

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-19-15-00006-A

Filing No. 937

Filing Date: 2015-10-30

Effective Date: 2015-11-18

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the May 13, 2015 issue of the Register, I.D. No. CVS-19-15-00006-P.

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

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

## Assessment of Public Comment

The agency received no public comment.

---

## New York State Gaming Commission

---

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

#### To Require Claimant to Indicate on Claim Form Whether Commission at Claimant's Expense Shall Test a Claimed Horse for Drug Use

I.D. No. SGC-46-15-00004-P

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

**Proposed Action:** Amendment of sections 4038.5, 4038.17, 4109.3 and 4109.5 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

**Subject:** To require claimant to indicate on claim form whether commission at claimant's expense shall test a claimed horse for drug use.

**Purpose:** To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

**Text of proposed rule:** Section 4038.5 of 9 NYCRR would be amended as follows:

§ 4038.5. Requirements for claim; determination by stewards.

(a) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the racing secretary or the racing secretary's designee, at least 10 minutes before post time. Claim slip forms must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim. Each person desiring to make a claim, unless the person has such amount to the person's credit with the association, must first deposit with the association the whole amount of the claim, in a manner approved by the racing secretary or designee for which a receipt will be given. *Unless funds of the claimant available in the claimant's account with the association are sufficient, in the judgment of the stewards, to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. If such funds are sufficient, an amount sufficient to pay for the post-race testing requested on the claim form shall be frozen in such claimant's account to secure anticipated costs of testing.* All claims shall be passed upon by the stewards. The person determined at the closing time for claiming to have the right of claim shall become the owner of the horse when the start is effected, whether the horse is sound or unsound or injured before or during the race or after the race, except that:

(1) the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section 4038.19 of this Part unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

(2) a claim shall be void for any horse that dies during a race or is euthanized on the track following a race; and

(3) a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

In the event more than one person should enter a claim for the same horse, the disposition of the horse shall be decided by lot by the stewards. Any horse so claimed shall then be taken to the test barn for delivery to the claimant after [the] any test sample is taken.

Section 4038.17 of 9 NYCRR would be amended as follows:

§ 4038.17. Horses claimed—testing.

*If the claimant of a horse has requested post-race testing, at the expense of the claimant, on the claim form, then the stewards shall designate such horse [Each horse claimed in a race shall be designated by the stewards for post-race blood and urine testing] for post-race testing pursuant to subdivision (b) of section 4012.3 of this Article.* The original trainer shall remain responsible for the claimed horse until [the] any on-track post-race sample collection has been completed.

Section 4109.3 of 9 NYCRR would be amended as follows:

§ 4109.3. Claiming procedure.

(a) Claimant's credit. The claimant must have to [his] *the claimant's* credit with the track an amount equivalent to the specified claiming price, the applicable sales tax, the cost of transferring the registration[,] and the fee for the test for equine infectious anemia. No claims shall be accepted unless such credit is certified in writing by an authorized track official and such written certification is included with the claim. *Unless the claimant also has to the claimant's credit an amount sufficient to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing.* No track official of [said] the racing association shall give any information as to the filing of any claim or claim information to the public and horsemen until after the race has been run.

\* \* \*

Section 4109.5 of 9 NYCRR would be amended as follows:

§ 4109.5. Horses claimed—testing.

*If the claimant of a horse has requested post-race testing, at the expense of the claimant, on the claim form, then the judges shall designate such horse [Each horse claimed in a race shall be designated by the judges for post-race blood and urine testing] for post-race testing pursuant to subdivision (b) of section 4120.8 of this Article.* The original trainer shall remain responsible for the claimed horse until [the] any on-track post-race sample collection has been completed.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

## Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1), (19), 301(1), (2), and 902(1). Under Section 103(2), the Commission is responsible to supervise, regulate and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public's confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

2. Legislative objectives: To enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits. This rule making is necessary to allow the Commission the flexibility to determine which claiming horses should be tested

at the expense of the Commission consistent with current enforcement needs and realities, while allowing a prospective owner of a claimed horse ("claimant") to arrange for the Commission to test the horse at the claimant's expense at the conclusion of the race. Both the harness and thoroughbred rules for testing all claimed horses were adopted in 1983 and require revision to reflect equine testing priorities.

Sections 4038.17 and 4109.5 will be amended to no longer require the stewards and judges to designate every claimed horse for post-race equine drug testing. The proposed amendments will require such testing by the Commission, however, if the claimant had requested such testing at the claimant's expense on the claim form. Sections 4038.5 and 4109.3 will be amended to provide a method for a claimant to post sufficient funds to pay for the cost of such requested testing, in the same manner as sufficient funds are posted to pay for a claimed horse, in advance of the race.

