November 24, 2014 Meeting Book

Meeting Agenda
November 24, 2014

1. Call to Order and Establishment of Quorum

2. Approval of Minutes, Meeting of September 30, 2014

3. Report of Executive Director

4. Rulemaking

    a. SGC-28-14-00006-E, Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)
    b. SGC-49-13-00020-RP, Per Se Thoroughbred Regulatory Thresholds for Equine Drugs (Adoption)
    c. SGC-49-12-00019-P, Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Thoroughbred Racing (Adoption)
    d. SGC-49-13-00021-P, Restricted Time Period for Systemic Administrations of Corticosteroids to Thoroughbred Horses (Adoption)
    e. SGC-37-14-00006-P Limits Betamethasone, Methylprednisolone and Triamcinolone to Only Joint Injections in Thoroughbred Racehorses (Adoption)
    f. SGC-49-13-00022-P, Restricted Time Period After IV Administrations of Flunixin to Thoroughbred Horses (Adoption)
    g. SGC-49-13-00023-P, Restricted Time Period for Administrations of Unspecified Corticosteroids to Thoroughbred Horses (Withdraw)
    h. Proposed Rulemaking: Grounds for Suspension and Revocation of Lottery License

5. Adjudications

    a. In the Matter of Aaron Byron
    b. In the Matter of William Creech
    c. In the Matter of Barry Held
    d. In the Matter of Jack Rice

6. New/Old Business

7. Scheduling of Next Meeting

8. Adjournment

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NEW YORK STATE
GAMING COMMISSION MEETING

MINUTES

MEETING of SEPTEBER 30, 2014

BROOKLYN, NEW YORK
GENEVA, NEW YORK
SCHENECTADY, NEW YORK

A meeting of the N.Y.S. Gaming Commission was conducted in Brooklyn, Geneva and Schenectady, New York. Three-way audio and visual communication was established and maintained among the three meeting locations.

1. Call to Order

The meeting was called to order at 12:46 p.m. by Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance were Chairman Mark Gearan in Geneva, John Crotty, John Poklemba and Todd Snyder in Brooklyn and Barry Sample in Schenectady. Peter Moschetti participated by telephone and did not count towards quorum establishment or for voting purposes.

2. Approval of the Minutes from August 21, 2014

The Commission considered draft minutes of the meeting conducted on August 21, 2014. Commissioner Snyder proposed an amendment regarding participation. The minutes were accepted by acclamation, as amended.

3. Report of Executive Director

Mr. Williams provided an update on the commercial casino development process and the proposed Lottery game Monopoly™ Millionaires' Club™.

4. Rulemaking

a. SGC-32-14-00005-P, Rules New Monopoly™ Millionaires' Club™ (Adoption)

Chairman Gearan asked Mr. Williams to introduce for consideration the adoption of a Lottery rule to govern the game MONOPOLY Millionaire's Club. Mr. Williams explained the rule, which was

previous proposed at the July 28, 2014. He noted that no public comment was received.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

Commissioner Moschetti indicated he would have voted in the affirmative had he been physically present.

b. SGC-28-14-00006-E, Rules, Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)

Chairman Gearan asked Mr. Williams to introduce for consideration re-adoption of an emergency rule prescribing the forms for the Request for Application to Develop and Operate a Gaming Facility and related license application forms. Mr. Williams explained the emergency rule, remarking that no public comments have been received nor has the text of the rules changed since initial emergency adoption.

ON A MOTION BY: Commissioner Snyder
APPROVED: 5-0

Commissioner Moschetti indicated he would have voted in the affirmative had he been physically present.

c. Proposed Rulemaking: Preference in Harness Racing

Chairman Gearan asked Mr. Williams to introduce for consideration a proposed rule regarding preferences in entries for harness racing. Mr. Williams explained the proposal would conform existing rules to recent enacted legislation.

ON A MOTION BY: Commissioner Snyder
APPROVED: 5-0

Commissioner Moschetti indicated he would have voted in the affirmative had he been physically present.

5. New Business/Old Business

a. New Business

Chairman Gearan acknowledged Commission's Inspector General Lisa Lee and requested she provide biographical and office-related information. Ms. Lee complied. Chairman Gearan also asked Commission General Counsel Edmund C. Burns to provide an overview on the status of an adjudicatory system reform project being undertaken by the Office of Counsel. Mr. Burns provided a general overview.

b. Old Business

No action on old business was taken.

6. Scheduling of Next Meeting

It was determined the next meeting would be on or around October 27, 2014.

7. Adjournment

The meeting was adjourned at 1:07 p.m.

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Andrew M. Cuomo
Governor

Edmund C. Burns
General Counsel

NYS GAMING COMMISSION

MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: November 19, 2014

Re: Proposed Emergency Rulemaking for Gaming Facility Application Forms (9 NYCRR Part 5300)

On March 31, 2014 the Commission promulgated emergency rules prescribing both forms for the Request for Applications to Develop and Operate a Gaming Facility and several forms necessary to consider and process Applications for Gaming Facility Licenses

By publication in the State Register on July 16, 2014, September 10, 2014, and again on November 12, 2014, the Commission extended the emergency adoption. The emergency rule will expire December 21, 2014. Accordingly, for Commission consideration is the re-adoption of Part 5300 as an emergency rule, with such re-adoption to be filed with the Department of State prior to the expiration of the current emergency rule. The text of the rules has not changed since the initial emergency adoption on March 31, 2014. A copy of the proposed text is attached.

The public comment period for a companion notice of proposed rulemaking has expired and no public comment was received. Permanent adoption of this rule should be considered when the Commission has before it the broad set of proposed commercial casino regulations, which are still being drafted.

[redacted]

attachment

Subchapter C of Chapter IV of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new Part 5300 as follows:

PART 5300

Gaming Facility Applications

§ 5300.1. Application to Develop and Operate a Gaming Facility.

The form of application to develop and operate a gaming facility shall include, without limitation, the following elements:

(a) *Executive summary.* An applicant shall submit a brief executive summary with its application, highlighting the principal terms of the application.

(b) *Applicant information.*

(1) An applicant shall provide identifying information including, without limitation:

(i) Full name (including trade name or d/b/a) of the applicant. If the applicant is a corporation, full name as it appears on the certificate of incorporation, charter, by-laws or other official document.

(ii) Name, title, email address, mailing address and telephone number of the individual to be contacted in reference to the application.

(iii)Principal business address and telephone number for an applicant and, if applicable, the manager of the proposed gaming facility, including the URL for any website maintained by or for the applicant or manager.

(iv)Type of business entity (*e.g.*, corporation, limited liability company, partnership, etc.).

(v) The state (or other jurisdiction) under the laws of which the applicant is incorporated, organized, formed or registered and the Federal tax identification number and evidence of existence or formation as an entity as of a date no later than 10 days prior to the date of submission of the application.

(vi) Ownership chart of the applicant and, if applicable, the manager and their respective affiliates, including percentage ownership interests in the applicant and the manager by their respective direct and indirect owners, illustrating the ultimate owners and real parties in interest. For a publicly traded company, disclosure of owners may be limited to owners owning five percent or more of the publicly traded company.

(vii) Organizational chart of the applicant and, if applicable, the manager, illustrating the organizational structure likely to be used by the applicant or the manager in the event that applicant is awarded a license, including all casino key employees.

(viii) Name, address and title of each director, manager or general partner of the applicant and, if applicable, the manager and each officer and casino key employee of the applicant or manager.

(ix) Name and business address of each person or entity that has a direct or indirect ownership, or other proprietary interest (financial, voting or otherwise) in the applicant and, if applicable, the manager. For a publicly traded company, disclosure of owners may be limited to owners owning five percent or more of the publicly traded company.

(x) Name and business address of all promoters, sponsors, personnel, consultants, sales agents or other entities involved in aiding or assisting the applicant's efforts to obtain a gaming facility license.

