



**MEETING AGENDA
APRIL 29, 2019**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF MARCH 25, 2019
3. RULEMAKING
 - A. FOR ADOPTION: SGC-01-19-00002-P, TREATMENT OF THOROUGHBRED HORSES WITH ULTRASOUND OR ELECTRO/ MEDICAL EQUIPMENT BEFORE A RACE
 - B. FOR ADOPTION: SGC-01-19-00017-P, SAFETY HELMET AND VEST REQUIREMENTS
 - C. FOR ADOPTION: SGC-40-18-00006-P, AMENDMENT OF MULTIPLE MEDICATION VIOLATION (MMV) PENALTY ENHANCEMENT RULE
4. CONSIDERATION OF GAMING FACILITY LICENSE AMENDMENT
 - A. LAGO RESORT & CASINO, LLC DOING BUSINESS AS DEL LAGO RESORT & CASINO
5. ADJUDICATIONS
 - A. IN THE MATTER OF CORY EULIN
 - B. IN THE MATTER OF BEN MONDELLO
 - C. IN THE MATTER OF ZAARA CONVENIENCE
6. OLD BUSINESS/NEW BUSINESS
 - A. OLD BUSINESS
 - B. NEW BUSINESS
7. ADJOURNMENT

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New York State Gaming Commission

Minutes

Meeting of March 25, 2019

A meeting of the Commission was conducted in New York, New York and Schenectady, New York.

1. **Call to Order and Establishment of Quorum**

Acting Executive Director Robert Williams called the meeting to order at 1:14 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Commissioners John Crotty, Peter Moschetti, John Poklemba and Jerry Skurnik. Chairman Barry Sample participated from Schenectady, New York. Two-way audio and video communications were maintained between locations for the duration of the meeting. Commissioner Poklemba acted as presiding officer by unanimous consent.

2. **Consideration of Minutes for Meeting of January 28, 2019**

The Commission considered previously circulated draft minutes of the meeting conducted on January 28, 2019. The minutes were accepted as circulated.

3. **Rulemaking**

a. **ADOPTION: SGC-47-18-00009-P, Self-Exclusion and Casino Advertising**

The Commission considered the adoption of a proposed rulemaking that would centralize self-exclusion policies and make self-exclusion universal throughout the various forms of gaming in New York.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

b. **ADOPTION: SGC-17-18-00002-P, Regulation of Courier Services That Purchase and Claim Certain Lottery Tickets as Agents for Customers**

The Commission considered the adoption of regulations to authorize courier services as a new category of a lottery licensee.

ON A MOTION BY: Commissioner Skurnik
APPROVED: 5-0

c. ADOPTION: SGC-38-18-00003-RP, Casino Fees and Payments

The Commission considered adoption of revised proposed rules for gaming facility fees and payments.

ON A MOTION BY: Commissioner Moschetti
APPROVED: 5-0

d. ADOPTION: SGC-01-19-00018-P, Standards for Backstretch Housing and Related Facilities

The Commission considered the adoption of a rule that sets forth standards for housing maintained on the grounds of certain racetracks.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

4. Gaming Facility License Amendments

a. Montreign Operating Company, LLC doing business as Resorts World Catskills

The Commission considered a petition by Montreign Operating Company, LLC doing business as Resorts World Catskills to reduce the number of their operational slot assets below the minimum detailed within Exhibit 1 of their Gaming Facility License and to conform their Operating Certificate to such amendment.

ON A MOTION BY: Commissioner Skurnik
APPROVED: 5-0

b. Tioga Downs Racetrack, LLC doing business as Tioga Downs Casino, Racing and Entertainment

The Commission considered a petition by Tioga Downs Racetrack, LLC doing business as Tioga Downs Casino, Racing and Entertainment to reduce the number of their operational slot assets below the minimum detailed within Exhibit 1 of their Gaming Facility License and to conform their Operating Certificate to such amendment.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

5. Adjudications

a. In the Matter of Carl F. Conte, Jr.

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed on a 5-0 vote to sustain the Hearing Officer’s Report and Recommendation that the applicant’s license denial be upheld.

b. In the Matter of Philip Papas

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed on a 5-0 vote to sustain the Hearing Officer’s Report and Recommendation that the applicant’s registration denial be upheld.

6. Old Business/New Business

a. Old Business

No old business was offered for discussion.

b. New Business

Commissioner Crotty requested that staff analyze the proposals advanced by The Stronach Group for Santa Anita Park and Golden Gate Park to determine whether the Commission should consider undertaking similar initiatives. Staff was requested to report back on the matter.

7. Adjournment

The Commission tentatively set April 29, 2019 as the date for the next meeting before adjourning at 1:57 p.m.

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Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500

www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns

Date: March 13, 2019

Re: Adoption of Rulemaking for Treatment of Thoroughbred Horses Before a Race (9 NYCRR § 4043.13)

For Commission consideration is the adoption of a proposed rulemaking to allow the treatment of Thoroughbred racehorses with ultrasonic, diathermy or other electro/medical equipment treatments until 24 hours before the scheduled post time of a horse's race. The current rule permits such treatments until 24 hours before the start of the racing program, regardless of which race the horse is entered to compete.

The proposal would be consistent with the Commission's other drug rules, 9 NYCRR §§ 4043.2(b)(6), (c), (e), (f), (g) and (h), which restrict the administration of drugs for varying time periods before a horse's next scheduled race. The proposal has no effect on race integrity and has the endorsement of the New York Thoroughbred Horsemen's Association, Inc. (NYTHA).

