



# August 1, 2013 Meeting Book

## **Agenda**

### **New York State Gaming Commission**

**August 1, 2013**

**New York, New York**

1. Call to Order
2. Designation of Presiding Officer
3. Approval of Commission Meeting Minutes for June 26, 2013 and July 11, 2013
4. Report of Acting Executive Director
5. Final Commission Adjudication—Matter of James Martuscello
6. Rulemaking
  - a. Permanent adoption of Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds
  - b. Permanent adoption of Ability of a New Owner of a Claimed Horse to Void the Claim
  - c. Permanent adoption of Use of Cellular Telephones in the Paddock
7. NYRA Request for Pick Five and Show Quinella Wagers
8. Resolution in Regard to Delegation of Authority
9. New Business/Old Business
10. Scheduling of Next Meeting
11. Adjourn

# ITEM 5

Andrew M. Cuomo  
Governor

John A. Crotty  
John J. Poklemba  
Barry C. Sample  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Barry C. Sample, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** July 23, 2013

**Re:** Matter of James Martuscello

Harness trainer James Martuscello appealed from a decision of the presiding judge at Saratoga Raceway, who ordered the return of \$3,680 in purse money won by horses that were allegedly ineligible to race. Each horse had a partial owner who was not licensed to participate in New York racing, in violation of New York Racing and Wagering Board Rule 4101.24(b).

[REDACTED]

[REDACTED]

[REDACTED]

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

P.O. Box 7500, Schenectady, NY 12301-7500  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

When New Yorkers Play Responsibly, We All Win.

**ITEM 6 a.**

Andrew M. Cuomo  
Governor

John A. Crotty  
John J. Poklemba  
Barry C. Sample  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Barry C. Sample, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** July 23, 2013

**Re:** Rulemaking on Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds (amendments to 9 NYCRR §§ 4043.2(e)(9), 4043.2(g)(5-16), 4043.2(i) and 4043.4(b)).

Emergency rules in regard to equine drug use have been in place since December 26, 2012 with no complaints received. These rules, recommended by the New York Task Force on Racehorse Health and Safety, have been proposed and may now be considered for adoption as permanent rules. The emergency rules are scheduled to expire on September 10, 2013.

These proposed rules impose longer time periods during which corticosteroids and clenbuterol cannot be administered to a thoroughbred horse before its next race.

Corticosteroids are potent anti-inflammatory agents that are used to promote rapid healing of bodily tissues, but these drugs can mask pain and even destroy healthy joints when overused. The Task Force concluded that the health and safety of racehorses and jockeys would be improved by increasing the period of time that a horse may not participate in racing after a corticosteroid treatment.

Clenbuterol is a potent bronchodilator, previously used only to treat respiratory inflammation and infections in horses, that recently has been overused because it has an anabolic-steroid like effect. The Task Force concluded that many trainers overuse clenbuterol and that the health and safety of racehorses and jockeys would be improved by increasing the period of time that a horse may not participate in racing after a clenbuterol treatment.

The proposed rules restrict the administration of corticosteroids within five days before a race, for systemic administration (increased from 48 hours), or within seven days before a race, for intra-articular administration (increased from five days), and restrict the use of clenbuterol within 14 days before a race (increased from 96 hours). These rules also require trainers to report all corticosteroid joint injections to the Commission for reference during pre-race exams.

These amendments were proposed as permanent rules, as published in the February 20, 2013 *State Register*. In addition, certain interested members of the racing community received an additional memo

Commissioners

July 23, 2013

Page 2

from Commission staff describing the proposed rules. No public comment was received during the comment period of the proposed permanent rulemaking.

For your reference, attached are the pages of the February 20, 2013 *State Register* describing the proposed rules and the text of the proposed rules. The Task Force report is found at <http://www.governor.ny.gov/assets/documents/Report.pdf>. Recommendations in regard to corticosteroids and clenbuterol are on pages 64-67 of the report.



attachments

cc: Robert Williams, Acting Executive Director  
Ronald G. Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering  
Kristen M. Buckley, Acting Secretary

Subdivision (g) of Section 4043.2 of 9 NYCRR is amended as follows:

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

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

- (1) acepromazine;
- (2) albuterol;
- (3) atropine;
- (4) butorphanol;
- [(5)](5) clenbuterol;
- [(6)](5) detomidine;
- [(7)](6) glycopyrrolate;
- [(8)](7) guaifenesin;
- [(9)](8) hydroxyzine;
- [(10)](9) isoxsuprine;
- [(11)](10) lidocaine;
- [(12)](11) mepivacaine;
- [(13)](12) pentoxifylline;
- [(14)](13) phenytoin;
- [(15)](14) pyrilamine;
- [(16)](15) xylazine.