(xi) The region and locality in which the gaming facility is proposed to be located.

(2) An applicant shall identify all conflicts of interest including:

(i) Any relationship or affiliation of the applicant, manager or any of their respective affiliates that currently exist with any member, employee, consultant or agent of the New York Gaming Facility Location Board or the Commission that is a conflict of interest, or may be perceived as a conflict of interest, during the application process. Further, if any such conflict should arise during the term of the application process, the applicant shall notify the New York Gaming Facility Location Board in writing of such conflict.

(ii) Any public officials or officers or employees of any governmental entity, and immediate family members of said public officials, officers or employees, who directly or indirectly own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instruments issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the applicant, the manager, or their affiliates.

(iii) Any persons not identified in subparagraph (ii) of this paragraph who have any arrangement, written or oral, to receive any compensation from anyone in connection with the application, the application process or the obtaining of a gaming facility license.

(3) If the applicant does not identify any conflict of interest, or perceived conflict of interest, the applicant shall state that no direct or indirect conflict of interest, or potential conflict of interest, exists with respect to such proposal.

(4) If the applicant identifies a direct or indirect conflict of interest, or potential conflict of interest, the applicant shall disclose the conflict of interest or potential conflict of interest and the steps the applicant will take to resolve such conflict of interest or potential conflict of interest.

(5) The New York Gaming Facility Location Board shall make the final determination as to whether any activity constitutes a conflict of interest. The decision of such board shall be final and without recourse; however, such board shall not make any such decision without providing the applicant or manager, as applicable, with an opportunity to present comments.

(6) An applicant shall identify any current or previous contract that the applicant has had with, and any current or previous licenses that the applicant has been issued by or under, any department or agency of New York State.

(7) If the gaming facility will be managed by a manager that is different from the applicant, the applicant shall describe the relationship between the manager and the applicant including, without limitation, a summary of the terms of any and all agreements, contracts or understanding between the manager and the applicant.

(8) An applicant shall submit, as applicable, copies of the following documents that apply to the applicant, the applicant's owners, any manager or any of the manager's owners:

(i) certified copy of its certificate of incorporation, articles of incorporation or corporate charter;

(ii) by-laws as amended through the date of the application;

(iii) certified copy of its certificate of formation or articles of organization of a limited liability company;

(iv) limited liability company agreement or operating agreement as amended through the date of the application;

(v) certified copy of its certificate of partnership;

(vi) partnership agreement as amended through the date of the application;

(vii) certified copy of its certificate of limited partnership;

(viii) limited partnership agreement as amended through the date of the application;

(ix) other legal instrument of organization;

(x) joint venture agreement;

(xi) trust agreement or instrument, each as amended through the date of the application;

(xii) voting trust or similar agreement; and

(xiii) stockholder, member or similar agreement.

(c) *Finance and capital structure.* An applicant shall:

(1) describe its finance and capital structure including:

(i) capital investment plans;

(ii) a study completed by an independent expert assessing the size of the potential gaming market for the proposed gaming facility;

(iii) a detailed financial forecast annually for a period of at least 10 years after opening for gaming on a best-, average- and worst-case basis;

(iv) a qualitative business plan for the proposed gaming facility describing, at minimum, the components and projected results of the material revenue lines and expense categories of the proposed gaming facility, the applicant's sources and availability of financing, the principal business and financing risks of the proposed gaming facility and plans to mitigate those risks;

(v) a detailed description of how the project will be financed;

(vi) a detailed description regarding each financing source;

(vii) a schedule of the financing sources' anticipated capital structure after construction and first three years of operation of the proposed gaming facility;

(viii) an analysis of how the financing plans for the application fee, application and suitability investigation expenses, license fee, capital investment deposit, construction and first three years of operation of the proposed gaming facility will affect each financing source's compliance with the financial covenants under its current financing arrangements; and

(ix) all financial commitments and guarantees the applicant or, if applicable, the manager, or its affiliates is prepared to provide to the Commission over and above the deposit or bond required by subdivision 1 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law to ensure that the gaming facility is completed, license conditions are fulfilled and sufficient working capital is available to allow continuous operation in manner described in the applicant's financial forecasts;

(2) submit an independent audit report for each of the last five fiscal years regarding the applicant and each of its parents;

(3) submit bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies and business and personal accounting check records and ledgers and copies of securities analyst and credit rating agency reports for the past three years;

(4) submit all United States Securities and Exchange Commission filings, if any, for the financing sources, for the three fiscal years ended before the date applications are due and any interim period between the end of the most recent fiscal year and the date applications are due;

(5) describe any delinquencies in the payment of any fees or tax required under any federal, state or municipal law within the past 10 years by an applicant; for any payment not made because of a dispute, describe the circumstances;

(6) describe the applicant's and, if applicable, the manager's experience, training and expertise in developing, constructing and operating gaming facilities and related facilities;

(7) describe any destination casino resort or other gaming projects that the applicant and, if applicable, the manager, has publicly announced that it is in the process of acquiring, developing or proposing to acquire or develop;

(8) provide any information relating to legal actions including, without limitation:

(i) pending legal actions, whether civil, criminal or administrative in nature, to which the applicant is a party and a brief description of any such actions;

(ii) any settled or closed legal actions, whether civil, criminal or administrative in nature, against the applicant over the past 10 years;

(iii) any judgments against the applicant within the past 10 years, including the case name, number, court, and what the final ruling or determination was from the court, administrative body or other tribunal;

(iv) a statement whether the applicant was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past 10 years;

(v) a statement whether the applicant was the subject of any order, judgment or decree of any court, administrative body or other tribunal of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past 10 years; and

(vi) a description of any bankruptcies (voluntary or involuntary), assignments for the benefit of creditors, appointments of a receiver or custodian or similar insolvency proceedings made, commenced or pending during the past 10 years by or involving any applicant;

(9) describe any contract, loan agreement or commitment that the applicant has breached or defaulted on during the past 10 years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default;

(10) describe any gaming-related licenses issued in any jurisdiction, and provide a detailed explanation if the applicant has ever had a gaming-related license denied, suspended, withdrawn or revoked, or if there is a pending proceeding that could lead to any of these conditions; and

(11) describe any disciplinary action brought against the applicant by any gaming licensing authority during the past five years.

(d) *Economics.* An applicant shall provide:

(1) market analysis, studies and/or reports evidencing the benefits of the gaming facility including:

(i) market analysis showing benefits of the site location and the estimated recapture rate of gaming-related spending by New York residents travelling to out-of-state gaming establishments;

(ii) studies completed by an independent expert showing the proposed gaming facility's:

(*a*) overall economic incremental benefits to the region and New York State; and

(*b*) impact on the local and regional economy, including incremental job creation, the impact on cultural institutions and on small businesses in the host community and surrounding communities; and

(iii) completed studies by an independent expert showing projections for all estimated State, county, and local tax revenue each year for the first five years of operations on a best-, average- and worst-case basis, identifying the source of each element of the tax revenue;

(2) a description of the proposed gaming facility's inclusion within, and coordination with, a regional and local economic plan;

(3) a description of plans and minimum commitments for use of New York-based suppliers and materials in the construction and operational phases of applicant's project;

(4) a description of the employment opportunities created by the proposed gaming facility, including, among other things, the number of employees to be employed at the proposed gaming facility and the pay rate and benefits for employees;

(5) a description of the competitive environment in which the applicant anticipates the proposed gaming facility will operate over the 10 years after opening;

(6) a description of the target market segments of the gaming facility;

(7) the marketing plans for the proposed gaming facility with specific reference to pre-opening marketing and opening celebrations; and

(8) a description of strategies to be used by the applicant to deal with the cyclical/seasonal nature of tourism demand.

