

This amendment extends from January 1, 2019 to July 1, 2019 the date until which a group policy must provide that the group policy is primary to give insurers more time to revise and implement their new policy forms. Many insurers waited to start making changes to their motor vehicle liability insurance policy forms to exclude coverage for using or operating a motor vehicle as TNC vehicle until the Department had adopted the final regulation in October 2017. It takes time for an insurer to amend and file its policy forms with and receive approval from the Superintendent, and then for the insurer to actually implement the policy form changes. In addition, the Insurance Law prohibits an insurer from amending the terms of a motor vehicle liability insurance policy mid-contract. Rather, an insurer only may change the terms of an insurance policy upon the renewal date, which is usually annually. Furthermore, the Insurance Law requires an insurer to provide sufficient advance notice to an insured of any changes to the policy terms. Thus, many insurers may not have sufficient time to revise and implement their new policy forms by January 1, 2019. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2).

4. Costs: This amendment will not impose compliance costs on insurers because it merely extends the date until which a group policy must provide that the group policy is primary and fixes an incorrect citation. The Department of Financial Services will not incur costs for the implementation and continuation of this amendment. This amendment does not impose compliance costs on any local government.

5. Local government mandates: This amendment does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: An insurer will not incur additional paperwork because the amendment merely extends the date until which a group policy must provide that the group policy is primary and fixes an incorrect citation.

7. Duplication: This amendment does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: There were no significant alternatives to consider.

9. Federal standards: The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The amendment will take effect upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

The amendment to Insurance Regulation 35-E should have no impact on small businesses and local governments. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

The proposed amendment to Insurance Regulation 35-E should have no impact on rural areas or public or private entities in rural areas. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should not impose any adverse impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

The proposed amendment to Insurance Regulation 35-E should have no impact on jobs and employment opportunities. This rulemaking amends § 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changes an incorrect citation from 11 NYCRR § 60-3.3(g)(2) to 11 NYCRR § 60-3.3(h)(2). Because this amendment merely extends the date from January 1, 2019 to July 1, 2019 and fixes an incorrect citation, it should have no impact on jobs and employment opportunities.

New York State Gaming Commission

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

Amendment of Multiple Medication Violation (MMV) Penalty Enhancement Rule

I.D. No. SGC-40-18-00006-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 4045.1, 4045.3 and 4045.4 of Title 9 NYCRR.

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

Subject: Amendment of multiple medication violation (MMV) penalty enhancement rule.

Purpose: To enable the Commission to enhance the integrity and safety of thoroughbred pari-mutuel racing.

Text of proposed rule: Section 4045.1 of 9 NYCRR would be amended, as follows:

§ 4045.1. Definitions.

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

(a) ARCI Penalty Guidelines means the [penalty] *uniform classification* guidelines published in “Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule,” Version [8.0] 13.0 ([revised] *approved* December [2014] 9, 2016) of the Association of Racing Commissioners International, Inc., 1510 Newtown Pike, Suite 210, Lexington, KY 40511, which are hereby incorporated by reference. Such Uniform Rules of Racing are available for public inspection at the New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY and at the Department of State, 99 Washington Street, Albany, NY.

Section 4045.3 of 9 NYCRR would be amended, as follows:

§ 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] *the* equine drug rule violations as set forth in this section.

(b) The commission shall assign six points, which shall accumulate [permanently] *with points resulting from other violations committed within a three-year period*, for a violation involving a drug or other substance that:

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

(d) The commission shall assign [two points] *one point*, which shall accumulate with points resulting from other violations committed within a [two-year] *one-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.]

