

NYCRR Title 9, Executive

Subtitle T

New York State [Racing and Wagering Board] Gaming Commission

Chapter I

Division of Horse Racing and Pari-Mutuel Wagering

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Subchapter B

[State] Harness Racing [Commission]

PART 4100

General Provisions

§ 4100.1. Definitions.

(a) As used in this Subchapter, the following definitions are applicable:

(1) *Added money early closing event*[. An] means an event closing in the same year in which it is to be contested in which all entrance fees received are added to the purse.

(2) [*Age, how reckoned.*] The [age] age of a horse shall be reckoned from the first day of January of the year of foaling[, except that, respecting foals born in November and December 1971 and succeeding years through and inclusive of 1980, age shall be reckoned from January 1 of the next succeeding year].

(3) *Appeal*[. A] means a request for the commission to investigate, consider and review any decisions or rulings of judges or officials of a meeting. The appeal may deal with placings, penalties, interpretations of the rules or other questions dealing with the conduct of races.

[(48)] (4) *Association veterinarian*[. A] means a veterinarian licensed by the [board] commission and employed by a racing association or corporation.

[(49)] (5) *Attending veterinarian*[. A] means a veterinarian licensed by the [board] commission and hired by the owner or trainer.

[(4)] (6) *Claiming race*[. One] means a race [One] in which any horse starting may be claimed for a designated amount in conformance with the rules.

[(5)] (7) *Classified race*[. A] means a race regardless of the money winnings eligibility of horses, entries being selected by a racing secretary on the basis of ability or performance.

[(45)] (8) *Commission* [or *board* shall be deemed to be the] means the New York State [Racing and Wagering Board] Gaming Commission.

[(6)] (9) *Conditioned race*[. An] means an overnight event to which eligibility is determined according to specified qualifications. Such qualifications may only be based upon:

[(7)] (10) *Coupled entry*[. The] means the combination of two or more starters in the same race as a unit for wagering and disqualification.

[(8)] (11) *Dash*[. A] means a race decided in a single trial. Dashes may be given in a series of two or three governed by one entry fee for the series, in which event a horse must start in all dashes.

[(9)] (12) *Declaration*[. A declaration is] means the naming of a specific horse to a specific race as a starter.

[(10)] (13) *Disqualification*[. A] means a decision that a horse shall not start or shall not be allowed to maintain its finishing position for betting or purse purposes or both if [it] such horse shall have started.

[(11)] (14) *Early closing race*[. A] means a race to be contested within the year of [its] such race's closing for a definite amount to which nominations close at least 10 days preceding the race. The eligibility fee may be on the installment plan or otherwise, and all payments are forfeits.

[(12)] (15) *Elimination heats*[. Heats] mean the heats of a race split to qualify the contestants for a final heat.

[(13)] (16) *Expulsion*[. Whenever the], whenever such penalty [of expulsion] is prescribed in this Subchapter, [it shall be construed to mean] means unconditional exclusion and disqualification from every phase of harness racing, either directly or indirectly, on or off the track or admission to the track as a patron or otherwise.

[(14)] (17) *Futurity*[. A] means a stake in which the animal to compete is nominated either in utero or during the year of foaling.

[(15)] (18) *Handicap*[. A] means a race in which allowance is made by post position.

[(46)] (19) *Harness race*[. A harness horse race is] means a contest among horses under harness pulling a sulky and being driven by a human being designated a ["driver."] driver.

[(16)] (20) *Heat*[. A] means a single trial in a race two in three, or three-heat plan.

[(17)] (21) *In harness*[. In harness shall be construed to mean] means that the horses participating are attached to a sulky or [other] similar vehicle.

[(18)] (22) *Interference*[. Whenever used, this term shall mean] means any act [which] that, by design or otherwise, and regardless of actual contact, hampers or obstructs any competing horse or horses.

[(19)] (23) *International championship*[. A] means a race advised, promoted or announced as competition among the best horses in the world of any gait or age and comprised of horses from three or more countries with no more than four horses from any one country.

[(20)] (24) *Invitation race*[. An] means an overnight race to which only those horses named by the racing secretary and listed by [him] the racing secretary with the presiding judge shall be eligible.

[(43)] (25) *Late closing race*[. A] means a race for a fixed amount to which nominations close [less] fewer than six weeks and more than 10 days before the race is to be contested. The rules herein governing early closing races shall govern late closing races in all respects except that nominations to a late closing race may be taken in a calendar year prior to [its] such race being contested and on the first calendar day of a month in addition to the 15th calendar day.

[(21)] (26) *Length of race*. Races or dashes shall be given at a stated distance in units not shorter than one-sixteenth of a mile.

[(22)] (27) *Limited pari-mutuel meeting*. The Orange County Driving Park Association Meeting, held in Goshen, is, for the purposes of this Subchapter, considered a limited pari-mutuel meeting.

[(23)] (28) *Maiden*[. A] means a horse that has never won a heat or race for a purse at the gait at which it is declared to start. Races or purses awarded to a horse after the "Official" sign has been posted shall not affect [its] such horse's status as a maiden.

[(24)] (29) *Match race*[. A] means a race [which] that has been arranged and the conditions [thereof] of the race agreed upon between the contestants.

[(25)] (30) *Matinee race*[. A] means a race with no declaration fee and where the premiums, if any, are other than money.

[(26)] (31) Named race[. An] means an invitation race.

[(41)] (32) New York State sire races[. Races which] means races that are conducted pursuant to conditions and rules promulgated or approved by the Agriculture and New York State Horse Breeding Development Fund and the commission. No track licensee shall designate races by such title or a similar [thereto] title without express approval of said fund and the commission.

[(27)] (33) Number of heats. If no distance or number of heats are specified in the conditions, all races shall be one heat at a mile.

[(28)] (34) Nomination[. The] means the naming of a horse or [its] such horse's foal in utero to compete in a specific race or a series of races, eligibility for which is conditioned upon the payment of a fee at the time of the naming, the payment of subsequent sustaining fees and/or a starting fee.

[(29)] (35) Overnight event[. A] means a race for which declarations close not more than four days (omitting Sundays) before such race is to be contested. All races other than stakes and early closing events shall be considered overnight events.

[(30)] (36) Paddock[. An] means an enclosure to which horses scheduled to compete in a race program are confined prior to racing.

[(31)] (37) Protest[. An] means an objection, properly sworn to, charging that a horse is ineligible to a race, alleging improper declaration, or citing any act of an owner, driver, trainer or caretaker, or official that is prohibited by the rules[, and which] and that, if true, should exclude the horse or driver from the race.

[(42)] (38) Public trainer[. One] means one who trains as an independent contractor rather than as an employee.

[(32)] (39) Scoring[. Those] means those preliminary practice starts taken by the horses in a race, after the post parade and before they are called by the starter to line up for the start.

[(44)] (40) Spouse[. Where used in these rules, the term spouse] means a person married to the licensee or applicant or one held out by a person to be his or her spouse.

[(33)] (41) Stake[. A] means a race [which] that will be contested in a year subsequent to [its] such race's closing in which the money given by the track conducting the same is added to the money contributed by the nominators, all of which except deductions for the cost of promotion, breeders or nominators awards belongs to the winner or winners. In any event, all of the money contributed by the nominators must be paid to the winner or winners. Where a definite purse is offered, same shall be known as a ["guaranteed stake."]guaranteed stake.

[(47)] (42) *Sulky*[. A sulky is] means a dual-shafted, dual-wheeled vehicle designed to be drawn by a horse and driven by a person. [It] A sulky shall be not more than 72 inches wide at any point and from the point of [its] such sulky's attachment to the harness to [its] such sulky's most rear point (including any protruding seat or other component) shall be no longer than 120 inches. [Its] The wheels of a sulky shall not exceed 32 inches in diameter. Foot stirrups shall be fitted on each shaft and each shaft shall be attached to the harness on each side of the horse. For good cause shown, and after safety and fairness to competitors is established satisfactorily to the [board] commission by an applicant, the [board] commission may permit minor variations from these requirements.

[(34)] (43) *Suspension*[. Whenever the term suspension is referred to in this Subchapter], unless otherwise specifically limited, [it shall be construed to mean] means the unconditional exclusion and disqualification from every phase of harness racing either directly or indirectly, on or off the track, or admission to the track as a patron or otherwise.

[(35)] (44) *Two in three*[. In a two in three race,] means a race in which a horse must win two heats to be entitled to first money.

[(36)] (45) *Three-heat plan*[. An] means an event limited to three heats, except if three horses have each won a heat, [when] in which case there shall be a fourth heat to determine the winner.

[(37)] [Reserved]

[(38)] *Walk over*. When] (46) Walkover means a situation in which only horses in the same interest start[, it constitutes a walk over]. In a stake race, a [walk over] walkover is entitled to all the stake money and forfeits unless otherwise provided in the published conditions. To claim the purse, the entry must start and go once over the course.

[(39)] (47) *Winner*[. The] means the horse whose nose reaches the wire first. If there is a dead heat for first, both horses shall be considered winners. Where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy.

[(40)] (48) *Wire*[. The wire is] means a real or imaginary line from the center of the judge's stand to a point immediately across, and at right angles to, the track.

§ 4100.2. Power to supersede or suspend operation of the rules.

The commission may, by written order or directive, supersede or suspend the operation of any of [its] the commission's rules or regulations when in [its] the commission's judgment such action

is necessary to insure the public interest, convenience or necessity or the best interests of racing generally.

PART 4101

Licenses

§ 4101.1. License required to conduct harness race meeting with pari-mutuel wagering.

All harness racing corporations or associations formed pursuant to the laws of the State of New York desiring to conduct a race meeting with pari-mutuel wagering thereon must obtain a license annually from the commission. All licenses shall be deemed conditioned upon compliance with the laws of the State of New York, the rules and regulations of the [New York State Harness Racing C]commission, payment of fees and taxes required by statute, payment of fees required for the operation of the [New York State Racing C]commission laboratory for chemical analysis of samples, and the proper installation, operation and maintenance of equipment and devices for the conducting, timing and monitoring of races [which] that the [Harness Racing C]commission shall prescribe as necessary or desirable in the public interest.

§ 4101.4. Knowledge of rules.

Licensed harness racing corporations or associations conducting harness racing with pari-mutuel wagering are required, with their officers and employees, to be responsible for the conduct of their meetings and to make certain that all officers and executive employees are thoroughly familiar with provisions of the [Pari-Mutuel Revenue Law, (L. 1940, ch. 254, as amd.),] Racing, Pari-Mutuel Wagering and Breeding Law and the rules and regulations of the [New York State Harness Racing Commission] commission.

§ 4101.5. Certificates of incorporation.

Neither a certificate of incorporation under section [37] 302 of the [Pari-Mutuel Revenue] Racing, Pari-Mutuel Wagering and Breeding Law, nor a certificate of amendment, shall [hereafter] be filed with the Secretary of State without the approval of the [State Harness Racing Commission] commission or the commission's predecessor endorsed [thereon] on or annexed [thereto] to it.

§ 4101.6. Increased retention for capital improvements.

(a) For the purposes of this section, capital improvement, as defined in section 319 of the Racing, Pari-Mutuel Wagering and Breeding Law, is any addition to, replacement of or remodeling of the physical plant, structures and equipment, [now or hereafter] owned or leased by a licensed track,

[which] that is used or is to be used by such track in connection with the conduct of harness race meetings, and shall include improvements to land but not land itself.

(b) A statutorily designated harness track[,] may elect upon 30 days' written notice to the [board] commission (and a copy to the Tax Commission) to withhold, in addition to any other amounts required by this section, one [per centum] percent of the total deposits in pools resulting from regular and multiple bets; provided, however, that any harness track (or, in the case of Buffalo Raceway, the county agricultural society [which hereinafter] that is deemed to be a harness track for purposes of this section) withholding pursuant to this subdivision shall use such one [per centum] percent exclusively for capital improvements, as defined in subdivision (a) of this section, subject to the following provisions:

(1) All amounts withheld by a track on and after such 30-day written notice to the [board] commission, as well as all monies paid over to the track by off-track betting corporations from additional withholding mandated upon such corporations pursuant to such law (section 527[5-a]), shall be deposited in a segregated interest-bearing account designated "Retention for Capital Construction" account. A track may withdraw monies from such account for the purposes of investment in segregated certificates of deposit or government securities, provided that the entire proceeds of such investments, including interest or dividends therefrom, are redeposited in such account within two years of such withdrawal.

(2) Within 30 days of the enactment of this rule (or if a track shall hereafter make such election, then with [its] such track's notice of election to the [board] commission), and annually thereafter, with [its] such track's license application, each such electing track shall furnish the [board] commission with a complete description of all capital improvements that it plans to make, together with the estimated cost thereof, the estimated inception and completion date, and how such capital improvement will be acquired or accomplished. Such capital improvements as are to be paid for from funds from the "Retention for Capital Construction" account shall be so designated, together with estimated dates and amounts of withdrawals, and a statement as to how such improvement will further the objectives of the law to increase attendance and betting handle.

(3) A permit from the [board] commission shall be required for all capital improvements to be financed from such "Retention for Capital Construction" account and, if such capital improvement shall involve construction or alteration of plant and structures, plans and specifications satisfactory to a consulting engineer or architect designated by the [board] commission shall be furnished as a prerequisite to such purpose.

(4) No monies may be withdrawn from such account except for investments permitted pursuant to subdivision (c) of this section or in payment for capital improvements for which a permit has been issued by the [board] commission.

(5) Within 30 days of the end of the calendar year, such track shall submit a report to the [board] commission, showing the balance of the account at the beginning of the year, the total added and the total withdrawn during the year, and the balance at the end of the year listing each bank account and investment. The report shall also describe progress of planned capital construction, together with an itemized list of the withdrawals from the "Retention for Capital Construction" account, the payees of such withdrawals, and copies of all billings and vouchers supporting such withdrawals.

(6) The [board] commission on [its] the commission's own initiative may require a track to make such capital improvements as it may deem necessary.

(7) The [board] commission, at any time, may cause a track to be audited concerning [its] such track's compliance with this section.

(c) A track making such election may terminate such election upon 30 days' notice to the [board] commission.

§ 4101.7. Certification of annual expenditures for enhancements.

(a) Pursuant to section 318 of the Racing, Pari-Mutuel Wagering and Breeding Law, the [board] commission shall certify to the Commissioner of Taxation and Finance no later than [eighty] 80 days after the close of each calendar year the name of each harness racing association or corporation[, which] that has failed during the immediately preceding calendar year to expend an amount equal to at least one-half of one [per centum] percent of [its] such association or corporation's on-track bets [during the immediately preceding calendar year] for enhancements consisting of capital improvements as defined in section 319 of such law (and section 4101.6 of this Part), repairs to [its] such association or corporation's physical plant, structures and equipment used in its racing or wagering operations and costs connected with [up to] no more than five special events as defined in section 318 of such law and approved by the [Racing and Wagering Board] commission [as defined in section 318].