(e) *Land construction and design of physical plant.* An applicant shall:

(1) identify the location of the proposed gaming facility, including:

(i) the dimensions and total acreage of the land that will be developed for the proposed gaming facility;

(ii) the address, maps, book and page numbers from the appropriate registry of deeds;

(iii) the assessed value of the land for the proposed gaming facility at the time of application, and a description of all ownership interests in the land for the past 20 years, including all easements, options, encumbrances, and other interests in the property, together with all relevant demographic, geographic and environmental information in regard to the site and the surrounding area; and

(iv) if the applicant does not currently possess an ownership interest in the location, describe how the applicant intends to acquire the necessary interest in the land in accordance with subdivision 2 of section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(2) provide copies of current local zoning approvals and any rezoning, variances and/or land use approvals required for the gaming facility site, a detailed explanation of the status of any request for any of the foregoing, together with copies of all filings, including a specific schedule of applications for such approvals and anticipated approval dates;

(3) provide a description of, and schematics illustrating, the applicant's master plan for the land and the gaming facility site showing major activities and functions, and a phasing plan for the proposed components;

(4) provide designs for the proposed gaming facility including among other things, a site plan, floor plans, building elevations and perspectives;

(5) describe the proposed gaming area, including square footage, number and types of table games and slot machines, electronic gaming devices, poker tables and any other forms of gaming, number of gaming positions, specific location of the games and machines in the proposed gaming facility;

(6) provide a detailed description of the proposed amenities including hotels, meeting and convention facilities, dining facilities, entertainment venues and non-gaming amenities; in addition, provide a statement of how the proposed amenities will compare in quality to other area amenities and those offered in competitive gaming facilities;

(7) provide a detailed description of proposed parking and transportation infrastructure including, among other things, parking spaces for employees, patrons and buses; tour bus, taxi and valet drop-off areas; and service vehicle and satellite parking;

(8) provide a description of mechanical systems and other on-site infrastructure plans;

(9) provide the names, addresses and relevant experiences of the architects, engineers, contractors, and designers of the proposed gaming facility and related proposed infrastructure improvements;

(10) provide a detailed construction budget and timeline for construction, including plans for mitigating impacts during and following construction;

(11) provide information concerning the number and quality of construction jobs to be provided during the construction period;

(12) provide names of all proposed gaming equipment vendors; and

(13) provide a description of the proposed internal controls, electronic surveillance systems and security systems for the proposed gaming facility and any related facilities.

(f) *Assessment of local support and mitigation of local impact.* An applicant shall:

(1) demonstrate local support by submitting to the board a resolution passed after November 5, 2013 by a majority of the membership of the local legislative body of the host community supporting the application;

(2) provide completed studies and reports showing the proposed gaming facility's impact on, among other things, local and regional, social, environmental and traffic infrastructure; and

(3) provide plans for mitigating potential impacts on host and nearby municipalities that might result from the development or operation of the gaming facility.

(g) *Regional tourism and attractions.* An applicant shall describe regional tourism and local promotion efforts including:

(1) promoting local businesses in host and surrounding communities including developing cross-marketing strategies with local restaurants, small businesses, hotels and retail outlets;

(2) establishing partnerships with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues;

(3) contracting with local business owners for provision of goods and services to the gaming facility, including developing plans designed to assist businesses in New York State in identifying the needs for goods and services to the facility;

(4) local agreements designed to expand gaming facility draw, including the number of patrons brought to the region; and

(5) cross-marketing efforts with attractions.

(h) *Measures to address problem gambling.* An applicant shall describe measures to address problem gambling, including among other things, on-site resources available to those affected by gambling-related problems, training for facility employees to help identify those who may have gambling-related problems, exclusion policies, treatment and prevention programs, and metrics the applicant will use to measure whether the applicant is succeeding in efforts to reduce problem gambling.

(i) *Workforce development.* An applicant shall describe:

(1) its workforce development plans including:

(i) human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program;

(ii) an affirmative action program that identifies specific goals for the utilization of minorities, women, persons with disabilities and veterans on construction, service and professional jobs; and

(iii) on-the-job opportunities and training in areas and with respect to demographic groups with high unemployment; and

(2) whether the applicant has the support of organized labor for its application and detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment.

(j) *Sustainability and resource management.* An applicant shall describe its sustainability and resource management plans with respect to the gaming facility, including its plans to, among other things, mitigate traffic flow, obtain LEED certification, use energy efficient equipment, manage storm water, conserve water, use renewable energy and monitor energy consumption.

§ 5300.2. Background Investigation.

(a) The Commission may investigate the background of any applicant for a gaming facility license. This investigation may include the background of any related parties in interest to the applicant, including close associates and financial resources of the applicant. Applicants and related parties in interest, as indicated in paragraphs (1) and (2) of this subdivision, shall submit the following supplemental forms as part of a gaming facility license application:

(1) a Gaming Facility License Application Form, as prescribed in subdivision (b) of this section, for each of the applicant, any direct and indirect parent entity of the applicant (including any holding company), any manager, any entity having a beneficial or proprietary interest of five percent or more in an applicant or a manager, and any other entity that may be designated by the New York Gaming Facility Location Board or the Commission; and

(2) a Multi-Jurisdictional Personal History Disclosure Form, as prescribed by subdivision (d) of this section and a Multi-Jurisdictional Personal History Disclosure Supplemental Form, as prescribed in subdivision (f) of this section, for each natural person who is a director, manager, general partner or person holding an equivalent position with the applicant, a manager or any direct or indirect parent entity of the applicant, a casino key employee, a person having beneficial or proprietary interest of five percent or more in an applicant or a manager and any other person that may be designated by the New York Gaming Facility Location Board or the Commission.

(b) *Gaming Facility License Application Form.* A Gaming Facility License Application Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

(1) The name, title, phone number and email address of a person to be contacted in reference to the application;

(2) The current and former d/b/a or trade names used by the entity;

(3) The principal business address of the entity;

(4) The date and place of formation and information concerning each person forming the entity;

(5) All other names under which the entity has conducted business and give the approximate time periods during which these names were being used;

(6) All other addresses presently used by the entity and all addresses from which the entity is presently doing business;

(7) All addresses, other than those listed in paragraph (6) of this subdivision, that the entity held or from which it was conducting business during the last 10-year period, and give the approximate time periods during which such addresses were held;

(8) A description of the business conducted and intended to be conducted by the entity and its parent, holding, subsidiary and intermediary entities and the general development of such business during the past five years, or such shorter period as the entity or its parent, holding, subsidiary and intermediary entities may have been engaged in business. The description shall include information on matters such as the following:

(i) competitive conditions in the industry or industries involved and the competitive position of the entity, if known;

(ii) the principal products produced and services rendered by the entity and its parent, intermediary and subsidiary entities, the principal markets for said products or services and the methods of distribution;

(iii) the sources and availability of raw materials essential to the business of the entity;

(iv) the importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises and concessions held; and

(v) a description of any material changes in the business entity's mode of conducting the business;

(9) A description of any former business, not listed in response to paragraph (8) of this subdivision, that the entity or any parent, intermediary or subsidiary company engaged in during the last 10-year period and the reasons for the cessation of such business. Also indicate the approximate time period during which each such business was conducted;

(10) Information for each director, trustee, and officer of the entity for the last 10 years. Officers include all persons serving as president, secretary, treasurer, chairman of the board, vice-president, general/corporate counsel or any such other officers as may be prescribed by the entity's governing documents;

(11) The annual compensation of directors, trustees and officers and whether such compensation is in the form of salary, wages, commissions, fees, stock options, bonuses or otherwise;

(12) The name, business address, date of birth, and position of each person other than a director, trustee or officer, who received annual compensation of more than $250,000 and the length of time employed and the amount of compensation;

(13) A description of all bonus, profit sharing, pension, retirement, deferred compensation and similar plans in existence;