This rulemaking proposal was published in the January 2, 2019 *State Register*. The public comment period expired on March 4, 2019. No comments were received.

[REDACTED]

attachment

cc: Robert Williams, Acting Executive Director
Ronald Ochrym, Director of Division of Horse Racing and Pari-Mutuel Wagering
Scott Palmer, Equine Medical Director

Revised Job Impact Statement

The amendments to Insurance Regulations 147 and 179 should have no impact on jobs and employment opportunities. The amendments modify Insurance Regulations 147 and 179 to specify that two prior amendments to the regulations (i.e., the Fifth and Sixth Amendments to Regulation 147 and the Third and Fourth Amendments to Regulation 179) shall only apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2019 with written notification provided to the Superintendent by January 31, 2019. The concurrent amendments to Insurance Regulations 147 and 179 allow insurers to apply these two prior amendments, if optionally elected, for one additional year of policy issues. Insurers should not need to hire additional employees or independent contractors to comply with these amendments.

Assessment of Public Comment

The agency received no public comment.

New York State Gaming Commission

NOTICE OF ADOPTION

Heads Up Hold ‘Em Poker

I.D. No. SGC-38-18-00002-A

Filing No. 1174

Filing Date: 2018-12-17

Effective Date: 2019-01-02

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

Action taken: Addition of Part 5324.43 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(5), (6) and (11)

Subject: Heads Up Hold ‘Em poker.

Purpose: To set forth the practices and procedures for the operation of Heads Up Hold ‘Em poker as a casino table game.

Text or summary was published in the September 19, 2018 issue of the Register, I.D. No. SGC-38-18-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3332, email: gamingrules@gaming.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 2023, 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Treatment of Thoroughbred Horses with Ultrasound or Electro/Medical Equipment Before a Race

I.D. No. SGC-01-19-00002-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 4043.13 of Title 9 NYCRR.

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

Subject: Treatment of thoroughbred horses with ultrasound or electro/medical equipment before a race.

Purpose: To enhance the safety and integrity of pari-mutuel racing.

Text of proposed rule: Section 4043.13 of 9 NYCRR would be amended as follows:

§ 4043.13. Other prohibitions.

No person shall, attempt to, or cause, solicit, request, or conspire with another or others to:

(a) use or possess any electrical device, “joint,” “battery,” electric prod, or any other electrical equipment or any mechanical or other appliance not generally accepted as regular racing equipment that can be used to stimulate, depress, goad, spur, retard or condition a horse during a race or during training. The use of ultrasonic, diathermy or other electro/medical equipment is permissible until 24 hours before the [start of a racing program,] *scheduled post time of the race in which the horse is to compete*, and whirlpool until race time. However, the stewards may bar the possession or use of any specific equipment;

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, NY 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.

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”) §§ 103(2) and 104(1, 19). Under § 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 § 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 § 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. Legislative objectives: To enhance the safety and integrity of pari-mutuel racing.

3. Needs and benefits: This rule making is needed to improve our thoroughbred rules with regard to permitted prerace treatment.

Section 4043.13 of 9 NYCRR currently permits the use of ultrasonic and electro/medical equipment on race day until 24 hours before the start of the race program. On major race dates with additional races and an earlier than normal commencement of the race program, it is difficult for horsepersons to have access to and treat their horses with the ultrasonic and electro/medical equipment before this deadline.

The proposed amendment, which has the endorsement of the New York Thoroughbred Horsemen’s Association, Inc., helps by permitting the equipment to be used until 24 hours before each horse’s scheduled post time. The proposal would change this restricted time period for all races, for simplicity. This change will also conform to the Commission’s medication rules. The 24-hour restricted time periods for substances administered to a horse before racing are based on the scheduled post time of a horse’s race.

There will be no substantial effect on the race performance or integrity of the races the next day.

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. There is no cost to the regulated parties by using independent veterinarians.

(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: There are no similarly practical alternatives.

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 would permit the use of electro/medical equipment treatment of racehorses until 24 hours before post time of a horse's race, rather than 24 hours before the start of the race program. This change will make it easier for horsemen to have time to treat horses that are entered in later races, particularly on major race days when a large number of races are carded. The amendment would not change the kind of treatments or equipment that are used in horseracing.

This rule will not impose an adverse economic impact or reporting, recordkeeping, 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

Safety Helmet and Vest Requirements

I.D. No. SGC-01-19-00017-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 4006.7 and 4006.8 of Title 9 NYCRR.

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

Subject: Safety helmet and vest requirements.

Purpose: To enhance the safety and integrity of pari-mutuel racing.

Text of proposed rule: Section 4006.7 of 9 NYCRR would be amended as follows:

§ 4006.7. Safety helmet required.

(a) Every [jockey, apprentice jockey and other rider, whether in a race or when exercising or ponying a thoroughbred horse,] *person working in the gate crew or mounted on horseback on the grounds of a racetrack shall wear a properly fastened safety helmet [of a type approved in writing by the stewards. No change shall be made in any such helmet without the approval of the stewards]. The gate crew means the starter and assistant starter and any person who handles a horse for the starter or assistant starter at the starting gate.*

(b) *Each safety helmet shall provide a minimum level of shock absorbing protection to the head as evidenced by a label indicating compliance with one or more of the following product standards or with a standard that in the judgment of the executive director of the commission or his or her designee is comparable or superior:*

(1) *American Society for Testing and Materials, ASTM F1163-04a or F1163-15, Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding;*

(2) *European Norm, EN 1384:1996, Helmets for Equestrian Activities;*

(3) *British Standards Institute Product Approval Specification, PAS 015:2011, Specification for Helmets for Equestrian Activities;*

