

**Revised Job Impact Statement**

The amendments to Insurance Regulations 147 and 179 should have no impact on jobs and employment opportunities. The amendments modify Insurance Regulations 147 and 179 to specify that two prior amendments to the regulations (i.e., the Fifth and Sixth Amendments to Regulation 147 and the Third and Fourth Amendments to Regulation 179) shall only apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2019 with written notification provided to the Superintendent by January 31, 2019. The concurrent amendments to Insurance Regulations 147 and 179 allow insurers to apply these two prior amendments, if optionally elected, for one additional year of policy issues. Insurers should not need to hire additional employees or independent contractors to comply with these amendments.

**Assessment of Public Comment**

The agency received no public comment.

**New York State Gaming Commission**

**NOTICE OF ADOPTION**

**Heads Up Hold ‘Em Poker**

**I.D. No.** SGC-38-18-00002-A

**Filing No.** 1174

**Filing Date:** 2018-12-17

**Effective Date:** 2019-01-02

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

**Action taken:** Addition of Part 5324.43 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(5), (6) and (11)

**Subject:** Heads Up Hold ‘Em poker.

**Purpose:** To set forth the practices and procedures for the operation of Heads Up Hold ‘Em poker as a casino table game.

**Text or summary was published** in the September 19, 2018 issue of the Register, I.D. No. SGC-38-18-00002-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, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3332, 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 2023, 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**

**Treatment of Thoroughbred Horses with Ultrasound or Electro/Medical Equipment Before a Race**

**I.D. No.** SGC-01-19-00002-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 4043.13 of Title 9 NYCRR.

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

**Subject:** Treatment of thoroughbred horses with ultrasound or electro/medical equipment before a race.

**Purpose:** To enhance the safety and integrity of pari-mutuel racing.

**Text of proposed rule:** Section 4043.13 of 9 NYCRR would be amended as follows:

§ 4043.13. Other prohibitions.

No person shall, attempt to, or cause, solicit, request, or conspire with another or others to:

(a) use or possess any electrical device, “joint,” “battery,” electric prod, or any other electrical equipment or any mechanical or other appliance not generally accepted as regular racing equipment that can be used to stimulate, depress, goad, spur, retard or condition a horse during a race or during training. The use of ultrasonic, diathermy or other electro/medical equipment is permissible until 24 hours before the [start of a racing program,] *scheduled post time of the race in which the horse is to compete*, and whirlpool until race time. However, the stewards may bar the possession or use of any specific equipment;

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (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 (“Racing Law”) §§ 103(2) and 104(1, 19). Under § 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of § 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 § 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. Legislative objectives: To enhance the safety and integrity of pari-mutuel racing.

3. Needs and benefits: This rule making is needed to improve our thoroughbred rules with regard to permitted prerace treatment.

Section 4043.13 of 9 NYCRR currently permits the use of ultrasonic and electro/medical equipment on race day until 24 hours before the start of the race program. On major race dates with additional races and an earlier than normal commencement of the race program, it is difficult for horsepersons to have access to and treat their horses with the ultrasonic and electro/medical equipment before this deadline.

The proposed amendment, which has the endorsement of the New York Thoroughbred Horsemen’s Association, Inc., helps by permitting the equipment to be used until 24 hours before each horse’s scheduled post time. The proposal would change this restricted time period for all races, for simplicity. This change will also conform to the Commission’s medication rules. The 24-hour restricted time periods for substances administered to a horse before racing are based on the scheduled post time of a horse’s race.

There will be no substantial effect on the race performance or integrity of the races the next day.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. There is no cost to the regulated parties by using independent veterinarians.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: There are no similarly practical alternatives.

9. Federal standards: There are no minimum standards of the federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

**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 proposal would permit the use of electro/medical equipment treatment of racehorses until 24 hours before post time of a horse's race, rather than 24 hours before the start of the race program. This change will make it easier for horsemen to have time to treat horses that are entered in later races, particularly on major race days when a large number of races are carded. The amendment would not change the kind of treatments or equipment that are used in horseracing.

This rule will not impose an adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

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

#### Safety Helmet and Vest Requirements

I.D. No. SGC-01-19-00017-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 4006.7 and 4006.8 of Title 9 NYCRR.

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

**Subject:** Safety helmet and vest requirements.

**Purpose:** To enhance the safety and integrity of pari-mutuel racing.

**Text of proposed rule:** Section 4006.7 of 9 NYCRR would be amended as follows:

§ 4006.7. Safety helmet required.

