

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov): The addition of Part 5318 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe rules requiring that gaming facility and video lottery facility licensees not operate any slot machine, video lottery gaming system or other gaming equipment unless such have been certified by a licensed independent testing laboratory. These rules also establish the standards for licensing and operating an independent testing laboratory as well as the required notification and reporting of inspection and certification results.

Section 5318.1 sets forth the requirement that a gaming facility licensee not operate any slot machine or other gaming equipment unless such has been certified by a licensed independent testing laboratory. Section 5318.2 sets forth licensing requirements for an independent testing laboratory. Section 5318.3 sets forth additional standards for the issuance of a license to an independent testing laboratory. Section 5318.4 sets forth notification and reporting requirements. Section 5318.5 sets forth requirements for the conduct and operation of a licensed independent testing laboratory. Section 5318.6 sets forth the reporting of inspection and certification results.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, Schenectady, NY 12305, (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:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1303 authorizes the Commission to utilize the services of an independent testing laboratory that has been qualified and approved by the Commission to perform the testing of slot machines and other gaming equipment and to utilize applicable data.

Racing Law section 1326(1) requires the Commission to regulate the method and form of vendor licensing including the licensing of independent testing laboratories.

Racing Law section 1335(8) mandates the testing of all slot machines and other gaming equipment prior to being used to conduct gaming.

Lottery for Education Law (Article 34 of the Tax Law) section 1617-a(c) authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out the implementation of video lottery gaming.

2. **LEGISLATIVE OBJECTIVES:** The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. **NEEDS AND BENEFITS:** The proposed rules implement the above listed statutory directives regarding the utilization of independent testing laboratories that are qualified and approved by the Commission to perform the testing of slot machines, video lottery gaming systems and other gaming equipment. The rules provide specificity with respect to the above listed statutory directives to assure a credible, independent and secure testing process for all games, gaming devices, associated equipment, cashless wagering systems, inter-casino linked systems, mobile gaming systems and interactive gaming systems and any components thereof or modifications thereto. The rules represent best practices in the testing of slot machines, video lottery gaming systems and other gaming equipment and are the result of input from stakeholders and other gambling jurisdiction best practices and regulation. Best practices addressed in the proposed rules include the payment of independent testing laboratory service fees, licensing criteria, the conduct and operation of independent testing laboratories, notification and reporting requirements and inspection and certification results.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: Gaming facility and video lottery facility licensees are responsible for the payment of any fees imposed by an independent testing laboratory for services performed. Those fees will be approximately \$3 to \$4 million annually. Gaming facility and video lottery facility licensees or licensed independent testing laboratories are responsible for the payment of any costs associated with the Commission's review or approval of (i) slot machine, video lottery gaming system and other gaming equipment testing, and (ii) independent testing laboratory

inspection, certification or review. Those fees will be approximately \$500,000 to \$750,000 annually.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rule will be negligible given that all such costs are the responsibility of the gaming facility and video lottery facility licensees or licensed independent testing laboratories. These rules will not impose any additional costs on local governments.

(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 regulating racing and gaming activities within the State.

5. **LOCAL GOVERNMENT MANDATES:** There are no local government mandates associated with these rules.

6. **PAPERWORK:** These rules impose paperwork burdens on independent testing laboratories to apply for licensure, perform slot machine, video lottery gaming system and other gaming equipment testing and report on results. Examples of paperwork burdens on the independent testing laboratories include the drafting and maintenance of audits and reviews as well as inspection and certification results.

7. **DUPLICATION:** These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. Alternatives were discussed and considered with stakeholders and compared to other jurisdictions regulations. These included the definition of associated equipment; the allocation and payment of independent testing laboratory fees; the best practices concerning conduct and operation of an independent testing laboratory; the appropriate entity to receive testing and certification results; the appropriate criteria included in the testing and certification results; and the best practices concerning reciprocity of independent testing laboratory results from other jurisdictions. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1303 and 1335(8).

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules set forth the requirement that gaming facility and video lottery facility licensees not operate slot machines, video lottery gaming systems or any other gaming equipment unless such have been certified by a licensed independent testing laboratory. These rules also establish the standards for licensing and operating an independent testing laboratory as well as the required notification and reporting of inspection and certification results. These rules apply only to licensed gaming facilities and video lottery facilities.

These rules do not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility or video lottery facility license.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state and solely apply to licensed gaming facilities and video lottery facilities.

These rules will have no adverse impact on job opportunities.

These rules 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.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Thoroughbred Restricted Time Periods for Various Drugs

I.D. No. SGC-39-15-00005-RP

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

Proposed Action: Amendment of section 4043.2(a) and (e) of Title 9 NYCRR.