(14) Describe the nature, type, number of authorized and issued shares, terms, conditions, rights and privileges of all classes of voting, non-voting and other stock issued, or to be issued, or other similar indicia of ownership by the entity including the number of shares of each class of stock authorized or to be authorized and the number of shares of each class of stock outstanding, not held by or on behalf of the issuer, or other similar information applicable to other indicia of ownership as of this date;

(15) The name, home address, and date of birth of each shareholder, the class held, number of shares held and the percentage of outstanding voting or non-voting securities or other ownership interest held;

(16) A description of the nature, type, terms, covenants, conditions, and priorities of all outstanding debt and security devices utilized by the entity;

(17) A description of each person or entity holding any outstanding debt and security devices utilized by the entity;

(18) A description of any options existing or to be created with respect to securities issued by the entity in which description shall include, but not be limited to, the title and amount of securities subject to option, the year or years during which the options were or will be granted, the conditions under which the options were or will be granted, the consideration for granting the option and the year or years during which, and the terms under which, optionees became or will become, entitled to exercise the options, and when such options expire;

(19) The following information for each account for the last 10 years held in the name of the entity or its nominee or otherwise under the direct or indirect control of the entity:

(i) the name and address of the financial institution;

(ii) the type of account;

(iii) the account number; and

(iv) the dates held;

(20) The name and address of all persons with whom the entity has contracts or agreements of $250,000 in value or more including employment contracts of more than one year duration, or who have supplied goods and services within the past six months and the nature of such contracts or the goods and services performed;

(21) Information regarding any transaction within the last five years involving a change in the beneficial ownership of the entity's equity securities on the part of any current or former director, officer or beneficial owner of more than 10 percent of any class of equity security;

(22) A description of any civil, criminal, administrative, and investigatory proceedings in any jurisdiction for the entity and each director, trustee or officer as follows:

(i) any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;

(ii) any criminal proceeding in which such person has been named a party or an unindicted co-conspirator;

(iii) any existing civil litigation that resolved within the previous five years to which the entity, its parent, or any subsidiary is a party, if damages are reasonably expected to exceed $100,000 unless such damages involve claims against the entity that are fully and completely covered under an insurance policy;

(iv) any judgment order, consent decree or consent order entered against the entity pertaining to a violation or alleged violation of the federal antitrust, trade regulation, or securities laws or similar laws of any jurisdiction; and

(v) any judgment order, consent decree or consent order pertaining to any state or federal statute, regulation, or code that resulted in a fine or penalty of $50,000 or more within the past 10 years;

(23) For the entity, parent or any intermediary entity, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the federal bankruptcy code or any state insolvency law; and information regarding any receiver, fiscal agent, reorganization trustee or similar officer appointed for the property or business of the entity or its parent, holding, intermediary or subsidiaries;

(24) During the last 10 years, whether the entity has had any license or certificate issued by any governmental agency denied, suspended, or revoked. Also, whether the entity, its parent or any subsidiary ever applied in any jurisdiction for a license, permit or other authorization to participate in lawful gambling operations (including casino gaming, horse racing, dog racing, pari-mutuel operation, lottery, sports betting, etc.);

(25) During the last 10 years, whether the entity, its parent or any subsidiary, director, officer, or employee or any third party acting on behalf of the entity made any bribes or kickbacks or made any payments alleged to have been bribes or kickbacks to any employee, company, organization, government official domestic or foreign to obtain favorable treatment;

(26) During the last 10 years whether the entity, its parent, any subsidiary or related entity or individual has:

(i) donated or loaned property or anything of value for the purpose of opposing or supporting any government, political party, candidate, or committee, either foreign or domestic;

(ii) made any loans, donations, or other disbursements to its directors, officers, or employees for the purpose of reimbursing such individuals for political contributions, either foreign or domestic; and

(iii) maintained a bank account or other account, domestic or foreign, not reflected on the books of the entity, or maintained any account in the name of the nominee of the entity;

(27) Provide the names and addresses of any current or former directors, officers, employees or third parties who would have knowledge or information concerning subparagraph (iii) of paragraph (26) of this subdivision;

(28) Provide a copy of the following:

(i) audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;

(ii) all annual financial statements prepared in the last five years, any exceptions taken to such statements by the independent auditor retained by the entity and the management response thereto;

(iii) annual reports to shareholders for the last five years;

(iv) any annual reports prepared within the last five years on Form 10K pursuant to Securities Exchange Act of 1934;

(v) the last quarterly unaudited financial statements prepared by or for the entity, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed 10Q;

(vi) any current report prepared due to a change in control of the entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the entities certifying accountant, or other material events, which, if the entity is registered with the SEC, may be satisfied by providing a copy of the most recently filed form 8K;

(vii) each press release issued by the entity for the past five years;

(viii) last definitive Proxy or Information Statement filed pursuant to the section 14 of the Securities Exchange Act of 1934;

(ix) registration statements filed in the last five years pursuant to the Securities Act of 1933; and

(x) all reports and correspondence submitted in the last five years by independent auditors for the entity that pertain to the issuance of financial statements, managerial advisory services, or internal control recommendations;

(29) The name, address, and telephone number of the current outside auditor(s);

(30) A certified copy of the articles of incorporation, charter and by-laws and all amendments and proposed thereto;

(31) A current ownership organizational chart of the entity, its parent entity and each subsidiary of the entity;

(32) A functional table of organization for the entity filing this gaming facility license application form, including position descriptions and the names of persons holding such positions; and

(33) A copy of all Federal Internal Revenue Service tax returns filed by the entity in the last five years.

(c) In addition to the information set forth in subdivision (b) of this section, a completed Gaming Facility License Application Form shall include the following documents, which shall be dated and signed by the President or any officer of the entity authorized to affirm and sign the documents:

(1) a release authorization directing all courts, probation departments, selective service boards, employers, educational institutions, banks, financial institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the entity as required by the Commission and its authorized agents and representatives;

(2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of any material or information acquired during the licensing or investigation process;

(3) a consent to inspections, searches and seizures and the supplying of handwriting exemplars; and

(4) a signed, dated and notarized affidavit.

(d) *Multi-Jurisdictional Personal History Disclosure Form.* A Multi-Jurisdictional Personal History Disclosure Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

(1) name, including maiden name and any aliases or nicknames and applicable dates of use;

(2) date of birth;

(3) physical description;

(4) current address and residence history;

(5) Social Security number, which information is voluntarily provided in accordance with section 552a of the United States Code;

(6) citizenship and, if applicable, information regarding resident alien status, including information regarding passports;

(7) marital history, dependents and other family data;

(8) the gaming licensee or applicant, gaming vendor licensee or applicant or holding company, as applicable, with which the applicant is affiliated, and the nature of the applicant's position with or interest in such entity;

(9) telephone number at the current place of employment;

(10) employment history of the applicant and applicant's immediate family;

(11) education and training;

(12) record of military service;

(13) government positions and offices presently or previously held, and the offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;

(14) trusteeships or other fiduciary positions held by the applicant and the applicant's spouse, and any denial or suspension of, or removal from, such positions;

(15) current memberships in any social, labor or fraternal union, club or organization; and

(16) licenses and other approvals held by or applied for by the applicant or, where specified, the applicant's spouse, in New York State or any other jurisdiction, as follows:

(i) any professional or occupational license held by or applied for the by the applicant or the applicant's spouse;

(ii) motor vehicle registrations and operator licenses held by or applied for by the applicant or the applicant's spouse, and any revocation or suspension thereof;

(iii) possession or ownership of any pistol or firearm, or any application for any firearm permit, firearm dealer's license, or permit to carry a pistol or firearm;

(iv) any license, permit, approval or registration required to participate in any lawful gambling operation in New York State or any jurisdiction held by or applied for by the applicant; and