(b) In this connection, each harness racing association or corporation shall by January [31st] 31 of the current year file with the [board] commission schedules of expenditures made during the immediately preceding calendar year segregated by expenditures for capital improvements, eligible repairs and special events. Such schedules shall be in summary form identifying each asset or special event, as applicable, by appropriate name, the total expended for each asset or special event, and the date of completion for use for such asset or, if special event, the date it was held. Copies of bills, invoices and other supporting documentation providing details of such expenditures shall be retained by the track for audit by the [board] commission.

(c) To qualify as eligible repairs, expenditures must be for work or materials necessary to put inoperative assets back into good operating condition; in addition, the replacement of parts, the fixing of plant, overhaul of equipment, and similar work [which] that ordinarily would not

qualify as capital expenditures because the life of the asset is not thereby extended shall nevertheless qualify as eligible repairs. Maintenance expenditures, incurred for the purpose of keeping assets in operating condition are excluded.

(d) In determining whether the necessary amounts have been expended, the [board] commission shall consider the immediately preceding calendar year or the average of the two immediately preceding calendar years, whichever is higher for all tracks located outside Westchester or Nassau Counties; for a track located in Westchester or Nassau County, only the average of the two immediately preceding years shall be considered. It shall be presumed that only expenditures submitted in the form required in subdivision (b) of this section are expenditures qualified for consideration by the [board] commission.

(e) If the [board] commission determines that such racing association or corporation has failed to make the total of expenditures as established by statute it shall notify the affected association or corporation thereof by February 20[th] of the current year and schedule a date within 15 days [thereof] to hear the association or corporation in regard [thereto] to the commission's determination.

(f) Copies of any certification made in accordance with subdivision (a) of this section shall be served upon the affected association or corporation by the date prescribed in such subdivision (a).

§ 4101.8. Horsemen's Contract Requirement.

In determining whether or not to grant a pari-mutuel track license to a racing association or corporation and/or assign racing dates to a licensed racing association or corporation, the [board] commission may consider if there exists a written agreement between the racing association or corporation and its representative horsemen's association governing the terms and conditions of racing and the [board] commission may require such an agreement to be in existence, unless [it] the commission finds that the absence of the agreement is for good cause due to factors beyond the control of the racing association or corporation or the representative horsemen's association.

§ 4101.9. Accounting system of tracks.

All associations and corporations licensed under the Racing, Pari-Mutuel Wagering and Breeding Law[s of 1940, as amended,] to conduct harness race meetings at which pari-mutuel betting is permitted must adopt the uniform system of accounts [which] that has been furnished such licensees by the commission.

§ 4101.12. Reports of corporate licensees.

All associations and corporations licensed by the [New York State Harness Racing Commission] commission are required to submit to the commission the following:

(a) Copies of weekly payrolls of all personnel employed at the track during [its] such association or corporation's race meeting, including State license number of each employee.

(e) Upon the sale or transfer of any stock of any licensed harness racing corporation or association, such sale or transfer must be transmitted to the commission by affidavit verifying that said transfer or sale is in compliance with section [37-a] 303 of the [Pari-Mutuel Revenue Law (L. 1940, ch. 254, as amd.)] Racing, Pari-Mutuel Wagering and Breeding Law.

§ 4101.13. Transmission of racing information.

Except as otherwise provided in the rules or by statute, information concerning races conducted at all pari-mutuel harness tracks in New York shall not be transmitted from any such track unless approved by the [board] commission. The term racing information shall be deemed to include live, delayed or simulated descriptions of a race whether by audio or video transmission, the odds resulting from any betting registered before a race and other types of information, including but not limited to entries, program numbers, driver changes, post positions, scratches, race results and pay-off prices.

(a) [In making its determination, the board] The commission, in making its determination, shall consider the following criteria, information concerning which must be submitted by the racing association or corporation:

(5) any other relevant information [which] that may be specifically requested by the [board] commission.

(b) In addition to the foregoing, if an application involves the transmission of racing information to a location other than a off-track betting corporation facility via a cable or closed circuit radio or television transmission, which location is either within a nonparticipating county or within the market area of a regional track then the racing association or corporation whose racing information is to be transmitted shall notify the clerk of such county or the head of such track in order that such county or track may submit written comments on such application to the [board] commission.

(c) The [board] commission, in [its] the commission's discretion, may order a hearing on any application seeking [its] the commission's approval for the transmission of racing information pursuant to this section.

(d) The [board] commission shall only approve an application submitted pursuant to this section if it finds that such application is consistent with the best interests of the racing industry in general.

(e) The [board] commission may suspend or revoke [its] the commission's prior approval of the transmission of racing information and may order the termination of any such transmission for good cause.

§ 4101.14. Combination of New York wagers with wagers made in other states or foreign countries.

Pursuant to section 907 of the Racing, Pari-Mutuel Wagering and Breeding Law, New York wagers may be combined with wagers made in other states or foreign countries if proposed pursuant to a written plan describing the method of operation under each of the criteria set forth under such law and evidence of compliance with each of the requirements of such law is furnished by the applicant. Such application shall be approved by the [board] commission if [it] the commission is satisfied that the statutory criteria have been met and that such operation is consistent with the public interest and the best interests of racing generally.

STATEMENTS AND REPORTS OF CONCESSIONAIRES

§ 4101.16. Filing of reports of concessionaires to tracks with commission.

Any person who, or firm, association or corporation that, [who] holds any concession, right or privilege to perform any service or sell any article at any track at which pari-mutuel harness racing meets are conducted must submit to the [Harness Racing C]commission a copy of each report, advice or other document [which] that such person, firm, association or corporation furnishes or is required to furnish to the licensed harness racing association or corporation in order to substantiate any commissions, rentals, service fees and similar financial or other arrangements between the parties. Any person, firm, association or corporation operating a concession, performing any service or selling any article at more than one licensed harness racing track must submit separate reports of [his] such operation at each track.

§ 4101.17. Financial statements of concessionaires.

At the end of each meet such person, firm, association or corporation shall prepare and send to the commission a record of [its] such firm, association or corporation's operations at the track in the form of a profit and loss statement. Such report shall show the gross revenues derived from the meeting as well as all expenses paid or accrued during the same period. Income and expense

items must be shown in detail. Such report must be verified by at least two of the principal officers of the firm, association or corporation, if an association or corporation, and by one or more owners or proprietors thereof if not an association or corporation. Such report must be filed with the commission within 30 days after the end of each individual meet. Such person, firm, association or corporation shall submit to the commission a verified financial statement including (a) a balance sheet and (b) a statement of profit and loss showing the combined operations for that year and the results of such operations for each specific harness racing meet at which he, she, they or it conducted business during the year. These reports must be filed with the commission within 75 days after the end of the calendar or fiscal year of such person, firm, association or corporation. The end of the calendar or fiscal year reports must be verified as required under paragraphs (1) and (2) of subdivision (c) of section 4101.10 of this Part.

§ 4101.18. Reports of concessionaires.

Any person who, or firm, association or corporation that, [which] holds any concession, right or privilege to perform any service or sell any article at any track at which pari-mutuel racing meets are conducted in the State of New York must submit to the commission the following:

(e) Upon the sale or transfer of any stock of any concessionaire at a licensed harness racing track, evidence of such sale or transfer must be transmitted to the commission by affidavit verifying that said transfer or sale is in compliance with section [37-a] 303 of the [Pari-Mutuel Revenue Law (L. 1940, ch. 254, as amd.)] Racing, Pari-Mutuel Wagering and Breeding Law.

OTHER PROVISIONS

§ 4101.23. Stock certificates of licensees.

Each licensed harness racing association or corporation issuing stock must imprint upon the face of each certificate of stock plainly and prominently the following: "This certificate of stock is transferable only subject to the provisions of section [37-a] 303 of [chapter 254 of the Laws of 1940 of the State of New York, as amended, constituting the Pari-Mutuel Revenue Law] the Racing, Pari-Mutuel Wagering and Breeding Law."

§ 4101.24. Occupational licenses.

(a) No person shall participate in the affairs of any association or corporation licensed by the [New York State Harness Racing Commission] commission to conduct harness race meetings at which pari-mutuel betting is permitted as director, agent or employee of such track [license] licensee, unless such person shall have received an occupational license from the commission.

(c) It shall be the responsibility of each track licensee to prevent any person not holding an occupational license from doing or performing any act or acts at [its] such licensee's track.

(d) Each such license, unless revoked for cause, shall be for the period of no more than one, two or three years, expiring on the applicant's birth date; provided, however, that the [board] commission may, pending final determination of any question under section 309 of the Racing, Pari-Mutuel Wagering and Breeding Law, as amended, issue a temporary license upon such terms and conditions as it may deem necessary or desire to effectuate the provisions of such chapter. No person shall be qualified to receive or hold an occupational license if he or she is not a bona fide participant in harness racing. [Licenses current on the effective date of this rule shall not be reduced in duration by this provision.] An applicant who applies for a license that, if issued, would take effect less than six months prior to the applicant's birth date may, by payment of a 50 percent higher fee, receive a license [which] that shall not expire until the applicant's second succeeding birth date. A renewal license for owner, trainer, assistant trainer, driver, driver agent, racing official, mutuel employee, maintenance employee, veterinarian, farrier, track management or track security employee shall be for three years unless an individual establishes good cause for a shorter term or the [board] commission, in [its] the commission's discretion, determines a shorter term.

(i) It shall be the responsibility of the trainer to determine that every person employed by [him] such trainer at a licensed track and every assistant trainer, groom clerk, assistant or other person working regularly in [his] such trainer's stable at a licensed track is licensed by the commission. It shall be the responsibility of the trainer to refuse to represent any participant at a licensed track under circumstances in which the trainer, by the exercise of reasonable discretion, has reason to believe that said participant has not been licensed by the commission and to report said circumstances to the track steward.

(k) Upon the commission's request an applicant for an occupational license or a licensee holding such license shall furnish the commission records or information pertaining to [his] such applicant's service in the Armed Forces, to treatment for any physical or mental condition including confinement in any institution, to [his] such applicant's past or present financial condition, to [his] such applicant's past or present employment or any other information or records [which] that may be deemed necessary by the commission. Failure to furnish such records and information if available, and if not available to cooperate with and assist the commission in obtaining such records and information, shall be grounds for denial, suspension, or revocation or fine by the commission.

(l) Before the commission issues or reinstates an occupational license it may require as a condition for issuing or reinstating such license that the person involved produce proof:

(1) that if he or she is to be employed, that his or her proposed employer intends to so employ him or her upon issuance or reinstatement of the license; or

(2) that if he or she is to otherwise engage in harness racing that he or she is able, financially or otherwise, to so participate upon licensing.

[(m) Video lottery gaming employee license

(1) Definitions. As used in this Subchapter, the following definitions are applicable:

(a) Division. Division means the Division of the Lottery.

(b) Video lottery gaming employee. Video lottery gaming employee is any natural person who will be employed in the operation of or at a video lottery gaming facility, as such terms are defined by Part 2836 of Title 21 of the New York Code of Rules and Regulations.

(2) Video lottery gaming employee license. Notwithstanding any inconsistent provision of rule or regulation, the board shall deem an individual licensed as a video lottery gaming employee upon written notification from the Division that said individual will be issued a video lottery gaming license pursuant to Part 2836 of Title 21 of the New York Code of Rules and Regulations if licensed as a video lottery gaming employee by the board. Such written notification by the Division shall include applicant identifiers, a request for the issuance of a board video lottery gaming employee license and confirmation that a release of information to the board has been executed by the applicant. The board shall grant such license unless information existing and immediately available in records maintained by the board indicate that the applicant's financial responsibility, experience, character and general fitness are such that the participation of such person will not be consistent with the public interest, convenience or necessity and with the best interests of racing. This rule shall apply to those engaged exclusively in the employ of a video lottery gaming operation, provided however no employee engaged in the preparation, service and handling of food and beverages in the operation of a restaurant or a food or beverage dispensing facility at a track shall be required to hold an independent racing license for employment outside the video lottery gaming operation unless employed in the backstretch, stable area, paddock, racing strip, infield, mutuel area of a track, or other restricted area of the racetrack as designated by the board.

(3) Duration of license. Each such video lottery gaming employee license granted by the board, unless revoked for cause, shall be effective for a period equal to that of the license issued by the Division; provided that a licensed gaming employee who has timely and properly applied for a license renewal may continue to be employed under the expired license until such time as final action is taken on the renewal application. Such license shall also terminate upon the end of a licensee's video lottery gaming employment.

(4) Fees. Each applicant for a video lottery gaming employee license shall pay no annual license or renewal fee.]

§ 4101.25. Copy of the rules.

Copies of the [New York State Harness Racing Commission] commission rules and regulations are available at the commission office at each licensed harness race track[,] and [its] the commission's principal office.

§ 4101.27. Passes.

No track licensee shall issue any pass, card or badge entitling any person to free admission to [its] such licensee's track except in accordance with section [50 of chapter 254 of the Laws of 1940, as amended] 324 of the Racing, Pari-Mutuel Wagering and Breeding Law.

§ 4101.29. Time of last race.

Each night's racing program shall be scheduled to be completed prior to midnight. On Saturday night no race shall be called on the track [which] that cannot within reasonable expectation be completed before midnight and in no event may betting be conducted after 11:57 p.m. on said night and the presiding judge shall cause the machines or other devices used for wagering to be locked by such time.

§ 4101.36. Video equipment or motion picture equipment.

Corporations or associations licensed to conduct pari-mutuel racing shall at all times during races furnish and maintain at their tracks the necessary cameras and equipment, as approved and directed by the [board] commission, to produce videotape recordings or motion pictures of every race from start to finish. The videotape recordings, [or] films, or digital images shall be retained by the respective corporations or associations for a period of not less than 18 months, and shall at all times be available to the [board] commission.

§ 4101.38. Badge identification system.

(b) All persons present in the stable area shall wear in plain view the identification badge issued by the harness racing association or corporation except that in the case of [board] commission employees, each shall conspicuously wear his [board] commission identification credentials.

(c) No identification badge may be issued unless the recipient has a current [board] commission license and is duly listed on a trainer's stable registration or badge list or is listed on a race track approved list maintained by the association. Such a list may include, but need not be limited to track officials, track employees, vendors and concessionaires.

§ 4101.39. Disputes.

Disputes between a regional corporation and a track with respect to the purposes or objectives set forth in section 518 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be submitted in writing to the [board] commission for determination. The [board] commission may make [its] the commission's determination based on the submissions or may hold a hearing on the matter. The [board] commission's determination shall be final. Failure to comply with the [board] commission's determination by any party shall subject the person or persons responsible therefor to disciplinary action.

§ 4101.40. Internet posting to assist compulsive gamblers.

Each harness racing association[, which] that maintains a website on the Internet, shall post on [its] such association's home page a message designed to assist compulsive gamblers. Such posting shall include, but not be limited to a notice of the availability of one or more organizations approved by the Commissioner of Mental Health, pursuant to the provisions of section 7.09(g) of the Mental Hygiene Law, which offer assistance in dealing with problem of compulsive gambling.

