

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

vests. The average cost for an approved helmet and vest is \$500 (\$300 and \$200, respectively). This cost ranges, respectively, from \$100 and \$160 for less comfortable models to \$1000 and \$550 for advanced products.

There will be no new costs for the outriders and starting gate crews, who are employed by the Thoroughbred tracks, because the tracks have already upgraded their employees' equipment to the new safety standards. The amendments would not add other 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: There will be no costs to local governments because they do not regulate pari-mutuel racing activities. There will be no new costs to the Gaming Commission, which already monitors that proper equipment is used. All races are viewed by the stewards who can see what equipment is being used by the gate crew and the persons mounted on horses. The state steward is also able to conduct inspections of the equipment of all such persons, including when training, whose equipment can be readily produced and examined.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The average cost of compliant helmets and vests is known from the recent program conducted by horsemen's organizations to assist all riders to update their equipment. The range of costs is known through an internet search of available products online.

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

6. PAPERWORK: There will be no additional paperwork.

7. DUPLICATION: None.

8. ALTERNATIVES: The Commission considered not amending its current rules. Adopting this proposal, however, provides an assurance to insurance providers that the stewards are requiring helmets and vests that meet current product standards in the industry, that any person mounted on a horse on the grounds of a Thoroughbred track will be wearing such a helmet and vest, and that the starting gate crew will be wearing such helmets.

9. FEDERAL STANDARDS: None.

10. COMPLIANCE SCHEDULE: Once adopted, the rule can be implemented as soon as it is published in the State Register.

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

This proposal does not require a Regulatory Flexibility Analysis for Small Businesses, and Local Governments, Rural Area Flexibility Statement or Job Impact Statement since the amendment conforms the Commission's equipment rule for safety helmets and vests to what a majority of jockeys, pony and other riders, and safety gate crews are already using at the New York State Thoroughbred tracks. In addition, this rule does not affect small business, local governments, jobs or rural areas. Further, this proposal will not impose an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. Due to the straightforward nature of the rulemaking, there is no need for the development of a small business regulation guide to assist in compliance. These provisions are clear as to what the permissible equipment is and what is necessary to comply with the rule.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standards for Backstretch Housing and Related Facilities

I.D. No. SGC-01-19-00018-P

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

Proposed Action: Addition of Part 4047 to Title 9 NYCRR.

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

Subject: Standards for backstretch housing and related facilities.

Purpose: To create minimum standards for housing and related facilities offered to backstretch workers by racing associations.

Substance of proposed rule (Full text is posted at the following State website: https://www.gaming.ny.gov/proposed_rules.php): The addition of Part 4047 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to set forth standards for housing maintained on the grounds of certain facilities conducting horse racing.

Section 4047.1 sets forth the definitions used throughout the Part. Section 4047.2 establishes the requirements for an association to be subject to

the regulations. Section 4047.3 sets forth that an annual inspection is required. 4047.4 set forth the general maintenance, health, sanitary and safety obligations an association providing backstretch housing must meet. Section 4047.5 sets forth specific housing standards for buildings, rooms and dining facilities provided by associations. Section 4047.6 establishes notice and building requirements for new construction. Section 4047.7 sets forth requirements for bathroom and shower facilities. Section 4047.8 establishes requirements for laundry facilities. Section 4047.9 sets forth the standards for trash and refuse storage. Section 4047.10 requires abatement of pests and notice thereof. Section 4047.11 establishes responsibilities of backstretch housing occupants. Section 4047.12 establishes requirements for backstretch water supply. Section 4047.13 set forth requirements for an association to receive a variance or waiver.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, Suite 500, Schenectady, New York, (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: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities.

Racing Law section 103(2) sets forth that the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State.

Racing Law section 104(1) 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.

2. LEGISLATIVE OBJECTIVES: The Commission is charged with enhancing the integrity and safety of thoroughbred and standardbred racing, which extends to the health, wellness and safety of individuals employed at and residing within racing facilities.

3. NEEDS AND BENEFITS: The proposed rules establish specific standards for housing, sanitary and dining facilities at racing entities. Currently there is a broad variance in the habitability of backstretch housing, with some facilities in a state of general disrepair. These rules will require that housing be habitable and safe, access to sanitary facilities be present and the Commission be notified regularly of the housing and related facilities.

These rules will benefit the backstretch workers who reside at a track facility and help ensure that racing in New York state is of the highest caliber by addressing housing and sanitary conditions. The rules specifically define what constitutes adequate housing, from the type of building materials, dimensions, ventilation, electrical supply and wiring, plumbing capabilities and the minimum quality standards for water used in such plumbing, number of points of egress from a housing facility and the quantity and type of smoke detectors and fire extinguishers that must be present in the home. The rules further define what constitutes sanitary conditions, both within a home and exterior areas, as to prevent standing water or other public health hazards.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: The Commission does not have data to precisely identify the impact of this proposed rule on race facilities that will need to improve housing, sanitary and dining facilities.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: There is no additional anticipated cost, but should the Commission procure persons to conduct the inspections required by proposed section 4047.3, there would be a cost to retain such persons for such task.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing activities within the State and in consultation with other racing jurisdictions that have such standards in place.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: The rules impose paperwork burdens on a racing association to submit documentation in relation to the inspection of housing; injury, serious illness, death of a housing tenant; occurrence of a fire at the housing; renovation of existing housing or construction of new housing, dining or sanitary facilities; annual inspection and action taken regarding pest control; water treatment; interruptions or changes to water source; and any request for variance or waiver of regulatory requirements.