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

Subject: Thoroughbred restricted time periods for various drugs.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.
Text of revised rule: Section 4043.2 of 9 NYCRR would be amended as follows:

§ 4043.2. Restricted use of drugs, [medication] *medications* and other substances.

Drugs and medications are permitted to be used only in accordance with the following provisions.

(a) The following substances are permitted to be used at any time up to race time:

(1) topical applications (such as antiseptics, ointments, salves, [DMSO.] *DMSO* leg rubs, leg paints and liniments) which may contain antibiotics but do not contain benzocaine, steroids or other drugs;

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

(14) the following nonsteroidal anti-inflammatory drugs ([NSAID's] *NSAIDs*): [Phenylbutazone (e.g., Butazolidin)] *diclofenac*, [Flunixin] *flunixin* (e.g., Banamine), *ketoprofen* (e.g., *Orudis*), meclofenamic acid (e.g., Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., *Orudis*) and phenylbutazone (e.g., *Butazolidin*).

(20) *an oral or intravenous administration of dimethyl sulfoxide (i.e., DMSO).*

Revised rule compared with proposed rule: Substantial revisions were made in section 4043.2(a)(1) and (e)(20).

Text of revised proposed rule and any required statements and analyses may be obtained from Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, NY 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: 30 days after publication of this notice.

Revised 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 Sections 103(2), 104 (1), (19) and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This revised rulemaking is necessary to adjust the Commission's restricted time period governing the administration of the drugs dimethyl sulfoxide, i.e., DMSO, and diclofenac, a non-steroidal anti-inflammatory drug ("NSAID"), to be consistent with the regulatory thresholds for the drugs that have been adopted by the Commission.

The proposal would amend the restricted time period for DMSO to permit the oral or intravenous administration of DMSO within 48 hours of a race. Currently, in 9 NYCRR, topical administration of DMSO is permitted at any time under Section 4043.2(a)(1) and other administrations of DMSO are not permitted until one week before a horse's next race under the restrictions of Section 4043.2(h). The Commission has adopted a regulatory threshold on race day for DMSO that is consistent with an oral or intravenous administration of DMSO at least 48 hours before a horse's next race. The proposed amendment would add such administrations of DMSO to the list, in subdivision (e) of Section 4043.2, of drugs that may be administered until 48 hours before racing. A 48-hour restricted time period for DMSO will also provide an assurance to thoroughbred horsepersons that compliance would protect them from violation of such threshold.

The Commission will continue to permit topical use of DMSO at any time. The most recent indications from the Racing Medication & Testing Consortium are that such administrations of DMSO will not result in violations of the new regulatory threshold.

The proposal would also amend subdivision (e) Section 4043.2 to add diclofenac to the list of permissible NSAIDs that appears at paragraph 14. This change will make the restricted time period for diclofenac, which

currently is regulated for one week before racing pursuant to subdivision (h) of Section 4043.2, consistent with the regulatory threshold that the Commission has adopted for diclofenac. A 48-hour restricted time period will provide an assurance to thoroughbred horsepersons that compliance would protect them from violation of such threshold.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of various medications.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new mandatory duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that the Commission's restricted time periods are consistent with the separately proposed national regulatory laboratory thresholds for these equine drugs that have been recommended by the RMTTC and the ARCI. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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

This rulemaking proposal does not necessitate a revision to the previously published analyses and statement and does not have an adverse effect on small businesses, local governments, jobs, or rural areas.

Assessment of Public Comment

Two public comments were received in response to the publication of the proposed rule-making in the September 30, 2015 State Register. The Racing Medication & Testing Consortium wrote to recommend that the Commission continue to permit topical use of DMSO at any time, and has indicated that it will be revising its recommended withdrawal guideline for topical use of DMSO from 48 hours before racing to race day. The New York Thoroughbred Horseman's Association wrote to request that race-day topical use of DMSO continue to be permitted. The Commission agrees with these suggestions and its revised proposal will result in greater ease of enforcement of agency rules that restrict the use of equine drugs in a manner that promotes the participation of racehorses in New York and enhances the health and safety of horses and jockeys.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

School Immunization Requirements

I.D. No. HLT-23-16-00007-P

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

Proposed Action: Amendment of Subpart 66-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2164 and 2168

Subject: School Immunization Requirements.

Purpose: To update school immunization and NYSIS regulations.

Text of proposed rule: Paragraph (1) of Subdivision (f) of Section 66-1.1 is amended to read as follows:

(f) Fully immunized means that an adequate dosage and number of