

Action taken: Amendment of section 597.3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 17-0301, 17-0303, 17-0501, 17-1743, 27-1301, 37-0101 through 37-0107 and 40-0101 through 40-0121

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: The New York State Department of Health (DOH) has requested that the New York State Department of Environmental Conservation (DEC) list perfluorooctanoic acid (PFOA), CAS number 335-67-1, as a hazardous substance under 6 NYCRR Part 597. Due to its environmental presence, persistence and toxicity, the improper treatment, storage, transport, and disposal of PFOA pose a threat to public health in New York State.

There is also a substantial concern across the globe regarding the human toxicity of PFOA. The United States Environmental Protection Agency, the United States Agency for Toxic Substances and Disease Registry, Health Canada, the European Food Safety Authority, the European Chemical Agency, and the States of New Jersey, Minnesota, and Maine have all conducted comprehensive evaluations of the human health effects of PFOA. These evaluations show associations between PFOA exposure and an increased risk for several health effects.

In light of the public health concerns associated with PFOA it is essential to list it as a hazardous substance under 6 NYCRR Part 597, making it a hazardous waste pursuant to ECL Section 27-1301, in order to enable DEC to expend funds from the Hazardous Waste Remedial Fund to clean up the contaminate where it poses a significant public health threat. For example the Town of Hoosick is currently experiencing exposure to elevated levels of PFOA. This emergency regulation will provide DEC with authority to take immediate action to protect the public health. Furthermore, to the extent elevated levels of PFOA are identified elsewhere in the state, DEC needs the authority to act expeditiously to protect public health.

Subject: Chemical Bulk Storage (CBS).

Purpose: To amend section 597.3 of the CBS regulations to add perfluorooctanoic acid (CAS number 335-67-1) to Table 1 and Table 2.

Text of emergency rule: Section 597.3 is amended to add perfluorooctanoic acid (CAS number 335-67-1) to Table 1 and Table 2.

Substance Added to Part 597 Table 1

CASRN	Substance	RQ Air	RQ Land/ Water	Notes
335-67-1	Perfluorooctanoic acid	1	1	

Substance Added to Part 597 Table 2

CASRN	Substance	RQ Air	RQ Land/ Water	Notes
335-67-1	Perfluorooctanoic acid	1	1	

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 25, 2016.

Text of rule and any required statements and analyses may be obtained from: Andrew English, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020, (518) 402-9553, email: derweb@dec.ny.gov

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Environmental Conservation publishes a new notice of proposed rule making in the *NYS Register*.

Regulations Governing the Recreational Harvest of Winter Flounder

I.D. No.	Proposed	Expiration Date
ENV-04-15-000006-P	January 28, 2015	January 28, 2016

New York State Gaming Commission

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

Use of Cellular Telephones and Electronic Communication Devices in the Paddock

I.D. No. SGC-07-16-00001-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 4104.14 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(1), (19) and 301(1)

Subject: Use of cellular telephones and electronic communication devices in the paddock.

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

Text of proposed rule: Subdivision (c) of 4104.14 of Title 9E NYCRR is deleted 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: Kristen Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York, (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

(a) Statutory authority. Racing, Pari-Mutuel Wagering and Breeding Law sections 104(1), 104(19) and 301(1). Section 104(1) of the Racing, Pari-Mutuel Wagering and Breeding Law grants the Gaming Commission general jurisdiction over all gaming activities within the state and over the corporations, associations and person engaged therein. Section 104(19) grants the Gaming Commission the authority to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 301(1) grants the Gaming Commission the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly.

(b) Legislative objectives. To enable the Gaming Commission to ensure that all gaming activity conducted in this state will be of the highest integrity, credibility and quality.

(c) Needs and benefits. This rule is needed to permit trainers, drivers, owners and groom the ability to communicate fully while in the paddock area.

Paddock personnel will be able to communicate during the long period of time they are required to remain in the paddock. Commission Rule 4104.8(a) requires trainers and/or assistant trainers to report to the paddock at least one hour prior to post time. A driver, trainer or groom, once admitted to the paddock may not leave the paddock 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. If these persons have multiple horses racing, they may be required to spend many hours in the paddock. During that time, they may need to make and receive telephone calls and electronic messages.

The cell phone paddock rule, 9 NYCRR § 4104.14, was adopted originally on January 30, 2012 and included subdivision (c), which stated that "this section shall continue for one year after the date that it goes into effect," allowing the rule to be implemented on a trial basis. The Gaming Commission re-adopted the rule on August 6, 2013. The Gaming Commission, with this proposal, intends to omit the sunset clause and make the rule permanent.

(d) Costs. There are no projected costs to regulated persons or state and local governments associated with the adoption of this rule. The elimination of subdivision (c) will reduce agency costs to the Gaming Commission by eliminating the need to prepare and submit a rulemaking package to continue experimentation with the rule. State and local governments are not affected by this rule.

(e) Paperwork. There will be no new paperwork created by this amendment. Adoption of the amendment will reduce the paperwork required for annual re-adoption of Section 4104.14 by the Gaming Commission.

(f) Local government mandates. Because the Gaming Commission is solely responsible for the regulations of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

(g) Duplication. There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the amendment of Section 4104.14.

(h) Alternative approaches. No alternative approaches were considered for this rulemaking because it was previously implemented in January 2012 and August 2013 on an experimental basis and there were no problems encountered with the rule.

(i) Federal standards. There are no federal standards for pari-mutuel wagering on harness races in New York State.