(e) *When more than one violation described in subdivision (d) of this section is committed within a 365-day period, the commission shall assign an additional penalty of one-half point for each previous violation (e.g., a second such violation within a 365-day period incurs an additional one-half point, a third such violation incurs an additional one point) in addition to the points assessed pursuant to subdivision (d) of this section.*

(f) *The point values set forth in subdivisions (c), [.] and (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.*

[(g)] (g) 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)] (h) 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. *No points shall be assessed for more than one non-steroidal anti-inflammatory drug (NSAID) when there has been only an NSAID stacking violation.*

(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. *If such an assessment of lesser points had been made by the jurisdiction in which a predicate equine drug violation occurred, or such jurisdiction had assigned lesser (even zero) points due to environmental contamination, then the commission shall assign such lesser points for the violation.*

Section 4045.4 of 9 NYCRR would be amended, as follows:
§ 4045.4. Administrative action.

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

(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] *an* 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] *five* 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] *5 to 5.5* points as a result of equine drug rule violations, a suspension of [30] *15* days;

(2) if the licensee has accumulated 6 to 8.5 points as a result of equine drug rule violations, a suspension of [60] *30* days;

(3) if the licensee has accumulated 9 to 10.5 points as a result of equine drug rule violations, a suspension of [180] *90* 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] *180 days*.

(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. *The Director may also impose a suspension before there has been a final adjudication of one or more of the predicate equine drug violations, when points assessed for matters that have been finally adjudicated suffice to impose a suspension pursuant to this Part; the balance of any suspension shall be imposed upon additional final adjudications.*

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

Public comment will be received until: 60 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) and 104(1, 19). 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 Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. Legislative objectives: The proposal advances legislative objectives by allowing the Commission to enhance the integrity of pari-mutuel wagering on thoroughbred races and the health and safety of thoroughbred racehorses.

3. Needs and benefits: This rulemaking will amend part 4045 of 9 NYCRR to be consistent with recent changes to the corresponding national model rule that requires specific minimum penalties for certain multiple violations of equine drug rules.

Part 4045 of 9 NYCRR imposes a minimum license suspension, after the occurrence of an equine drug rule violation in New York, when the Commission determines that the offender meets the criteria of a habitual or persistent violator. Part 4045 is based on a national model rule and was designed to ensure that in every state a mandatory minimum penalty would be imposed when a horseperson, typically the trainer, reaches a certain level of multiple equine drug violations. The national model rule has not been adopted in several racing states, however, due to perceived shortcomings. As a result, the Association of Racing Commissioners International, Inc. ("ARCI") recently changed its national model rule. These changes have received widespread support.

The proposal would adopt these amendments made to the national model rule.

Section 4045.3 would be amended to exempt points for minor medication (ARCI penalty class D) violations and to assess fewer points, except for repeated violations involving the use of non-steroidal anti-inflammatory drugs (NSAIDs), for lesser duration.

Section 4045.3 would be amended to require more points before the lowest (15- day) penalty assessment would be imposed, and to introduce a range of penalties that would grant some discretion to racing commissions.

The proposal would also clarify, in section 4045.3, the assessment of points when multiple NSAIDs are administered to a horse and authority of a state where a violation occurs to determine how many points to assess when environmental contamination is a mitigating factor; and, in section 4045.4, the authority of the Commission to impose some penalty, based on the matters that have been adjudicated with finality, while an offender has other matters under review.

Section 4045.1 would also be amended to incorporate by reference the most recent ARCI penalty guidelines concerning how many points to assess for a violation.

The proposal would not change the fact that, under section 4045.4, the Commission may consider past equine rule violations as an aggravating factor that could result in a more serious penalty for a new equine drug rule violation and proportionately reduce the mandatory minimum penalty enhancement in such situations.

This revised rulemaking is based on a model rule of the ARCI, which is anticipated to be adopted by racing commissions throughout the United States. The adoption of this proposed rule will help to discourage thoroughbred horsepersons from having recurring violations of equine drug rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. 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 because the rule does not create any mandatory new duty or obligation.

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

6. Paperwork: The Commission will assess a bare minimum penalty enhancement, when applicable, when an equine drug rule is violated in New York. The affected party may request a hearing. The Commission al-

ready examines the basis of this assessment, i.e., the licensee’s history of equine drug (and other) rule violations. A permanent record of such violations is maintained by the ARCI.