§ 4101.41. Reimbursement for racing officials.

(a) All licensed racing corporations shall reimburse the racing and wagering [board] commission for the per diem cost to the [board] commission to employ one associate judge and the starter at and in relation to racing meetings conducted by the licensed racing corporation. Reimbursement shall include the per diem rate accorded to the title as well as fringe benefits and any indirect costs attributable to the position.

(b) The [board] commission shall notify each licensed racing corporation of the costs to be reimbursed prior to the beginning of each month.

(c) Payment of the reimbursement shall be made to the [board] commission no later than the last business day of each month and shall be accompanied by a report, under oath, on a form prescribed by the [board] commission. The report shall contain such information as the [board] commission may require.

(e) The [board] commission or [its] the commission's duly authorized representatives shall have the power to examine or cause to be examined the books and records of the corporations required to provide the reimbursement for the purpose of examining and checking the same and ascertaining whether the proper amounts are being paid.

(f) If the [board] commission determines that any reimbursement received by it was paid in error or exceeded the actual amount required, the [board] commission may cause the same to be refunded without interest out of the monies collected or credited to the racing corporation, provided an application [therefore] for such a refund is filed with the [board] commission within one year from the date the incorrect payment was made.

(g) If the [board] commission determines that any reimbursement received by [it] the commission was insufficient due to an increase in racing days or other circumstance, the [board] commission shall direct the racing corporation to provide for such reimbursement by notifying the racing corporation of the obligation and requiring payment by issuance of an assessment fixing the correct amount. Such assessment may be issued within three years from the filing of any report. Any such assessment shall be final and conclusive unless an application for a hearing is filed by the racing corporation within 30 days of the date of the assessment. The action of the [board] commission in making such final assessment shall be reviewable in the supreme court in the manner provided by and subject to the provisions of Article 78 of the Civil Practice Law and Rules.

PART 4102

Violations

§ 4102.1. Violators.

Any person licensed by the [New York State Harness Racing Commission] commission or any person violating any of [its] the commission's rules or regulations shall be liable to the penalties herein provided, unless otherwise limited in and by the rules and regulations of the [New York State Harness Racing Commission] commission.

§ 4102.2. Attempted violations.

Any attempt to violate any of the rules and regulations of the [New York State Harness Racing Commission] commission falling short of actual accomplishment, shall constitute an offense and shall be punishable as if consummated.

§ 4102.4. Unpaid fines.

Where monetary fines have been imposed and remain [un paid] unpaid, the violator shall be automatically suspended until the fine is paid in full.

§ 4102.5. Financial responsibility.

Any participant who shall accumulate unpaid obligations, or default in obligations, or issue drafts or checks that are dishonored, or payment refused, or otherwise display financial irresponsibility reflecting on his or her experience, character or general fitness shall be subject to refusal, suspension or revocation of license.

PART 4103

Programs

§ 4103.1. Contents.

(b) The program shall give the following particulars of at least the six most recent purse races of each horse:

(9) the name of the driver in each race and a notation by the letter "p" if [he] such driver has fewer than 25 pari-mutuel starts in his or her career;

(c) Each program shall carry the speed ratings of every pari-mutuel race track, the commission rules covering the start and breaking horses, an explanation of qualifying races and workouts, and the contents of sections 4122.19, 4122.20 and 4122.27[, infra,] of this Subchapter and a statement to read as follows: "Where a horse [which] that has gone offstride in a previous race is reported to have suffered broken equipment during such race, a symbol 'ex' is used. It is not

possible to reflect whether such broken equipment was a cause of or only the result of such horse's having gone offstride."

(g) As far as practicable matters of opinion shall not be included in the program. Those matters [which] that are opinion shall be so labeled.

§ 4103.8. Charts.

Each program shall print an official chart of the latest preceding night's results available. Such chart shall indicate any horses scratched and the reason therefor, broken equipment of a horse not causing a break, that a horse's performance has been materially affected because it choked down, the average weather temperature for the program, and other factual information [which] that may be deemed necessary by the commission from time to time.

PART 4104

Paddock

§ 4104.1. Requirements.

Every licensed harness racing association or corporation shall maintain a paddock or receiving barn from which all horses shall be raced. The paddock[,] or receiving barn shall be entirely enclosed with a man-tight fence, and the gate or gates through said fence shall be so manned and controlled that the general public shall be excluded therefrom. A horse ambulance, stone boat and blankets for the humane removal of horses injured on the race track shall be available for paddock use.

§ 4104.4. Blacksmiths.

During racing hours the racing association shall provide the services of a blacksmith, within or adjacent to the paddock. Said blacksmith shall be equipped with all the tools, materials and equipment necessary to replace and [refix] reaffix lost or dislodged shoes.

§ 4104.8. Admission to paddock.

(b) No person shall be admitted to the paddock except the owners, trainers, drivers and grooms of the horses actually competing in the races of the particular day or night, and such other persons as are specifically authorized by the [board] commission.

(c) A driver, trainer or groom, once admitted to the paddock shall not leave the same until the horse to which he or she is assigned shall have completed its race, returned to the paddock, and the race is declared official, except to warm up.

(d) An owner may enter the paddock once prior to the race in which [he] such owner has a horse programmed to start, but [he] shall leave the paddock prior to the post parade of the race following that in which [he] such owner's horse has competed. [Where] When an owner has two or more horses programmed to start [he] such owner may remain in the paddock or [he] may enter and leave the paddock once for each such horse before it races, provided [he] such owner shall leave the paddock prior to the post parade of the race following the last race in which [a horse of his has] such horses competed. Not more than two owners of a horse, exclusive of the driver, shall be entitled to enter the paddock for said horse.

(e) The track shall provide the paddock judge with a list of [its] such track's personnel eligible for admission to the paddock. The track shall keep a list of all persons entering and leaving the paddock on a form approved by the [board] commission.

§ 4104.10. Code of conduct.

(a) While in the paddock:

(1) An owner shall not engage in conversation with a driver or trainer who is not employed by [him] such owner for the owner's horse programmed to race the same day. A driver or trainer shall refuse to engage in conversation with any owner whom he or she is not representing in a race the same day.

(2) A driver or trainer shall not mark a program for anyone including his or her own owner.

(b) The [steward] presiding judge and paddock judge are authorized on any occasion to revoke or curtail the paddock privileges of an owner if, in the judgment of the [steward] presiding judge or

paddock judge, circumstances warrant such action in order to maintain proper decorum in the paddock.

§ 4104.12. Test for alcoholic consumption.

(a) Each track shall provide a device approved by the [board] commission in the paddock capable of measuring the presence of alcohol by weight within the blood. The [board] commission shall only approve the use of breath analysis instruments that have been approved by the National Highway Traffic Safety Administration. The use of such device shall be under the supervision of the [board] commission steward or [board] commission designee.

(b) Tests shall be administered to licensees and officials at such times as directed by the [board] presiding judge or [board] other commission designee[,] and shall [only] be administered by only qualified individuals employed by the [board] commission.

(d) A driver who is alcoholically impaired or who refuses to be tested shall not compete and may be fined or suspended. An official who is alcoholically impaired or refuses to be tested shall not be assigned [his] duties and a report thereof shall be made immediately to the [board] commission. Any other licensee who is alcoholically impaired or refuses to be tested shall not be permitted to continue to perform in a licensed capacity on that day. In the event of a violation of this section, the [board] commission may take such other action as is deemed appropriate, including fine, revocation, suspension or the conditioning of continued licensing upon the satisfactory enrollment in and completion of a state certified treatment program.

PART 4105

Officials of Race Meetings

§ 4105.1. Appointment of officials.

(a) The [chairman] executive director of the commission shall appoint the following State officials to act at race meetings: the presiding judge, associate judges, inspectors, and State racing officials.

(1) The following are State racing officials: presiding judges, associate judges, recording judges, starters, patrol judges, paddock judges, stress coordinators, who are the individuals who counsel licensees on behalf of the [board] commission regarding alcohol and drug

abuse, State veterinarians, and any others appointed by the [chairman] commission to act as the [board] commission's representative.

§ 4105.2. Administrative steward.

The administrative steward shall be the principal advisor to the commission on harness racing activities throughout the State. [He] The administrative steward shall exercise administrative supervision over all track stewards, State racing officials and association racing officials listed in paragraph (1) of subdivision (a), and subdivision (b), of section 4105.1 of this Part. [He] The administrative steward shall be responsible for keeping the track stewards, State racing officials and association racing officials informed of commission policies and procedures. Under direction of the commission, [he] the administrative steward shall have the authority to conduct inquiries and in connection therewith to issue subpoenas to compel the attendance of witnesses, and the production of all relevant and material reports, books, papers, documents correspondence and other evidence; and in connection therewith [he] the administrative steward shall have the power to administer oaths and examine witnesses and shall submit a report of all proceedings thereon. The commission may assign [him] the administrative steward to act in the place of a track steward or State racing official at any meeting for a specified period. In an emergency, created by the absence or disability of a track steward or State racing official, the administrative steward shall act in his or her place or appoint a substitute for the duration of the emergency. The administrative steward shall carry out any special duty assigned by the commission.

§ 4105.3. Track stewards and inspectors.

The commission shall assign a track steward and as many inspectors as it deems necessary to each race meeting. The track steward shall be the principal representative of the commission at such meeting. [He] The track steward shall have general supervision over all State and association racing officials, inspectors, licensees and appointees of the commission assigned or engaged at such meeting. [He] The track steward shall supervise the licensing procedure at such race track. [He] The track steward shall supervise the conduct of the racing and of the pari-mutuel department. If necessary, [he] the track steward may act in place of an official, or as an additional official or may appoint a substitute official at such race meeting. [He] The track steward shall have the authority to conduct inquiries and in connection therewith to issue subpoenas to compel the attendance of witnesses, and the production of all relevant and material reports, books, papers, documents, correspondence and other evidence. [He] The track steward shall have the power to administer oaths and examine witnesses and shall submit a report of all proceedings thereon. The inspectors assigned to each meeting shall carry out such duties as are assigned by the track steward.

§ 4105.5. Authority of the presiding judge.

The presiding judge at each meeting shall exercise authority and supervision over the State racing officials and over the association racing officials assigned to or employed at such meeting. In [his] the presiding judge's absence, or incapacity, the powers and duties of the presiding judge shall be exercised by the associate judge designated by the presiding judge for such purpose.

§ 4105.6. Power of judges.

Presiding judges and associate judges shall have authority to:

(b) Impose fines and penalties as prescribed by the [New York State Harness Racing Commission] commission rules and regulations.

(c) Decide any difference between parties to the race or any contingent matter [which shall] that may arise [which] that is not otherwise provided for in this Subchapter.

§ 4105.7. Special duties of presiding judge.

The presiding judge shall be responsible for the performance of the judges' duties by himself or herself and other officials under his or her supervision. In addition [he] the presiding judge shall supervise:

§ 4105.8. Duties of judges.

It shall be the duty of the judges to:

(e) Exclude from any race, a horse [which] that is improperly equipped, dangerous, unmanageable, unfit to race, or liable to cause accident or injury to another horse or driver in the race or [which] that has fallen upon the track during the program.

(k) Maintain communication with the patrol judges, by telephone from the time the starter picks up the field of horses until all horses pass the finish line. A written record is to be made of every

"break,"[,] violation of rules or incident reported by the patrol judges. A mechanical recording shall be made and preserved of all communications between the patrol judges and the main judging stand at all, other than limited, pari-mutuel meetings.

§ 4105.9. Duties of paddock judge.

It shall be the duty of the paddock judge to:

(a) Supervise the assembling of the fields of horses in the race on the track for post parades in accordance with the schedule given to [him] the paddock judge by the presiding judge.

§ 4105.12. Duties of the recording judge.

It shall be the duty of the recording judge to:

(a) Maintain all official race summaries, records, suspensions and fines; prepare and serve all notices relating thereto and provide daily copies thereof to the [Harness Racing Commission] commission, the licensed harness race track and to all stewards at licensed harness race tracks in New York State.

(b) Check the eligibility of all horses entered in races as well as the ownership and management [thereof] of such horses.

(e) Maintain a list of all owners, trainers and drivers at each race meeting together with their [New York State Harness Racing C] commission license numbers, and keep such list current.

§ 4105.14. State veterinarian.

(a) The State veterinarian, unless otherwise directed by the commission, shall devote his or her full time to the performance of the duties of [his] the office of State veterinarian and shall not render [his] professional services to any horseman on the grounds to which [he] the State veterinarian is assigned during the course of the meeting.

(b) It shall be the duty of the State veterinarian to:

(8) Approve for subsequent declaration all horses [which] that have been scratched from a race for unfitness when such horse has become fit to race.

§ 4105.15. Wagering or interest by officials.

No person employed or appointed by the [Harness Racing Commission] commission or in any way representing the commission shall place wagers upon the outcome of any harness horse race conducted at a track at which pari-mutuel betting is conducted by any licensee of the commission, or have or maintain any interest, direct or indirect, in a horse participating at any licensed meeting in the State of New York.

§ 4105.16. Wagering or interest by certain track employees.

No employee of a licensed harness race track whose duties include the classification of horses shall place wagers upon the outcome of any harness horse race conducted at the track where he or she is employed, nor shall [he] any such employee directly or indirectly be the owner of any horse racing at such meeting[, nor shall he] or participate financially, directly or indirectly, in the purchase or sale of any horse racing at such meeting.

PART 4106

Identification of Horses

§ 4106.4. Reports on ownership and control of horses.

(a) Within 72 hours, or shorter period if so directed, after arrival of any horse at a race track, the person in charge of such horse shall file a statement with the commission steward, in form satisfactory to the commission, listing the following information:

(3) Each groom or other employee employed for such horse with address and commission license number. If any such employee is thereafter discharged or leaves his or her employment, such fact shall be reported to the commission steward within 24 hours.

(c) The trainer of a horse shall file a statement with the recording judge, designating an assistant to assume [his] such trainer's responsibility when such trainer will not be available for a period exceeding one day.

§ 4106.5. Identification of horses.

No horse shall be permitted to race [which] that has not been registered and tattooed and/or freeze branded in a manner approved by the [board] commission. Before each start such horse's tattoo, or freeze brand number shall be read and verified and, if thereafter tested pursuant to section 4120.1 of this [Subtitle] Subchapter, such number shall again be read and verified.

§ 4106.8. Nerved horses—restrictions.

(a) Any horse that has been nerved (neurectomy, cryosurgery, stunning) at or above the fetlock (i.e., Median nerve, Ulnar nerve, Volar nerve, or the Plantar nerve) shall not be permitted to race at tracks under the jurisdiction of the [board] commission.

§ 4106.9. Death of a horse.

(a) Upon the death of a horse on any part of the grounds of a harness race track, the remains of the deceased horse shall not be removed without:

- (1) the execution of a death certificate by a [board] commission-licensed veterinarian, in a form as the [board] commission may prescribe, and containing such information as the [board] commission may require;
- (2) the filing of said death certificate with the presiding judge or his or her designee; and
- (3) the written consent of the presiding judge or his or her designee, authorizing the removal of the remains.

