact rural areas or jobs or local governments and does not require a Rural Area Flexibility Statement or Job Impact Statement.

Department of Taxation and Finance

NOTICE OF ADOPTION

Tax Return Filings for Licensed Farm Breweries

I.D. No. TAF-48-12-00008-A

Filing No. 143

Filing Date: 2013-01-30

Effective Date: 2013-02-20

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

Action taken: Amendment of section 60.1 of Title 20 NCYRR.

Statutory authority: Tax Law, section 171, subdivision First, 429(1), 436 (not subdivided)

Subject: Tax return filings for licensed farm breweries.

Purpose: To allow licensed farm breweries to file annual beer tax returns.

Text or summary was published in the November 28, 2012 issue of the Register, I.D. No. TAF-48-12-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted

Assessment of Public Comment

The agency received no public comment.