- 7. Duplication: None.
- 8. Alternatives. The Commission considered not amending its current rule. Adopting this proposal, however, is the most effective means to encourage more states to adopt a minimum penalty for repeat drug offenders and improve the public image of racing.
- 9. Federal standards: None.
- 10. Compliance schedule: The proposed rule does not create any additional requirements with which regulated persons must comply.

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 because it will not adversely affect small businesses, local governments, rural areas, or jobs.

The proposed amendment mitigates the assessment of points under the Commission’s existing rule to assess a minimum penalty enhancement when an equine drug violation occurs in New York and the offender has a specified significant history of such violations in New York or elsewhere. No regulated party will need a period to cure because the proposed amendments will only reduce, compared to the existing rules, the incidence and severity of the recidivism penalty that the commission applies when a person incurs repeated equine drug rule violations.

Such regulation will serve to enhance the integrity of racing and the health and safety of racehorses by serving as a deterrent to habitual and persistent equine drug rule violations. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Higher Education Services Corporation

EMERGENCY RULE MAKING

NYS Part-Time Scholarship (PTS) Award Program

I.D. No. ESC-40-18-00003-E
Filing No. 914
Filing Date: 2018-09-14
Effective Date: 2018-09-14

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

Action taken: Addition of section 2201.20 to Title 8 NYCRR.
Statutory authority: Education Law, sections 653, 655 and 667-c-1
Finding of necessity for emergency rule: Preservation of general welfare.
Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (HESC) Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the 2017-18 academic year, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a community college at the State University of New York or the City University of New York. Decisions on applications for student financial aid programs are customarily made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to begin processing scholarship applications. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: NYS Part-time Scholarship (PTS) Award Program.

Purpose: To implement the NYS Part-time Scholarship (PTS) Award Program.

Text of emergency rule: New section 2201.20 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.20 New York State Part-time Scholarship (PTS) Award Program.

(a) *Definitions. As used in Education Law, section 667-c-1 and this section, the following terms shall have the following meanings:*

- (1) *Good academic standing shall mean having a minimum cumulative grade point average of 2.0.*
- (2) *Interruption of study shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.*
- (3) *Program shall mean the New York State Part-time Scholarship (PTS) Award Program codified in Education Law, section 667-c-1.*

(b) *Eligibility. An applicant must satisfy the requirements of Education Law, section 667-c-1 and the general eligibility requirements provided in Education Law, section 661.*

(c) *Administration.*
 (1) *Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *For purposes of determining priority, financial need shall be established based on the federal expected family contribution reflected on the applicant’s federal student aid report, with the lowest expected family contribution evidencing the greatest financial need.*

(3) *Recipients of an award shall:*
 (i) *request payment annually at such times, on forms and in a manner specified by the corporation;*

(ii) *provide any information necessary for the corporation to determine compliance with the program’s requirements.*

(4) *The corporation shall maintain data relating to the performance of award recipients including, but not limited to, degree completion rates. All such data shall be deemed confidential and the corporation shall only disclose aggregate data unless otherwise required by law.*

(d) *Awards.*
 (1) *The amount of the award shall be determined in accordance with section 667-c-1 of the education law.*

(2) *A recipient of an award must remain in good academic standing, as defined in this section, and remain continuously enrolled (excluding summer and winter terms) to be eligible for payment of future awards, excluding any allowable interruption of study.*

(3) *Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time after verification and certification by the institution of the recipient’s grade point average and other eligibility requirements.*

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 December 12, 2018.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:
 The New York State Higher Education Services Corporation’s (HESC) statutory authority to promulgate regulations and administer the NYS Part-time Scholarship (PTS) Award Program (Program) is codified within Article 14 of the Education Law. In particular, Part KKK of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-c-1 to the Education Law. Subdivision 6 of section 667-c-1 of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State’s administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC’s Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC’s President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of