(j) Compliance schedule. The rule would be effective immediately upon publication of a Notice of Adoption in the State Register.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment re-adopts a rule that was originally adopted on January 31, 2012 and re-adopted on August 6, 2013 which allows the use of cellular telephones and electronic communications devices within the paddock or receiving barn at a licensed harness race track. This amendment is different from the January 2012 and August 2013 adoption in that it removes an annual sunset clause, removing the need for the Gaming Commission to re-adopt the rule every year. The rule proposal requires Paddock Judges, who are employees of the New York State Gaming Commission, 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 at New York State harness racetracks since January 2012 and will not add any new requirements. Consequently, the rule does not adversely affect small business, local governments, jobs nor rural areas. This amendment will not have an 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**

Thoroughbred Pick-Four, Pick-Five and Pick-Six Wagers

I.D. No. SGC-07-16-00011-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 4011.23 and 4011.26; renumbering of section 4011.24 to 4011.23; and addition of section 4011.25 to Title 9 NYCRR.

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

Subject: Thoroughbred pick-four, pick-five and pick-six wagers.

Purpose: To standardize and improve the pick-four, pick-five and pick-six wagers in thoroughbred racing.

Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov>) Section 4011.23. Pick-six pools.

This section is renumbered as § 4011.26, changes in style are made,

new subdivisions (b), (c), (d), (e), (i), (k), (n) (o), (p) and (x) are added and other amendments are made, often to conform the structure of the section to the sections governing the pick-four and pick-five rules. A new subdivision (a) defines the wager and requires written approval from the commission concerning scheduling of pick-six contests, the designation of the method used and the amount of any cap to be set on the carryover. The subdivision also requires that any changes to the approved pick-six format require prior approval from the commission. A new subdivision (b) sets forth that the pick-six wager is separate from other types of wagers. A new subdivision (c) prohibits the re-sale of pick-six tickets. A new subdivision (d) requires the clear designation of which races are part of pick-six wagering. A new subdivision (e) requires a distinguishing design for pick-six tickets. A new subdivision (f) (formerly subdivision (g)) provides that should a programmed starter be scratched or declared a nonstarter in any pick-six race before the start of the first pick-six race, affected bettors may select another betting interest or cancel the wager before the start of the first pick-six race, or else a designated horse will be substituted for the scratched or nonstarting horse. In the new subdivision (g) (formerly subdivision (b)), the amendments make it possible for a bettor to win the major pool, by correctly selecting the winner in all six races, when there has been a surface transfer from turf in more than one of the pick-six races. The amendment allows for as many as three surface transfer races, which are deemed a win for all bettors ("all win"), when the bettor correctly selects all the other races. In subdivision (h), if a designated race is cancelled for pari-mutuel wagering before the first pick-six race is made official, then the pick-six wagers are deemed cancelled and the gross pool will be refunded to the bettors. A new subdivision (i) is added for when there are surface transfers in one or more designated races in the pick-six pool. The former subdivision (f) is redesignated as subdivision (j). A new subdivision (k) is added in regard to carryovers. The former subdivision (d) is redesignated as subdivision (l) and stylistic changes are made. The former subdivision (e) is redesignated as subdivision (m) and stylistic changes are made. A new subdivision (n) concerns suspension of pick-six wagering, with the prior approval of the commission. A new subdivision (o) concerns prohibition of display of will-pays. A new subdivision (p) concerns distribution occurrences not encompassed within the explicit provisions of section 4011.26. The former subdivision (j) is redesignated as subdivision (q) and stylistic changes are made. The former subdivision (n) is redesignated as subdivision (r) and stylistic changes are made. The former subdivision (o) is deleted, as the substance of it is superseded by the new subdivision (p). The former subdivision (m) is redesignated as subdivision (s) and stylistic changes are made. The former subdivision (l) is redesignated as subdivision (t) and stylistic changes are made. The former subdivision (q) is redesignated as subdivision (u) and stylistic changes are made. The former subdivision (k) is redesignated as subdivision (v) and stylistic changes are made. The former subdivision (i) is redesignated as subdivision (w) and stylistic changes are made. The new subdivision (x) requires the track to make copies of section 4011.26 available to the public free of charge in the public betting area of the track.

Section 4011.24. WIN-3. This section is renumbered as § 4011.23.

Section 4011.25. Pick-five pools.

A new section 4011.25 is added, called pick-five pools. The section was reserved. The provisions for this wager are generally consistent with those for pick-six pools except that there is no minor pool. The pick-five requires a bettor to select the winner of five designated races. Provisions are made for dead heats, final or other designated distributions at a race meeting, scratched horses, cancelled races and surface transfers. The retention rate for the pick-five pool is 15 percent.

Section 4011.26. Pick-four pools.

This section is renumbered as § 4011.24, changes in style are made, new subdivisions (h), (i), (p) and (r) are added and other amendments are made. Subdivision (a) defines the wager and requires written approval from the commission concerning scheduling of pick-four contests and the designation of the method used. The subdivision also provides that any changes to the approved pick-six format require prior approval from the commission. Stylistic changes are made in subdivisions (b), (c), (d) and (e). In subdivision (f), the designated substitute wager, should a betting entry or field be scratched from a pick-four race, when there is a tie among remaining horses for most money wagered on the horse in the win pool, is defined as the horse among those tied that has the lowest program number rather than on which the most money is wagered in the place pool. Also, an affected bettor is authorized to choose between cancelling a wager or selecting another horse when a horse selected to win a designated race is scratched before the first race of the pick-four, and otherwise the wager for such race is construed as a bet on a different horse, determined by rule, for such race. Stylistic changes are made in subdivision (g) and paragraph (5) is redesignated as a new subdivision (i) and amended to specify that bettors who select the winners in the greatest number of races run on the originally scheduled surface will share the net pool when there is a surface change in one or more of the designated races in the pick-four, and if there