(4) *Interim European Standard, VG1 01.040: 2014-12 (with or without BSI Kitemark), Equestrian helmets;*

(5) *Australian Standards/New Zealand Standards, AS/NZS 3838:2006, Helmets for horse riding and horse-related activities;*

(6) *Australian Racing Board Helmet Safety Standard, ARB HS 2012;*

(7) *Snell Memorial Foundation (Snell) Equestrian Helmet Standard E2001 or E2016; or*

(8) *L'Union Technique de l'Automobile du Moto-cyclo et du Cycle (UTAC) or CRITT Sport Loisirs (CRITT) 04/2015 standards.*

(c) *A safety helmet shall not be altered from its original manufactured design nor shall the product marking be removed or defaced.*

Section 4006.8 of 9 NYCRR would be amended as follows:

§ 4006.8. Safety vests.

(a) *Every person mounted on [No jockey, apprentice jockey, or exercise rider, pony person or outrider shall participate in any race, train, exercise, or pony any] horseback on [such] the grounds [conducted by any association or corporation licensed or franchised by the commission to conduct thoroughbred race meetings unless he or she wears a] of a racetrack shall wear a properly fastened safety vest.*

(b) *[Such safety vest] Each safety vest shall weigh no more than [two] four pounds and [shall be designed to] provide a minimum level of shock absorbing protection to the upper body[,] as evidenced by a label [with at least a rating of British Equestrian Trade Association (BETA) [2000/2009 Level 1] indicating compliance with one or more of the following product standards or with a standard that in the judgment of the [stewards] executive director of the commission or his or her designee is comparable or superior:*

(1) *British Equestrian Trade Association (BETA) Standard for Body and Shoulder Protectors for Equestrian Use, BETA 2009 Level 1;*

(2) *European Norm, EN 13158:2009 Level 1, Protective Clothing for equestrian use; or*

(3) *American Society for Testing and Materials, ASTM F2681-08 or F1937-04, Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding.*

(c) *A safety vest shall not be altered from its original manufactured design nor shall the product marking be removed or defaced.*

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, NY 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.

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) and 104(1, 19).

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.

2. **LEGISLATIVE OBJECTIVES:** To enhance the integrity and safety of Thoroughbred racing.

3. **NEEDS AND BENEFITS:** This rulemaking will update the requirements for safety helmets and vests on the grounds of Thoroughbred tracks.

Section 4006.7 of 9 NYCRR currently requires jockeys, pony riders and other riders on the grounds of a Thoroughbred track to wear a helmet, approved by the Stewards, when racing, exercising or ponying a horse. The proposal will instead specify the applicable, current equine product standards, at least one of which a helmet must meet, and permit compliance with revised versions of such standards unless the Commission determines that any such change shall not be accepted. The proposal extends the requirement to wear such a helmet any person who is mounted on a horse or working in the starting gate crew on such tracks and will also require that the helmet be properly fastened.

Section 4006.8 currently requires jockeys, pony and other riders on the grounds of a Thoroughbred track to wear a safety vest that complies with British Equestrian Trade Association (BETA) 2000/2009 Level 1, or a standard that in the judgment of the stewards is comparable, when racing, exercising or ponying a horse. The proposal will require 2009 Level 1 and replace the judgment of the stewards with other acceptable product standards. The vest must meet at least one of these standards, and the proposal will permit compliance with revised versions of such standards unless the Commission determines that any such change shall not be accepted. The proposal will extend the requirement to wear such a vest to any person mounted on a horse on such tracks. The proposal would increase the permitted vest weight from two to four pounds, consistent with newer product standards, and would require that the vest be properly fastened.

The proposed amendments are based on a report from Marsh Risk Consulting that was commissioned by The Jockey Injury Compensation Fund to assess operational risks in New York Thoroughbred racing and input from the stewards at New York State tracks, The Jockey Guild, and the New York Thoroughbred Horsemen's Association (NYTHA).

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: Most jockeys and exercise riders are already using helmets and vests that meet the newer, approved industry standards. The other persons (e.g., trainers) whom the amendments would require on the grounds of a track to wear such helmets and vests are already using them.

The only costs will be the cost to replace helmets or vests that are outdated and do not meet at least one of the newer industry product standards. The riders with outdated equipment at NYRA race meetings, where the horsemen's organization is offering \$150 to assist riders to purchase new equipment, is estimated by the stewards to be about 50 to 100 persons. The jockeys and trainers at Finger Lakes Race Track (FLRT), the other Thoroughbred track in New York, have the newer equipment. FLRT is contributing \$100 to help pay for a new vest, and the stewards estimate that 10 persons (exercise riders) do not have newer helmets or



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500

www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns

Date: March 13, 2019

Re: Adoption of Rulemaking for Helmets and Safety Vests at Thoroughbred Racetracks (9 NYCRR §§ 4006.7 and 4006.8)

For Commission consideration is the adoption of a proposed rulemaking to update the requirements for helmets and safety vests worn by persons who may be injured loading the horses into the starting gate or while mounted on any horse (e.g., ponies, outriders, racehorses) on the grounds of Thoroughbred racetracks.

The proposal would update the applicable standards for protective helmets and safety vests, as recommended by a report from Marsh Risk Consulting that was commissioned by the Jockey Injury Compensation Fund to assess operational risks in New York Thoroughbred racing. The proposal also would increase the maximum weight of the safety vest from two to four pounds to permit newer vest models that provide enhanced safety and would require the starting gate crew to wear helmets.