(v) any denial, suspension or revocation by a government agency of a license, permit or certification held by or applied for by the applicant or the applicant's spouse, or any entity in which the applicant or the applicant's spouse was a director, officer, partner or any owner of a five percent or greater interest;

(17) any interest in or employment presently or previously held by the applicant with any entity that has applied for a permit, license, certificate or qualification in connection with any lawful gambling or alcoholic beverage operation in New York State or any other jurisdiction; and any current employment or other association by the applicant's family with the gambling or alcoholic beverage industries in New York State or any other jurisdiction;

(18) civil, criminal and investigatory proceedings in any jurisdiction, as follows:

(i) arrests, charges or offenses committed by the applicant or any member of the applicant's immediate family;

(ii) any instance where the applicant has been named as an unindicted party or co-conspirator in a criminal proceeding or held as a material witness;

(iii) any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, grand jury or investigatory body, and any refusal to comply with a request to do so;

(iv) any pardons, dismissals, suspensions or deferrals of any criminal investigation, prosecution, or conviction;

(v) lawsuits to which the applicant was or is a party;

(vi) any citation or charge for a violation of a statute, regulation or code of any jurisdiction, other than a criminal disorderly persons, petty disorderly persons or motor vehicle violation; and

(vii) any use, distribution, or possession of any narcotic, hallucinogenic, drug, barbiturate, amphetamine or other substance other than pursuant to a valid prescription issued by a licensed physician;

(19) any exclusion or barring from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction;

(20) financial data, as follows:

(i) all assets and liabilities of the applicant, and the applicant's spouse and dependent children as indicated on the net worth statement and supporting schedules in a format prescribed by the Commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes

payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;

(ii) bank accounts, including any right of ownership in, control over or interest in any foreign bank account, and safe deposit boxes;

(iii) real estate interests held by the applicant or the applicant's spouse or dependent children;

(iv) businesses owned;

(v) copies of Federal tax returns and related information;

(vi) judgments or petitions for bankruptcy, insolvency or liquidation concerning the applicant or any business entity in which the applicant held a five percent or greater interest, other than a publicly traded corporation, or in which the applicant served as an officer or director;

(vii) any business entity in which the applicant was an owner, director or officer that has been placed under some form of governmental administration or monitoring;

(viii) any garnishment or attachment of wages, charging order or voluntary wage execution, including the amount, court, nature of the obligation and the holder of the obligation;

(ix) any repossessions of real or personal property;

(x) any guarantees, co-signatures or insuring of payments of financial obligations of any persons or business entities;

(xi) status as executor, administrator or fiduciary of any estate;

(xii) life insurance policies on the applicant's life that name someone other than the applicant's family as a beneficiary;

(xiii) positions held, assets held, or interest received in any estate or trust;

(xiv) whether the applicant has ever been bonded for any purpose or been denied any type of bond, including the nature of the bond and if applicable, the reason for denial;

(xv) insurance claims in excess of $100,000 by the applicant or the applicant's spouse or dependent children;

(xvi) referral or finder's fees in excess of $10,000;

(xvii) loans in excess of $10,000 made or received by the applicant, the applicant's spouse or dependent children;

(xviii) gifts in excess of $10,000 given or received by the applicant or the applicant's immediate family;

(xix) brokerage or margin accounts with any securities or commodities dealer;

(xx) currency exchanges in an amount greater than $10,000;

(xxi) information regarding any instance where the applicant or any entity in which the applicant was a director, officer or holder of a five percent or greater interest has traded in foreign currencies or in a foreign commodities exchange, sold or purchased discounted promissory notes or other commercial paper, or been a party to any leasing arrangements in excess of $50,000; and

(xxii) information regarding any ownership interest or financial investment by the applicant in any entity that holds or is an applicant for a license issued by the Commission, or in any gambling venture that does not require licensure by the Commission, including persons providing or reasonably anticipated to provide the applicant with support in the financing of such investment or interest; the extent and nature of the applicant's involvement in the management and operation of the entity;

whether the applicant has or has agreed to assign, pledge or hypothecate such interest or investment, the nature and terms of any such transaction and a copy of any such agreement.

(e) In addition to the information set forth in subdivision (d) of this section, a completed Multi-Jurisdictional Personal History Disclosure Form shall include the following:

(1) the name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;

(2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the license or investigation process;

(3) a consent to inspection, searches and seizures and the supplying of handwriting exemplars; and

(4) a signed, dated and notarized affidavit of truth.

(f) *Multi-Jurisdictional Personal History Disclosure Supplemental Form*. A Multi-Jurisdictional Personal History Disclosure Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

(1) name and nature of position with or interest in a gaming facility license applicant or licensee, a gaming vendor applicant or licensee, or a holding company as applicable;

(2) current photograph;

(3) citizenship, and if applicable, resident alien status, including any certificate of naturalization, United States Citizenship and Immigration Services documentation, employment authorization with expiration date, country of which the applicant is a citizen, place of birth, proof of entry to the United States, and name of address of sponsor upon arrival;

(4) any ownership interest, financial interest, or financial investment in any business entity applying to or presently licensed by the Commission; and

(5) an applicant shall disclose whether, during the last 10 years, any entity in which it had been a director, officer, or principal employee or a holder of five percent or greater interest has:

(i) made or been charged with (either itself or through third parties acting for it) bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;

(ii) held a foreign bank account or has had authority to control disbursements from a foreign bank account;

(iii) maintained a bank account, or other account, whether domestic or foreign, that is not reflected on the books or records of the business;

(iv) maintained a domestic or foreign numbered bank account or other bank account in a name other than the name of the business;

(v) donated or loaned corporate funds or corporate property for the use or benefit of, or for the purpose of opposing, any government, political party, candidate or committee either domestic or foreign;

(vi) compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposition to any government or political party domestic or foreign; and

(vii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign.

(g) An applicant shall provide copies of Federal and state tax returns and related information for the last five years, including:

(1) United States Internal Revenue Service forms 1040, 1040X and related schedules;

(2) an audit narrative or failure to file narrative; and

(3) foreign tax returns and schedules.

(h) An applicant shall provide a signed, dated and notarized release authorization that shall direct all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, Federal, state and local, both foreign and domestic, to release any and all information pertaining to the applicant as requested by the Commission, the New York State Gaming Facility Location Board, or any employee, agent or representative, thereof.

(i) In addition to the information set forth in subdivision (f) of this section, a completed Multi-Jurisdictional Personal History Disclosure Supplemental Form shall include the following:

(1) the name, address, occupation, phone number, email address and years known of persons who can attest to the good character and reputation of the applicant;

(2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the licensing process, or during any inquiries, investigations or hearings;

(3) a consent to inspection, searches and seizures and the supplying of handwriting exemplars;

(4) a notification and authorization form for employment credit report; and

(5) a signed, dated and notarized affidavit.

§ 5300.3. Fingerprinting.

An applicant for a gaming facility occupational license, shall, at the time of application be fingerprinted under the supervision of the Commission or by a person or agency acceptable to the Commission and shall pay to the Commission an amount set by the Commission to cover the costs of such fingerprinting. The Commission may, for good cause shown, permit an applicant or licensee alternatively to submit sets of classifiable fingerprints on fingerprint impression cards provided by the Commission.

§ 5300.4. Duty to Update Application.

(a) Upon completion of an application prescribed in section 5300.1 of this Part and prior to the award of a gaming facility license, an applicant has a continuing duty to disclose to the New York Gaming Facility Location Board promptly, in writing (and electronically), any changes or updates to the information submitted in the application or any related materials submitted in connection therewith.

(b) The New York Gaming Facility Location Board may in its sole discretion determine to accept the update as an amendment to an application. The New York Gaming Facility Location Board shall not be required to accept any such information.

(c) An applicant's failure to promptly notify the New York Gaming Facility Location Board of any changes or updates to information previously submitted may be grounds for disqualification of an applicant from consideration by the New York Gaming Facility Location Board.