(b) Upon the death of a horse on the grounds of a harness track, the [board] commission at [its] the commission's discretion through [its] the commission's agents, may take control of the bodily remains of the deceased horse; and/or order, direct and cause an appropriate necropsy to be conducted on the remains of said horse, in order to determine the cause of death. The necropsy shall be conducted by a qualified veterinarian at a facility designated by the [board] commission.

PART 4107
Racing, Farm or Stable Names

§ 4107.2. Limitations.

(a) No horse shall be entered or started that is owned by 35 or fewer owners unless all such owners are licensed. If a horse is owned by more than 35 owners, then only those individuals having a three percent or greater property interest in such horse shall be required to be licensed as an owner. [Not more than 35 individuals may participate in the ownership, whether corporate or otherwise, of any horse, and every such individual must be licensed by the board. For the purposes of determining this number, the following blood relatives of a person in interest: father, mother, brother, sister, aunt, uncle, grandparents, niece or nephew; or spouse of such person or such relative thereof, shall be regarded collectively as one shareholder, partner or member as the case may be.]

(b) No more than one stable may be registered under the same name. The commission may reject any name [which] that is misleading to the public[,], or unbecoming to the sport.

§ 4107.4. Leases.

The lessee of a horse shall file with the eligibility paper of such horse a copy of the leasing arrangement [which] that shall contain the name of the horse, the name and address of the owner, the name and address of the lessee, the stable name, if any, of either party and the terms of the lease. Each lessor and lessee must obtain an owner's license from the commission.

§ 4107.5. Corporate ownership.

If a horse is owned by a corporation, all officers, directors, and persons owning any of the capital stock, or beneficial interest therein, shall be disclosed to, and licensed by the commission, except that if there are more than 35 individual owners of a horse then only those owners having a three percent or greater property interest in the horse shall be required to be licensed as an owner.

PART 4108

Classification and Eligibility

§ 4108.2. Classified races.

(a) Classification by racing secretary. The racing secretary, according to [his] the racing secretary's judgment, shall assign horses eligible for classification by gait to not more than the following classes based upon ability as demonstrated by past performances: FFA (Free-For-All), JFA (Junior-Free-All), AA, A, B, C, D, and where feasible, into not more than three subclasses designated by number within classes AA, A, B, C, and D. Such assignment shall be made when a horse is first accepted for racing at the track and all such assignments and changes thereof shall be posted in the declaration room.

§ 4108.5. Two-year-old distances; heats.

No two-year-old shall be permitted to start in any dash, heat or race exceeding one mile[;], nor shall [it] a two-year-old be permitted to start in more than two heats, dashes, or races in any single day [except where provided in conditions for races closed prior to January 1, 1971].

PART 4109

Claiming Races

§ 4109.1. Claimant.

(b) Notwithstanding the provisions of subdivision (a) of this section, a person who has not previously been licensed in any state as an owner, upon application for an owner's license in this State made 72 hours prior to the intended claim, may apply to the presiding judge for a certificate authorizing [him] such person to claim one horse during the next 30 racing days following the issuance of the certificate. The certificate shall be valid for claiming only at the track at which it was issued. Such a certificate shall be issued by the presiding judge only after [he] the presiding judge has been advised by the [board] commission that from the face of the application the applicant appears to be qualified to be licensed and only after the applicant has designated a licensed trainer who will be responsible for any horse the applicant may claim.

§ 4109.2. Prohibitions.

(a) No person may claim his or her own horse or a horse trained or driven by himself or herself or his or her trainer.

(b) No person may claim more than one horse in a race nor may any person file more than one claim in a race either for himself or herself or acting as agent for another.

(d) No owner may cause his or her horse to be claimed directly or indirectly for [his] such owner's own account.

§ 4109.3. Claiming procedure.

(j) Affidavit by claimant. The judges may require any person making a claim for a horse to make affidavit that [he] such claimant is claiming said horse for [his] such claimant's own account or as authorized agent and not for any other person.

§ 4109.7. Certain voidable claims.

(a) *Post-race positive.* Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a post-race positive test, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by [his] such trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or [his] such claimant's trainer.

(b) *Erythropoietin and [darbepoietin] darbepoetin.* Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the antibody of erythropoietin or [darbepoietin] darbepoetin was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by [his] the claimant's trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or [his] the claimant's trainer.

(c) *Reserpine and fluphenazine.* Notwithstanding any inconsistent provision of Part 4120, should the analysis of a post-race blood or urine sample taken from a claimed horse result in a

finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by [his] the claimant's trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or [his] the claimant's trainer.

(d) *Upper neurectomy or unreported lower neurectomy.* Where an upper neurectomy as defined in subdivision (a) of section 4025.31[(a)] of this [Title] Subchapter or a lower neurectomy [which] that has not been reported as required in subdivision (b) of section 4025.31[(b)] of this [Title] Subchapter has been performed on a horse prior to the race in which it is claimed, the claimant shall have the option to void said claim upon written notice to the judges from the claimant or [his] the claimant's trainer given within 10 days following the date of the claim.

(e) *Undeclared pregnant mare.* Where a pregnant mare has been claimed which pregnancy has not been disclosed as required in section 4038.17 of this [Title] Chapter, the claimant shall have the option to void the claim upon written notice to the judges from the claimant or his or her trainer within 10 days following the date of the claim.

(f) *Excess TCO2 levels.* In the event that a claimed horse tests in violation of [Rule 4120.13] section 4120.13 of this Subchapter, and it is not determined that such TCO2 level is physiologically [normal] natural for that particular horse, the claimant or [his] the claimant's trainer shall have the option to void the claim upon written notice to the stewards within five days of receiving notice of the violation.

PART 4110

Time and Records

§ 4110.3. Certification of time.

Each manual timer and the operator of the electrical timer shall record his or her or its time for each quarter, or parts thereof, in minutes, seconds and fifths of seconds. Each such timer and operator of said electrical timer shall sign the judges' book for each race certifying the official time of the race. No unofficial timing shall be admitted to record.

§ 4110.4. Time of winner.

The leading horse shall be timed and [his time] only such horse's time shall be announced. No horse shall obtain a win race record by reason of the disqualification of another horse unless a horse is declared a winner by reason of the disqualification of a breaking horse on which [he] such horse was lapped.

PART 4111

Declarations to Start and Drawing Horses

§ 4111.1. Form of declaration.

All declarations must:

(c) name the driver and [his] such driver's colors or state "no driver" if none is yet contracted;

(g) be signed by the owner or [his] the owner's authorized agent, or upon satisfaction of the requirements of section 4111.34 of this Part by the racing secretary;

§ 4111.7. General procedures and restrictions.

(c) Declarations to start a horse [which] that is scheduled to start in any other race (except as also eligible) may only be accepted by permission of the presiding judge. Such permission shall not be given, however, when such horse is scheduled to start in a claiming race. In no event may a horse start in more than one race per day.

§ 4111.9. Preference.

(a) Preference shall be given in all overnight purse races according to a horse's last previous purse race during the current year, but a horse of the classification offered shall in all events be preferred over horses of slower classification. The preference date on a horse that has been drawn to a race and been scratched is the date of the race from which [he] the horse was scratched. In order to insure proper diversification of racing fields in classes having less than 25 horses available for competition, the racing secretary may consider two consecutive race dates in the class of equal preference.

(c) A horse [which] that has last raced at a fair meeting shall carry the preference date of such fair race.

§ 4111.12. Programming of drivers.

(a) Drivers may be nominated or changed after declaration by an owner or [his] the owner's agent or [his] trainer until "programming time["], the day and time established by the presiding judge at the beginning of the meeting and posted in the declaration room. At programming time it shall be the responsibility of the trainer to make any nomination or change necessary to complete the program after which such nominations or changes shall be made by the judges. Failure to make a necessary nomination or change by programming time shall subject the trainer to fine and/or suspension.

§ 4111.13. Judge's scratch.

After declarations to a race have closed no horse may be withdrawn except by permission of the presiding judge. The presiding judge acting on [his] personal knowledge, belief or discretion may order a horse scratched from a race at any time prior to the actual start of the race, if [he] the presiding judge has reasonable grounds to believe that any rules have been violated by any person connected with such horse.

§ 4111.19. Void entries.

All entries not governed by published conditions shall be void and no deviation from such published conditions shall be permitted. Any nominator who is allowed privileges not in accordance with the published conditions of the race, or [which] that are in conflict with this Subchapter, shall be debarred from winning any portion of the purse.

§ 4111.20. Nominator's guarantee.

A nominator is presumed to guarantee the identity, eligibility and accuracy, of his or her nominations and declarations and if given incorrectly [he] such nominator may be deemed guilty of a violation of this Subchapter and any winning shall be forfeited and redistributed to eligible entries. A person obtaining a purse or money through fraud or error shall surrender or pay the same to the racing association conducting the meeting and such purse or money shall be awarded to the party justly entitled to the same. However, where an ineligible horse races as a result of the

fault of the racing secretary, the track shall reimburse the owner for the resultant loss of winnings.

§ 4111.21. Transfer to eligible class.

A horse entered in a class to which [it] such horse is ineligible may be transferred to any event to which [he] such horse is eligible at the same gait.

§ 4111.25. Withdrawals.

Where subsequent payments are required, a complete list of those withdrawn or declared out shall be made within 15 days after payment was due and the list filed with the [New York State Harness Racing Commission] commission and mailed to every nominator.

§ 4111.31. Fraudulent transfer of horse.

(b) Anyone transferring any ownership interest in a horse after the commission's refusal to license [him] such person or suspending or revoking [his] such person's license shall be prohibited from thereafter regaining any ownership interest in said horse.

§ 4111.32. Withholding of purse.

A licensed harness race track shall be warranted in withholding the premium or purse of any horse, if information establishes that the declaration of any horse was fraudulent or that the horse was ineligible. Such premium shall be withheld by the licensed harness race track pending decision of the [New York State [Harness Racing] Commission] commission concerning such fraud or ineligibility.

§ 4111.34. Declarations by racing secretary.

A racing secretary may declare a horse to race provided [he] such racing secretary has been specifically so requested by a person known to [him] such racing secretary to be authorized to make the declaration. To complete such declaration, the racing secretary must deposit it in the declaration box prior to the closing time for declarations with an attached form signed by [him] such racing secretary certifying that [he] such racing secretary was so requested, the time of such

request, by what means the request was made, and that [he] such racing secretary knows the person so requesting was authorized to make such request. The request must relate to a specific race and may not be general in nature.

PART 4113

Steward's List and Unqualified Horses

§ 4113.2. Steward's list.

(f) A horse [which] that has been placed on the steward's list three times during a season may be barred from further declaration for the balance of the season.

(g) When a horse is released from the steward's list, the date of such action[,], and the signature of the presiding judge or [his] the presiding judge's agent shall be recorded on the eligibility papers of the horse.

(h) A horse on the steward's list at one track shall be placed on the steward's list at any other track to which [it] such horse may move. But the fact that a horse has not been placed on the steward's list at one track shall not prevent [his] such horse being placed on the steward's list at any other track to which it may move based on [his] such horse's past performance, in the judgment of the presiding judge.

§ 4113.3. Reasons for placing a horse on the steward's list.

A horse shall be placed on the steward's list at each track for the following reasons:

(a) [it] such horse has a tube in its throat;

(b) [it] such horse is dangerous or unmanageable. Such horse must work out before the judges on the main track, secure permission of the judges to qualify and then qualify in two consecutive qualifying races before release from the steward's list;

(c) [it] such horse is sick, lame or unfit to race. Such horse must perform before the State veterinarian and be certified fit to race by the State veterinarian before release from the steward's list;

(d) [it] such horse is unable to start satisfactorily behind the starting gate. Such horse must work out behind the starting gate, be approved by the starter and then qualify once before release from the steward's list;

(e) [it] such horse has been high nerved;

(f) [it] such horse has performed poorly. Such horse shall qualify once before release from the steward's list;

(g) [it] such horse has tested positively for a drug, any substance prohibited by section 4120.17 of this Subchapter, or excess TCO2. Such horse shall qualify in a workout and thereafter test negative for drugs (and in compliance with the TCO2 thresholds, if applicable) before release from the steward's list; or

(h) [it] such horse has been the subject of a finding by the laboratory that the antibody of erythropoietin or [darbepoietin] darbepoetin was present in the sample taken from the horse. Such horse shall test negative for the antibodies of erythropoietin or [darbepoietin] darbepoetin in a test conducted by the laboratory before release from the steward's list.

§ 4113.5. Unqualified horses.

(a) A horse shall be deemed unqualified and must qualify once before being allowed to start in any overnight pari-mutuel event for the following reasons:

(1) The horse does not show a charted line of a current performance meeting the qualifying standards at the track for the class of race. Current performance shall be defined as a start within 30 days of the date of the race to which declared. A performance on or after September 1[,] of the preceding year shall be considered current for a horse making [its] such horse's first start of the current year before June 1 at Vernon Downs, Saratoga Raceway, Monticello Raceway and Goshen Historic Track. Official workouts shall be acceptable as qualifying performances for this paragraph for horses with previous satisfactory races.

(i) Notwithstanding the requirements stated in Paragraph 1, during the period of April 4, 2012 through May 4, 2012 inclusive, "current performance" shall be defined as a start within 60 days of the date of the race to which declared.

PART 4114

Cancellation of Program

§ 4114.1. Program cancellation

No racing program or any part of a racing program may be cancelled without the consent of the track steward. In the event any heat or race of a program is cancelled for any reason, the

remainder of such program may be cancelled by the track steward, if in [his] the track steward's judgment such action is warranted.

PART 4115

Starter and Starting

§ 4115.2. Powers of starter.

The starter shall have complete control over all horses participating in the racing program from the formation of the post parade until the word "go" is given. [He] The starter shall have authority to fine drivers not to exceed \$50 for violation of any of the following rules of the start:

§ 4115.3. Duties of the starter.

The starter shall:

(d) notify the judges and the drivers of the penalties imposed by [him] the starter;

(e) make recommendations to the presiding judge for the placing on the steward's list of all horses [which] that do not perform properly at the start;

(f) conduct such school sessions as are necessary to train horses to the method of starting adopted at the race track over which [he] such starter presides.

§ 4115.5. Operation of starting gate.

(a) Such starting gate shall be operated under the control and direction of the starter licensed and designated by the commission. The licensed race track may employ additional persons to assist the starter in the performance of [his] the starter's duties and such personnel shall be licensees of the commission. The starter shall have control of the horses from the formation of the parade until [he] the starter gives the word "go."
[.]

(l) A recall shall be [signalled] signaled by the flashing of a light on the starting gate plainly visible to the drivers, and by sounding a claxon or horn or other distinctively audible signal. Upon making such signals the starting gate shall proceed out of the path of the horses.

(m) In the event of a "recall,"[,] all the horses in the race shall return immediately to the quarter pole to form for a fresh start.