This rulemaking proposal was published in the January 2, 2019 *State Register*, a copy of which is attached. The public comment period expired on March 4, 2019. No comments were received.

[REDACTED]

attachment

cc: Robert Williams, Acting Executive Director
Ronald Ochrym, Director of Division of Horse Racing and Pari-Mutuel Wagering
Scott Palmer, Equine Medical Director

required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

The proposal would permit the use of electro/medical equipment treatment of racehorses until 24 hours before post time of a horse's race, rather than 24 hours before the start of the race program. This change will make it easier for horsemen to have time to treat horses that are entered in later races, particularly on major race days when a large number of races are carded. The amendment would not change the kind of treatments or equipment that are used in horseracing.

This rule will not impose an adverse economic impact or reporting, recordkeeping, 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

Safety Helmet and Vest Requirements

I.D. No. SGC-01-19-00017-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 4006.7 and 4006.8 of Title 9 NYCRR.

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

Subject: Safety helmet and vest requirements.

Purpose: To enhance the safety and integrity of pari-mutuel racing.

Text of proposed rule: Section 4006.7 of 9 NYCRR would be amended as follows:

§ 4006.7. Safety helmet required.

(a) Every [jockey, apprentice jockey and other rider, whether in a race or when exercising or ponying a thoroughbred horse,] *person working in the gate crew or mounted on horseback on the grounds of a racetrack shall wear a properly fastened safety helmet [of a type approved in writing by the stewards. No change shall be made in any such helmet without the approval of the stewards]. The gate crew means the starter and assistant starter and any person who handles a horse for the starter or assistant starter at the starting gate.*

(b) *Each safety helmet shall provide a minimum level of shock absorbing protection to the head as evidenced by a label indicating compliance with one or more of the following product standards or with a standard that in the judgment of the executive director of the commission or his or her designee is comparable or superior:*

(1) *American Society for Testing and Materials, ASTM F1163-04a or F1163-15, Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding;*

(2) *European Norm, EN 1384:1996, Helmets for Equestrian Activities;*

(3) *British Standards Institute Product Approval Specification, PAS 015:2011, Specification for Helmets for Equestrian Activities;*

(4) *Interim European Standard, VG1 01.040: 2014-12 (with or without BSI Kitemark), Equestrian helmets;*

(5) *Australian Standards/New Zealand Standards, AS/NZS 3838:2006, Helmets for horse riding and horse-related activities;*

(6) *Australian Racing Board Helmet Safety Standard, ARB HS 2012;*

(7) *Snell Memorial Foundation (Snell) Equestrian Helmet Standard E2001 or E2016; or*

(8) *L'Union Technique de l'Automobile du Moto-cyclo et du Cycle (UTAC) or CRITT Sport Loisirs (CRITT) 04/2015 standards.*

(c) *A safety helmet shall not be altered from its original manufactured design nor shall the product marking be removed or defaced.*

Section 4006.8 of 9 NYCRR would be amended as follows:

§ 4006.8. Safety vests.

(a) *Every person mounted on [No jockey, apprentice jockey, or exercise rider, pony person or outrider shall participate in any race, train, exercise, or pony any] horseback on [such] the grounds [conducted by any association or corporation licensed or franchised by the commission to conduct thoroughbred race meetings unless he or she wears a] of a racetrack shall wear a properly fastened safety vest.*

(b) *[Such safety vest] Each safety vest shall weigh no more than [two] four pounds and [shall be designed to] provide a minimum level of shock absorbing protection to the upper body[,] as evidenced by a label [with at least a rating of British Equestrian Trade Association (BETA) [2000/2009 Level 1] indicating compliance with one or more of the following product standards or with a standard that in the judgment of the [stewards] executive director of the commission or his or her designee is comparable or superior:*

(1) *British Equestrian Trade Association (BETA) Standard for Body and Shoulder Protectors for Equestrian Use, BETA 2009 Level 1;*

(2) *European Norm, EN 13158:2009 Level 1, Protective Clothing for equestrian use; or*

(3) *American Society for Testing and Materials, ASTM F2681-08 or F1937-04, Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding.*

(c) *A safety vest shall not be altered from its original manufactured design nor shall the product marking be removed or defaced.*

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, NY 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.

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) and 104(1, 19).

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.

2. **LEGISLATIVE OBJECTIVES:** To enhance the integrity and safety of Thoroughbred racing.

3. **NEEDS AND BENEFITS:** This rulemaking will update the requirements for safety helmets and vests on the grounds of Thoroughbred tracks.

Section 4006.7 of 9 NYCRR currently requires jockeys, pony riders and other riders on the grounds of a Thoroughbred track to wear a helmet, approved by the Stewards, when racing, exercising or ponying a horse. The proposal will instead specify the applicable, current equine product standards, at least one of which a helmet must meet, and permit compliance with revised versions of such standards unless the Commission determines that any such change shall not be accepted. The proposal extends the requirement to wear such a helmet any person who is mounted on a horse or working in the starting gate crew on such tracks and will also require that the helmet be properly fastened.

Section 4006.8 currently requires jockeys, pony and other riders on the grounds of a Thoroughbred track to wear a safety vest that complies with British Equestrian Trade Association (BETA) 2000/2009 Level 1, or a standard that in the judgment of the stewards is comparable, when racing, exercising or ponying a horse. The proposal will require 2009 Level 1 and replace the judgment of the stewards with other acceptable product standards. The vest must meet at least one of these standards, and the proposal will permit compliance with revised versions of such standards unless the Commission determines that any such change shall not be accepted. The proposal will extend the requirement to wear such a vest to any person mounted on a horse on such tracks. The proposal would increase the permitted vest weight from two to four pounds, consistent with newer product standards, and would require that the vest be properly fastened.

