

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*

company that issued the winning ticket. There is no unique winning ticket if there is more than one winning ticket whose selections finished in correct sequence as the first five betting interests.

(3) The racetrack shall specify a minimum monetary amount of a unique winning ticket wager, subject to the approval of the Commission.

(4) Unless otherwise stated in writing by the Commission, on the last jackpot super high five race on the final day of a race meeting, the net pool, including any applicable carryover, shall be distributed equally among all bettors who correctly selected the first five betting interests in the required order, so long as there is at least one such winning ticket.

(c) If there is no winning jackpot super high five ticket for the last race of a race meeting for which such wager is offered, the carryover pool shall be held on deposit in an interest-bearing account approved by the commission and resume at the next race meeting at that track. The jackpot super high five carryover plus accrued interest shall then be added to the net jackpot super high five pool of the following meet on a date and performance so designated by the commission.

(d) Fewer than five betting interests. If fewer than five betting interests finish a race and the race is declared official, payoffs shall be made based upon the order of finish of those betting interests completing the race. The balance of any selection on any ticket beyond the number of betting interests completing the race shall be ignored. The jackpot super high five contest's carryover shall not be included in the payoff and shall be retained for the next contest's carryover. The jackpot super high five pool for the contest to be settled according to whether there is a unique winning ticket for the betting interests that finished the race.

(e) Dead heat for first. If there is a dead heat for first involving:

(1) contestants representing five or more betting interests, all of the wagering combinations selecting the five betting interests, without regard to order of finish, shall share in a profit split;

(2) contestants representing four betting interests, all of the wagering combinations selecting the four dead-heated betting interests, without regard to order of finish, along with the fifth-place betting interest shall share in a profit split;

(3) contestants representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, without regard to order of finish, along with the fourth-place and fifth-place betting interests, in correct order, shall share in a profit split; and

(4) contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, without regard to order, along with the third-place, fourth-place and fifth-place betting interests, in correct order, shall share in a profit split.

(f) Dead heat for second. If there is a dead heat for second involving:

(1) contestants representing four or more betting interests, all of the wagering combinations correctly selecting the winner along with the four-dead heated betting interests, without regard to order of finish of the dead-heated contestants, shall share in a profit split;

(2) contestants representing three betting interests, all of the wagering combinations correctly selecting the winner, the three-dead heated betting interests, without regard to the order of finish of the dead-heated contestants, and the fifth-place betting interests shall share in a profit split; and

(3) contestants representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, without regard to the order of finish of the dead-heated contestants, and the fourth-place and fifth-place betting interests, in correct order, shall share in a profit split.

(g) Dead heat for third. If there is a dead heat for third involving:

(1) contestants representing three or more betting interests, all of the wagering combinations correctly selecting the first two betting interest finishers, in correct order, and the three dead-heated betting interests, without regard to the order of finish of the dead-heated contestants, shall share in a profit split; and

(2) contestants representing two betting interests, both of the wagering combinations selecting the first two betting interest finishers, in correct order, and the two dead-heated betting interests, without regard to the order of finish of the dead-heated contestants, along with the fifth-place betting interest shall share in a profit split.

(h) Dead heat for fourth. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three betting interest finishers, in correct order, along with any two of the betting interests involved in the dead heat for fourth, without regard to the order of finish of the dead-heated contestants, shall share in a profit split.

(i) Dead heat for fifth. If there is a dead heat for fifth, all wagering combinations correctly selecting the first four betting interest finishers, in correct order, along with any of the betting interests involved in the dead heat for fifth shall share in a profit split.

(j) Coupled entry and field. The numbers of the first five horses as made official shall constitute the winning combination, except that where two or more such horses are part of the same coupled entry or field only the best

finishing position attained by such coupled entry or field horses shall be considered for pay-off purposes and the next best finishing horses not part of such coupled entry or field shall be selected to determine the winning jackpot super high five combination.

(k) No changes without approval. No change shall be made to the jackpot super high five wager format without the prior approval of the commission.

