

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Attending Veterinarian Examinations in Thoroughbred Racing

I.D. No. SGC-29-23-00004-P

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

Proposed Action: Amendment of section 4007.5 of Title 9 NYCRR.

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

Subject: Attending veterinarian examinations in Thoroughbred racing.

Purpose: To decrease the risks of injury to racehorses.

Text of proposed rule: Section 4007.5 of 9 NYCRR would be amended to read as follows:

§ 4007.5. Qualifications to start or work out.

(a) *Licensee requirement.* No horse shall be qualified to start in any race unless entered by a licensed owner and in the charge of a licensed trainer.

(b) *Examination preceding entry.* A horse shall not be entered in any race unless:

(1) the horse has been examined by the trainer's attending veterinarian during the 72 hours immediately preceding entry to race for the express purpose of evaluating the horse's fitness to race; and

(2) such attending veterinarian has determined that the horse is fit to race.

Such examination shall include, without limitation, close inspection of the eyes, examination of the legs, and observation of the horse at rest and while in motion. The attending veterinarian and trainer shall inform the association veterinarian of any changes in the horse's fitness after entry and before race day. The attending veterinarian's evaluation shall be reported to the association veterinarian and to the commission, in a manner the commission directs.

(c) *Examination preceding workout.* A horse shall not be permitted to work out at a track unless:

(1) the horse has been examined by the trainer's attending veterinarian during the 72 hours immediately preceding the workout for the express purpose of evaluating the horse's fitness to work out; and

(2) such attending veterinarian has determined that the horse is fit to work out.

Such examination shall include, without limitation, close inspection of the eyes, examination of the legs, and observation of the horse at rest and while in motion. The attending veterinarian and trainer shall inform the association veterinarian of any changes in the horse's fitness after examination and before workout. The attending veterinarian's evaluation shall be reported to the association veterinarian and to the commission, in a manner the commission directs.

(d) *Definition.* For the purpose of this section, workout means an exercise session near full speed or close to full speed.

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") 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 minimize the risks of injury to horses that are unfit to perform.

3. **NEEDS AND BENEFITS:** The proposed regulation would require a trainer's attending veterinarian to examine a horse within 72 hours before a race, as well as within 72 hours before a workout, to determine the horse's fitness to participate in the race or workout. The horse would be prohibited from entry into a race or from a workout unless such evaluation results in a determination that the horse is fit to race or work out, as the case may be.

The proposed rule would require such attending-veterinarian examinations to include, without limitation, a close inspection of the eyes, examination of the legs, and observation of the horse at rest and while in motion. Following a determination that the horse is either fit to race or to work out, the attending veterinarian and trainer would be obligated to inform the racing association's veterinarian of any changes in the horse's fitness before race day or the workout, as the case may be. The evaluation of the horse's fitness to race or work out, as the case may be, would be required to be reported in a manner the Commission directs.

Significant injuries can occur if a horse that is already suffering from an injury or illness continues to race or participate in workouts. Exacerbation of such injuries or illnesses could disrupt further racing or training and lead to elevated risk to the horse of further injury, catastrophic breakdown or death. An injured or sick horse is not capable of exerting its best effort during racing or training and the horse's body cannot fully absorb the stresses that racing or working out can impose.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulations is minimal. The proposed rulemaking may result in additional examinations by attending veterinarians and, subsequently, increased expenses to licensed owners and/or trainers.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rules will be negligible. Costs for examinations are the responsibility of the licensed parties. The Commission will be responsible to file and review evaluations reported to the Commission. This rule will not impose any additional costs on local governments.

(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 gaming activities within the State.

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

6. **PAPERWORK:** The rules are not expected to impose any significant paperwork or reporting requirements on the regulated entities other than a potential for increased documentation of examinations by attending veterinarians and evaluations reported to the association veterinarian and to the Commission.