[They] None of these substances may [not] be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. 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 [96 hours] 96-hour period.

Paragraph 9 of Subdivision (e) of Section 4043.2 of 9 NYCRR is amended as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadatropin[, glucocorticoids])[, except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part];

Subdivision (i) of Section 4043.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse [which 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] the following periods of time:

(1) for at least five days following a systemic administration of a corticosteroid;

(2) for at least seven days following a joint injection of a corticosteroid; and

(3) for at least 14 days following an administration of clenbuterol.

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 time periods.

New Subdivision (b) is added to Section 4043.4 of 9 NYCRR to read as follows:

(b) Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the commission, by the trainer to the commission within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.

**ITEM 6 b.**

Andrew M. Cuomo  
Governor

John A. Crotty  
John J. Poklemba  
Barry C. Sample  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Barry C. Sample, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** July 23, 2013

**Re:** Rulemaking on Ability of a New Owner of a Claimed Horse to Void the Claim  
(amendments to 9 NYCRR §§ 4038.5(a)(1) and (3)).

Emergency rules allowing the new owner of a claimed horse to void the claim when the horse is transported (or “vanned”) off the track were first enacted in October 19, 2012. The only public comment has been in support. These rules, recommended by the New York Task Force on Racehorse Health and Safety, have been proposed and may now be considered for adoption as permanent rules. The emergency rules are scheduled to expire after August 22, 2013.

This proposed rulemaking would amend Sections 4038.5(a)(1) and (3) of the Gaming Commission’s thoroughbred rules, as published in the February 20, 2013 *State Register*. In addition, certain interested members of the racing community received an additional memo from Commission staff describing the proposed rules. The only public comment that was received during the comment period of the proposed permanent rulemaking was a statement of support from The Jockey Club.

Claiming races comprise the majority of thoroughbred races in North America. In a claiming race, a horse is offered for sale at a designated price before the race and prospective new owners can submit a claim to purchase the horse for that price, the transfer to occur after the race. An existing rule allows the claim to be voided in the event a horse dies during the race or is euthanized on the track.

The Task Force, charged with the study of breakdowns and loss of life of thoroughbred racehorses in New York State, concluded that certain emergency changes to the agency’s claiming-race rules should be adopted immediately and permanently. The Task Force noted the existing rule, adopted in 2012, which allows a successful claimant to void a claim in the event that a horse dies during the race or is euthanized on the track, and concluded that extending the rule to situations when the horse is vanned off the track after the race would discourage the transfer of an unsound or physically compromised horse through the claiming process. The Task Force stated, “The voiding of a claim should not require the death of a horse.” The creation of a new paragraph (3) under subdivision (a) of Section 4038.5 to provide an option for the successful claimant to void a claim if the horse is vanned off the track is intended to remove an incentive to race an unsound horse in a claiming race and thereby protect the health and safety of horses and jockeys.

Commissioners  
July 23, 2013  
Page 2

The proposed amendment to Section 4038(a)(1) corrects a typographical error in the existing permanent rule that erroneously references Section 4038.18 (Pregnant Mares). The reference should be to Section 4038.19 (Certain Voidable Claims).

Attached are pages of the February 20, 2013 *State Register* describing the proposed rules. The Task Force report is available at <http://www.governor.ny.gov/assets/documents/Report.pdf>. Recommendations in regard to claiming race rules are on pages 54-58 of the report.

[REDACTED]

attachment

cc: Robert Williams, Acting Executive Director  
Ronald G. Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering  
Kristen M. Buckley, Acting Secretary

*The use of cellular telephones or any other electronic communication device, including devices that are capable of sending or receiving text messages or e-mails, by any person while in the paddock or receiving barn is restricted to use in an area designated by the Paddock Judge.*

*a. Notwithstanding the provisions of Rule 4104.11, a sign shall be posted prominently at the entrance of the paddock or receiving barn stating that the use of a cellular telephone or an electronic communication device by any person while in the paddock is restricted to an area designated by the Paddock Judge and identified by a sign that reads "Designated Cell Telephone Area".*

*b. Nothing contained in this rule shall diminish the right of any track to adopt or implement more restrictive procedures concerning the use of cellular telephones and other electronic devices.*

*c. This section shall continue for one year after the date that it goes into effect.*

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York, (518) 395-5400, email: info@racing.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### **Consensus Rule Making Determination**

No person is likely to object to the adoption of this rule because this rule has been in effect since February 15, 2012 and no person has objected to it, nor has there been anything controversial that occurred since it was implemented.

