

adverse impact on small businesses, local governments, rural areas or jobs.

The proposed amendments are revisions to the Commission’s Thoroughbred and harness pick-four wagering rules to enhance interest in the pick-four wager by allowing racetracks the option of offering a consolation payout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities. No local government activities are involved.

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

Pick-Five Wager for Thoroughbred Racing

I.D. No. SGC-06-24-00003-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 4011.25 of Title 9 NYCRR.

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

Subject: Pick-five wager for Thoroughbred racing.

Purpose: To improve the pick-five wager in Thoroughbred racing.

Text of proposed rule: Section 4011.25 of 9 NYCRR would be amended to read as follows:

§ 4011.25. Pick-five pools.

(a) *Description.* A winning pick-five wager requires selection of the first-place finisher in each of five designated, consecutive contests, unless otherwise provided in this section. The [association or corporation] track operator must obtain written approval from the commission concerning the scheduling of pick-five contests, the designation of the method used and the amount of any cap to be set on the carryover. Any changes to the approved pick-five format require prior approval from the commission.

(b) *Separate wager.* The pick-five wager is not a parlay and has no connection or relation to the other betting pools for the respective races. The pick-five pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, quinella, trifecta, superfecta or other wagering pool.

(c) *No resale.* Resale of pick-five tickets from one individual to another is prohibited, shall be grounds for ejection, and may be deemed illegal gambling.

(d) *Clear designation.* Races in which pick-five pools shall be conducted shall be clearly designated in the program and racing cards issued by the association or corporation.

(e) *Ticket design.* The design of the pick-five tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

* * *

(g) Wagering tickets and winners. If neither subdivision (h) nor subdivision (i) of this section applies, then the pick-five pool shall be apportioned, with the prior written approval of the commission following the request of track operator offering this wager, pursuant to either paragraph (1) or (2) of this subdivision, as follows:

(1) the net pick-five pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-five contests, based on the official order of finish, unless otherwise provided in this section. If there are no such wagers, the net pick-five pool shall be added to the carryover[.]; or

(2) the net pick-five pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-five contests, based on the official order of finish, or to the holders of wagers selecting the first-place finisher in each of the pick-five contests with no more than one all-win race, unless otherwise provided in this paragraph. Should there be no wager selecting winners of all five designated races or no wager selecting the winners of the designated races with no more than one all-win race, then 25 percent of the net pool, excluding carryover from the previous program, shall be distributed, less breaks, to the holders of wagers selecting the winners of the most pick-five races and 75 percent of the net pool shall be added to the carryover. In addition to the net-pool share and any carry-overs distributable when a wager correctly selects winners of all five designated races, or four winners and no more than one all-win race of a pick-five pool, there shall be distributed by the track operator from its own funds, upon such occurrence, any amounts the track operator has advertised that the track operator will add to the total distribution.

(h) Race cancellations. Except for pick-five pools in which a designated distribution is to be made, the following shall apply:

(1) If one or two of the pick-five races are cancelled or declared no race or non-betting, then those who selected the winners of other pick-five races shall share the net pool. Any carryover from previous programs will be carried over to the next pick-five wager pool. *If there are no such wagers and the track operator has selected the pick-five wagering option set forth in paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(2) If more than two of the pick-five races are cancelled or declared no race or non-betting, then the entire pool shall be cancelled and all pick-five wagers shall be refunded.

(3) If any of the designated races of the pick-five sequence is cancelled or declared no race or non-betting before the first pick-five race is made official, then the pick-five pool shall be declared off and the gross pool refunded.

(i) Surface transfer. When the condition of a turf course warrants a change of racing surface to a non-turf course in any of the pick-five races, and such change has not been known to the public before the close of wagering for the pick-five pool, then such changed race shall be deemed an all win race for pick-five wagering purposes. An [all win] all-win race means the winning horse of that race is assigned to each pick-five bettor as such bettor’s selection for that race. Except for pick-five pools in which a full distribution is to be made, a pick-five pool with surface transfer(s) shall be handled as follows:

(1) If there was a surface change to a non-turf course in only one of the pick-five races, then the bettors who selected the winners of the four pick-five races for which there were no surface changes shall share that day’s net pool for such wager as well as any carryover. *If there are no such wagers and the track operator has selected the pick-five wagering option set forth in paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(2) If there was a surface change to a non-turf course in more than one of the pick-five races, then the bettors who selected the winners of all the other pick-five races shall share that day’s net pool for such wager but shall not share any carryover (any such previous carryover to be carried over to the next performance’s pick-five wager pool). *If there are no such wagers and the track operator has selected the pick-five wagering option pursuant to paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(3) If there are one or more surface change races in the pick-five sequence, and there are no bettors who selected the winner(s) of all the other pick-five races, then:

(i) *if the track operator has selected the pick-five wagering option set forth in paragraph (1) of subdivision (g) of this section, the net pool for such program shall be carried over to the next performance’s pick-five wager pool[.]; or*

(ii) *if the track operator has selected the pick-five wagering option pursuant to paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(4) If there are one or more surface change races in the pick-five sequence and there are no bettors who selected the winner of any of the other pick-five races, then the entire pool for such program shall be refunded.

