

Mutuel Wagering and Breeding Law (“Racing Law”) Sections 103(2) and 104(1, 19). Pursuant to Section 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 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.

Legislative objectives: To improve integrity, health and safety of Thoroughbred horse racing.

Needs and benefits: This Thoroughbred rule making proposes to restrict the administration of nonsteroidal anti-inflammatory drugs (“NSAIDs”) in the week a horse races to a single, intravenous injection of either flunixin, ketoprofen or phenylbutazone, and to lower the permitted thresholds for flunixin and phenylbutazone in race day blood samples.

The current rules permit the administration by any means, in the week before a horse races, of one NSAID until 48 hours before a race and another until 96 hours before the race from a list of six permitted NSAIDs, 9 NYCRR § 4043.2(e)(14). In addition, the thresholds for flunixin and phenylbutazone in race day blood samples are 20 ng/ml and 2 mcg/ml, respectively, 9 NYCRR §§ 4043.3(a)(13) and (23), and a clinical dose administered in compliance with the restricted time periods will not cause a threshold violation.

The proposal would amend the thresholds for flunixin to 5 ng/ml and for phenylbutazone to 0.3 mcg/ml. These lower thresholds are based on equine drug administration trials in which the smallest efficacious single administration of each NSAID was tested and will prove that no clinical administration of either drug could have been given in the preceding 48 hours. This stricter regulation of NSAID administrations by using lower thresholds has been recommended by the Racing Medication and Testing Consortium and adopted as a model rule by the Association of Racing Commissioners International, Inc. The lower thresholds will help ensure a horse is not affected by a pain masking NSAID during the examination of the horse to determine its fitness to race on race day. If the horses are not under the influence of an NSAID, a drug that mitigates pain and conceals lameness, then the pre-race examinations are better able to identify and scratch from the race the horses that are susceptible to injury. This will be done by amending 9 NYCRR §§ 4043.3(a)(13) and (23).

The proposal would amend the restricted time periods for these NSAIDs to ensure that any horseperson who complies with the restrictions will not cause the horse to have a concentration of the NSAIDs in blood samples that may be collected from the horse on race day. By limiting NSAID administration to only one NSAID, administered only once in the week before racing, and no closer than 48 hours before the race, these time periods assure the trainer and veterinarian that the horse will not exceed the lower thresholds. This is done by adding a new subdivision (d) to 9 NYCRR § 4043.2 (restricted time periods). Subdivision (d) currently is reserved for future use. The current time restrictions for NSAIDs at 9 NYCRR § 4043.3(e)(14), accordingly, would be repealed. This has the further effect of reducing the number of permissible NSAIDs in the week before a horse race from six to only three, eliminating NSAIDs that are not widely used and for which an appropriate laboratory threshold is unclear.

The proposal would also move a requirement that certain corticosteroids may be administered only by means of a joint injection from 9 NYCRR § 4043.2(i)(2) to the end of § 4043.2(i).

Costs:

Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The regulated parties will be permitted fewer administrations of nonsteroidal anti-inflammatory drugs to their race horses in the week before racing. This will reduce the cost of participating in races.

Costs to the agency, the State and local governments for the implementation and continuation of the rule: There will be no additional costs to the Commission, which already has a system of sample collection and testing to enforce its equine-drug rules.

There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel horse racing.

The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The past experience of the Commission in operating a drug testing program is the basis for the conclusion that such costs will not be increased.

Local government mandates: None. The Commission is the only governmental entity authorized to regulate harness racing activities.

Paperwork: None.

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

Alternatives: The Commission considered and rejected retaining its current NSAID thresholds. These thresholds have worked well, but to be consistent with other states the Commission decided to propose adopting the latest proposed national standards. The amendments will cause New York trainers to change their practices, but the Commission believes it will be easier overall for trainers to have uniform national thresholds. In addition, the Commission has proposed adjusting the restricted times when the NSAIDs can be administered, and these restricted time periods will provide clear instructions on when NSAIDs can be administered without the trainer being concerned about an inadvertent positive.

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

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 proposed amendment revises the regulation of nonsteroidal anti-inflammatory drugs with stricter thresholds in blood samples and reduced permitted uses of the drugs in the week before a Thoroughbred horse races. The changes augment the current regulatory scheme that controls the use of drugs in racehorses in a similar fashion. The effect will be to reduce the overall use of these drugs to stay competitive with other horsepersons.

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.

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

Furosemide Use and Practice

I.D. No. SGC-35-20-00005-P

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

Proposed Action: Amendment of sections 4043.2(b)(4), (5) and (e)(5) of Title 9 NYCRR.

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

Subject: Furosemide use and practice.

Purpose: To enhance horse racing in New York and generate reasonable revenue for the support of government.

Text of proposed rule: Subdivisions (b) and (e) of section 4043.2 of 9 NYCRR would be amended to read as follows:

(b) Eligibility for the administration of furosemide.

* * *

(4) Removal from the furosemide list. A horse that has been eligible for the administration of furosemide may be removed from the list, upon authorization from the stewards. *The state steward may remove a horse from the list for the limited purpose of allowing the horse to compete in a race whose conditions forbid the administration of furosemide on race day.*

(5) Reinstatement to furosemide list. After removal from the furosemide list, a horse may be reinstated for the administration of furosemide if:

(i) the horse again meets the requirements set forth in paragraph (1) of this subdivision; or

(ii) *the state steward at the request of the trainer after the race and without requiring the horse to meet the requirements set forth in paragraph (1) of this subdivision, reinstates a horse to the list following a removal that occurred pursuant to paragraph (4) of this subdivision.*

[and such] *Such horse shall not be permitted to race for the applicable time period set forth in [subparagraphs (i) through (iv) of] paragraph (2) of this subdivision.*

* * *

(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:

* * *

(5) diuretics (e.g., furosemide (Lasix), except as otherwise provided

pursuant to subdivision (b) of this section, thiazide derivatives (e.g., Di-uril);

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, New York 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.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

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") Section 103(2) and 104(1, 19). Pursuant to Section 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 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 horse racing in New York and generate reasonable revenue for the support of government.