When this rule was adopted by the Racing and Wagering Board on January 25, 2012, it included a sunset provision of one year. The rule will expire on February 15, 2013. This adoption is necessary to extend the rule for another year from the publication date of the Notice of Adoption.

#### **Job Impact Statement**

This proposal does not require a Job Impact Statement as the amendment deals with the conduct of personnel within the paddock or receiving barn at a licensed harness race track. Consequently, the rule does not adversely affect jobs. The rule proposal requires Paddock Judges, who are employees of the New York State racing and Wagering Board, to designate areas where track personnel may use their cellular telephones or electronic communication devices, prominently post signs regarding the restricted use of cell phones in the paddock and other signs that identify the cellular phone use area. This rule has been in effect on a one-year term since February 15, 2012 and there has been no adverse impact on jobs as a result.

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

#### **Ability of a New Owner of a Claimed Horse to Void the Claim**

**I.D. No.** RWB-08-13-00005-P

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

**Proposed Action:** Amendment of section 4038.5 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, section 101(1)

**Subject:** Ability of a new owner of a claimed horse to void the claim.

**Purpose:** To remove the incentive to horse owners to race substandard horses in a claiming race.

**Text of proposed rule:** Under subdivision (a) of Section 4038.5 of Title 9 NYCRR, Item (iii) is added and Item (i) is amended to read as follows:

i. the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section [4038.18] 4038.19 of this subchapter unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

ii. a claim shall be void for any horse that dies during a race or is euthanized on the track following a race[.]; and

iii. a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### **Regulatory Impact Statement**

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate this rule pursuant to Racing Pari-Mutuel Wagering and Breeding Law section 101(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to assure integrity, safety and public confidence in claiming races by removing incentives to use the claiming race process as a means of racing and transferring unsound horses. This rulemaking removes the incentive to enter an unsound horse in a claiming race with the intended goal of protecting both the health and safety of the equine and human athlete.

A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race at which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. By entering a horse in a claiming race, the owner is offering his horse for sale to another individual.

This amendment will reduce the incidence of injuries/deaths in horse races by changing the claiming rule to allow a successful claimant to void a claim when the horse is unable to walk off the track and must be transported – or vanned – off the race track. The current rule provides a regulatory mechanism by which a successful claimant may void a claim in the event that a horse dies during the race or is euthanized on the track.

Adoption of this amendment was recommended by the New York Task Force on Racehorse Health and Safety, which recently released its report of investigation concerning the death of 21 thoroughbred race horse between November 2011 and March 2012. The report stated: "The Task Force recommends that the NYSRWB Rule 4038.5 be amended to provide that a claim is voidable, at the discretion of the claimant and within one hour of the conclusion of the race, for a horse that is vanned off the track." The report further states: "The Task Force believes the NYSRWB emergency amendment to Rule 4038 (in April 2012) represents an improvement by establishing a deterrent to the willful entry of a compromised horse, but that it should be further amended to provide that a claim is voidable by the claimant within one hour of the conclusion of the race if the horse is vanned off the track. The voiding of a claim should not require the death of a horse."

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Board staff reviewed the cost factors and determined that the rule can be implemented using the existing system for voiding a claim, and no additional costs will be added.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The process will rely on the existing administrative forms and processes for voiding a claim.

7. Duplication: None.

8. Alternatives. Proposals include allowing the claimant to void a claim immediately after a race for no reason or giving race secretaries authority to include the above condition in claiming races. These alternatives were considered impractical.

The Board also considered a rule to required the stewards to consult with a designated veterinarian before voiding a claims for a horse that has suffered a catastrophic injury or death before it was unsaddled following its race. This alternative was rejected in favor of the proposed rule, which is a bright line threshold rather than an arguably judgmental determination.

9. Federal standards: None.

10. Compliance schedule: This rule is currently in effect as an emergency rule. It can implemented upon adoption and publication in the State Register, which is anticipated to be May 2013.