* * *

(k) Carryovers.

(1) The pick-five carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick-five carryover equals or exceeds the designated cap, then the pick-five carryover will be frozen until such carryover is won or distributed under the other provisions of this [rule] section. After the pick-five carryover is frozen, 100 percent of the net pool that ordinarily would be added to the pick-five carryover shall be distributed to those whose

selection finished first in the greatest number of pick-five contests for that performance.

* * *

(4) With the written approval of the commission, the [association] track operator may contribute to the pick-four carryover a sum of money up to the amount of any designated cap.

* * *

(m) Final distribution. The track operator shall select, with the approval of the commission, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting at a track after which such track operator will operate at another track, when there shall be a final distribution of all accumulated [carry-overs] carryovers together with the net pool of the pick-five pool conducted during such program to the holders of wagers selecting the winners of the most pick-five races contested during such program. If all pick-five races on the program designated for final distribution are cancelled and no further programs are conducted at the meeting, then no other pick-five pools shall be conducted during such week and the commission shall require that a pick-five pool be conducted on the first program of the next race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

(n) Suspension of wager. The [association or corporation] track operator may suspend previously approved pick-five wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick-five wagering is reinstated. [An association or corporation] A track operator may request approval of a pick-five wager or separate wagering pool for specific performances.

* * *

(p) Other occurrences. In the event of occurrences not encompassed within the explicit provisions of this section, distribution shall be formulated on the basis of established pari-mutuel practice and in accordance with the distribution philosophy set forth in this section; provided, nevertheless, that if full distribution of the pool is made on the basis of outstanding tickets, then the method of formulation announced by the track and the basis upon which payments have been made shall be deemed conclusively correct and not subject to review.

* * *

(s) Betting information. A [racing association] track operator may display publicly information in regard to combinations wagered upon, amounts wagered on such combinations, numbers of tickets sold or number of tickets still capable of winning a pick-five pool. The operation of the totalisator equipment and reports generated thereby shall be subject to the strict supervision of the commission.

* * *

(x) Rule availability. Copies of this section shall be made available free of charge by the track operator to the public in the public betting area of the track.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, 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") Sections 103(2), and 104 (1) and (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 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 enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. NEEDS AND BENEFITS: This rule making proposes to amend the Commission's Thoroughbred pick-five wagering rule to enhance interest in the pick-five wager by allowing each Thoroughbred racetrack the option of offering a consolation payout. This proposal is similar to rules al-

ready in effect in other prominent jurisdictions. These jurisdictions offer choices as to what method each track chooses to use for its pick-n wagers, which mirror the Model Rules of Racing issued by The Association of Racing Commissioners International.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: None anticipated. 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 Thoroughbred racing.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: Experience of agency staff.

5. LOCAL GOVERNMENT MANDATES: None. The Commission is the only governmental entity authorized to regulate Thoroughbred racing activities.

6. PAPERWORK: There will be no additional paperwork.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The alternative of not revising the pick-five wagering rule was considered and rejected. The current rule is not consistent with other prominent racing jurisdictions and the Model Rules of Racing issued by The Association of Racing Commissioners International. These changes provide racetracks more flexibility to help increase their handle.

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

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

The proposed changes do not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. There will be no adverse impact on small businesses, local governments, rural areas or jobs.

The proposed amendments are a revision to the Commission's Thoroughbred pick-five wagering rule to enhance interest in the pick-five wager by allowing racetracks the option of offering a consolation payout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Claiming Rules Revisions in Thoroughbred Racing

I.D. No. SGC-06-24-00004-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 4038.1, 4038.3 and 4038.4 of Title 9 NYCRR. This rule was previously proposed as a consensus rule making under I.D. No. SGC-34-23-00009-P.

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

Subject: Claiming rules revisions in Thoroughbred racing.

Purpose: To improve the claiming process in Thoroughbred racing.

Text of proposed rule: Sections 4038.1, 4038.3, and 4038.4 of 9 NYCRR would be amended to read as follows:

§ 4038.1. Who may make claim.

(a) Licensed and participating owners. Claims may be made by an owner licensed for the current year, or duly authorized agent, if the owner is presently registered in good faith for racing at that meeting and [has nominated a starter in the previous or current race meet of the licensed or franchised racing association, up to or including the race in which the claim is made] *the owner has started a horse:*

(1) *within the previous 120 days, including the race in which such horse started, in a race meeting of the licensed or franchised association; or*

(2) *in the current or previous race meeting of the licensed or franchised racing association.*

Such claim shall be in the name of the owner making the claim, or in the name of the entity of which the potential claimant is the managing owner.