

§ 4117.3. Use or removal of hobbles.

(a) [If a horse has warmed up in hobbles or raced one heat of a race in hobbles, such hobbles shall not be removed from a horse or altered without permission of the presiding judge.] *The trainer has discretion on the use of hobbles, subject to the judges cancelling any change in the use of hobbles on a horse in the exercise of the judges' discretion to protect the integrity of racing and the wagering public.*

(b) [A horse habitually wearing hobbles shall not be permitted to start in a race without them except by permission of the presiding judge. A horse habitually racing free-legged shall not be permitted to wear hobbles in a race except with such permission. A failure to obtain permission to add, remove or make alterations in hobbles may be deemed to be a fraud in racing.] *The entry of the horse shall state whether such horse will use hobbles or not. Failure to include a change on the entry form disallows any addition or subtraction of hobbles for the race. Every change in a horse's use of hobbles must be included in the program.*

(c) *Any person found culpable of removing or altering a horse's hobbles during a race or between races for the purpose of fraud shall be suspended or expelled.*

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), and 301(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering 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(1), 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.

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

3. Needs and benefits: This rule making would allow the trainer discretion when entering a harness horse to race to change whether the horse will use hobbles, subject to oversight by the Commission judges at the track.

Hobbles are straps that help to keep a harness horse on a proper gait, either pacing or trotting, by connecting the front and rear legs on the same side of the horse. The consensus in the industry is that harness horses are able to race well regardless of a change in such equipment and that the wagering public can properly handicap such changes.

Under the current rules, a trainer must get the permission of the presiding judge for any change in the use of hobbles (9 NYCRR § 4117.3) and a horse must race satisfactorily in a qualifying race before hobbles may be worn or removed for the first time (9 NYCRR § 4113.5).

The proposal would amend these rules to allow the trainer to change whether a horse will use hobbles or not, and to change a horse's use of hobbles without having to qualify the horse. The proposal instead would require that the race program report any changes in a horse's use of hobbles and authorize the judges to disallow any change in the use of hobbles when necessary to protect the integrity of racing and the wagering public. This will allow a trainer more flexibility to change hobbles as appropriate for local track configurations and conditions without always incurring the time and expense of getting permission from the presiding judge and requalifying the horse to race.

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 not add any new costs. 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: N/A.

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: 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 not changing this rule, but decided to propose changes that are less burdensome and are consistent with the capabilities of harness horses and the wagering public.

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.

The proposal seeks to revise the Commission's horse racing rules in regard to the use or removal of hobbles for standardbred horses. The proposal would no longer require a harness horse trainer to obtain permission and have the horse participate in a qualifying race before making this minor equipment change. The trainer would be able to indicate the change on the entry form. The change would appear in the race program, and the judges could prevent such a change in the use of hobbles when necessary to protect race integrity and wagering public.

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

Decoupling of Harness Horses in Major Stakes Races

I.D. No. SGC-22-16-00005-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 4111.15 of Title 9 NYCRR.

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

Subject: Decoupling of harness horses in major stakes races.

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

Text of proposed rule: Section 4111.15 of 9 NYCRR would be amended as follows:

§ 4111.15. Coupling of entries.

(a) In all races starters shall be coupled when owned in whole or in part or under the control of, or trained by the same person, or trained in the same stable or by the same management, or where, in the discretion of the judges, it is necessary to protect the public interest. A horse to be driven by a full-time employee of another driver in the race shall be considered as racing from the same stable. If a race is divided into two or more divisions, such starters shall be seeded into separate divisions where possible, first on the basis of ownership[, next on the basis of training,] and [finally] by stable, [but the] then on the basis of training. The divisions in which they compete and their post positions shall be drawn by lot. Whenever such horses are coupled in the same race, the presiding judge shall approve the second and additional drivers.

(1) *Except for stakes races with a purse of \$25,000 or more, horses trained by the same trainer but owned by different, separate owners may be uncoupled. The presiding judge has the discretion to couple such horses, however, to protect the interests of the wagering public. Trainers with an ownership interest in more than one horse must have their horses coupled.*

(2) *Except for stakes races with a purse of \$100,000 or more, horses with common ownership may be uncoupled. The presiding judge has the discretion to couple such horses, however, to protect the interests of the wagering public.*

(b) Except by express permission of the commission, coupled entries are prohibited in overnight events.

(c) After post positions have been drawn, horses may be coupled as an entry (or uncoupled, if erroneously coupled) but such race, as divided[,] and as post positions have been drawn, shall be final.

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), and 301(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering 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(1), 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.

2. Legislative objectives: 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 needed to increase the wagering opportunities and improve field size in major stakes races in New York by permitting horses with a common trainer or owner to participate in major stakes races without being coupled for betting purposes.

The current rule, 9 NYCRR § 4111.15, provides that horses with a common trainer or owner shall be coupled as a single betting interest in a race. When horses are coupled, it reduces the number of options that are available for a bettor to select in a race. As a result, there is less betting interest and handle on the race, which in turn reduces the amount of take-out for funding the racetrack operations and the support of government. In addition, when horses would be coupled, the trainer and owner are less interested in entering the horses to race. As a result, there are fewer horses in the race, less betting interest and handle, and a reduction in revenue for the track, purses and government.

The proposal would permit not coupling such horses in major stakes races. In a stakes race with a purse of \$25,000 or more, horses with different owners but a common trainer will not be coupled. In a stakes race with a purse of \$100,000 or more, horses with the same owner will not be coupled. The larger purse amount for horses with a common owner is because the risk of collusion during a race is higher when both horses are owned by the same owner, rather than the horses owned by owners who, despite hiring the same trainer, are competing against each other. At a certain purse amount, which the Commission estimates as \$100,000 in such stakes races, the value of winning the purse, and potentially advancing to another stage of the stakes racing program, outweighs the risk of collusion. In addition, bettors have access to information that identifies common trainers or owners of each horse. Finally, the proposal retains the provision that the judges may require any horses to be coupled when it is necessary to protect the public interest.

The proposal also clarifies subdivision (a) of section 4111.15 by having horse ownership and a horse's stable be equivalent.

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 not add any new costs. 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: N/A.

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: 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 not changing this rule, but decided to propose changes that are congruent with the approach of other racing jurisdictions and recent amendments to thoroughbred rules.

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.

This proposal only authorizes the standardbred racetrack operators in New York not to couple the entries of horses with common ownership or trainers as a single betting interest in major pari-mutuel stakes races. The proposal will increase the wagering opportunities for those who are interested in wagering on the race. No regulated party will need a period to cure a pending matter because there is no penalty enhancement.

Such regulation will serve the best interests of standardbred racing by increasing the wagering opportunities that racetrack operators may offer to the wagering public. 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.

Department of Health

EMERGENCY RULE MAKING

Protection Against Legionella

I.D. No. HLT-22-16-00001-E

Filing No. 481

Filing Date: 2016-05-11

Effective Date: 2016-05-11

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

Action taken: Addition of Part 4 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225(5)(a)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older, current or former smokers, those with chronic lung diseases, those with weakened immune systems from diseases like cancer, diabetes, or kidney failure, and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including Legionella)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing Legionella.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying com-