§ 5300.5. Application Fees.

An applicant to develop and operate a gaming facility in New York State shall pay the $1 million fee prescribed by subdivision 8 of section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law by electronic fund transfer as the Commission may direct. An applicant shall submit this fee on a date established by the Commission, which shall be posted on the Commission's website as well as included in the schedule provided

in the application to develop and operate a gaming facility in New York State. The application fee shall be non-refundable, except that the unexpended portion of the fee shall be returned to an applicant, minus any reasonable processing or investigative costs the Commission has incurred, including overhead, administrative expenses, and any other costs directly or indirectly incurred.

Andrew M. Cuomo
Governor

Edmund C. Burns
General Counsel

NYS GAMING COMMISSION

MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: November 19, 2014

Re: Adoption of Rules for Controlled Therapeutic Medications in Thoroughbred Racing (9 NYCRR §§ 4043.2, 4043.3)

For the Commission's consideration are the adoption of an extensive set of controlled therapeutic medications rules for thoroughbred horses that the Commission proposed on November 4, 2013 and revised on March 12, 2014. A summary of these thoroughbred proposals is as follows:

9 NYCRR	**Subject (*revised)**	**N.Y. Dept. of State I.D. No.**
§ 4043.3(a, b)	24 per se thresholds *	SGC-49-13-00020-P, RP
§ 4043.2(k)	methylprednisolone restricted time	SGC-49-13-00019-P
§ 4043.2(i)(1)	systemic corticosteroids restricted time	SGC-49-13-00021-P
§ 4043.2(i)(2)	corticosteroids limited to joint injections	SGC-37-14-00006-P
§ 4043.2(d, e)	flunixin restricted time	SGC-49-13-00022-P
§ 4043.2(l)	other corticosteroids restricted time	SGC-49-13-00023-P

The rules that the Commission proposed on November 4, 2013 were accompanied by a duly noticed Public Hearing that the Commission held on January 21, 2014. As a result, the Commission may make Fact Findings in regard to such rulemaking proposals. Such Fact Findings, if made, will be official findings of the Commission in its rulemaking proceedings and will constitute resolved facts for all adjudicatory proceedings before the Commission. A copy of proposed Fact Findings is attached.

The Commission also received written comments during the public comment periods for the various proposals. In January 2014, two substantive written comments were received. A letter with 282 listed signatories, on letterhead of The Jockey Club ("TJC"), encouraged the Commission to maintain the thresholds and withdrawal times that national organizations had proposed. The Thoroughbred Safety Committee of TJC wrote to encourage the Commission to adopt rules only with regard to medications for which such proposals had been made. The Commission had proposed the recommended national thresholds.

In March 2014, the Commission revised its *per se* threshold proposal, to remove the limit-of-detection threshold for "unapproved" drugs after the national organizations changed course. The Commission proposed limiting three corticosteroids to only joint injections, as the national organizations recommended. The Commission then received three more written comments. The American Graded Stakes Committee supported adopting the uniform medication rules without amendments. The Jockey Club supported the threshold proposals and recommended doing away with restricted time periods. The New York Racing Association, Inc. (NYRA) supported the Commission's published proposals.

Dr. Scott Palmer, the Commission's equine medical director, and Commission staff have considered the proposals carefully and believe they are ready for consideration for adoption. This memorandum summarizes each of the proposals and attaches the text of the proposed final rules along with the proposed Commission findings of fact.

Per Se Thoroughbred Regulatory Thresholds for Equine Drugs (SGC-49-13-00020-P, RP)

The Commission proposed *per se* threshold rules for 24 drugs to complement the Commission's restricted time period rules. The restricted time period rules provide a simple instruction for trainers to follow concerning when to stop the administration of various drugs before a horse's next race. The *per se* threshold rules are intended to ensure that drugs will not be used in a manner that could endanger a horse and jockeys or manipulate the outcome of pari-mutuel horse races. The Commission revised its proposal after the national proponents of the thresholds abandoned the original concept of strictly prohibiting the presence of any other drugs in race day samples. The Commission's revision was not to propose a limit-of-detection threshold for such "unapproved" drugs. Measures to limit therapeutic medications close to race day might severely reduce the number of horses shipping to race in New York, absent a consensus with other states. The Commission still regulates the permitted time of administration of all drugs before a horse's next race.

In addition to simplifying the administrative adjudication of equine rule violations by making it an automatic rule violation to exceed a Section 4043.3 threshold, the adoption of these thresholds nationally makes it easier for trainers to race in New York and elsewhere. Although trainers who participate in other states are expressly *not* assured that the use of the 24 drugs at their own recommended withdrawal times will prevent the occurrence of a positive post-race test, trainers may rely on our time restrictions, when following accepted veterinary practices (*e.g.*, clinical doses), to ensure their compliance with these thresholds in all states.

Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Thoroughbred Racing (SGC-49-12-00019-P).

The Commission proposed a use restriction after any administration of methylprednisolone acetate (*e.g.*, Depo Medrol). The Commission proposed that a horse must test negative and be released to race by the stewards before it can race. A clinical dose of this drug may result in a positive test for more than 50 days after some joint injections, yet a small clinical dose in a different joint may result in a concentration in the horse's plasma below the threshold value within seven days. As a result, a single restricted time period may be unreasonable for this drug. The Commission also lacks sufficient scientific data to formulate a reasonably precise restricted time period that can protect regulated parties in all circumstances. Rather than prohibit the use of this drug, which some veterinary practitioners believe is the best therapeutic option in some circumstances, a use restriction that the horse must test negative and be released to race by the stewards will limit the use of this drug to such circumstances and provide the Commission and regulated parties with a use restriction that is reasonable to apply. This restriction will continue the practice of the Commission providing the regulated parties with a use restriction that is reasonable to apply.

Restricted Time Period for Systemic Administrations of Corticosteroids to Thoroughbred Horses (SGC-49-13-00021-P).

The Commission proposed limiting the corticosteroids that may be administered by any means other than a joint injection ("systemically") to the two, dexamethasone and prednisolone, that are well-accepted, sufficient to provide good veterinary care and amendable to control by means of laboratory testing.

Adopting this proposal will reduce the variety of drugs that might be used close to race day. It will also ensure that a trainer who follows our restricted time periods and uses accepted veterinary practices (*e.g.*, clinical doses) for systemic corticosteroid administrations will not incur a threshold violation. These corticosteroids have been researched to determine their clearance time from a horse's body ("pharmacodynamics"). Five days is sufficient for each drug. Similar research has not been completed for most other corticosteroids.

Limits Betamethasone, Methylprednisolone and Triamcinolone to Only Joint Injections in Thoroughbred Racing (SGC-37-14-00006-P).

The Commission proposed limiting the corticosteroids that will have *per se* thresholds and are widely used for joint injections to use only for joint injections.

These three corticosteroids are betamethasone and various formulations of methylprednisolone or triamcinolone. Their thresholds are based on the concentration of these drugs in a horse's plasma in the days after a joint injection. Such thresholds are generally exceeded for a much longer period of time after these drugs are administered by other means, and it is not possible to determine from laboratory test results which route of administration has been used. Other corticosteroids are available to treat horses by other means.

The Commission cannot reasonably regulate the use of these three corticosteroids with thresholds without limiting their means of administration to only joint injections.

Restricted Time Period After IV Administrations of Flunixin to Thoroughbred Horses (SGC-49-13-00022-P).