The proposed amendments are based on a report from Marsh Risk Consulting that was commissioned by The Jockey Injury Compensation Fund to assess operational risks in New York Thoroughbred racing and input from the stewards at New York State tracks, The Jockey Guild, and the New York Thoroughbred Horsemen's Association (NYTHA).

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: Most jockeys and exercise riders are already using helmets and vests that meet the newer, approved industry standards. The other persons (e.g., trainers) whom the amendments would require on the grounds of a track to wear such helmets and vests are already using them.

The only costs will be the cost to replace helmets or vests that are outdated and do not meet at least one of the newer industry product standards. The riders with outdated equipment at NYRA race meetings, where the horsemen's organization is offering \$150 to assist riders to purchase new equipment, is estimated by the stewards to be about 50 to 100 persons. The jockeys and trainers at Finger Lakes Race Track (FLRT), the other Thoroughbred track in New York, have the newer equipment. FLRT is contributing \$100 to help pay for a new vest, and the stewards estimate that 10 persons (exercise riders) do not have newer helmets or

vests. The average cost for an approved helmet and vest is \$500 (\$300 and \$200, respectively). This cost ranges, respectively, from \$100 and \$160 for less comfortable models to \$1000 and \$550 for advanced products.

There will be no new costs for the outriders and starting gate crews, who are employed by the Thoroughbred tracks, because the tracks have already upgraded their employees' equipment to the new safety standards. The amendments would not add other mandated costs to the existing rules.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: There will be no costs to local governments because they do not regulate pari-mutuel racing activities. There will be no new costs to the Gaming Commission, which already monitors that proper equipment is used. All races are viewed by the stewards who can see what equipment is being used by the gate crew and the persons mounted on horses. The state steward is also able to conduct inspections of the equipment of all such persons, including when training, whose equipment can be readily produced and examined.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The average cost of compliant helmets and vests is known from the recent program conducted by horsemen's organizations to assist all riders to update their equipment. The range of costs is known through an internet search of available products online.

5. LOCAL GOVERNMENT: None. The Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. PAPERWORK: There will be no additional paperwork.

7. DUPLICATION: None.

8. ALTERNATIVES: The Commission considered not amending its current rules. Adopting this proposal, however, provides an assurance to insurance providers that the stewards are requiring helmets and vests that meet current product standards in the industry, that any person mounted on a horse on the grounds of a Thoroughbred track will be wearing such a helmet and vest, and that the starting gate crew will be wearing such helmets.

9. FEDERAL STANDARDS: None.

10. COMPLIANCE SCHEDULE: Once adopted, the rule can be implemented as soon as it is published in the State Register.

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

This proposal does not require a Regulatory Flexibility Analysis for Small Businesses, and Local Governments, Rural Area Flexibility Statement or Job Impact Statement since the amendment conforms the Commission's equipment rule for safety helmets and vests to what a majority of jockeys, pony and other riders, and safety gate crews are already using at the New York State Thoroughbred tracks. In addition, this rule does not affect small business, local governments, jobs or rural areas. Further, this proposal will not impose an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. Due to the straightforward nature of the rulemaking, there is no need for the development of a small business regulation guide to assist in compliance. These provisions are clear as to what the permissible equipment is and what is necessary to comply with the rule.

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

Standards for Backstretch Housing and Related Facilities

I.D. No. SGC-01-19-00018-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 4047 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 104(1) and (19)

Subject: Standards for backstretch housing and related facilities.

Purpose: To create minimum standards for housing and related facilities offered to backstretch workers by racing associations.

Substance of proposed rule (Full text is posted at the following State website: https://www.gaming.ny.gov/proposed_rules.php): The addition of Part 4047 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to set forth standards for housing maintained on the grounds of certain facilities conducting horse racing.

Section 4047.1 sets forth the definitions used throughout the Part. Section 4047.2 establishes the requirements for an association to be subject to

the regulations. Section 4047.3 sets forth that an annual inspection is required. 4047.4 set forth the general maintenance, health, sanitary and safety obligations an association providing backstretch housing must meet. Section 4047.5 sets forth specific housing standards for buildings, rooms and dining facilities provided by associations. Section 4047.6 establishes notice and building requirements for new construction. Section 4047.7 sets forth requirements for bathroom and shower facilities. Section 4047.8 establishes requirements for laundry facilities. Section 4047.9 sets forth the standards for trash and refuse storage. Section 4047.10 requires abatement of pests and notice thereof. Section 4047.11 establishes responsibilities of backstretch housing occupants. Section 4047.12 establishes requirements for backstretch water supply. Section 4047.13 set forth requirements for an association to receive a variance or waiver.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, Suite 500, Schenectady, New York, (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.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

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 103(2) sets forth that the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State.

Racing Law section 104(1) 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.

2. LEGISLATIVE OBJECTIVES: The Commission is charged with enhancing the integrity and safety of thoroughbred and standardbred racing, which extends to the health, wellness and safety of individuals employed at and residing within racing facilities.

3. NEEDS AND BENEFITS: The proposed rules establish specific standards for housing, sanitary and dining facilities at racing entities. Currently there is a broad variance in the habitability of backstretch housing, with some facilities in a state of general disrepair. These rules will require that housing be habitable and safe, access to sanitary facilities be present and the Commission be notified regularly of the housing and related facilities.