7. **DUPLICATION:** The rules do not duplicate or conflict with any existing State or federal requirements. There is overlap with a federal regulation, in that Rule 2230(c) of the Horseracing Integrity and Safety Authority ("HISA"), a private regulatory authority subject to the rulemaking authority of the Federal Trade Commission, prohibits an attending veterinarian from having contact with an entered Thoroughbred horse within 24 hours before the scheduled post time of the race in which the horse is scheduled to compete, unless approved by a regulatory veterinarian or in an emergency. HISA regulations define a regulatory veterinarian as a veterinarian who has registered with HISA and is employed, contracted, or appointed by a state racing commission, racetrack or HISA.

8. **ALTERNATIVES:** The alternative of not proposing this rulemaking was considered and rejected. The proposed rule is necessary to protect the safety of equine and human athletes.

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

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 rule making would require a trainer's attending veterinarian to examine a horse within 72 hours before a race, as well as within 72 hours before a workout, to determine the horse's fitness to participate in the race or workout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on local

governments, rural areas or employment opportunities. No local government activities are involved. Any potential additional reporting requirements and recordkeeping for attending veterinarians should be minimal.

Rural Area Flexibility Analysis

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 rule making would require a trainer’s attending veterinarian to examine a horse within 72 hours before a race, as well as within 72 hours before a workout, to determine the horse’s fitness to participate in the race or workout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on local governments, rural areas or employment opportunities. No local government activities are involved. Any potential additional reporting requirements and recordkeeping for attending veterinarians should be minimal.

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 rule making would require a trainer’s attending veterinarian to examine a horse within 72 hours before a race, as well as within 72 hours before a workout, to determine the horse’s fitness to participate in the race or workout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on local governments, rural areas or employment opportunities. No local government activities are involved. Any potential additional reporting requirements and recordkeeping for attending veterinarians should be minimal.

Office of General Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service-Disabled Veteran-Owned Business Enterprises

I.D. No. GNS-29-23-00003-P

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

Proposed Action: This is a consensus rule making to amend sections 252.1, 252.2 and 252.3 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200; Veterans’ Services Law, sections 41(5) and 42(1)

Subject: Service-Disabled Veteran-Owned Business Enterprises.

Purpose: To make amendments to definitions and statutory references in order to remain consistent with new statutory changes.

Text of proposed rule: Subdivision 252.1(n) is amended to read as follows:

(n) Directory shall mean the directory of certified service-disabled veteran-owned business enterprises for use by State agencies and contractors in complying with the provisions of article [17-B] 3 of the [Executive] Veterans’ Services Law.

Subdivisions (p), (q) and (r) of Section 252.1 are re-lettered as subdivisions (q), (r) and (s) and a new subdivision (p) is added to read as follows:

(p) *Discharged LGBT veteran shall mean a veteran who was discharged less than honorably from the uniformed services due to their sexual orientation or gender identity or expression, as those terms are defined in section 292 of the Executive Law, or statements, consensual sexual conduct, or consensual acts relating to sexual orientation, gender identity or expression, or the disclosure of such statements, conduct, or acts, that were prohibited by the branch of the uniformed services at the time of discharge.*

Subdivisions (s), (t), (u), (v), (w), (x), (y) and (z) of Section 252.1 are re-lettered as subdivisions (u), (v), (w), (x), (y), (z), (aa) and (ac) and a new subdivision (t) is added to read as follows:

(t) *Qualifying condition shall mean a diagnosis of post-traumatic stress disorder or traumatic brain injury made by, or an experience of military sexual trauma, as described in 38 USC 1720D, as amended from time to time, disclosed to, an individual licensed to provide health care services at a United States Department of Veterans Affairs facility or an individual licensed to provide health care services within the state of New York.*

Newly renumbered subdivision 252.1(u)(1) is amended to read as follows:

(1) [in the case of the United States Army, Navy, Air Force, Marines, Coast Guard, Army National Guard or Air National Guard and/or Reserves thereof,] *a veteran as defined herein* who received a compensation rating of ten percent or greater from the United States Department of Veterans Affairs or from the United States Department of Defense because of a service-connected disability incurred in the line of duty; and

A new subdivision 252.1(bb) is added to read as follows:

(ab) *Uniformed services shall mean the army, navy, marine corps, air force, space force, coast guard, public health commissioned corps, and the national oceanic and atmospheric administration commissioned officer corps of the United States.*

Newly re-lettered subdivision 252.1(ac) is amended to read as follows:

(ac) Veteran shall mean (1) a person who served [in and who has received an honorable or general discharge from, the United States Army, Navy, Air Force, Marines, Coast Guard, and/or Reserves thereof, and/or in the Army National Guard, Air National Guard, New York Guard and/or the New York Naval Militia] *on active duty in the uniformed services of the United States, or in the army national guard, air national guard, or service as a commissioned officer in the public health service, commissioned officer of the national oceanic and atmospheric administration or environmental sciences services administration, cadet at a United States armed forces service academy, and who has been released from such service under other than dishonorable conditions, or (2) a member of the New York guard who was discharged under other than dishonorable conditions, or (3) has a qualifying condition, as defined herein, and has received a discharge other than bad conduct or dishonorable from such service, or (4) is a discharged LGBT veteran, as defined herein, and has received a discharge other than bad conduct or dishonorable from such service.*

Subparagraph 252.2(a)(1) is amended to read as follows:

(1) Each State agency shall develop and adopt agency-specific goals in accordance with article [17-B] 3 of the [Executive] Veterans’ Services Law. Such agency specific goals shall be in addition to goals established pursuant to article 15-A of the Executive Law with respect to procurements from certified minority owned and women owned business enterprises.

Subparagraph 252.2(b)(3)(iv) is amended to read as follows:

(iv) a list of personnel responsible for the implementation of article [17-B] 3 of the [Executive] Veterans’ Services Law;

Subparagraph 252.2(c)(1) is amended to read as follows:

(1) All State agencies subject to article [17-B] 3 of the [Executive] Veterans’ Services Law shall submit and/or have an active master goal plan in force and on file with DSDVBD.

Paragraph 252.2(e) is amended to read as follows:

(e) State agency compliance reporting.

Each State agency shall cooperate and submit information in the timeframe requested by OGS to include in an annual report to be submitted by December 31st each year. Information to be provided shall include, but not be limited to, number of contracts entered into pursuant to article [17-B] 3 of the [Executive] Veterans’ Services Law and the average amount of such contracts.

Subparagraphs 252.2(f)(2)(ix) and (xi) are amended to read as follows:

(ix) whether the State agency’s practices and procedures comport with article [17-B] 3 of the [Executive] Veterans’ Services Law and this Part with respect to utilization plans, utilization reports and waivers;

* * *

(xi) any other information submitted by the State agency or other criteria that the director deems relevant to determining whether the State agency exercised good faith, including but not limited to, the agency’s compliance with the provisions of article [17-B] 3 of the [Executive] Veterans’ Services Law and these regulations.

Paragraph 252.2(j) and subparagraph 252.2(j)(7) are amended to read as follows:

(j) Set asides.

State agencies may reserve or set aside certain procurement opportunities for purposes of achieving the goals for participation of service-disabled veteran owned businesses to achieve the objectives of article [17-B] 3 of the [Executive] Veterans’ Services Law. The commissioner, in consultation with State agencies, shall develop and provide guidance for conducting procurements through the use of set asides with consideration given, but not limited to:

* * *

(7) other factors as may be relevant to the exercise of set asides in procurement contracts.

The commissioner shall develop and provide written guidance to State agencies to assist in their use of set asides as directed by article [17-B] 3 of the [Executive] Veterans’ Services Law which may be revised from time to time based on experience with this procurement tool.