(o) No persons shall be allowed to ride in the starting gate except the starter and [his] the starter's driver or operator unless permission has been granted by the track steward in charge of the race meeting.

§ 4115.7. Starting without a gate.

The horses shall be allowed two warm-up scores, unless otherwise directed by the starter, before being called to form a parade. The starter shall have full control of the horses from the formation of the parade until [he] the starter gives the word "go."[,] The starter shall be stationed at or near the starting point and shall give the word "go" as close as possible to such starting or release point. All drivers shall follow the instructions of the starter as closely as possible and shall avoid unnecessary delay in the parade and scoring. If the word "go" is not given, all the horses in the race shall immediately turn on signal and jog back to their parade positions for a fresh start. There shall be no recall after the starting word has been given.

§ 4115.8. Substitution of driver.

The starter may exclude a driver who fails or refuses to obey [his] the starter's instructions for the heat or race. The starter may fine such driver not to exceed \$50 and may order a substitute driver.

§ 4115.12. Handicap races.

Handicap races shall be started with a starting gate, unless permission to start handicap races by using snap barriers or walk-up starts, has been approved by the track steward. When snap barriers are used, all such barriers shall be sprung simultaneously with the announcement of the word "go."[,]

PART 4116

Drivers

§ 4116.1. Application for license.

Every person desiring to drive a harness horse at a race meeting licensed by the [New York State Harness Racing C]commission shall be required to obtain a license from the commission. Such application shall be on forms provided by the commission. Applications may be filed at the commission office or with the track steward at a race track. The fee for an annual driver's license shall be three dollars and shall be paid at the time of application [therefor].

§ 4116.2. Qualification for driver's license.

(a) Every applicant for a driver's license shall satisfy the commission, in such manner as [it] the commission may prescribe, that such applicant:

- (1) [that he] has had at least one year's training experience and has demonstrated the ability to drive;
- (2) [that he] is knowledgeable of and conversant in the training and driving of harness horses;
- (3) [that he] is physically and mentally competent to drive;
- (4) [that he] is familiar with the rules of racing;
- (5) [that he] has a minimum of [20-40] 20/40 vision in one eye, corrected, according to certification by a licensed optometrist, oculist or ophthalmologist.

(b) No person shall be permitted to drive at a race meeting licensed by the [New York State Harness Racing C]commission without a New York State license[, but the]. The track steward or presiding judge at any race meeting may refuse to permit any licensed driver to compete in a race if, in the judgment of such official, [he] such driver is unfit, unqualified, or too inexperienced to drive. Such official may require the driver to submit to a physical examination under conditions specified by the official.

§ 4116.3. Officials may not drive or enter horses.

(a) No officer, director or executive, or spouse thereof, of a track shall drive a horse at such track except at limited [parimutuel] pari-mutuel meetings or in nonbetting races[;], nor may a horse be entered in which [he] such person has any beneficial interest in any overnight event at said track.

§ 4116.4. Safety helmets.

No one will be permitted to jog, train, warm up, or drive a horse at any time on the premises of a harness race track unless [he] such person is properly wearing a protective safety helmet[, either] approved by either the Snell Memorial Foundation or the United States Department of Transportation. The United States Department of Transportation standards are reprinted in title 49 of the Code of Federal Regulations, chapter 5, section 571.218 (49 CFR, 571.218). The Snell Memorial Foundation standards are contained in the publication entitled, Snell Memorial [1984] 2000 Standard For Protective Gear, available from the Snell Memorial Foundation, 3628 Madison Avenue, Suite 11, North Highlands, CA 95660 [Box 733, Wakefield, RI 02880] or at www.smf.org/stds. Both standards are on file in the office of the [Secretary to the New York State Racing and Wagering Board] commission, located at [400 Broome Street, New York, NY 10013] One Broadway Center, Schenectady, NY 12305-2553.

§ 4116.5. Drivers' colors.

No driver or trainer shall be allowed to drive in any race or public performance or to otherwise appear on the race track during the racing program unless wearing his or her own or his or her owner's registered colors, and no driver may appear in colors registered in the name of another, without the special permission of the presiding judge. No driver or trainer wearing colors may appear at any betting booth or window at a race track, or at any bar or restaurant dispensing alcoholic beverages. [After June 30, 1965,] "C[c]olors" shall [be deemed to] include white trousers and rain gear of a type approved by the commission.

§ 4116.6. Drivers' meetings.

(c) No driver will be permitted to drive unless [he] such driver shall have attended such meeting or have met with the officials [thereafter] by appointment and at their convenience after such meeting.

§ 4116.7. Examination of license.

No driver will be permitted to drive in a race at a licensed harness racing meeting until [he] such driver has presented his or her [New York State Harness Racing Commission] commission driver's license to the recording judge for examination.

§ 4116.8. Duties of drivers.

(a) If the judges determine that a programmed driver is unreliable, unfit or incompetent, or if [he] such programmed driver refuses to comply with the direction of the judges, or is reckless or unmannerly in his or her conduct, [he] such programmed driver may be removed.

(b) It shall be the duty of each driver to report to the paddock judge at least 10 minutes prior to the opening of wagering on the race in which [he] such driver is scheduled to drive and thereafter to be present in the paddock in fit condition to drive 15 minutes prior to post time of such race.

(1) Should a driver carelessly fail to fulfill such duty, [he] such driver shall be subject to fine or suspension. Carelessness shall be presumed if a driver fails to make timely appearance to drive after [he] such driver has competed at another track the same day.

(2) Should a driver willfully fail to fulfill such duty, [he] such driver shall be suspended.

§ 4116.9. Suspension or revocation of drivers' license.

Without limiting the generality thereof, the license of any driver may be suspended, revoked, or money fine may be imposed, at any time for:

(a) Violation of any rule of the [New York State Harness Racing Commission] commission.

(b) Failure to obey the instructions of a racing official appointed or designated by the [New York State Harness Racing Commission] commission.

(d) Unless otherwise ordered where a suspension is for a driving violation and does not exceed in time a period of five days, the driver may complete [his] the driver's engagements on horses drawn to start after which time the suspension shall begin. After said suspension has begun [said] such driver may drive horses in early closing events, stakes and featured overnight events but the suspension shall be extended one day for each date [he] such driver drives such races.

§ 4116.12. Qualification for trainer's license.

Every applicant for a trainer's license shall satisfy the commission in such manner as it may prescribe that [he] such applicant has had at least one year's training experience under a recognized trainer and has demonstrated the ability to train, that [he] such applicant is knowledgeable of and conversant with training of harness horses, that [he] such applicant is physically and mentally competent to train, and that [he] such applicant is familiar with the rules pertaining to trainers and training.

PART 4117
Racing and Track Rules

§ 4117.2. Failure to finish.

(c) Any horse or sulky[, which] that shall leave the course, is disqualified and ruled out; except that, in races contested at a track without a continuous hub rail, if, in the opinion of the judges, a horse or sulky is forced off the course as a result of the actions of another horse or driver, or as a result of a break from [its] such horse's gait, the judges may determine the appropriate order of finish. Any horse or sulky [which] that may partly leave the course shall be disqualified one or more positions, as appropriate, if, in the opinion of the judges, such occurrence has had a material effect on the finish of the race.

§ 4117.3. Use or removal of hobbles.

(a) [Having] If a horse has warmed up in hobbles or raced one heat of a race in hobbles, [they] such hobbles shall not be removed from a horse or altered[,] without permission of the presiding judge.

(b) A horse[,] habitually wearing hobbles shall not be permitted to start in a race without them except by permission of the presiding judge. [and a] 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 for the addition of removal or alterations in hobbles may be deemed to be a fraud in racing.

§ 4117.5. Dismissal of drivers.

(b) All complaints by drivers of any misconduct or other driving rule violation shall be made to the official designated for such purpose by the presiding judge unless the driver is prevented from doing so by reason of an accident or injury. After making known [his] a desire to enter a claim of foul or other complaint and against whom he or she is lodging [his] such objection, [said] such driver shall immediately go to the paddock and proceed to the telephone to discuss with the judges his or her reasons for making such claim, objection or complaint. The judges shall not cause the "official" sign to be displayed until such claim, objection or complaint [shall have been] is considered.

§ 4117.8. Whips, goads and head poles.

(a) Drivers may carry a whip [which] that shall not exceed three feet nine inches in length plus a snapper no longer than six inches.

§ 4117.10. Breaking horses.

(a) When a horse breaks from its gait, the driver shall:

(3) pull [his] the horse to its proper gait;

(b) If there has been no failure on the part of the driver in complying with paragraphs [(a)](1) through (4) of subdivision (a) of this section, the horse shall not be set back unless a contending horse on [his] its gait is lapped on the hind quarter of the breaking horse at the finish.

§ 4117.12. Setting horses back.

(b) If the judges believe a driver allows or causes [his] such driver's horse to break for the purpose of fraudulently losing a race, [he] such driver shall be subjected to the penalties prescribed herein.

§ 4117.16. Report of interference.

It is the duty of every driver to report to the official designated for such purpose by the presiding judge, as promptly after the conclusion of a race in which [he] such driver has participated as possible, any interference to himself or herself or his or her horse by another horse or driver during a race. Failure to report such interference may be the subject of disciplinary action.

§ 4117.17. Open stretch racing.

(a) Where a racetrack uses an open stretch in which the line of pylons in the homestretch delineating the inner edge of the racing surface has been moved approximately eight feet further inside to create an "inner lane,"[,] the following provisions shall govern racing in the open stretch[;]:

PART 4118

Purses and Conditions

§ 4118.1. Purses shall follow race results.

(b) *Payment of purses.* Unless otherwise directed by the presiding judge or other authorized representative of the [board] commission, all purse checks shall be mailed to the owners of horses earning such purses within 72 hours after the time the race was run.

§ 4118.2. Deductions.

(a) At a licensed track where there is no provision relating to purse deductions for drivers in an agreement between such track and [its] such track's horsemen's representative, each driver shall be entitled to five percent of the purse earned by any horse [he] such driver drives at such track, which amount shall be deducted from such purse otherwise payable to the horse's owner (which term shall include lessee, nominator and breeder) and shall be payable directly to said driver by such track at such time as such purse payment is authorized. In the event a purse is thereafter declared forfeit or ordered redistributed, such action shall in like manner affect such five percent allocation, and if previously paid, the driver recipient shall promptly repay such sum to such track. Any private agreement with a driver relating to driver compensation shall not affect the track's responsibility herein to pay said driver's five percent allocation. At a licensed track where there is any provision relating to purse deductions for drivers in an agreement between such track and [its] such track's horsemen's representative, this rule shall not apply.

(c) At a licensed track where there is no provision relating to purse deductions for trainers, in an agreement between such track and [its] such track's horsemen's representative, each trainer shall be entitled to five percent of the purse earned by any horse [he] such trainer trains at such track, which amount shall be deducted from such purse otherwise payable to the horse's owner (which term shall include lessee, nominator and breeder) and shall be payable directly to said trainer by such track at such time as such purse payment is authorized. In the event a purse is thereafter declared forfeit or ordered redistributed, such action shall in like manner affect such five-percent

allocation, and if previously paid, the trainer recipient shall promptly repay such sum to such track. Any private agreement with a trainer relating to trainer compensation shall not affect the track's responsibility herein to pay said trainer's five percent allocation. At a licensed track where there is any provision relating to purse deductions for trainers in an agreement between such track and [its] such track's horsemen's representative, this rule shall not apply.

§ 4118.3. Racing inducements.

No track shall give, promise, loan or offer to any horseman any consideration or thing of value to secure the appearance of a horse or horseman at a track for the purpose of participating in racing except:

(b) round trip transportation of a horse, [its] such horse's regular driver and groom, and one ownership interest to and from a track for an international championship and a reasonable subsistence allowance for said persons during the period they are restricted from racing at another track as provided for in section 4118.9 of this Part. If such transportation and subsistence allowance are furnished by a track the cost thereof may be charged by the track, if the parties so agree, against purse winnings, except from said international championship, to the extent of said cost; provided[,] that the track in being reimbursed does not receive more than one half of each said purse won in other races. However, such cost may not be charged against an owner for failing for good cause to enter or start [his] such owner's horse in any race; and

§ 4118.7. Incomplete finish.

If there [be] is any premium for which no horse has maintained a position either through failure to start or to finish or through disqualification, [it] such premium shall go to the race winner.

§ 4118.9. Restraints on racing.

No track may enter a contract [which] that restricts the appearance of a horse at any other track, except that a track, in consideration for transportation afforded to participate in an international championship race may bind a horse to appear and start (if at all) at its track only for such race and a period of 10 consecutive days prior to and 15 consecutive days subsequent to such race.

PART 4119

Decorum

§ 4119.1. Conduct.

All licensees of the [New York State Harness Racing C]commission are required to conduct themselves in a forthright, gentlemanly manner at all times while on or near the premises of a licensed harness race track during the operation of a licensed harness race meeting.

§ 4119.2. Profanity.

No licensee of the [New York State Harness Racing C]commission shall use improper language or otherwise abuse any official, appointee, representative or employee of the [New York State Harness Racing C]commission, or any person acting under the orders or rules of the [New York State Harness Racing C]commission.

§ 4119.3. Assault.

If any owner, driver, trainer or attendant of a horse, or any other licensee connected with the operation of a licensed harness race meeting at any time during said meeting, either on or off the grounds of a licensed race track shall commit an assault or battery, or attempt an assault or battery or threaten to do bodily harm to any person or persons connected in any way with such race meeting, [he] such person shall be subjected to the penalties prescribed by this Subchapter.

§ 4119.5. Wagers by horsemen.

No owner, trainer, driver agent, employee or attendant of a horse shall bet or cause any other person to bet on [his] such person's behalf on any other horse in any race in which there shall start a horse owned, trained or driven by [him] such person, or which [he] such person in any way represents or handles or in which [he] such person has an interest. No such person shall participate in exacta, quinella, superfecta or triple wagering on a race in which such horse starts.

§ 4119.6. Divided interest.

No driver shall drive a horse in a race in which there shall start another horse [which he] that such driver in any way represents or handles or in which [he] such driver has an interest unless coupled as an entry.

§ 4119.7. Misconduct and association with undesirables.

(b) The commission may impose the penalties as prescribed by law if [it] the commission finds that the experience, character or general fitness of any person is such that [his or their] the participation by such person in harness racing or related activities would be inconsistent with the public interest, convenience or necessity or with the best interests of racing generally.

(d) Duty to give evidence. It shall be the duty of each licensee to report promptly when requested or ordered to do so by any official of the commission in furtherance of an investigation or hearing and to testify under oath concerning any facts within [his] the licensee's knowledge and produce any books, records, written matter or other evidence within [his] the licensee's possession or control relevant to such matter.

§ 4119.8. Undesirable persons.