These rules will benefit the backstretch workers who reside at a track facility and help ensure that racing in New York state is of the highest caliber by addressing housing and sanitary conditions. The rules specifically define what constitutes adequate housing, from the type of building materials, dimensions, ventilation, electrical supply and wiring, plumbing capabilities and the minimum quality standards for water used in such plumbing, number of points of egress from a housing facility and the quantity and type of smoke detectors and fire extinguishers that must be present in the home. The rules further define what constitutes sanitary conditions, both within a home and exterior areas, as to prevent standing water or other public health hazards.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: The Commission does not have data to precisely identify the impact of this proposed rule on race facilities that will need to improve housing, sanitary and dining facilities.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: There is no additional anticipated cost, but should the Commission procure persons to conduct the inspections required by proposed section 4047.3, there would be a cost to retain such persons for such task.

(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 activities within the State and in consultation with other racing jurisdictions that have such standards in place.

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

6. PAPERWORK: The rules impose paperwork burdens on a racing association to submit documentation in relation to the inspection of housing; injury, serious illness, death of a housing tenant; occurrence of a fire at the housing; renovation of existing housing or construction of new housing, dining or sanitary facilities; annual inspection and action taken regarding pest control; water treatment; interruptions or changes to water source; and any request for variance or waiver of regulatory requirements.



Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: November 28, 2018

Re: Adoption of Proposed Rulemaking for Amendments to Minimum Penalty Enhancement Rules in Thoroughbred Racing (9 NYCRR Part 4045)

For Commission consideration is the adoption of a proposal to revise the Thoroughbred racing rules on minimum penalty enhancement. The proposed rulemaking, including the text of the proposed rule, was published in the October 3, 2018 *State Register*, a copy of which is attached. The public comment period for the proposal will expire on December 3, 2018. No comments have been received to date. Staff will bring any comment received before the expiration of the public comment period to the attention of the Commissioners.

The minimum penalty enhancement rules, adopted by the Commission in February 2016, were designed to ensure that every state imposes a mandatory minimum penalty whenever a horseperson, typically the trainer, reaches a certain level of multiple equine drug violations. The proposed amendment is intended to conform New York's rules to changes in the national model rules adopted by the Association of Racing Commissioners International, Inc. (ARCI).

The proposed revisions will appropriately focus the MMV system on those who consistently violate serious medication and anti-doping rules and assist in developing national consistency in regard to punishment.

[REDACTED]

attachment

cc: Ronald Ochrym, Acting Executive Director

This amendment extends from January 1, 2019 to July 1, 2019 the date until which a group policy must provide that the group policy is primary to give insurers more time to revise and implement their new policy forms. Many insurers waited to start making changes to their motor vehicle liability insurance policy forms to exclude coverage for using or operating a motor vehicle as TNC vehicle until the Department had adopted the final regulation in October 2017. It takes time for an insurer to amend and file its policy forms with and receive approval from the Superintendent, and then for the insurer to actually implement the policy form changes. In addition, the Insurance Law prohibits an insurer from amending the terms of a motor vehicle liability insurance policy mid-contract. Rather, an insurer only may change the terms of an insurance policy upon the renewal date, which is usually annually. Furthermore, the Insurance Law requires an insurer to provide sufficient advance notice to an insured of any changes to the policy terms. Thus, many insurers may not have sufficient time to revise and implement their new policy forms by January 1, 2019. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2).

4. Costs: This amendment will not impose compliance costs on insurers because it merely extends the date until which a group policy must provide that the group policy is primary and fixes an incorrect citation. The Department of Financial Services will not incur costs for the implementation and continuation of this amendment. This amendment does not impose compliance costs on any local government.

5. Local government mandates: This amendment does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: An insurer will not incur additional paperwork because the amendment merely extends the date until which a group policy must provide that the group policy is primary and fixes an incorrect citation.

7. Duplication: This amendment does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: There were no significant alternatives to consider.

9. Federal standards: The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The amendment will take effect upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

The amendment to Insurance Regulation 35-E should have no impact on small businesses and local governments. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

The proposed amendment to Insurance Regulation 35-E should have no impact on rural areas or public or private entities in rural areas. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should not impose any adverse impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

The proposed amendment to Insurance Regulation 35-E should have no impact on jobs and employment opportunities. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should have no impact on jobs and employment opportunities.

New York State Gaming Commission

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

Amendment of Multiple Medication Violation (MMV) Penalty Enhancement Rule

I.D. No. SGC-40-18-00006-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 4045.1, 4045.3 and 4045.4 of Title 9 NYCRR.

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

Subject: Amendment of multiple medication violation (MMV) penalty enhancement rule.

Purpose: To enable the Commission to enhance the integrity and safety of thoroughbred pari-mutuel racing.

Text of proposed rule: Section 4045.1 of 9 NYCRR would be amended, as follows:

§ 4045.1. Definitions.

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

(a) ARCI Penalty Guidelines means the [penalty] *uniform classification* guidelines published in “Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule,” Version [8.0] 13.0 ([revised] *approved* December [2014] 9, 2016) of the Association of Racing Commissioners International, Inc., 1510 Newtown Pike, Suite 210, Lexington, KY 40511, which are hereby incorporated by reference. Such Uniform Rules of Racing are available for public inspection at the New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY and at the Department of State, 99 Washington Street, Albany, NY.

Section 4045.3 of 9 NYCRR would be amended, as follows:

§ 4045.3. Points.

(a) When a precipitating equine drug rule violation occurs, the commission shall examine the equine drug rule violation history of the violator and assign a point value to [other] *the* equine drug rule violations as set forth in this section.