(a) Every [jockey, apprentice jockey and other rider, whether in a race or when exercising or ponying a thoroughbred horse,] *person working in the gate crew or mounted on horseback on the grounds of a racetrack shall wear a properly fastened safety helmet [of a type approved in writing by the stewards. No change shall be made in any such helmet without the approval of the stewards]. The gate crew means the starter and assistant starter and any person who handles a horse for the starter or assistant starter at the starting gate.*

(b) *Each safety helmet shall provide a minimum level of shock absorbing protection to the head as evidenced by a label indicating compliance with one or more of the following product standards or with a standard that in the judgment of the executive director of the commission or his or her designee is comparable or superior:*

(1) *American Society for Testing and Materials, ASTM F1163-04a or F1163-15, Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding;*

(2) *European Norm, EN 1384:1996, Helmets for Equestrian Activities;*

(3) *British Standards Institute Product Approval Specification, PAS 015:2011, Specification for Helmets for Equestrian Activities;*

(4) *Interim European Standard, VG1 01.040: 2014-12 (with or without BSI Kitemark), Equestrian helmets;*

(5) *Australian Standards/New Zealand Standards, AS/NZS 3838:2006, Helmets for horse riding and horse-related activities;*

(6) *Australian Racing Board Helmet Safety Standard, ARB HS 2012;*

(7) *Snell Memorial Foundation (Snell) Equestrian Helmet Standard E2001 or E2016; or*

(8) *L'Union Technique de l'Automobile du Moto-cyclo et du Cycle (UTAC) or CRITT Sport Loisirs (CRITT) 04/2015 standards.*

(c) *A safety helmet shall not be altered from its original manufactured design nor shall the product marking be removed or defaced.*

Section 4006.8 of 9 NYCRR would be amended as follows:

§ 4006.8. Safety vests.

(a) *Every person mounted on [No jockey, apprentice jockey, or exercise rider, pony person or outrider shall participate in any race, train, exercise, or pony any] horseback on [such] the grounds [conducted by any association or corporation licensed or franchised by the commission to conduct thoroughbred race meetings unless he or she wears a] of a racetrack shall wear a properly fastened safety vest.*

(b) *[Such safety vest] Each safety vest shall weigh no more than [two] four pounds and [shall be designed to] provide a minimum level of shock absorbing protection to the upper body[,] as evidenced by a label [with at least a rating of British Equestrian Trade Association (BETA) [2000/2009 Level 1] indicating compliance with one or more of the following product standards or with a standard that in the judgment of the [stewards] executive director of the commission or his or her designee is comparable or superior:*

(1) *British Equestrian Trade Association (BETA) Standard for Body and Shoulder Protectors for Equestrian Use, BETA 2009 Level 1;*

(2) *European Norm, EN 13158:2009 Level 1, Protective Clothing for equestrian use; or*

(3) *American Society for Testing and Materials, ASTM F2681-08 or F1937-04, Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding.*

(c) *A safety vest shall not be altered from its original manufactured design nor shall the product marking be removed or defaced.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (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:** To enhance the integrity and safety of Thoroughbred racing.

3. **NEEDS AND BENEFITS:** This rulemaking will update the requirements for safety helmets and vests on the grounds of Thoroughbred tracks.

Section 4006.7 of 9 NYCRR currently requires jockeys, pony riders and other riders on the grounds of a Thoroughbred track to wear a helmet, approved by the Stewards, when racing, exercising or ponying a horse. The proposal will instead specify the applicable, current equine product standards, at least one of which a helmet must meet, and permit compliance with revised versions of such standards unless the Commission determines that any such change shall not be accepted. The proposal extends the requirement to wear such a helmet any person who is mounted on a horse or working in the starting gate crew on such tracks and will also require that the helmet be properly fastened.

Section 4006.8 currently requires jockeys, pony and other riders on the grounds of a Thoroughbred track to wear a safety vest that complies with British Equestrian Trade Association (BETA) 2000/2009 Level 1, or a standard that in the judgment of the stewards is comparable, when racing, exercising or ponying a horse. The proposal will require 2009 Level 1 and replace the judgment of the stewards with other acceptable product standards. The vest must meet at least one of these standards, and the proposal will permit compliance with revised versions of such standards unless the Commission determines that any such change shall not be accepted. The proposal will extend the requirement to wear such a vest to any person mounted on a horse on such tracks. The proposal would increase the permitted vest weight from two to four pounds, consistent with newer product standards, and would require that the vest be properly fastened.

The proposed amendments are based on a report from Marsh Risk Consulting that was commissioned by The Jockey Injury Compensation Fund to assess operational risks in New York Thoroughbred racing and input from the stewards at New York State tracks, The Jockey Guild, and the New York Thoroughbred Horsemen's Association (NYTHA).

#### 4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: Most jockeys and exercise riders are already using helmets and vests that meet the newer, approved industry standards. The other persons (e.g., trainers) whom the amendments would require on the grounds of a track to wear such helmets and vests are already using them.

The only costs will be the cost to replace helmets or vests that are outdated and do not meet at least one of the newer industry product standards. The riders with outdated equipment at NYRA race meetings, where the horsemen's organization is offering \$150 to assist riders to purchase new equipment, is estimated by the stewards to be about 50 to 100 persons. The jockeys and trainers at Finger Lakes Race Track (FLRT), the other Thoroughbred track in New York, have the newer equipment. FLRT is contributing \$100 to help pay for a new vest, and the stewards estimate that 10 persons (exercise riders) do not have newer helmets or