Any person whether a licensee, participant or patron whose conduct is deemed detrimental to the best interest of harness racing or who is deemed an undesirable person may be expelled from the track. In this regard the track, on [its] such track's own initiative, or upon request of the commission or [its] the commission's representatives, shall take immediate steps by whatever means are reasonably required to expel such person. Acts deemed undesirable shall consist of, but not be limited by, the following:

(g) failure to appear when directed to do so by any official of the commission in furtherance of an investigation or hearing and to testify under oath concerning any facts within [his] such person's knowledge and produce any books, records, written matter or other evidence within [his] such person's possession or control relevant to such matter.

In addition, a person who has been convicted of a crime involving moral turpitude, or who has been convicted of bookmaking or other form of illegal gambling, or who has been adjudged by any court, [State] state commission or other governing body guilty of any fraud in connection with racing or any athletic contest, shall be deemed an undesirable person and shall be subject to expulsion as provided in this section. Nothing contained in this section shall diminish the right of any track to exclude any person as a patron or otherwise without reason, provided such exclusion is not based upon race, creed, color or national origin.

§ 4119.9. Prohibited acts.

(a) No licensee of the [New York State Harness Racing Commission] commission or any other person shall commit any act, or conspire to commit any act, [which] that, though not specified in this Subchapter, constitutes conduct detrimental to the best interests of racing or is in its nature fraudulent or corrupt or injurious to the character of the turf. Any such act or attempt, or conspiracy shall constitute a violation of this Subchapter and shall subject the licensee or such other persons to the penalties prescribed herein.

§ 4119.11. Use of drugs.

(a) No person while on the grounds of a licensed track, who is licensed as trainer, driver, assistant trainer, groom, marshal, driver of the starter's car, nor anyone who is driving a horse in a race, a warm-up for a race or driving behind a horse anywhere on the grounds, nor anyone who aids or participates in the preparation of a race or a horse for a race, or is licensed by the [board] commission, shall have present within the body of such person any controlled substance listed in schedules I through V of section 3306 of the Public Health Law, unless advance permission to drive a horse or participate in any manner in a race, while using such substance, pursuant to prescription by a licensed physician, has been granted in writing by the [board] commission.

(b) Every such person, which includes all licensees, shall, upon the request of a presiding or associate judge or paddock judge, deliver a specimen of urine or subject himself or herself to the taking of a blood sample by a licensed physician, as directed by such official. Failure by such person to provide such sample as so directed shall be a violation of these rules and subject such person to fine and license suspension. In addition, in no event shall any person drive or participate in any manner in the administration of or in any race, or the preparation of a horse for a race, on the day such sample is requested until such specimen has been taken as directed.

(c) In the event that analysis of a urine or blood sample, by the testing facility designated by the [board] commission, discloses the presence of a prohibited controlled substance, such fact shall be reported to the [board] commission, which shall schedule an immediate interview with such person, pending which such person shall not be permitted to drive or participate in any manner in any race. As a result of such interview, the [board] commission may restore full driving and/or license privileges to such person after such person has delivered a current sample for analysis, continue such temporary suspension of driving and/or license privileges pending receipt of the result of analysis of any sample directed to be taken at such interview, or take such other action as the [board] commission may deem appropriate, including fine, revocation, suspension or the conditioning of continued licensing upon the satisfactory enrollment in and completion of a drug treatment program or drug educational program designated by the [board] commission.

PART 4120

Drugs Prohibited and Other Prohibitions

§ 4120.1. Definitions.

The terms and words used in this Part shall mean:

(a) *Administer*[. Cause] means to cause the introduction of a substance into the body of a horse.

(b) [*Laboratory*. The official racing chemical detection laboratory designated by the board.]

(c) [*Drug*]. Any] means any substance or [its metabolites which] metabolite of such substance that does not exist naturally in the untreated horse and [which] that can have a pharmacological effect on a horse.

(c) Laboratory means the official racing chemical detection laboratory designated by the commission.

(d) [*Sample*. Any body substance, including, but not limited to, blood or urine taken from a horse at the direction of the board or its officials for the purposes of analysis. A sample is a pre-race sample when it is taken before a race pursuant to the rules governing the pre-race testing program. A sample is a post-race sample when it is taken after a horse races pursuant to the rules governing the post-race testing program.

(e) [*Post-race positive test*]. A] means a finding by the laboratory that a drug or other substance the use of which is restricted by [section 4120.2 of] this Part[,], was present in the sample and was administered at a time [and] or in a manner prohibited by this Part.

(e) Practicing veterinarian means a veterinarian who treats any race horse.

(f) [*Pre-race positive test*]. A] means a finding by the laboratory that a drug could be present in the sample.

(g) Sample means any bodily substance, including but not limited to blood or urine taken from a horse at the direction of the commission or the commission's officials for the purposes of analysis. A sample is a pre-race sample when such sample is taken before a race pursuant to the rules governing the pre-race testing program. A sample is a post-race sample when such sample is taken after a horse races pursuant to the rules governing the post-race testing program.

[(g) *Practicing veterinarian*. A veterinarian who treats any race horse.]

(h) *Start of a racing program*[. The] means the scheduled post-time of the first race of a program containing a race in which the horse is to compete.

§ 4120.2. Restricted use of drugs, 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, leg rubs, leg paints and liniments) [which] that may contain antibiotics but do not contain benzocaine, steroids or other drugs; and

(2) antibiotics, vitamins, electrolytes, and other food supplements [as] so long as they are administered orally and [as] so long as they do not contain any other drug or by their nature, exhibit drug-like actions or properties.

(b) Eligibility for the administration of furosemide.

(1) The administration of furosemide is permissible to a horse[, which] that has qualified for [its] such use by any of the following means:

(i) the horse has bled visibly during a race or a workout, as determined by the association veterinarian; [or]

(ii) the horse has bled during a race or workout, as determined by an attending veterinarian based upon [his/her] such veterinarian's clinical assessment of the horse[,]
which may or may not include an endoscopic examination after the race or workout; [or]

(4) Removal from the furosemide list. A horse[, which] that has been eligible for the administration of furosemide[,]
may be removed from the list, upon authorization from the stewards.

(6) Administration of furosemide. For the purposes of this [rule] section, furosemide shall be administered only in the following manner:

A single intravenous (IV) injection of no less than 150 milligrams (3cc) and no more than 500 milligrams (10cc) on the grounds of a licensed or franchised racing association or

corporation during the time period from [4] four to [4 ½] four and one-half hours before the scheduled post time of the race in which the horse is to compete.

(7) Ineligibility to start. Any horse[, which] that is eligible for the administration of furosemide[,], must be present on the grounds of the racing association or corporation no less than four hours prior to scheduled post time of the race in which the horse is scheduled to compete. A horse[, which] that is not present[,], at least four hours prior to post time or [which] that has not received the administration of furosemide pursuant to this rule shall be ineligible to start.

(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:

(19) biologics (e.g., bacterins, antitoxins except tetanus antitoxin).

[They may not] None of these substances may be administered within 48 hours of the scheduled post time of the race in which the horse is to compete, except that [phenylbutazone or] flunixin may be used in accordance with the specific authorization set forth in subdivision (d) this section. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 48 hours.

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

(j) The listing, reference to, or denomination herein of any drug or other substance does not constitute endorsement, or recommendation by the [board] commission for [its] the use of such drug.

§ 4120.3. 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, "joint₁"[,], "battery₁"[,], electric prod, or any other electrical equipment or any mechanical or other appliance not generally accepted as regular

racing equipment [which] 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, and whirlpool until racetime. However, the judges may bar the possession or use of any specific equipment.

(c) after a race, administer any substance except water to a horse designated for testing before the horse has been released by the [board] commission veterinarian; or

§ 4120.4. Trainer's responsibility.

A trainer shall be responsible at all times for the condition of all horses trained by him or her. No trainer shall start or permit a horse in his or her custody, care or control to be started if [he] such trainer knows, or [he] might have known cause to believe, that the horse has received any drug or other restricted substance that could result in a positive test. The trainer shall be held responsible for any positive test unless [he] such trainer can show by substantial evidence that neither [he] such trainer nor any employee nor agent was responsible for the administration of the drug or other restricted substance. Every trainer must guard each horse trained by him or her in such manner and for such period of time prior to racing the horse so as to prevent any person whether or not employed by or connected with the owner or trainer from administering any drug or other restricted substance to such horse contrary to this Part.

§ 4120.6. Possession of hypodermic equipment and controlled substances.

(a) No person other than a [board] commission veterinarian, track veterinarian or a practicing veterinarian licensed by the [board] commission shall have or possess in or upon the premises of a licensed harness race track, including premises [which he] that such veterinarian occupies or has a right to occupy, or shall have or possess in his or her personal property or effects upon such premises the following:

(b) Subdivision (a) of this section shall not apply to any person who may have in his or her possession a controlled substance or hypodermic syringe for which he or she has obtained prior written permission from the judges to possess and use for his or her own personal health pursuant to prescription of a physician.

(d) Each track is required to use all reasonable efforts to prevent and detect violations of this section. Each track, the [board] commission and the judges or their designees shall have the right to enter into or upon the buildings, stables, rooms, motor vehicles or other places within the grounds of such track to examine the same and to inspect and examine the personal property and effects of any person within such places[; and every]. Every person who has been granted a license by the [board] commission, by accepting [his] such license, does consent to such search including a personal search and to the seizure of any drugs or hypodermic syringes, hypodermic needles or other devices and if the [board] commission shall find that any person has refused to permit any such search or seizure it may impose such punishment as may be appropriate.

(e) A report shall be made to the Bureau of Narcotics of the Department of the Treasury of the United States of all cases in which it is reported to the [board] commission that narcotics or other controlled substances have been detected in a specimen from any horse[; and if]. If any veterinarian or physician has been involved [therein]in any such case, a similar report shall be made to the New York State Education Department.

§ 4120.7. Drug detection facilities.

(a) Each track operator shall provide such facilities, appurtenances and equipment for drug detection programs, or other related activities as the [board] commission may specify.

(b) No person shall enter or be present at any time in any enclosure set aside by direction of the [board] commission for the taking and examination of samples from horses except the staff immediately in charge of such work, the [board] commission, [its] the commission's chair[man] and other commissioners [members], [its] the commission's staff, the judges, the custodians of the horse, or such other persons as may be authorized by this Part.

§ 4120.8. Drug detection programs.

Programs for the detection of the presence of drugs in horses programmed to race shall be conducted at each track unless otherwise ordered by the [board] commission.

(a) *Pre-race testing.*

(1) Blood or other samples may shall be taken from every horse programmed to race, prior to the race in which [it] the horse is programmed, at a time and in a location specified by the [board] commission or [its] the commission's representative.

(2) The trainer or [his] the trainer's representative shall accompany the horse at the prescribed time and to the prescribed location, and shall manage the horse as directed. Willful failure to be present at, or a refusal to allow, the taking of any such sample, or any act or threat to impede or prevent or otherwise interfere therewith shall constitute a violation of

this [rule] section and shall subject the person or persons guilty thereof to punishment as may be appropriate.

(3) Blood samples will be taken by the State veterinarian or, under [his] the State veterinarian's supervision, by a graduate veterinarian.

(b) *Post-race testing.*

(2) Blood, urine, and such other samples as may be required shall be attempted to be taken from the designated horse at a time and in an enclosure specified by the [board] commission or [its] the commission's representative, until such horse is released by the [board] commission veterinarian.

(3) The trainer or [his] the trainer's representative shall accompany the horse at the prescribed time and to the prescribed location[,] and shall manage the horse as directed. Willful failure to be present at, or a refusal to cooperate in the taking of any such sample, or any act or threat to impede or prevent or otherwise interfere therewith shall subject the person or persons guilty thereof to such punishment as may be appropriate.

(4) Blood samples will be taken by the [board] commission veterinarian or, under [his] the commission veterinarian's supervision, by a graduate veterinarian. Urine samples shall be gathered by a [board] commission inspector.

(5) Where deemed necessary to obtaining a urine sample by the [board] commission veterinarian, a horse may be permitted to return to [its] such horse's stable prior to release if accompanied by a [board] commission inspector.

(c) (1) The judges may require at any time that any horse be sent to the testing enclosure for the taking of such specimens of blood, urine or other materials as shall be directed, as well as for an examination for "sponging" and such other examination as shall be directed.

(2) The [board] commission veterinarian may also, when so directed by the judges, require the taking of any or all of the foregoing specimens from any horse stabled at a track during a meeting.

(d) The judges, [board] commission veterinarians or their designees may take, for analysis, samples of any medicine or other materials [which] that may be found in stables or elsewhere on race tracks or in the possession of any person connected with racing.

§ 4120.9. Records of veterinarian.

(a) Every licensed practicing veterinarian shall keep a written record of his or her practice concerning horses participating at pari-mutuel harness race meets in this State whether performed at a licensed harness track or elsewhere which shall disclose:

(b) Every such veterinarian shall produce such written records when requested by an official of the [board] commission. In addition [he] the veterinarian shall instruct the trainer of the necessity to submit the report required by subdivision (i) of section 4120.2[(e)] of this Part relating to joint aspiration.

(c) Before a licensed veterinarian administers or prescribes any drug or restricted substance for a horse, [he] such veterinarian shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and if the horse has been entered [he] such veterinarian shall not administer or prescribe any drug or restricted substance within the time or in a manner restricted by this Part. If the horse has not been entered to race, but the administration is of a drug [which] that is not permitted to be administered within 72 hours of a racing program, or longer, [he] the veterinarian shall so inform the trainer of the fact and of the time applicable. If, however, an emergency exists involving the life or health of the horse, [he] the veterinarian may proceed to treat or prescribe for the horse, but shall report the matter as promptly as practicable to the [board] commission veterinarian or judges at the pertinent track.

(d) The attending veterinarian shall complete and submit daily a form prescribed by the [board which will contain] commission that contains each horse entered to race on that day and treated by [him] the attending veterinarian with furosemide. The form shall also contain the following information:

The form must be signed by the attending veterinarian and filed at a location designated by the [board] commission.

§ 4120.10. Erythropoietin and [Darbepoietin] Darbepoetin.

(a) A finding by the laboratory that the antibody of erythropoietin or [darbepoietin] darbepoetin was present in the sample taken from a horse shall establish that the horse is unfit to race in any subsequent race, subject to the provisions of subdivision (b) of this section. Such horse shall be placed on the steward's list.

(b) Any horse that has been the subject of a finding by the laboratory that the antibody of erythropoietin or [darbepoietin] darbepoetin was present in the sample taken from that horse

shall not be entered or allowed to race in any subsequent race until the horse has tested negative for the antibodies of erythropoietin or [darbepoietin] darbepoetin in a test conducted by the laboratory.

(c) Notwithstanding any inconsistent provision of this Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that the antibody of erythropoietin or [darbepoietin] darbepoetin was present in the sample taken from that horse.

§ 4120.11. Reserpine and Fluphenazine.

(b) The trainer of a horse [which] that has been the subject of a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse shall not be subject to application of trainer's responsibility based solely upon the finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample.

§ 4120.13. TCO2 [Blood Gas Testing Program] blood gas testing.