(b) The commission shall assign six points, which shall accumulate [permanently] *with points resulting from other violations committed within a three-year period*, for a violation involving a drug or other substance that:

(c) The commission shall assign four points, which shall accumulate with points resulting from other violations committed within a [three-year] *two-year* period, for a violation involving a drug or other substance that:

(d) The commission shall assign [two points] *one point*, which shall accumulate with points resulting from other violations committed within a [two-year] *one-year* period, for a violation involving a drug or other substance that is classified as Penalty Class C in the ARCI Penalty Guidelines, subject to any adjustments that apply as set forth in this section.

[(e) The commission shall assign one point, which shall accumulate with points resulting from other violations committed within a one-year period, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class D in the ARCI Penalty Guidelines; or

(2) does not fall within any other subdivision of this section, subject to any adjustments that apply as set forth in this section.]

(e) *When more than one violation described in subdivision (d) of this section is committed within a 365-day period, the commission shall assign an additional penalty of one-half point for each previous violation (e.g., a second such violation within a 365-day period incurs an additional one-half point, a third such violation incurs an additional one point) in addition to the points assessed pursuant to subdivision (d) of this section.*

(f) *The point values set forth in subdivisions (c), [.] and (d) [and (e)] of this section are reduced by one-half for any drug or other substance that is listed in section 4043.3 of this Subchapter.*

[(f)] (g) No points shall be assigned for a violation involving a drug or other substance that has no effect on the physiology of a racing horse except to improve nutrition or to treat or prevent infections or parasite infestations.

[(g)] (h) No points shall be assigned for any violations that occurred before January 1, 2014.

[(h)] The point values set forth in subdivisions (c), (d) and (e) of this section are reduced by one-half for any drug or other substance that is listed in section 4043.3 of this Subchapter.]

(i) If a violation involves more than one drug or substance, then the commission shall assign to such violation not less than the highest point value of any one of the drugs or substances and shall assign additional points for each drug or substance that could have the effect of substantially altering the nature or effect of such drugs or other substances on the horse. *No points shall be assessed for more than one non-steroidal anti-inflammatory drug (NSAID) when there has been only an NSAID stacking violation.*

(j) If multiple violations involving one drug or substance are committed before a licensee is notified of a positive laboratory test, then the commission may assign lesser points for the violations, although not less than the points for a single violation, when the responsible parties are able to show that the multiple violations occurred as the result of an honest and unavoidable mistake. *If such an assessment of lesser points had been made by the jurisdiction in which a predicate equine drug violation occurred, or such jurisdiction had assigned lesser (even zero) points due to environmental contamination, then the commission shall assign such lesser points for the violation.*

Section 4045.4 of 9 NYCRR would be amended, as follows:
§ 4045.4. Administrative action.

(a) The commission shall calculate the points applicable to such licensee to determine whether to take any further administrative action pursuant to this Part.

(2) Although point values shall be assigned as of the date of each violation, the commission shall not initiate a suspension pursuant to this Part until after the final adjudication of [each] *an* equine drug rule violation for which points are assigned pursuant to this Part.

(3) When a precipitating equine drug rule violation results in the licensee having accumulated [three] *five* or more points based on final adjudications of equine drug rule violations, the commission shall find that a licensee is a habitual or persistent equine drug rule violator.

(b) The Director of the Division of Horse Racing and Pari-Mutuel Wagering shall suspend the occupational licenses of a habitual or persistent equine drug rule violator, at a minimum, as follows:

(1) if the licensee has accumulated [3] *5 to 5.5* points as a result of equine drug rule violations, a suspension of [30] *15* days;

(2) if the licensee has accumulated 6 to 8.5 points as a result of equine drug rule violations, a suspension of [60] *30* days;

(3) if the licensee has accumulated 9 to 10.5 points as a result of equine drug rule violations, a suspension of [180] *90* days; and

(4) if the licensee has accumulated 11 or more points as a result of equine drug rule violations, a suspension of [one year] *180 days*.

(d) The Director of the Division of Horse Racing and Pari-Mutuel Wagering, on behalf of the commission, may proportionately reduce such suspension, however, when convinced by clear and convincing evidence that the commission had already enhanced, based on one or more of the predicate equine drug rule violations, the penalty imposed on the licensee for the precipitating equine drug rule violation. *The Director may also impose a suspension before there has been a final adjudication of one or more of the predicate equine drug violations, when points assessed for matters that have been finally adjudicated suffice to impose a suspension pursuant to this Part; the balance of any suspension shall be imposed upon additional final adjudications.*

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) 388-3332, 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 these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2) and 104(1, 19). 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.

2. Legislative objectives: The proposal advances legislative objectives by allowing the Commission to enhance the integrity of pari-mutuel wagering on thoroughbred races and the health and safety of thoroughbred racehorses.

3. Needs and benefits: This rulemaking will amend part 4045 of 9 NYCRR to be consistent with recent changes to the corresponding national model rule that requires specific minimum penalties for certain multiple violations of equine drug rules.

Part 4045 of 9 NYCRR imposes a minimum license suspension, after the occurrence of an equine drug rule violation in New York, when the Commission determines that the offender meets the criteria of a habitual or persistent violator. Part 4045 is based on a national model rule and was designed to ensure that in every state a mandatory minimum penalty would be imposed when a horseperson, typically the trainer, reaches a certain level of multiple equine drug violations. The national model rule has not been adopted in several racing states, however, due to perceived shortcomings. As a result, the Association of Racing Commissioners International, Inc. ("ARCI") recently changed its national model rule. These changes have received widespread support.