3. Needs and benefits: This rule making proposal would permit the State Steward to remove a thoroughbred horse that is on the list of horses that are eligible to receive an administration of furosemide on race day (the "Lasix List") from that list for the limited purpose of participating in a race that has been designated by the racetrack as a race in which no horses may receive furosemide on race day ("race-day Lasix"), and to restore the horse to the Lasix List at the request of the trainer after the race.

The current rule provides that any horse that has qualified for the Lasix List must be treated with the drug on race day. 9 NYCRR § 4043.2(b) establishes the procedure for a horse on the Lasix List. Paragraph (7) of subdivision (b) requires that a horse, once on the Lasix List, must receive its race-day Lasix to be eligible to start. The purpose of this requirement is to assist bettors by assuring them that horses eligible to receive race-day Lasix receive the drug. Race-day Lasix improves the race performance of many horses, and therefore bettors benefit from knowing in advance that the horses will not forego that Lasix and diverge from past performance. This requirement is not necessary, however, when a race is designated to be run by only horses that will not receive race-day Lasix. For such races, the bettors know when the race is written before race day that none of the horses will be treated with Lasix. This affords the bettors a fair opportunity to handicap such a race and the requirement set forth in paragraph (7) is not needed for such a race.

The owner and trainer of a horse cannot simply remove a horse from the Lasix List in order to participate in a designated no-Lasix race and then restore the horse to the Lasix List under the current rule, because this will cause a long exclusion period before the horse can race again in New York. Under the current rules, each time a horse is restored to the Lasix List in New York, the horse is prohibited from racing for ever longer (30 days, 90 days, one year) periods of time. See 9 NYCRR § 4043.2(b)(2). These exclusion periods are triggered by restoration to the Lasix List at any time in the racing life of the horse, not just by restorations during a single year as a two-year-old horse.

The proposal amends paragraphs (4) and (5) to 9 NYCRR § 4043.2(b) to allow the State Steward both to remove the horse from the Lasix List to allow the horse to participate in a race designated for horses that are not administered race-day Lasix and to restore the horse to the Lasix List, at the request of the trainer, without implicating the exclusion periods. In this way, the proposal will eliminate a powerful incentive, to avoid the prospect of future unnecessary periods of exclusion from racing, for horse owners and trainers not to participate in two-year-old races in New York.

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: There will be no costs to the agency. There will be no cost to local government because the Commission 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: n/a.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate harness racing activities.

6. Paperwork: There will be no required paperwork to comply with the rule.

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: The Commission considered and rejected the alternative of requiring horses to be removed from and added again to the Lasix List, which might dissuade horse owners and trainers from entering a horse in races that permit race day furosemide treatments after having run the horse in race that was designated as permitting no furosemide on race day. This alternative was rejected because it does not provide any benefit to horses or bettors and is likely to limit the number of quality horses that participate in New York races in the future.

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.

This proposal removes an impediment to starting a thoroughbred race-horse in certain races. Under current rules, a horse that is qualified to receive furosemide on race day cannot participate in a race that is designated only for horses which do not receive the treatment. The proposed amendment will remove this impediment. This will have a positive effect on horse racing, pari-mutuel wagering and breeding in New York.

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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jackpot Super High Five Wager for Harness Racing

I.D. No. SGC-35-20-00006-P

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

Proposed Action: Renumbering of section 4122.41 to section 4122.40; addition of new section 4122.41 to Title 9 NYCRR.

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

Subject: Jackpot Super High Five wager for harness racing.

Purpose: To improve harness pari-mutuel wagering and generate reasonable revenue for the support of government.

Text of proposed rule: Section 4122.41 of 9 NYCRR would be renumbered as section 4122.40.

A new section 4122.41 would be added to 9 NYCRR, as follows:

§ 4122.41. *Jackpot super high five.*

(a) *Wager defined. The jackpot super high five is a pari-mutuel wager in which the bettor selects five betting interests in the exact order of the first-through fifth-place finishers for a single race.*

(b) *Distribution of Winnings.*

(1) *The net jackpot super high five pool shall be distributed to winning wagers as follows, based on the official order of finish:*

(i) *as a single-price pool, including any applicable carryover, to the holder of a unique winning ticket whose selections finished in correct sequence of the first five finishers, but if there is no such unique winning ticket, then*

(ii) *the net pool shall be divided into two separate pools, a major pool and a minor pool. The major pool shall be paid as a carryover pool into the next regularly scheduled jackpot super high five race. The remaining minor pool shall be paid as a jackpot super high five consolation pool, which shall be divided equally among those bettors who correctly selected the first five betting interests in the required order; but if there are no such wagers, then*

(iii) *the entire net pool (including the major and minor pools, as defined in subparagraph (ii) of this paragraph) shall become a carryover pool into the next regularly scheduled jackpot super high five race.*

(2) *Unique winning ticket, as used in subparagraph (i) of paragraph (1) of this subdivision, means one and only one winning ticket whose selections finished in correct sequence as the first five betting interests in the race, as verified by the unique serial number assigned by the totalisator*