

PROPOSED THROUGHbred RULEMAKING

A new Part 4045, §§ 4045.1 to 4045.7, would be added to 9 NYCRR, to read as follows:

Part 4045. Minimum Penalty Enhancement.

§ 4045.1. Definitions.

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

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

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

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

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

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

§ 4045.2. General.

The commission shall suspend the occupational licenses of a habitual or persistent violator of equine drug rules as an additional penalty when there is a precipitating equine drug rule violation. This suspension shall constitute the bare minimum overall penalty enhancement that arises from a previous violation or violations of equine drug rules, wherever committed, and the commission shall continue to apply its own much broader and stricter standards when determining the appropriate penalty for the precipitating and other equine drug rule violations.

§ 4045.3. Points.

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

(b) The commission shall assign six points, which shall accumulate permanently, for a violation involving a drug or other substance that:

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

(2) is not classified in the ARCI Penalty Guidelines, but has a very high potential to affect race performance and no generally accepted veterinary use in racing horses,

subject to any adjustments that apply as set forth in this section.

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

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

(2) is not classified in the ARCI Penalty Guidelines, but has a high potential to affect race performance and

(i) has a high potential for abuse; or

(ii) has no generally accepted veterinary use in racing horses,

subject to any adjustments that apply as set forth in this section.

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

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

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

(2) does not fall within any other subdivision of this section,

subject to any adjustments that apply as set forth in this section.

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

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

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

(i) If a violation involves more than one drug or substance, then the commission shall assign to such violation not less than the highest point value of any one of the drugs or substances and shall assign additional points for each drug or substance that could have the effect of substantially altering the nature or effect of such drugs or other substances on the horse.

(j) If multiple violations involving one drug or substance are committed before a licensee is notified of a positive laboratory test, then the commission may assign lesser points for the violations, although not less than the points for a single violation, when the responsible parties are able to show that the multiple violations occurred as the result of an honest and unavoidable mistake.

(k) The commission shall assign point values as of the date of a violation.

(l) Points assigned for an equine drug rule violation are not removed from a licensee's record when they serve as a basis to suspend a license. Points continue to accumulate for the time periods that are set forth in subdivisions (c), (d) and (e) of this section.

§ 4045.4. Administrative action.

The commission shall take the following administrative action after a final adjudication of the commission establishes that a licensee has committed a precipitating equine drug rule violation in New York:

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

(1) A licensee may be mailed a letter advising such licensee of the status of the equine drug violation record of such licensee and any possible future action that may be taken in the event of such licensee's accumulation of additional points.

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

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

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

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

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

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

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

(c) Such license suspensions shall in no way affect any administration action taken under any other provision of this Subchapter, including the imposition of a penalty for the precipitating or other equine drug rule violation in New York.

(d) The Director of the Division of Horse Racing and Pari-Mutuel Wagering, on behalf of the commission, may proportionately reduce such suspension, however, when convinced by clear and convincing evidence that the commission had already enhanced, based on one or more of the predicate equine drug rule violations, the penalty imposed on the licensee for the precipitating equine drug rule violation.

(e) The State Steward may, when authorized by the Director of the Division of Horse Racing and Pari-Mutuel Wagering, add the habitual or persistent equine drug rule violator suspension when issuing a ruling upon a precipitating equine drug rule violation.

§ 4045.5. Start of suspension.

A habitual or persistent equine drug rule violator suspension shall not take effect until the commission has notified the licensee in writing of the suspension and

(a) the licensee waives in writing the right to an adjudicatory hearing;

(b) the licensee does not, within 10 days, make a written application for an adjudicatory hearing before the commission; or

(c) an administrative stay for the adjudicatory hearing has expired and no further stay has been granted to the licensee.

§ 4045.6. Adjudicatory hearing.

(a) A habitual or persistent equine drug rule violator may, within 10 days of service upon such violator of a notice of a suspension imposed by this Part, file a written application for an adjudicatory hearing before the commission. A request that is not filed within 10 days shall be null and void and the licensee shall have waived any right to an adjudicatory hearing.

(b) If a licensee requests an adjudicatory hearing for a suspension imposed pursuant to this Part, the commission shall issue an administrative stay of the habitual or persistent equine drug rule violator suspension. Such stay shall be for 45 days from the date of service on the licensee of the notice of the suspension. The licensee may request, on motion with reasonable notice to the secretary of the commission, filed in writing, an extension of such stay for good cause shown that the licensee has not been able to participate in an evidentiary hearing within such period of time. The director of the Division of Horse Racing and Pari-Mutuel Wagering shall decide such motion on behalf of the commission, and the decision of such director shall be final. Upon the completion of the evidentiary hearing, another administrative stay of the suspension shall be issued until such time as the commissioners have taken final agency action.

(c) The adjudicatory hearing shall be conducted pursuant to Part 4550 of this Chapter.