

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, section 104; Tax Law, sections 1601, 1604, 1612 and 1617

**Subject:** New York Lottery draw game rules, including rules implementing changes to Powerball lottery game.

**Purpose:** Implement nationwide changes to Powerball multi-state lottery game; make "Quick Pick" definition consistent for all draw games.

**Text or summary was published** in the July 22, 2015 issue of the Register, I.D. No. SGC-29-15-00026-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The agency received no public comment.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Thoroughbred Restricted Time Periods for Various Drugs

I.D. No. SGC-39-15-00005-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 4043.2(a) and (e) of Title 9 NYCRR.

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

**Subject:** Thoroughbred restricted time periods for various drugs.

**Purpose:** To enhance the integrity and safety of thoroughbred horse racing.

**Text of proposed rule:** Section 4043.2 of 9 NYCRR would be amended as follows:

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

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

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

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

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(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:

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(14) the following nonsteroidal anti-inflammatory drugs (NSAID[’s]): [Phenylbutazone (e.g., Butazolidin)] *diclofenac*, [F]lunixin (e.g., Banamine), *ketoprofen* (e.g., *Orudis*), meclufenamic acid (e.g., Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., *Orudis*)] and *phenylbutazone* (e.g., *Butazolidin*).

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(20) *dimethyl sulfoxide* (i.e., *DMSO*).

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

#### Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commis-

sion to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

The proposal would amend the restricted time period for *DMSO* to prohibit the administration of *DMSO* within 48 hours of a race. Currently, in 9 NYCRR, topical administration of *DMSO* is permitted at any time under Section 4043.2(a)(1) and other administrations of *DMSO* are not permitted until one week before a horse's next race under the restrictions of Section 4043.2(h). The Commission has adopted a regulatory threshold on race day for *DMSO* that is consistent with an administration of *DMSO* at least 48 hours before a horse's next race and reflects a determination that administrations of *DMSO* are permissible within one week of racing, provided that no administration occurs within the 48 hours before a horse's next race. The proposed amendment would add *DMSO* to the list, in subdivision (e) of Section 4043.2, of drugs that may be administered until 48 hours before racing. A 48-hour restricted time period for *DMSO* will also provide an assurance to thoroughbred horsepersons that compliance would protect them from violation of such threshold.

The proposal would also amend subdivision (e) Section 4043.2 to include the diclofenac to the list of permissible NSAIDs that appears at paragraph 14. This change will make the restricted time period for diclofenac, which currently is regulated for one week before racing pursuant to subdivision (h) of Section 4043.2, consistent with the regulatory threshold that the Commission has adopted for diclofenac. A 48-hour restricted time period will provide an assurance to thoroughbred horsepersons that compliance would protect them from violation of such threshold.

#### 4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal.

This proposed amendments merely adjust the restricted time periods after the treatment of a thoroughbred race horse with diclofenac or dimethyl sulfoxide (i.e., *DMSO*) to most closely approximate the period after administration of such drugs that should be accorded before a horseperson races a thoroughbred horse, given the recent adoption of the national regulatory laboratory thresholds for such drugs. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction

on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

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

#### Reimbursement of Awards for Capital Improvement Projects at Video Lottery Gaming (“VLG”) Facilities

I.D. No. SGC-39-15-00006-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 5100.2(a)(2), 5122.1, 5122.3, 5122.4; and addition of section 5122.5 to Title 9 NYCRR.

**Statutory authority:** Tax Law, sections 1601 and 1617-a; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2) and 104(1,19)

**Subject:** Reimbursement of awards for capital improvement projects at video lottery gaming (“VLG”) facilities.

**Purpose:** Clarify when VLG agent must reimburse State upon divestment of a capital improvement for which capital award was received.

**Text of proposed rule:** Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law and Section 1604, clause (H) of subparagraph (ii) of paragraph 1 of subdivision (b) of section 1612 and subdivisions a and c of Section 1617-a of the Tax Law, the New York State Gaming Commission hereby proposes this amendment of subdivision (a) of Section 5001.2 and Sections 5122.1, 5122.3 and 5122.4, and the addition of a new Section 5122.5, of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

§ 5100.2. Definitions.

(a) Unless the context indicates otherwise, the following definitions are applicable throughout this subchapter.

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(2) *The act means article 34 of the Tax Law, commonly known and cited as the “New York State Lottery for Education Law.”*

[NOTE: paragraphs (2) through (125) would be renumbered as (3) through (126).]

§ 5122.1. Video lottery gaming agent receipt of capital awards.