The Commission proposed a repeal of its allowance of intravascular ("IV") use of the non-steroidal anti-inflammatory drug ("NSAID") flunixin within 48 hours before a horse's next race. The adoption of this proposal would restore the Commission's historic limitation of pre-racing horses with NSAIDs for 48 hours before a horse's race. During the time of such 48-hour restriction, from 1971 to 2005, there were no complaints by trainers and veterinarians and few positives. Since flunixin was permitted closer to racing in 2005, the Commission has detected 80 flunixin rule violations, more than any other drug. Some trainers have confused the route of administration limitation and used oral paste, which has a longer clearance time. Flunixin is often obtained from a compounding pharmacy, which can provide a less accurate and reliable drug concentration in a preparation than a pharmaceutical company. Flunixin is not the most efficient or predictable NSAID, either, and permitting its use closer to racing has caused an artificial increase in the use of flunixin rather than other NSAIDs. Another problem in horse racing has been the "stacking" of NSAIDs, meaning an administration of multiple NSAIDs for their synergistic effects. Restoring our traditional 48-hour restricted time period for all NSAIDs would prohibit this practice within 48 hours before a horse's next race. A 48-hour restricted time period also ensures that a person who complies with the restricted time period will not incur a threshold violation with a clinical dose. This assurance is not provided, in the expert opinion of our scientific consultant, Dr. George A. Maylin, based on available research data, by the national organizations' withdrawal guideline of only 32 hours. Dr. Maylin expects

that there will be inadvertent threshold violations for those trainers who follow this withdrawal guideline rather than a restricted time period of 48 hours.

A restricted time period of 48 hours does not permit any NSAID administrations the day before a horse races and this would enhance the ability of the Commission to regulate drug use in the stables. The Commission would also introduce complexity and confusion with a 32-hour restricted time period, rather than our standard multiple of 24 hours (*e.g.*, 24, 48, 72, 96 hours) before race day. Previously, the national organizations had been recommending a 24-hour withdrawal guideline. These organizations did not realize that this was a mistake until April 2014. Importantly, a restricted time period of 48 hours will also minimize how much a pre-race flunixin administration could interfere with an examining veterinarian's detection of lameness in the hours immediately preceding a race. This pre-race examination is important to provide another layer of protection assuring that an unfit horse will not be started in a race.

Restricted Time Period for Administrations of Unspecified Corticosteroids to Thoroughbred Horses (SGC-49-13-00023-P).

The Commission proposed a strict prohibition of the presence of any other corticosteroids in race day samples before the national proponents of the 24-drug thresholds abandoned their national support for a limit-of-detection threshold for all such "unapproved" drugs. This is no longer a viable proposal. This proposal also provides that every corticosteroid not identified by name in the Commission's rules is impermissible within seven days of racing (*i.e.*, cannot be administered systemically within five days of a horse's next race). This provision is now redundant to SGC-49-13-00021-P. It is recommended that the Commission not consider adoption this rule proposal.

Conclusion

[redacted]

Copies of the notices of proposed rulemaking as published in the New York *State Register* are attached.

attachments

cc: Robert Williams, Executive Director
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering
Scott Palmer, Equine Medical Director

PROPOSED THROUGHBRED RULEMAKING

Per Se Thresholds:

Revised Proposed Rulemaking, "Per Se Regulatory Thoroughbred Thresholds for Equine Drugs" (I.D. No. SGC-49-13-00020-RP), published in the September 17, 2014 *State Register* at pp. 10-12:

A new Section 4043.3 ("Other prohibitions") of 9 NYCRR would be renumbered Section 4043.13, and a new Section 4043.3 would be added to Part 4043 of 9 NYCRR, to read as follows:

Section 4043.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

(1) Acepromazine: 10 ng/ml HEPS in urine;

(2) Betamethasone: 10 pg/ml in plasma;

(3) Butorphanol:

(i) 300 ng/ml of total butorphanol in urine; or

(ii) 2 ng/ml of free butorphanol in plasma;

(4) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma;

(5) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in plasma;

(6) Detomidine:

(i) 1 ng/ml of any metabolite of detomidine in urine; or

(ii) any detomidine in plasma;

(7) Dexamethasone: 5 pg/ml in plasma;

(8) Diclofenac: 5 ng/ml in plasma;

(9) DMSO: 10 mcg/ml in plasma;

(10) Firocoxib: 20 ng/ml in plasma;

(11) Flunixin: 20 ng/ml in plasma;

(12) Furosemide: 100 ng/ml in plasma and a specific gravity of urine less than 1.010;

(13) Glycopyrrolate: 3 pg/ml in plasma;

(14) Ketoprofen: 10 ng/ml in plasma;

(15) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;

(16) Mepivacaine:

(i) 10 ng/ml of total hydroxymepivacaine in urine; or

(ii) any hydroxymepivacaine in plasma;

(17) Methocarbamol: 1 ng/ml in plasma;

(18) Methylprednisolone: 100 pg/ml in plasma;

(19) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;

(20) Phenylbutazone: 2 mcg/ml in plasma;

(21) Prednisolone: 1 ng/ml in plasma;

(22) Procaine penicillin: 25 ng/ml of procaine in plasma;

(23) Triamcinolone acetonide: 100 pg/ml in plasma; and

(24) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A laboratory finding that a horse has not exceeded a threshold set forth in this section shall not constitute a defense to a violation of any other section of this subchapter.

Initial Proposed Rulemaking, "Per Se Regulatory Thoroughbred Thresholds for Equine Drugs" (I.D. No. SGC-49-13-00020-P), published in the December 4, 2013 *State Register* at pp. 30-32:

Section 4043.3 ("Other prohibitions") of 9 NYCRR would be renumbered Section 4043.13, and a new Section 4043.3 would be added to Part 4043 of 9 NYCRR, to read as follows:

Section 4043.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration listed below. The test for each sample shall include an evaluation of the method of uncertainty and imprecision of the analytical test.

(1) Acepromazine: 10 ng/ml HEPS in urine;

(2) Betamethasone: 10 pg/ml in plasma;

(3) Butorphanol:

(i) 300 ng/ml of total butorphanol in urine; or

(ii) 2 ng/ml of free butorphanol in plasma;

(4) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma;

(5) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in plasma;

(6) Detomidine:

(i) 1 ng/ml of any metabolite of detomidine in urine; or

(ii) any detomidine in plasma;

(7) Dexamethasone: 5 pg/ml in plasma;

(8) Diclofenac: 5 ng/ml in plasma;

(9) DMSO: 10 mcg/ml in plasma;

(10) Firocoxib: 20 ng/ml in plasma;

(11) Flunixin: 20 ng/ml in plasma;

(12) Furosemide: 100 ng/ml in plasma and a specific gravity of urine less than 1.010;

(13) Glycopyrrolate: 3 pg/ml in plasma;

(14) Ketoprofen: 10 ng/ml in plasma;

(15) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;

(16) Mepivacaine:

(i) 10 ng/ml of total hydroxymepivacaine in urine; or

(ii) any hydroxymepivacaine in plasma;

(17) Methocarbamol: 1 ng/ml in plasma;

(18) Methylprednisolone: 100 pg/ml in plasma;

(19) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;

(20) Phenylbutazone: 2 mcg/ml in plasma;

(21) Prednisolone: 1 ng/ml in plasma;

(22) Procaine penicillin: 25 ng/ml of procaine in plasma;

(23) Triamcinolone acetonide: 100 pg/ml in plasma; and

(24) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A horse shall have raced in violation of this section if the laboratory conducting tests by or for the commission is able to determine from such horse's race-day urine or blood sample that a drug or other substance for which no permissible threshold is established in this Part had been administered to such horse before its race, unless such drug or other substance by its nature could not affect a horse's organ systems.

(c) A laboratory finding that a horse has not exceeded a threshold set forth in this section shall not constitute a defense to a violation of any other section of this subchapter.

Use Restriction for any Use of Methylprednisolone Acetate (e.g., Depo Medrol):

Proposed Rulemaking, "This Proposal Would Limit the Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Thoroughbred Racing" (I.D. No. SGC-49-13-00019-P), published in the December 4, 2013 *State Register* at pp. 29-30:

A new subdivision (k) would be added to Section 4043.2 as follows:

(k) A horse may not race after an administration of methylprednisolone acetate unless such horse subsequently tests below the threshold set forth in section 4043.3 of this Part for such drug in a test conducted by or for the commission at the sole expense of the trainer of the horse; and is released to race by the stewards.