#### **Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statement**

As is evident by the nature of this rulemaking, this proposal affects the voiding of claims where a horse is injured during a race and requires transportation off the track and will not have an adverse affect on jobs or

small businesses. The narrow economic impact of this amendment is limited to those instances where a claim on a thoroughbred race horse is voidable if the horse is unable to walk off the race track and is transported off the track. The Board previously adopted a similar rule that allowed a claim to be voided if the horse dies on the track or is euthanized. Since that rule was adopted as an emergency rule in April 2012, there has been only one instance of a claimed horse dying on the track. The indirect economic impact of this rule is that it will discourage horse owners from entering unsound horses in claiming races. The Board believes that this limited economic impact will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This amendment is intended to reduce an incentive to race an unsound horse. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. There will be no impact for reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. A Jobs Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

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

#### Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds

I.D. No. RWB-08-13-00006-P

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

**Proposed Action:** Amendment of sections 4043.2 and 4043.4 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 902(1)

**Subject:** Implementation of substantive changes and procedures pertaining to equine drugs and reporting requirements for thoroughbreds.

**Purpose:** To protect the health and safety of thoroughbred race horses, jockeys and exercise riders.

**Text of proposed rule:** Subdivision (g) of Section 4043.2 of 9 NYCRR is amended as follows:

4043.2 Restricted use of drugs, medication and other substances.

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

- (1) acepromazine;
- (2) albuterol;
- (3) atropine;
- (4) butorphanol;
- (5) clenbuterol;
- (6)(5) detomidine;
- (7)(6) glycopyrrolate;
- (8)(7) guaifenesin;
- (9)(8) hydroxyzine;
- (10)(9) isoxsuprine;
- (11)(10) lidocaine;
- (12)(11) mepivacaine;
- (13)(12) pentoxifylline;
- (14)(13) phenytoin;
- (15)(14) pyrilamine;
- (16)(15) xylazine.

[They] Such substances may not be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. 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 [96 hours] 96-hour period.

Paragraph 9 of Subdivision (e) of Section 4043.2 of 9 NYCRR is amended as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadotropin[, glucocorticoids]), except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part];

Subdivision (i) of section 4043.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse [which 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] the following periods of time:

(1) for at least five days following a systemic administration of a corticosteroid;

(2) for at least seven days following a joint injection of a corticosteroid; and

(3) for at least 14 days following an administration of clenbuterol.

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 time periods.

New Subdivision (b) is added to Section 4043.4 of 9 NYCRR to read as follows:

(b) Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the Board, by the trainer to the Board within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, NYS Racing and Wagering Board/NYS Gaming Commission, One Broadway Plaza, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101(1) and 902(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel betting activities in the State, both on track and off-track, and the persons engaged therein, including the authority to regulate the use of drugs that can manipulate race performance. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Board to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties for anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Racing and Wagering Board has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths were more than double the expected frequency rate. The Task Force's investigation revealed troubling aspects with the way horses are examined and managed in this State and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

The amendments to Board Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys/riders. The withdrawal periods in the rule were prescribed explicitly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. The intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can frustrate the pre-race clinical examination. For these reasons, regulation of intra-articular administration of corticosteroids is appropriate. The term "intra-articular" has been revised to "joint injection" in the rule text to more accurately reflect a vernacular of the trade.

**ITEM 6 c.**

Andrew M. Cuomo  
Governor

John A. Crotty  
John J. Poklemba  
Barry C. Sample  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Barry C. Sample, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** July 26, 2013

**Re:** Rulemaking on Use of Cellular Telephones in the Paddock (amendment to 9 NYCRR § 4104.14).

A one-year experiment allowing the use of cellular telephones or other electronic communication devices in a designated area of a harness racing paddock or receiving barn expired February 15, 2013. No complaints were received during the period the rule was in place, nor have there been any incidents involving the rule. This rule has been proposed for an additional one-year period and may now be considered for adoption.

The proposed rule would allow the limited use of cellular telephones and electronic communication devices in the paddock area and receiving barn of a harness race track. The need for trainers to be able to communicate from the paddock is unique to harness racing because trainers or their assistants are required to spend at least one hour in the paddock prior to post time. A track would be permitted to adopt a more restrictive rule.

This amendment was proposed for an additional one-year period from adoption, as published in the February 20, 2013 *State Register*. In addition, certain interested members of the racing community received an additional memo from Commission staff describing the proposed rule. No public comment was received during the comment period of the proposed permanent rulemaking.