(a) The [board] commission may obtain pre-race blood samples from horses for subsequent testing for total carbon dioxide level (TCO2). The [board] commission may also obtain post-race blood samples from horses for subsequent testing for TCO2, after a minimum one-hour standing at rest period for the horse after [its] such horse's race. It shall be a violation of this [rule] section where the horse's TCO2 level equals or exceeds 37 millimoles per liter or, for horses administered furosemide pursuant to section 4120.2(b)(6) during the four hours before the blood sample was taken, 39 millimoles per liter.

(b) It shall be an affirmative defense that the horse's physiologically natural TCO2 level was not exceeded. To demonstrate natural TCO2, [its] such horse's owner or trainer must make a written request to the judges, within three calendar days of receiving notice of the horse's TCO2 test result, that the horse be held in guarded quarantine for this purpose. The racetrack operator shall make available a three day guarded quarantine for a time determined by the presiding judge, not to exceed 72 hours, at the sole expense of the requesting party, where blood samples shall be periodically taken for subsequent testing by the [board] commission. If the owner or trainer properly arranges with the [board] commission in advance, then samples shall also be taken and sent for independent testing at another laboratory at the sole expense of the requesting party. During quarantine the horse shall not race, but it may be exercised and trained at prescribed times that do not interfere with monitoring, sampling, and testing the horse. After the quarantine, the presiding judge shall determine whether the horse's TCO2 level was physiologically natural

for it. The presiding judge may also require, at least 45 days later, that the horse re-establish [its] such horse's natural TCO2 level with another guarded quarantine to be made available at the sole expense of the racetrack operator.

(c) Any guarded quarantine provided by the racetrack operator shall ensure that, at a minimum:

(2) Access to the horse shall be restricted to licensed persons who are directly affiliated with such horse, judges, or employees of the [New York State Racing and Wagering Board] commission, all of whom shall provide their respective track identification badge or [Board] commission-issued photo identification card prior to entry;

§ 4120.15. TCO2 testing: punishment for failure to cooperate.

It shall be a violation of section 4119.7 of this [Title] Subchapter for any person subject to the jurisdiction of the [board] commission to fail to cooperate with [the Blood Gas Testing Program] blood gas testing [program].

§ 4120.17. Out-of-competition testing.

(a) Any horse on the grounds of a racetrack under the jurisdiction of the [Board] commission or stabled off track grounds is subject to testing without advance notice for blood doping, gene doping, protein and peptide-based drugs, including toxins and venoms, and other drugs and substances while under the care or control of a trainer or owner licensed by the [Board] commission.

(b) Horses to be tested shall be selected at the discretion of the State judges or any [Board] commission representative. Horses to be tested shall be selected from among those anticipated to compete at New York tracks within 180 days of the date of testing or demand for testing.

(c) The State judges or any [Board] commission representative may require any horse of a licensed trainer or owner to be brought to a track under the jurisdiction of the [Board] commission for out-of-competition testing when that horse is stabled out-of-state at a site located within a radius not greater than 100 miles from a New York State racetrack. The trainer is responsible to have the horse or horses available at the designated time and location.

(d) A [Board] commission veterinarian or any licensed veterinarian authorized by the State

judges or any [Board] commission representative may at any time take a urine or blood sample from a horse for out-of-competition testing.

(f) The presence of any substance at any time described in [subsections] paragraphs (1), (2) or (3) of subdivision (e) of this section is a violation of this [rule] section for which the horse may be declared ineligible to participate until the horse has tested negative for the identified substance, and for which the trainer shall be responsible pursuant to [Board Rule] section 4120.4 of this Part.

(g) The trainer, owner, and/or their designees and any licensed racing corporation shall cooperate with the [Board] commission and [its] the commission's representatives[/] and designees by:

(4) obeying any instruction necessary to accomplish the provisions of this [rule] section.

The failure or refusal to cooperate in the above by any licensee or other person shall subject the licensee or person to penalties, including license suspension or revocation, the imposition of a fine and exclusion from tracks or facilities subject to the jurisdiction of the [board] commission.

(h) Any horse [which] that is not made available for testing as directed, including the failure to grant access on a timely basis, shall in the absence of acceptable mitigating circumstances, be ineligible to participate in racing for one hundred [twenty] 20 days.

(i) In the absence of extraordinary mitigating circumstances, a minimum penalty of a 10-year suspension will be assessed for any violation set forth in subdivision (f) of this section.

(j) An application to the [board] commission for an occupational license shall be deemed to constitute consent for access to any off-track premises on which horses owned and/or trained by the individual applicant are stabled. The applicant shall take any steps necessary to authorize access by [Board] commission representatives to such off-track premises.

PART 4122

Pari-Mutuel Wagering

§ 4121.1. Protests.

[Protests] A protest may be made only by an owner, manager, trainer or driver of one of the contending horses[, at]. A protest must be made any time before the winnings are paid over[,] and shall be reduced to writing and sworn to before a judge of the meeting[, and shall]. A protest

shall contain at least one specific charge [which] that, if true, would prevent the horse that is the subject of the protest from winning or competing in the race.

§ 4122.3. Sale of pari-mutuel tickets.

(b) No pari-mutuel tickets shall be sold except through regular ticket windows properly designated by signs showing type of tickets sold at that particular window, except that tickets may be issued by automated ticket machines, or bets may be sold by designated couriers, according to procedures approved by the [board] commission.

§ 4122.6. Betting by minors.

No licensed association or corporation shall permit any person who is actually [and] or apparently under 18 years of age to bet at [a] such association or corporation's race [meetings conducted by it] meetings.

§ 4122.9. Denomination of pari-mutuel tickets.

(b) Upon permission granted by the commission, a pari-mutuel ticket combining win and place, win and show, or place and show, may be sold for [three dollars] \$3, and a pari-mutuel ticket combining win, place and show may be sold for [five dollars] \$5. The permission granted pursuant to this subdivision may be upon such conditions and for such period of time as the commission may prescribe.

§ 4122.10. Method of wagering.

The method of selling pari-mutuel tickets shall be approved by the [Harness Racing Commission] commission and the State Tax Commission. No employee of a licensed track assigned to or working in the pari-mutuel department shall accept a wager from any person except through the track's pari-mutuel windows and in the regular course of business. No employee of the pari-mutuel department of any licensed corporation or association shall be permitted to bet during those periods of any day [which] that such person is actually working in such capacity.

§ 4122.12. Limited wagering fields.

(a) If less than six interests qualify horses to start in a race, the manager of the pari-mutuel department, with the consent of the representative of the [Harness Racing Commission] commission, shall be permitted to prohibit show wagering on that race.

(b) If less than five interests qualify horses to start in a race, the said manager, with the consent of the representative of the [Harness Racing Commission] commission, shall be permitted to prohibit both place and show wagering on that race.

(c) If less than three interests qualify horses to start in a race, the said manager, with the consent of the representative of the [Harness Racing Commission] commission, shall be permitted to prohibit wagering on the race.

(d) The said manager, with the consent of the representative of the [Harness Racing Commission] commission, may prohibit wagering on any particular horse or entry in any race. Such consent shall be sought by the manager of the pari-mutuel department from the representative of the [Harness Racing Commission] commission after the entries are closed on the day previous to that on which the heat or races in which exclusions are desired are to be conducted. Such exclusions if consented to by the representative of the [Harness Racing Commission] commission shall be clearly indicated on the program or score card and horses excluded shall be numbered so as to in no way infer that they are coupled in "the field." Horses once excluded from the betting shall remain excluded during the day or race in which they are scheduled to start.

§ 4122.15. Payments.

(a) Payments due on all wagers shall be made in conformity with well-established practice of the pari-mutuel system. The practice is to work in dollars and not in the number of tickets. Money wagered on winning tickets is returned in full plus the profits. In all cases of a winning mutuel pool, each association must redistribute not less than \$1.05 on each [one dollar] \$1 wager and \$2.10 on each [two dollar] \$2 wager.

(c) In the discretion of management or by direction of the [board] commission, payments may be made by cash or check to the holder of a winning pari-mutuel ticket from whom identification may be required.

§ 4122.17. Payment where no wagering on a position.

(b) If no money has been wagered to place on a horse [which] that is placed first or second in a race, the place pool for that race shall be apportioned among the holders of the place tickets on the other horse [which] that was placed first or second.

(c) If no money has been wagered to show on a horse [which] that has placed first, second or third in a race, the show pool in that race shall be apportioned among the holders of show tickets on the other horses [which] that are placed first, second or third in that race.

§ 4122.18. Dead heats and coupled entries.

(b) If two horses finish in a dead heat for second place, the division is made as follows: there shall be allotted to the pool of the winner of the race one-half of the place pool[,] and the two dead- heaters one-half each of the remaining half of the place pool.

(c) Coupled entries and fields. If two horses coupled in the betting as an entry or the field finish first and second, first and third or second and third, the division of the net show pool shall be as follows: two-thirds of the net show pool shall be allotted to the pool of the entry and the balance one-third to the other horse.

(d) In the event that one horse of the entry or the field finishes first or second and the other part of the entry or field finishes in a dead heat for third with another horse, the division of the net show pool shall be as follows: one-half of the net show pool shall be allotted to the pool of the entry, one-third to the horse finishing first or second, and one-sixth to the horse finishing in the dead heat with the entry for third.

§ 4122.20. Payoff errors.

(a) If an error is made in posting payoff figures on the public board, [it] such error may be corrected promptly and a statement explaining the facts made over the public address system.

(b) In the event of an error in calculations of payoff prices [which] that results in an underpayment to the public and payments have been made to the public, the amount of the underpayments made before a correction is posted shall transfer as directed by the presiding judge to the corresponding pool or pools of a subsequent race or races.

§ 4122.21. Time to present winning tickets.

(a) All winning pari-mutuel tickets must be presented for payment or refund before April [1st] 1 of the year following the year of their purchase and failure to present any such ticket within the prescribed period of time shall constitute a waiver of the right to refund or to participate in the award or dividend.

(b) Each association or corporation shall cause the substance of this rule to be imprinted upon each pari-mutuel ticket, in words approved by the [board] commission.

§ 4122.23. Daily double terms.

In order to win a daily double, it is necessary for the purchaser of a daily double ticket to select the winners of each of the two races specified for the double. If either of [his] a purchaser's selections [fail] fails to win, [his] such purchaser's contract is void, except as hereafter provided.

§ 4122.27. Coupled entry scratch.

If, after wagering has begun on a race, a horse, programmed to start as part of a coupled entry or field is scratched in such race, all betting upon such coupled entry or field shall cease and all money theretofore wagered upon such coupled entry or field shall be refunded. Notwithstanding the termination of betting upon all horses [which] that are part of such coupled entry or field, the horse or horses in such coupled entry or field [which] that are not scratched shall start in such race as nonbetting interests for the purse and the finish of such horses in the race shall be disregarded for pari-mutuel purposes. Such circumstances shall be announced by public address and explained to the public at the time of such action and thereafter as may be necessary to adequately inform the public.

§ 4122.29. Forms.

The officers and employees of the licensed harness racing association shall promptly give the commission and the State Tax Commission [and the Harness Racing Commission] such information as they may request from time to time and shall freely and fully cooperate with them in every way.

§ 4122.30. Report of unpaid tickets.

An itemized record of all unpaid winning mutuel tickets shall be prepared and a complete record [thereof], including total, forwarded to the [State Harness Racing Commission] commission and the State Tax Commission within five days after the last day of any racing meeting.

§ 4122.31. Report if no [totalizator] totalisator.

The licensed harness racing association, if operating a mutuel system without the [totalizator] totalisator, shall, in taking off total of mutuel ticket sales, prepare an additional [carbon] copy [thereof] at the same time of making and furnish the same to the representative of the [State Harness Racing Commission] commission and the State Tax Commission before the calculations for mutuel prices to be paid [shall have been] are made.

§ 4122.32. Report of payoff.

Complete and detailed records of each race containing the actual payoff on each horse shall be filed with [State Harness Racing C] commission at the end of each day.

§ 4122.33. Report of attendance and handle.

The licensed harness racing association shall supply daily to the [State Harness Racing Commission] commission a report of the [following:] handle of each race, total daily handle and attendance.

§ 4122.34. Test of mutuel equipment.

All tracks shall have a test, by actual operation, of the pari-mutuel equipment before the opening of each meeting, which shall be approved by a representative of [this] the commission and of the State Tax Commission.

§ 4122.35. Display of public information.

Each track licensee shall cause to be erected a sign or board upon which shall be displayed the approximate straight odds on each horse in any race; the total amount wagered upon each horse in each pool; the value of a \$2 winning mutuel ticket, straight, place or show on the first three horses in any race; the elapsed time of the race; the value of a \$2 winning daily double or twin double ticket, if a daily double or twin double be conducted; and any other information that the [State Harness Racing Commission] commission may deem necessary for the guidance of the general public. All machines and equipment used for pari-mutuel betting or for the display of [the foregoing] such information must be approved by the [State Harness Racing Commission] commission and the State Tax Commission before being used[, neither]. The commission and

the State Tax Commission shall not require the installation of any particular make of mechanical or electrical equipment.

§ 4122.36. Personnel.

A list of the personnel of the pari-mutuel department shall be submitted to the [State Harness Racing Commission] commission for its approval. Such list shall indicate the residence of each employee and [also] state whether [he] such employee has been a citizen of the United States of America and a resident of the State of New York for the two years immediately prior to the commencement of [his] such employment. A copy of the pari-mutuel department payroll shall be submitted each week to the [State Harness Racing Commission] commission and such payroll shall be accompanied by a statement sworn to by the manager of the pari-mutuel department or an official of the licensed harness racing association stating that at least 85 percent of such employees each day have been citizens of the United States of America and residents of the State of New York for at least two years immediately prior to the commencement of their employment.

§ 4122.38. Parlay betting.

(a) When consistent with the public interest and the best interests of racing generally, with permission of the [board] commission, the track operator may offer parlay betting as a service to the betting public.

(b) The parlay is not a pari-mutuel pool[, but]. The parlay is a series of bets combining betting entries in win, place, show or proposition pools in each of two or more separate races in chronological order. The initial amount bet constitutes the bet on the first betting entry in the first parlay race (leg); if successful, the payoff from winning the first leg (to the lowest penny) is then bet on the betting entry designated in the second leg; if again successful, and if the parlay continues, the payoff from winning the second leg is then bet (to the lowest penny) in the third leg; etc.

(c) A parlay bet may combine any of the races on the program and must combine at least two and not over eight races. Bets are limited to win, place, show or proposition pool types for which a corresponding pool is conducted on the race selected. The races in a parlay must be chronological but need not be consecutive nor combine the same type pool. The parlay shall be designated on one pari-mutuel ticket [which] that may also evidence other parlay bets combining the same races. A parlay bet ticket must contain all win, place or show bets without any proposition bets or all proposition bets without any win, place or show bets.

§ 4122.41. Triple.

(h) Coupled entries and fields are permitted in trifecta races. In such races no wagers may be accepted or issued (including "wheel" or "box" type bets) [which] that couple the same coupled entry or the same field in the same combination.