(a) [In accordance with the act, there] *A vendor capital award for which a video lottery agent shall be eligible pursuant to Tax Law section 1612(b)(1)(ii)(H) shall be made available [to each video lottery gaming agent] from the daily video lottery gaming revenue generated at [each] such video lottery gaming agent’s facility [a capital award] to be used exclusively for [capital project investments to improve the facilities of the vendor track that promote or encourage increased attendance at the video lottery gaming facility, including, but not limited to, hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance the facility amenities; provided that such capital investments shall be approved by the commission and that such agent demonstrates that such capital expenditures will increase patronage at such agent’s facilities and increase the amount of revenue generated to support State education programs] the purposes set forth in Tax Law section 1612(b)(1)(ii)(H). Tax Law section 1612(b)(1)(ii)(H) sets forth co-investment requirements of such agents. The amount of any vendor’s capital award that is not used during any one-year period may be carried over into subsequent years only as permitted by Tax Law section 1612(b)(1)(ii)(H).*

(b) Except as provided in the act, each agent shall be required to co-invest an amount of capital expenditure equal to such agent’s cumulative vendor’s capital awards. The amount of any vendor’s capital award that is not used during any one-year period may be carried over into subsequent years ending before April 1, 2013. In the event that a vendor track’s capital expenditures, approved by the commission prior to April 1, 2013 and completed prior to April 1, 2015, exceed the vendor track’s cumulative capital award during the five-year period ending April 1, 2013, the vendor track shall continue to receive the annual capital award after April 1, 2013 until such approved capital expenditures are paid to the vendor track subject to any required co-investment.]

(c) Any agent that has received a vendor’s capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement, in accordance with

generally accepted accounting principles, shall reimburse the State in amounts equal to the total of any such awards.]

(d) Any capital award not approved for a capital expenditure at a video lottery gaming facility by April 1, 2013 shall be deposited in the State lottery fund for education aid.]

(e) (b) All such capital [improvement] *improvements* and expenditures shall be subject to the overall supervision of the commission.

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§ 5122.3. Capital improvement plan.

(a) Each agent eligible for capital award funds shall prepare *annually* a capital improvement plan for the video lottery gaming facility. The capital improvement plan shall provide sufficient detail to describe anticipated capital projects for which the agent will seek reimbursement from the capital award. Such capital improvement plan shall be submitted electronically to the commission for review, and may be amended by the agent from time to time as planned capital projects are modified.

(b) Each capital improvement plan, without limitation, shall briefly describe, in narrative form, the capital improvement projects the video gaming facility plans to commence [during the five-year period ending April 1, 2013, that are to be completed prior to April 1, 2015] *over the next five years.*

(c) Capital improvements plans shall be due to the commission [on a date prescribed by the commission] *no later than July 1 of each year.* The failure to submit any capital improvement plan when due to the commission shall be a violation of the agent’s license, the act and these regulations.

§ 5122.4. Capital improvement plan implementation and award reimbursement.

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(b) Payment from capital award funds shall [only] be approved by the commission *only* for capital project construction or improvements commenced on or after April 1, 2008, or the portion of a project completed after April 1, 2008 for projects, or phases of projects, commenced before April 1, 2008.

(c) Not later than [15] *60* days from receipt of a capital project request for approval, the commission shall review the request and provide the commission’s approval or denial of the project. Each project shall qualify as an approved use of the capital award if it meets the following guidelines:

(1) The capital project includes the addition of tangible, permanent assets in the form of land, buildings, or equipment; or the project includes the restoration of such existing assets.

(2) Project assets purchased or restored, are to be used in the operation of video gaming and are expected to have a useful life of two years or more, providing a reasonable benefit throughout the assets useful life.

(3) The capital expenditure is of significant value, consistent with standard accounting policies for the recording of capital assets.

(4) The capital project will increase patronage at the video gaming facility and increase the amount of revenue generated to support education aid.

(5) The capital project will be completed prior to [April 1, 2015] *the applicable date set forth Tax Law section 1612(b)(1)(ii)(H).*

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(l) (l) In the event any [expense reports] *reimbursement requests* are deemed insufficient at the sole discretion of the commission, the commission may require an agent to provide the following information:

(1) a full and complete reconciliation of the capital improvement expenses and associated costs incurred; and

(2) an accounting for the cash spending related to the capital improvement funds.

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§ 5122.5. *Reimbursement of capital award to State upon divestiture.*

(a) *Divestiture of a capital improvement. A video lottery gaming agent shall be deemed to have chosen to divest a capital improvement, within the meaning of Tax Law section 1612(b)(1)(ii)(H), when such video lottery gaming agent voluntarily*

(1) *sells, alienates, transfers, relinquishes possession of or otherwise disposes;*

(2) *destroys or otherwise wastes; or*

(3) *removes from use for the benefit of video lottery gaming;*

*a capital improvement that had been purchased or created with funds in whole or in part from a vendor’s capital award. Notwithstanding anything else in this subdivision, a video lottery gaming agent shall not be deemed to have chosen to divest a capital improvement, within the meaning of Tax Law section 1612(b)(1)(ii)(H), if the commission determines in writing that such action was taken with the prior approval of the commission and was taken with the intent to increase patronage at such video lottery gaming agent’s facility and increase the amount of revenue generated to support State education programs.*

(b) *Sale or transfer to affiliated entity. A video lottery gaming agent transferring a capital improvement to an affiliated entity that will become, in the place of such video lottery gaming agent, the video lottery agent at*