For your reference, attached are the pages of the February 20, 2013 *State Register* describing the proposed rule.

[REDACTED]

attachment

cc: Robert Williams, Acting Executive Director  
Ronald G. Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering  
Kristen M. Buckley, Acting Secretary

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When New Yorkers Play Responsibly, We All Win.

confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Board to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties for anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Racing and Wagering Board has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths were more than double the expected frequency rate. The Task Force's investigation revealed troubling aspects with the way horses are examined and managed in this state and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

The amendments to Board Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys/riders. The withdrawal periods in the rule were prescribed explicitly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. The intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can frustrate the pre-race clinical examination. For these reasons, regulation of intra-articular administration of corticosteroids is appropriate. The term "intra-articular" has been revised to "joint injection" in the rule text to more accurately reflect a vernacular of the trade.

The Task Force also identified the need to tighten controls over the use of clenbuterol, which is currently permitted as a 96-hour rule under the Board's rules. It is a potent bronchodilator that is approved by the Food and Drug Administration for treatment of lower airway inflammation and upper respiratory infections in a horse. The drug is used to prevent respiratory infections in horses experiencing exercise-induced pulmonary hemorrhage (respiratory bleeding). Some trainers have indicated that their horses look better and have increased appetites when treated with clenbuterol. The amendments will replace the existing 96-hour time restriction, prompting the change to subdivision (g) of 4043.2 of 9 NYCRR to remove any reference to clenbuterol, with a 14-day restriction to be found in a new paragraph (3) of subdivision (i) of 9E NYCRR.

The report stated that in addition to its pharmacological effect on the respiratory tract, clenbuterol mimics anabolic steroids in that it increases muscle and decreases fat in cattle, pigs, poultry and sheep. The report stated that there is a belief that illegally compounded clenbuterol has been used in thoroughbred horses as an alternative to prohibited anabolic steroids. The Task Force found: "It was abundantly clear to the Task Force that while the NYSRWB's time limit regarding clenbuterol was being followed, the medication is in common use as a substitute for anabolic steroids and not for the legitimate therapeutic purpose for which it is intended."

The Board also amended paragraph (9) of subdivision (e) of 4043.2 of 9 NYCRR to remove any references to steroids. This was not a recommendation by the Task Force, but in light of the Board's existing rule limiting the administration of anabolic steroids (Rule 4043.15) and the restrictions placed on corticosteroids in this rulemaking, the Board believes that Rule 4043.2(e)(9) should contain no reference to steroids, in order to avoid confusion.

The Task Force reported: "The failure of trainers to report intra-articular injections as required prevented the NYRA veterinarians from identifying a pattern of redundant...treatments that had the potential to misrepresent the true clinical condition of a horse." Therefore, in order to ensure proper notification, the Board amends Section 4043.4 of 9 NYCRR, which is commonly known as the "Trainer's Responsibility Rule," to require that a trainer maintain accurate records of all corticosteroid joint injections to a horse he or she trains. The corticosteroid reporting will require that a trainer submit a corticosteroid joint injection record to the Board within 48 hours of treatment so that examining veterinarians will have access to that information as part of the pre-race examinations. This amendment will improve the quality of pre-examinations, provide the Board with timely notice of any potential ailments and ensure that documentation is available in the event a horse's fitness comes into question.

In response to input from the New York Thoroughbred Racing Association, the Board added a provision in the CJI reporting rule, the new 9 NYCRR 4043.4(b), authorizing trainers to delegate the reporting responsibility to the treating veterinarians.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for the New York Drug Testing and Research Program will be substantial. The cost for conducting administration trials necessary for Cortisone Testing will be \$36,000. The cost of related laboratory testing of samples for corticosteroids is \$18,000 per year. The cost of trial administrations of clenbuterol is \$6,000. The related laboratory testing of clenbuterol samples is \$5,000 per year.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will require the New York State Racing and Wagering Board to develop a filing system for corticosteroid reporting.

There will be no costs to local government because the New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel horse racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Board relied on its experience in collecting information and based upon its experience in the equine drug testing program. The costs associated with clenbuterol and corticosteroid testing was provided directly from the New York Drug Testing and Research Program.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers will be required submit paperwork to the Board in a manner prescribed by the Board.