Under the current rules, the Commission must test all horses that are claimed, which is problematic given the cost of testing when weighed against realistic fiscal implications and the priorities of the Commission's equine drug testing program. All claimed horses have to be tested whether there is a basis for testing or not, the Commission has no flexibility in determining which claiming horses should be tested, and there is no discretion granted to withhold testing in the absence of any basis for testing a claiming horse. No other major racing jurisdiction has such a requirement.

In claiming, equine testing is not directly related to the integrity of the racing contest. A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race in which the horse is entered by its owner. The potential claimant of a horse in a claiming race must enter a claim before the race. When more than one claim is entered for a horse in a claiming race, the successful claimant is chosen by lot. By entering a horse in a claiming race, the current owner offers the horse for sale to any qualified person who enters a claim. There is no rationale for testing a claiming horse simply because it is sold.

The claimant can nullify a claim in the event of a positive drug test, and so the testing program serves as a distinct benefit to such new owner, who is a private party to what amounts to a sale. It is not uncommon, however, for a claimant to decide not to nullify a claim despite a positive drug test. In such cases, the equine drug testing program serves only to permit a claimant to nullify the claim for unrelated reasons, e.g., because the horse raced poorly.

The Commission's other equine testing rules are more directly related to the results, and therefore the integrity, of a race. Under thoroughbred rule 4012.3 and harness rule 4120.8, for example, equine drug testing is conducted on every winner and at least one other horse designated by the respective stewards or judges. Such equine testing rules will still apply to winners and another designated horse in claiming races if the proposed amendments are adopted.

The amendments to harness rule 4109.5 are also necessary to bring the harness rule into uniformity with the thoroughbred rule by including the clause, "The original trainer shall remain responsible for the claimed horse until the on-track post-race sample collection has been completed." This amendment is necessary to expressly assign a responsibility that, although it has been done in practice, has not been included in the harness rule.

#### 4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will have no effect on the cost of testing by the Commission and will merely permit the reallocation of limited equine testing funds to other types of equine drug testing conducted by the Commission. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission relied on the studies and advice provided by Dr. George A. Maylin, the Director of the New York State Drug Testing and Research Program.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None. No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered an alternative suggestion by some regulated parties to preserve the current requirement for equine testing of claimed horses, and to create general fiscal savings by instead testing only one horse, randomly, in each race. This alternative was not considered feasible because random testing is not based on the performance of the horse in a race, such as a winning horse or a beaten favorite, nor was the alternative considered adequate to justify testing a horse

merely because it was claimed, rather than for objective reasons. In addition, while other racing states commonly choose to test the winner and another horse in each race, none routinely test claimed horses at the expense of the racing commission.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

These proposals would discontinue the Commission's practice of collecting a post-race sample from all claimed horses but permit every claimant to have a claimed horse tested at the request and expense of the claimant. The purpose of this proposal is to mitigate the burdensome administrative expense of testing every claimed horse when many claimants do not void a claim, which is their right, in the rare instance when such a sample tests positive. Free testing of every claimed horse is also not a service that is not offered by any other racing jurisdiction.

The racing stewards and judges will continue to select the winner and one other horse, using their judgment and based on the performance of the horse, to be sampled and tested for illicit drug use at the conclusion of each race. Claimants will continue to be able to void a claim if any such post-race sample tests positive for the presence of a prohibited substance.

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

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

### **Requirement of Specific Minimum Penalties for Certain Multiple Medication Violations**

**I.D. No.** SGC-46-15-00007-P

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

**Proposed Action:** Addition of Part 4045 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutual Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

**Subject:** Requirement of specific minimum penalties for certain multiple medication violations.

**Purpose:** To enhance the integrity and safety of thoroughbred horse racing.

**Text of proposed rule:** A new Part 4045, §§ 4045.1 to 4045.6, would be added to 9 NYCRR, to read as follows:

*Part 4045. Minimum Penalty Enhancement.*

*§ 4045.1. Definitions.*

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

*(a) ARCI Penalty Guidelines means the penalty guidelines published in "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule," Version 8.0 (revised December 2014) of the Association of Racing Commissioners International, Inc., which are hereby incorporated by reference.*

*(b) Equine drug rule means any law, rule, regulation or order that restricts the administration to, or presence in, a racehorse of a drug or other substance in New York or another racing jurisdiction.*

*(c) Final adjudication means a ruling or order of a racing commission that is not currently subject to an administrative or judicial stay, and if such ruling or order is subjected subsequently to a stay, then the ruling or order existing after any such stay ends.*

*(d) Precipitating equine drug rule violation means an equine drug rule violation committed in New York that causes or may cause, depending on the final adjudication of a ruling or order of a racing commission, the penalties of this section to apply.*

*(e) Racing commission means the agency regulating horse racing in a jurisdiction that has horse racing and pari-mutuel wagering.*

*§ 4045.2. General.*

*The commission shall suspend the occupational licenses of a habitual or persistent violator of equine drug rules as an additional penalty when there is a precipitating equine drug rule violation. This suspension shall constitute the bare minimum overall penalty enhancement that arises from*