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 ("Racing Law") Sections 103(2) and 104 (1, 19). Under 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 improve harness pari-mutuel wagering and generate reasonable revenue for the support of government.

3. Needs and benefits: This rule making proposes to add a pick-five jackpot pool to the harness wagers offered by New York racetracks and wagering facilities.

The current rules offer a variety of wagers on pari-mutuel harness racing at Part 4122 of 9 NYCRR.

The proposal would add a type of pick-five wager that has proven popular in other jurisdictions to increase the track operator's wagering handle and derive more revenue for the support of government. The new wager is known as the jackpot super high five. It requires the winning bettor to hold the only ticket that has selected the winning horse in a designated five consecutive races. The number of possible winning tickets is displayed to the betting public as the designated races are run. This generates excitement as the holders of pick-five jackpot tickets that have won the races that have been run, and the crowd at the racetrack or viewing elsewhere, watch whether the possible winning tickets will dwindle in number to only one.

If there is not a unique winning ticket sold, the major share of the net pool is distributed as a single prize pool to the bettors selecting the greatest number of winning horses in the pick-five jackpot races, and a minor share is carried over to the next pick-five jackpot pool. If no winning horses are selected by any bettor, the net pool (excluding any carryover) is refunded. The proposal has provisions for other eventualities, including carryovers to another meet, dead heats and coupled entries or fields.

The proposal would also renumber the current triple wager rule, 9 NYCRR § 4122.41, to be 9 NYCRR § 4122.40, currently a reserved rule number. This will allow the new pick-five wager rule to fit in sequence with existing wagering rules as 9 NYCRR § 4122.41.

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.

(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 harness 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: The Commission considered and rejected not adding this wager to the current rules. The proposed rule changes will add new wagering options that are tested and successful in other jurisdictions.

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 proposed amendment is a revision to the Commission's harness racing rules to enhance interest in wagering by allowing racetracks to offer a pick-five jackpot pool, in which the entire pool is won only if a unique ticket has selected the winning horse in designated, five consecutive races.

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**

EIPH Protections for Thoroughbred Horses

I.D. No. SGC-35-20-00007-P

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

Proposed Action: Renumbering section 4043.2(c) to 4043.2(d); addition of new section 4043.2(c) to Title 9 NYCRR.

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

Subject: EIPH protections for Thoroughbred horses.

Purpose: EIPH protections for Thoroughbred horses.

Text of proposed rule: A new subdivision (c) would be added to 9 NYCRR § 4043.2 and the current subdivision (c) would be reclassified as subdivision (d), as follows:

(c) *Exercise Induced Pulmonary Hemorrhage (EIPH).*

(1) *Ineligibility to race after epistaxis. A horse that has demonstrated external evidence or bled visibly from its nostrils (epistaxis) because of exercise induced pulmonary hemorrhage (EIPH) shall be placed on the Steward's list of horses that are ineligible to race. The horse may not race until cleared to race by a veterinarian designated by the commission and for the following minimum period of time after such bleeding:*

(i) *1st epistaxis—15 days;*

(ii) *2nd epistaxis—30 days;*

(iii) *3rd epistaxis—90 days, and if the third time was within 365 days, then exclusion for a minimum of 180 days;*

(iv) *4th epistaxis—one year; and if the fourth time was within 365 days, then permanent exclusion from racing.*

(2) *Recording episodes of EIPH. Trainers shall maintain accurate records of every EIPH episode that is serious, meaning epistaxis or grade four as described in subparagraph (iv) of paragraph (4) of this subdivision, whether observed as visible bleeding or by endoscopic examination. The trainer may delegate this responsibility to the treating veterinarian, who shall make such records of a serious EIPH episode when so designated. Such records shall be retained for a minimum of four years unless reported to the commission in a form and manner approved by the commission or provided to the next trainer of the horse. Each succeeding trainer of the horse shall retain any such record of an EIPH episode that occurred in the previous four years.*

(3) *Disclosure to subsequent owners. Previous serious EIPH episodes shall be disclosed to the next owner or trainer of a horse within 48 hours of a request for such information, unless the commission has provided such information to the next owner or trainer of the horse.*