7. Duplication: None.

8. Alternatives: These rule amendments are based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: This rule can be implemented upon publication in the State register. The Board expects that this will be adopted as a final rule in either May or June 2013. It is currently in effect as an emergency rule.

#### **Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statement**

As is evident by the nature of this rulemaking, this will not have an adverse affect on jobs or rural areas. This proposal concerns the restricted administration of certain drugs to thoroughbred race horses, the testing procedures to ensure compliance with those restrictions, and reporting of the administration of certain drugs. These medications – corticosteroids and clenbuterol – are currently permitted and will continue to be permitted but under different administration schedules. These schedules will have no impact on jobs or rural areas. This amendment is intended to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State. This will not adversely impact rural areas or jobs or local governments and does not require a Rural Area Flexibility Statement or Job Impact Statement.

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

#### **Use of Cellular Telephones in the Paddock**

**I.D. No.** RWB-08-13-00004-P

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

**Proposed Action:** This is a consensus rule making to add section 4104.14 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 301(1)

**Subject:** Use of cellular telephones in the paddock.

**Purpose:** To allow cellular telephones and other electronic communication devices in designated areas of a harness race track paddock.

**Text of proposed rule:** Section 4104.14 of 9 NYCRR is added read as follows:

*4104.14 Use of cellular telephones and electronic communication devices*

*The use of cellular telephones or any other electronic communication device, including devices that are capable of sending or receiving text messages or e-mails, by any person while in the paddock or receiving barn is restricted to use in an area designated by the Paddock Judge.*

*a. Notwithstanding the provisions of Rule 4104.11, a sign shall be posted prominently at the entrance of the paddock or receiving barn stating that the use of a cellular telephone or an electronic communication device by any person while in the paddock is restricted to an area designated by the Paddock Judge and identified by a sign that reads "Designated Cell Telephone Area".*

*b. Nothing contained in this rule shall diminish the right of any track to adopt or implement more restrictive procedures concerning the use of cellular telephones and other electronic devices.*

*c. This section shall continue for one year after the date that it goes into effect.*

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York, (518) 395-5400, email: info@racing.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### **Consensus Rule Making Determination**

No person is likely to object to the adoption of this rule because this rule has been in effect since February 15, 2012 and no person has objected to it, nor has there been anything controversial that occurred since it was implemented.

When this rule was adopted by the Racing and Wagering Board on January 25, 2012, it included a sunset provision of one year. The rule will expire on February 15, 2013. This adoption is necessary to extend the rule for another year from the publication date of the Notice of Adoption.

#### **Job Impact Statement**

This proposal does not require a Job Impact Statement as the amendment deals with the conduct of personnel within the paddock or receiving barn at a licensed harness race track. Consequently, the rule does not adversely affect jobs. The rule proposal requires Paddock Judges, who are employees of the New York State racing and Wagering Board, to designate areas where track personnel may use their cellular telephones or electronic communication devices, prominently post signs regarding the restricted use of cell phones in the paddock and other signs that identify the cellular phone use area. This rule has been in effect on a one-year term since February 15, 2012 and there has been no adverse impact on jobs as a result.

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

#### **Ability of a New Owner of a Claimed Horse to Void the Claim**

**I.D. No.** RWB-08-13-00005-P

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

**Proposed Action:** Amendment of section 4038.5 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, section 101(1)

**Subject:** Ability of a new owner of a claimed horse to void the claim.

**Purpose:** To remove the incentive to horse owners to race substandard horses in a claiming race.

**Text of proposed rule:** Under subdivision (a) of Section 4038.5 of Title 9 NYCRR, Item (iii) is added and Item (i) is amended to read as follows:

i. the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section [4038.18] 4038.19 of this subchapter unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

ii. a claim shall be void for any horse that dies during a race or is euthanized on the track following a race[.]; and

iii. a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### **Regulatory Impact Statement**

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate this rule pursuant to Racing Pari-Mutuel Wagering and Breeding Law section 101(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to assure integrity, safety and public confidence in claiming races by removing incentives to use the claiming race process as a means of racing and transferring unsound horses. This rulemaking removes the incentive to enter an unsound horse in a claiming race with the intended goal of protecting both the health and safety of the equine and human athlete.

A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race at which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. By entering a horse in a claiming race, the owner is offering his horse for sale to another individual.