The proposal would adopt these amendments made to the national model rule.

Section 4045.3 would be amended to exempt points for minor medication (ARCI penalty class D) violations and to assess fewer points, except for repeated violations involving the use of non-steroidal anti-inflammatory drugs (NSAIDs), for lesser duration.

Section 4045.3 would be amended to require more points before the lowest (15- day) penalty assessment would be imposed, and to introduce a range of penalties that would grant some discretion to racing commissions.

The proposal would also clarify, in section 4045.3, the assessment of points when multiple NSAIDs are administered to a horse and authority of a state where a violation occurs to determine how many points to assess when environmental contamination is a mitigating factor; and, in section 4045.4, the authority of the Commission to impose some penalty, based on the matters that have been adjudicated with finality, while an offender has other matters under review.

Section 4045.1 would also be amended to incorporate by reference the most recent ARCI penalty guidelines concerning how many points to assess for a violation.

The proposal would not change the fact that, under section 4045.4, the Commission may consider past equine rule violations as an aggravating factor that could result in a more serious penalty for a new equine drug rule violation and proportionately reduce the mandatory minimum penalty enhancement in such situations.

This revised rulemaking is based on a model rule of the ARCI, which is anticipated to be adopted by racing commissions throughout the United States. The adoption of this proposed rule will help to discourage thoroughbred horsepersons from having recurring violations of equine drug rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would 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. 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 because the rule does not create any mandatory new duty or obligation.

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

6. Paperwork: The Commission will assess a bare minimum penalty enhancement, when applicable, when an equine drug rule is violated in New York. The affected party may request a hearing. The Commission al-

ready examines the basis of this assessment, i.e., the licensee’s history of equine drug (and other) rule violations. A permanent record of such violations is maintained by the ARCI.

- 7. Duplication: None.
- 8. Alternatives. The Commission considered not amending its current rule. Adopting this proposal, however, is the most effective means to encourage more states to adopt a minimum penalty for repeat drug offenders and improve the public image of racing.
- 9. Federal standards: None.
- 10. Compliance schedule: The proposed rule does not create any additional requirements with which regulated persons must comply.

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 proposed amendment mitigates the assessment of points under the Commission’s existing rule to assess a minimum penalty enhancement when an equine drug violation occurs in New York and the offender has a specified significant history of such violations in New York or elsewhere. No regulated party will need a period to cure because the proposed amendments will only reduce, compared to the existing rules, the incidence and severity of the recidivism penalty that the commission applies when a person incurs repeated equine drug rule violations.

Such regulation will serve to enhance the integrity of racing and the health and safety of racehorses by serving as a deterrent to habitual and persistent equine drug rule violations. 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.

Higher Education Services Corporation

EMERGENCY RULE MAKING

NYS Part-Time Scholarship (PTS) Award Program

I.D. No. ESC-40-18-00003-E
Filing No. 914
Filing Date: 2018-09-14
Effective Date: 2018-09-14

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

Action taken: Addition of section 2201.20 to Title 8 NYCRR.
Statutory authority: Education Law, sections 653, 655 and 667-c-1
Finding of necessity for emergency rule: Preservation of general welfare.
Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (HESC) Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the 2017-18 academic year, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a community college at the State University of New York or the City University of New York. Decisions on applications for student financial aid programs are customarily made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to begin processing scholarship applications. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: NYS Part-time Scholarship (PTS) Award Program.

Purpose: To implement the NYS Part-time Scholarship (PTS) Award Program.

Text of emergency rule: New section 2201.20 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.20 New York State Part-time Scholarship (PTS) Award Program.

(a) *Definitions. As used in Education Law, section 667-c-1 and this section, the following terms shall have the following meanings:*

- (1) *Good academic standing shall mean having a minimum cumulative grade point average of 2.0.*
- (2) *Interruption of study shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.*
- (3) *Program shall mean the New York State Part-time Scholarship (PTS) Award Program codified in Education Law, section 667-c-1.*

(b) *Eligibility. An applicant must satisfy the requirements of Education Law, section 667-c-1 and the general eligibility requirements provided in Education Law, section 661.*

(c) *Administration.*
 (1) *Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *For purposes of determining priority, financial need shall be established based on the federal expected family contribution reflected on the applicant’s federal student aid report, with the lowest expected family contribution evidencing the greatest financial need.*

(3) *Recipients of an award shall:*
 (i) *request payment annually at such times, on forms and in a manner specified by the corporation;*

(ii) *provide any information necessary for the corporation to determine compliance with the program’s requirements.*

(4) *The corporation shall maintain data relating to the performance of award recipients including, but not limited to, degree completion rates. All such data shall be deemed confidential and the corporation shall only disclose aggregate data unless otherwise required by law.*

(d) *Awards.*
 (1) *The amount of the award shall be determined in accordance with section 667-c-1 of the education law.*

(2) *A recipient of an award must remain in good academic standing, as defined in this section, and remain continuously enrolled (excluding summer and winter terms) to be eligible for payment of future awards, excluding any allowable interruption of study.*

(3) *Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time after verification and certification by the institution of the recipient’s grade point average and other eligibility requirements.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 12, 2018.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:
 The New York State Higher Education Services Corporation’s (HESC) statutory authority to promulgate regulations and administer the NYS Part-time Scholarship (PTS) Award Program (Program) is codified within Article 14 of the Education Law. In particular, Part KKK of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-c-1 to the Education Law. Subdivision 6 of section 667-c-1 of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State’s administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC’s Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC’s President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of