(4) *Required endoscopic examinations. A horse that experiences a serious EIPH episode must have, at the conclusion of the horse's next workout or race, an endoscopic examination performed by a qualified veterinarian, who shall make a record of findings and rate the degree of pulmonary hemorrhage on the scale set forth in this paragraph, with a zero for no blood:*

(i) *one (1/4)—a trace or thin line of blood on the floor of the trachea;*

(ii) *two (2/4)—a wide stripe of blood on the floor of the trachea or multiple streams of blood covering less than 1/3 of the trachea;*

(iii) *three (3/4)—multiple distinct streams of blood covering more than 1/3 of the trachea;*

(iv) *four (4/4)—multiple streams of blood covering 90 percent or more of the trachea with pooling at the thoracic inlet; or*

(v) *epistaxis—blood is evident in a nostril of the horse.*

[[c]] (d) *The following substances may be administered by any means until 24 hours before the scheduled post time of the race in which the horse is to compete:*

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.

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") Sections 103(2) and 104(1, 19). Under 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 the safety and integrity of pari-mutuel racing.

3. **Needs and benefits:** This rule making is needed to help safeguard the safety and value of thoroughbred race horses that experience serious episodes of exercise induced pulmonary hemorrhage (EIPH) with new treatment and recordkeeping requirements, and to codify the minimum period of time that a horse will not be permitted to race after a serious episode of EIPH.

The current rules address EIPH only by allowing the prophylactic use of furosemide on race day, 9 NYCRR § 4043.2(b). The proposal would add a new rule, 9 NYCRR § 4043.2(c), that provides certain protections for race horses.

EIPH is a condition that impacts race performance and integrity by its immediate and potentially long-lasting effects on a horse's health and ability to race. A horse that experiences pulmonary hemorrhage during a race generally performs less well. Repeated serious episodes of EIPH may have a cumulative adverse effect on a horse.

Paragraph (1) of the proposal would require that every racehorse that visibly bleeds from its nostrils (epistaxis) from exercise induced pulmonary hemorrhage be ineligible to race for a minimum period of time and until cleared to race by a veterinarian. This codifies the period of time the stewards will withhold a horse from racing after an episode of epistaxis.

Paragraph (2) of the proposal would require trainers to maintain a record for four years of when a horse experiences a serious episode of EIPH, which the proposal defines as epistaxis or grade four on the universal grading system, which is further described in paragraph (4). The trainer may delegate this recordkeeping responsibility to the treating veterinarian. The commission may establish a reporting system for reporting such episodes to the commission.

Paragraph (3) of the proposal would require that serious episodes of EIPH be disclosed to subsequent trainers and owners of a horse. The commission may perform this duty after collecting such information. Succeeding owners must preserve such records of EIPH episodes that occurred within the past four years.

Paragraph (4) of the proposal would require an endoscopic examination, at the conclusion of the next workout or race, after a horse experiences a serious episode of EIPH. This will permit the treating veterinarian to better evaluate the condition of a horse and lead to appropriate training, remedial and prophylactic measures to treat the horse's condition.

The proposal would also reorganize the current rule by reclassifying the current subdivision (c) as subdivision (d), a subdivision that is currently reserved.

4. **Costs:**

(a) **Costs to regulated parties for the implementation of and continuing compliance with the rule:** These amendments will add a new cost for any trainers or owners who have not been evaluating a horse's condition, after a serious episode of EIPH, by means of an endoscopic examination at the conclusion of the horse's next strenuous activity. The average cost of an endoscopic examination is reported by veterinarians who practice at New York thoroughbred racetracks to be \$70. Serious episodes of EIPH are rare. A leading study found that race horses not treated with furosemide experience serious EIPH at a rate below 0.5 percent after racing, and none of the racing horses that were administered pre-race furosemide experienced a serious episode of EIPH.

(b) **Costs to the agency, the state and local governments for the implementation and continuation of the rule:** None. The amendments will