This amendment will reduce the incidence of injuries/deaths in horse races by changing the claiming rule to allow a successful claimant to void a claim when the horse is unable to walk off the track and must be transported – or vanned – off the race track. The current rule provides a regulatory mechanism by which a successful claimant may void a claim in the event that a horse dies during the race or is euthanized on the track.

Adoption of this amendment was recommended by the New York Task Force on Racehorse Health and Safety, which recently released its report of investigation concerning the death of 21 thoroughbred race horse between November 2011 and March 2012. The report stated: "The Task Force recommends that the NYSRWB Rule 4038.5 be amended to provide that a claim is voidable, at the discretion of the claimant and within one hour of the conclusion of the race, for a horse that is vanned off the track." The report further states: "The Task Force believes the NYSRWB emergency amendment to Rule 4038 (in April 2012) represents an improvement by establishing a deterrent to the willful entry of a compromised horse, but that it should be further amended to provide that a claim is voidable by the claimant within one hour of the conclusion of the race if the horse is vanned off the track. The voiding of a claim should not require the death of a horse."

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Board staff reviewed the cost factors and determined that the rule can be implemented using the existing system for voiding a claim, and no additional costs will be added.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The process will rely on the existing administrative forms and processes for voiding a claim.

7. Duplication: None.

8. Alternatives. Proposals include allowing the claimant to void a claim immediately after a race for no reason or giving race secretaries authority to include the above condition in claiming races. These alternatives were considered impractical.

The Board also considered a rule to required the stewards to consult with a designated veterinarian before voiding a claims for a horse that has suffered a catastrophic injury or death before it was unsaddled following its race. This alternative was rejected in favor of the proposed rule, which is a bright line threshold rather than an arguably judgmental determination.

9. Federal standards: None.

10. Compliance schedule: This rule is currently in effect as an emergency rule. It can implemented upon adoption and publication in the State Register, which is anticipated to be May 2013.

#### **Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statement**

As is evident by the nature of this rulemaking, this proposal affects the voiding of claims where a horse is injured during a race and requires transportation off the track and will not have an adverse affect on jobs or

# ITEM 7

Andrew M. Cuomo  
Governor

John A. Crotty  
John J. Poklemba  
Barry C. Sample  
Todd R. Snyder  
Commissioners



Robert Williams  
Acting Executive Director

Edmund C. Burns  
General Counsel

**To:** John A. Crotty, Commissioner  
John J. Poklemba, Commissioner  
Barry C. Sample, Commissioner  
Todd R. Snyder, Commissioner

**From:** Edmund C. Burns, General Counsel

**Date:** July 25, 2013

**Re:** NYRA Request for Pick Five and Show Quinella Wagers

The New York Racing Association, Inc. ("NYRA") has requested approval to offer two new wagers, a Pick Five and a Show Quinella. As present Commission rules do not specifically authorize the wager, NYRA has requested utilization of Commission Rule 4011.28, which provides that a racing association may – with the prior permission of the Commission – offer any type of pari-mutuel wagering as defined in the December 1996 Association of Racing Commissioners International ("ARCI") model rules.

In regard to the Pick Five wager, discussion between NYRA and Commission staff identified concern with race changes from turf to a non-turf surface post-wagering. As a result, NYRA requested an "all win" for a race for which there is a surface change, provided it is limited to a single occurrence in a Pick Five sequence. In cases where there is a surface change for more than one race in a Pick Five sequence, NYRA requested "all wins" for the changed races, limited to that day's net win pool only with any carryover from a previous day again carried over to the next Pick Five pool.

[REDACTED]

The final substantive item related to the request regards the proposed takeout. NYRA proposes to offer each of the new wagers with a 15 percent takeout. NYRA currently offers Pick Four and Pick Six wagers, an exotic and super exotic wager respectively, with differing takeout rates. The NYRA Pick Six wager has a takeout rate of 24 percent on carryover days and 15 percent on non-carryover days; the NYRA Pick Four wager has a takeout rate of 24 percent. The N.Y.S. Racing, Pari-Mutuel Wagering and Breeding Law authorizes a racing association to request setting takeout rates within certain parameters depending upon type of wager. The proposed takeout rate for the two wagers is within the acceptable wagering parameters.

[REDACTED]



# ITEM 8

## Resolution in Regard to Delegation of Authority

The Commission passed a resolution on June 26, 2013 (No. 3 – 2013) in regard to the administration of the Gaming Commission. The Commission will consider whether to adopt a resolution that sets forth in more detail the types of matters delegated to Commission staff.