§ 4122.43. Shortages.

A track may deduct from the wages of a pari-mutuel employee monies owed as a result of such employee's going short on any particular racing day. The term short as used in this section shall mean any loss to the harness racing association arising from amounts missing from funds in the possession, custody or control or under the supervision of any pari-mutuel employee or employees in the course of the performance of [his or their] duties in the mutuel department of the harness racing association.

§ 4122.45. Super exotic pools.

The rules in this section shall govern all super exotic pari-mutuel pools conducted by a licensed harness track operator.

(a) Wagering tickets. A super exotic pari-mutuel pool known as the "pick-seven," "pick-eight," "pick-nine," "pick-ten" or such other name as may be approved by the [board] commission, is authorized to be conducted by a harness track operator upon the outcome of seven, eight, nine or [ten] 10 consecutive pari-mutuel races to be contested at [its] such operator's track on the same racing program. Such pool shall be separate and distinct from all other pari-mutuel pools conducted at such track. Wagers in such pool shall be represented by pari-mutuel tickets immediately distinguishable from pari-mutuel tickets issued in other pools. A wager, which shall select a winner for each designated race, shall be included on the same pari-mutuel ticket, [which] that shall be issued prior to the start of the first designated super exotic race. Races designated for the super exotic pool shall be clearly described as such in the official program.

(d) *Intermediate distributions.* Prior to the last two weeks of a licensed race meeting, a date and program approved by the [board] commission may be announced by the track operator when (provided no one thereafter has correctly selected the winners of all designated races of a super exotic pool through such program) accumulated carry-overs in an amount announced by the

track operator will be added to the established percentage of the net pool distributable to wagers selecting the winners of the most races of the super exotic pool conducted on such program. The balance of undistributed carry-overs above such announced amount, plus any carry-over from such program, shall in turn carry-over for distribution with subsequent super exotic pools conducted by such track operator. An intermediate distribution may also be directed at any time, upon three days' notice by the [board] commission, of such portion or all of the accumulated carry-over money as may be directed by the [board] commission.

(e) *Final distribution.* The [board] commission shall select a date and program during the final week of the licensed race meeting of a track operator when there shall be a final distribution of all accumulated carry-overs together with the entire net pool of the super exotic pool conducted during such program to the holders of wagers selecting the winners of the most super exotic races contested during such program. Thereafter no super exotic pools will be conducted at such meeting. In the event that all super exotic races on the program designated for final distribution are cancelled, and no further programs are conducted at the meeting, the [board] commission shall require that a super exotic pool be conducted on the first program of the next subsequent race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The [board] commission may also order a final distribution for an earlier time in [its] the commission's discretion.

(g) *Scratched horses and nonstarters.* At any time after wagering begins on the pool should an entire betting entry or field be scratched or declared a nonstarter in any super exotic race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the super exotic pool, shall be deemed wagers upon the betting entry or field upon which the most wagers have been registered in the win pool at the track at the close of win pool betting for such race (designated horse). (In the event of a money tie, the tied betting entry or field with the lowest program number shall be designated.) Wagers remaining in the pool upon horses [which] that may have been scratched will, in the case of multiple betting entries or fields be deemed wagers upon the horses remaining in such entries or fields, and in the case of single betting entries be deemed wagers upon the designated horse in the race affected by the scratch. Should the balance of a betting entry or field race as a nonbetting starter for purposes of other pari-mutuel pools, as provided in section 4122.27 of this Part, wagers upon such entry or field shall be deemed wagers upon the designated horse for such race. Should a programmed starter be scratched or declared a nonstarter prior to the start of the first leg, the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg.

(m) *Betting information.* Unless otherwise ordered by the [board] commission, information concerning combinations wagered upon or not wagered upon in a super exotic pool shall not be

disclosed by the tote operator or otherwise, until all races of a super exotic pool have been contested and declared official. The operation of the [totalizator] totalisator equipment and reports generated thereby as well as the communication of any information concerning such pool shall be subject to the strict supervision of the [board] commission.

(o) *Unforeseen circumstances*. Should circumstances occur [which] that are not foreseen in this section, questions arising thereby shall be resolved in accordance with general pari-mutuel practice in the judgment of the presiding judge. Decisions regarding distribution of super exotic pools [will be] are final and unappealable.

§ 4122.46. Pick four pools.

(a) The pick four (or other approved name) is a form of pari-mutuel wagering conducted on four races specifically designated as pick four races by the [board] commission. Each bettor selects, in order, the first placed horse in each of the four races designated and advertised by the track as pick four races, in the race order so designated by the [board] commission.

(f) *Scratched horses and nonstarters*. At any time after wagering begins on the pick four pool, should an entire betting entry or field be scratched or declared a nonstarter in any pick four race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the pick four pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the track in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field with the lowest program number shall be designated.) Wagers in the pick four pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except at tracks with [totalizator] totalisator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), in which case, the wagers upon scratched constituent horses will be deemed wagers upon the "designated horse" in such race. In case no starter remains representing any betting entry or field, wagers upon such entry or field shall be deemed wagers upon the "designated horse" in the race affected by the scratch. Should the balance of a betting entry or field race as a nonbetting starter for purposes of other pari-mutuel pools, as provided in section 4122.27 of this Part, wagers upon such entry or field shall be deemed wagers upon the "designated horse" for such race. Should a programmed starter be scratched or declared a nonstarter in any pick-four race prior to the start of the first leg, the

betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg.

§ 4122.47. Proposition wagers.

(a) *Generally.* When consistent with the public interest and the best interests of racing generally, the [board] commission may approve a request from a track operator to offer proposition wagering betting as a service to the betting public.

(b) *Proposition wager defined.* A proposition wager is a pari-mutuel wager based on the results of a live horse race or series of horse races. The wager requires the selection of a betting interest [which] that finishes ahead of the other betting interests in official placing regardless of the official placing of the other betting interests in the race.

(c) *Prior approval.* No racing association or corporation licensed by the [board] commission participating in proposition wagering may offer any proposition wager without the prior approval of the [board] commission. A request in writing for such approval shall be made no less than two weeks prior to the desired date of implementation, and must include the type of wager desired, the procedures for designating specific races, the date on which the wager shall be available, the takeout, the method of informing bettors of the probable odds for the wager, scratches, the distribution of pool and other items specified in this Section. Subsequent to the receipt of approval to offer the proposition wager, the racing association or corporation licensed by the [board] commission shall identify and seek further approval from the [board] commission, or [its] the commission's representatives, not less than [twenty four (]24[)] hours prior to the race or races subject to the wager, of the names of the betting interests on which the wagers are to be made for that race date and shall assign a program number to each betting interest. The races in which those betting interests are entered shall also be identified.

(d) *Calculation and posting of odds.* The calculation of approximate odds for any proposition wager shall be completed, and the approximate odds posted, as soon as practicable after the close of the specific wager pool. The final odds shall be calculated and posted as soon as practicable after the event, or last of a series of events, [which] that are the subject of the wager is declared official.

(e) *Types of proposition wagering authorized.* The [board] commission establishes the following proposition wagering offerings:

(1) Head-to-head horse wager.

(i) Head-to-head horse wager defined. A *head-to-head horse wager* requires the identification by a racing association or corporation licensed by the [board] commission

of two separate betting interests competing in a single race. The wager requires the selection of the betting interest [which] that finishes ahead of the other betting interest in official placing. The matching of contestants for the head-to-head wager should be limited to horse versus horse. The head-to-head wager on the horse versus horse may be offered only on horses competing in races that award purses of \$250,000 or more.

(ii) Identification of betting interests. None of the betting interests identified that are the subject of a proposition wager shall be part of a coupled entry or mutuel field, nor shall any betting interest have a shared identity of trainer or owner. The wager and competing betting interests for each such race shall be prominently displayed in the official program of the racing association or corporation licensed by the [board] commission on the day of the race or races subject to the wager.

(iv) Calculation and distribution. The proposition wager for each race is a separate pari-mutuel pool. The calculation and distribution of the pool shall be the same as the calculation of the win pool as set forth in section 4122.15 of this Part. However, because the proposition wager takeout amounts differ from the win pool, the distribution shall be based on the takeout rate allowances for proposition wagers as set forth in the New York State Racing, Pari-Mutuel Wagering and Breeding Law section 909 and as approved by the [board] commission. The net head-to-head pool shall be distributed as a single price pool to holders of winning wagers based upon the official order of finish.

(2) Head-to-head-to-head horse wager.

(i) Head-to-head-to-head horse wager defined. A *head-to-head-to-head horse wager* requires the identification by a racing association or corporation licensed by the [board] commission of three separate betting interests competing in a single race. The wager requires the selection of the betting interest [which] that finishes ahead of the other betting interests in official placing regardless of the official placing of the other betting interests in the race. The matching of contestants for the head-to-head-to-head wager should be limited to horse versus horse versus horse. The head-to-head-to-head wager on a horse versus a horse versus a horse may be offered on horses competing in races that award purses of \$250,000 or more.

(ii) Identification of betting interests. No[ne of the] betting interest[s] that [are] is the subject of a proposition wager shall be part of a coupled entry or mutuel field, nor shall any betting interest have a shared identity of trainer or owner. The wager and competing betting interests for each such race shall be prominently displayed in the official program

of the racing association or corporation licensed by the [board] commission on the day of the race or races subject to the wager.

(iii) Close of pool. The pool for each race subject to the wager shall close at the same time all regular, multiple and exotic pari-mutuel wagering pools close for [said] such race [close].

(iv) Calculation and distribution. The proposition wager for each race is a separate pari-mutuel pool. The calculation and distribution of the pool shall be the same as the calculation of the win pool as set forth in section 4122.18 of this Part. However, because the proposition wager takeout amounts differ from the win pool, the distribution shall be based on the takeout rate allowances for proposition wagers as set forth in the New York State Racing, Pari-Mutuel Wagering and Breeding Law section 909 and as approved by the [board] commission. The net head-to-head-to-head pool shall be distributed as a single price pool to holders of winning wagers based upon the official order of finish.

(v) Dead heat. In the event of a single dead heat involving all of the identified betting interests, the wager is declared cancelled, and the gross pool refunded. In the event of a dead heat involving two of the betting interests [which] that officially place ahead of the third betting interest, then the two betting interests involved in any such dead heat shall each be declared the winner for purposes of pool distribution. The calculation and distribution of the pool shall be the same as the calculation of the place pool as set forth in Section 4122.18 of this Part. However, because the proposition wager takeout amounts differ from the place pool, the distribution shall be based on the takeout rate allowances for proposition wagers set forth in the New York State Racing, Pari-Mutuel Wagering and Breeding Law section 909 and as approved by the [board] commission.

(3) Marketing and advertising headings. Subject to the prior approval of the [board] commission, the racing association or corporation licensed by the [board] commission participating in proposition wagering may use different names for the type of proposition wagering authorized [which] that differ from the headings defined by the [board] commission for each type of wager for the purposes of marketing or advertising.

§ 4122.48. Grand Slam wager.

(a) [Board] Commission approval. An association or corporation must obtain written approval from the [board] commission for the initial scheduling or specific performances of Grand Slam races or any other name used to characterize this bet type, and identify the pari-mutuel pool and any required distribution percentages. Changes to the approved Grand Slam format, or suspension of previously approved Grand Slam wagering, require prior written approval from the [board] commission.

(b) Grand Slam Pools.

(1) The Grand Slam requires selection of the official first-, second- or third-place finisher in each of the first three races in a series of four designated Grand Slam races in a single day. A completed winning Grand Slam wager requires the selection of the official first place finisher in the fourth and final event in this same series of races. The Grand Slam wager is classified as an exotic bet and is subject to the prevailing exotic takeout rate set forth in section 318 of the Racing Pari-Mutuel Wagering and Breeding Law (between [twenty] 20 to [thirty] 30 [per centum] percent of total deposits in pools resulting from on-track exotic bets and selected by an association or corporation and approved by the [board] commission).

(5) Should a betting interest in any of the Grand Slam contests be scratched:

(i) The actual favorite, as evidenced by total amounts wagered in the Win pool at the host association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the greatest amount of money in the place pool. The [totalizator] totalisator shall produce reports showing each of the wagering combinations with substituted betting interests [which] that became winners as a result of the substitution, in addition to the normal winning combination.

(8) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining prior to the third segment of the wager being made official is strictly prohibited. This shall not prohibit necessary communication between [totalizator] totalisator and pari-mutuel department employees for processing of pool data.

§ 4122.49. Additional authorized wagers.

In addition to the types of wagers authorized by this Part, an association or corporation may, with the prior permission of the [board] commission, offer any type of pari-mutuel wagering as defined by chapter 9, Pari-Mutuel Wagering, Uniform Rules of Racing, as adopted and published in December, 1996 by the Association of Racing Commissioners International at 2343 Alexandria Drive, Suite 200, Lexington, KY 40504-3276. This is available for public inspection at the New York State [Racing and Wagering Board] Gaming Commission located at [1] One Broadway Center, [Suite 600,] Schenectady, NY 12305-2553[or 86 Chambers Street, Suite

201], New York, NY [10007, both addresses] and at the Department of State, 41 State Street, Albany, NY.

PART 4123

Voluntary Exclusion from Racetracks and Restriction on Telephone Account Wagering

§ 4123.1. General requirements.

(b) Each racing association or corporation [which] that maintains telephone betting accounts for wagering on races shall establish procedures that are designed to permit an account holder to voluntarily place limits on the amount of his or her wagers. This restriction may be calculated on a daily or weekly basis.

(c) A self-excluded person or an account holder who has placed restrictions on his or her account may remove such exclusion or restrictions upon request made to the racing association or corporation[, however no] No request, however, from a person to remove any self-exclusion or limit placed on account wagers shall be effective until seven days after it has been received by the racing association or corporation.

§ 4123.2. Self-exclusion from racetrack.

(e) Each racing association or corporation shall file with the [board] commission [no later than 30 days after the effective date of this Part] a plan for implementing this section and for disseminating the information contained in the applications for placement on the list of self-excluded persons. The plan shall be designed to safeguard the confidentiality of the information but shall include dissemination to all of the following:

(i) This [rule] Part does not create any right or cause of action on behalf of the individual whose name is placed on the list of self-excluded persons against the State of New York, the [board] commission or a racing association or corporation.

§ 4123.3 Voluntary restrictions on telephone account wagering.

(a) Any holder of an account authorized pursuant to section 1012 of the Racing, Pari-Mutuel Wagering and Breeding Law may voluntarily place limits on the amount of his or her wagers. This restriction may be calculated on a daily or weekly basis.

(1) Each racing association or corporation [which] that maintains telephone betting accounts for wagering on races shall establish procedures that are designed to deny wagering privileges beyond a daily or weekly threshold set by the account holder;

(b) Each racing association or corporation [which] that maintains telephone betting accounts for wagering on races shall file with the [board] commission [no later than 30 days after the effective date of this Part] a copy of [its] such association or corporation's procedures established pursuant to [subdivision two of] this section.