Restricting Systemic Corticosteroids to Only Dexamethasone and Prednisolone:

Proposed Rulemaking, "Restricted Time Period for Systemic Administrations of Corticosteroids to Thoroughbred Horses" (I.D. No. SGC-49-13-00021-P), published in the December 4, 2013 *State Register* at pp. 32-33:

Paragraph (1) of subdivision (i) of Section 4043.2 would be amended as follows:

(i) In addition, a horse may not race for the following periods of time:

(1) for at least five days following a systemic administration of prednisolone or dexamethasone [a corticosteroid].

Limiting Betamethasone and Formulations of Methylprednisolone and Triamcinolone to Only Joint Injections:

Proposed Rulemaking, "Limits Betamethasone, Methylprednisolone and Triamcinolone to Only Joint Injections in Thoroughbred Horses" (I.D. No. SGC-37-14-00006-P), published in the September 17, 2014 *State Register* at pp. 7-8:

Paragraph (2) of subdivision (i) of section 4043.2 of 9 NYCRR would be amended as follows:

§ 4043.2. Restricted use of drugs, medications and other substances.

***

(i) In addition, a horse may not race for the following periods of time:

***

(2) for at least seven days following a joint injection of any corticosteroid; and the following corticosteroids may be administered only by means of a joint injection: betamethasone, any formulation of methylprednisolone and any formulation of triamcinolone;

Restoring 48-hour Restricted Time Period for All Flunixin Administrations:

Proposed Rulemaking,"Restricted Time Period After IV Administrations of Flunixin to Thoroughbred Horses" (I.D. No. SGC-49-13-00022-P), published in the December 4, 2013 State Register at pp. 33-34:

Subdivision (d) of Section 4043.2 of 9 NYCRR would be repealed:

(d) [The following non-steroidal anti-inflammatory drug may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete:

(1) flunixin.] (Reserved)

The final unnumbered paragraph of subdivision (e) of Section 4043.2 of 9 NYCRR would be amended as follows:

None of these substances may be administered within 48 hours of the scheduled post time of the race in which the horse is to compete[, except that flunixin may be used in accordance with the specific authorization set forth in subdivision (d) of this section]. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 48 hours.

Restricting Unspecified Corticosteroids

Proposed Rulemaking, "Restricted Time Period for Administration of Unspecified Corticosteroids to Thoroughbred Horses" (I.D. No. SGC-49-13-00023-P), published in the December 4, 2013 *State Register* at pp. 34-35:

A new subdivision (l) would be added to Section 4043.2 as follows:

(l) A horse may race following the administration of a corticosteroid that is not specified in other subdivisions of this section only if:

(1) such administration occurs at least seven days before such race;

(2) the trainer of the horse discloses, in writing, such administration to the stewards before race day; and

(3) the administration of such corticosteroid cannot be detected by laboratory tests, conducted by or for the commission, in a race-day urine or blood sample.

Draft Commission Findings

The Commission makes the following rulemaking fact findings with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to "Per Se Thoroughbred Regulatory Thresholds for Equine Drugs" (SGC-49-13-00020-P as republished as SGC-49-13-00020-RP).

Agency Finding # 1:

A horse will not incur a positive laboratory finding in excess of the following thresholds, following an administration of the drug in which the drug regimen is consistent with accepted veterinary practice, *e.g.*, the administration of a clinical dose, provided that the drug is not administered within the Commission's restricted time periods (including as adopted today):

1. Acepromazine [96 hours]: 10 ng/ml HEPS in urine
2. Butorphanol [96 hours]: 300 ng/ml of total butorphanol in urine or 2 ng/ml of free butorphanol in plasma
3. Clenbuterol [14 days]: 140 pg/ml in urine or any clenbuterol in plasma
4. Dantrolene [72 hours]: 100 pg/ml of 5-hydroxydantrolene in plasma
5. Detomidine [96 hours]: 1 ng/ml of any metabolite of detomidine in urine or any detomidine in plasma
6. Dexamethasone [5 days]: 5 pg/ml in plasma
7. Diclofenac [48 hours]: 5 ng/ml in plasma
8. DMSO [48 hours]: 10 mcg/ml in plasma
9. Firocoxib [14 days]: 20 ng/ml in plasma
10. Flunixin [48 hours]: 20 ng/ml in plasma
11. Furosemide [4-4.5 hours]: 100 ng/ml in plasma and a specific gravity of urine less than 1.010
12. Glycopyrrolate [96 hours]: 3 pg/ml in plasma
13. Ketoprofen [48 hours]: 10 ng/ml in plasma
14. Lidocaine [96 hours]: 20 pg/ml of total 3-hydroxylidocaine in plasma
15. Mepivacaine [96 hours]: 10 ng/ml of total hydroxymepivacaine in urine or any hydroxymepivacaine in plasma
16. Methocarbamol [72 hours]: 1 ng/ml in plasma
17. Omeprazole [24 hours]: 1 ng/ml of omeprazole sulfide in urine
18. Phenylbutazone [48 hours]: 2 mcg/ml in plasma; Procaine penicillin: 25 ng/ml of procaine in plasma
19. Prednisolone [5 days]: 1 ng/ml in plasma
20. Procaine penicillin [7 days]: 25 ng/ml of procaine in plasma
21. Xylazine [96 hours]: 10 pg/ml of total xylazine and its metabolites in plasma.

Agency Finding # 2:

If there is a positive laboratory finding in excess of a foregoing threshold, then the administration of such drug had the potential to affect the race performance of such horse.

Agency Finding # 3:

If there is a positive laboratory finding in excess of a foregoing threshold, assuming an administration of the drug in which the drug regimen is consistent with accepted veterinary practice, then a violation of the Commission's restricted time period for such drug occurred.

Agency Finding # 4:

It is difficult to enforce a restricted time period applicable to corticosteroid joint injections due to various factors, *e.g.*, (1) multiple joints are often treated; (2) certain joints are interconnected; (3) various size doses are

consistent with accepted veterinary practice; (4) other substances may be included with a corticosteroid in a joint injection. It is important to regulate corticosteroid joint injections because of the impact such treatments may have on race performance and the health and safety of race horses and human participants, *e.g.*, the jockeys. The following regulatory thresholds create a threshold value for corticosteroids that are permitted only for joint injections, with which a responsible person can reasonably be expected to comply. The Commission's restricted time period of seven days before a horse's next race, because of the various factors that could affect the concentration of the target analyte as found by a laboratory, however, has not been shown to provide the same assurance that is described in *Agency Finding # 1*. The Commission can reasonably enforce the following thresholds, provided that leniency is exercised in regard to a regulated party when the Commission finds that a preponderance of the evidence establishes that the administration did not occur within the restricted time period (such leniency may range from issuing a warning letter to mitigation of the penalty that is imposed):

22. Betamethasone: 10 pg/ml in plasma
23. Triamcinolone acetonide: 100 pg/ml in plasma

Agency Finding # 5:

Methylprednisolone is a corticosteroid that the Commission finds requires more strict regulation because of various factors, *e.g.*, (1) the drug can be particularly harmful to the long term health of treated joints and tissues, (2) the drug has the potential to affect race performance for an unusually long period of time, (3) the drug can be detected in laboratory tests for an unusually long period of time, particularly if some of the drug is injected outside of the joint capsule. The most reasonable use restriction to provide the same assurance that is described in *Agency Finding # 1* is to make every horse treated with this drug ineligible to race until the horse tests below the threshold and is released to race by the stewards. The threshold itself is reasonable, however, because it is difficult to enforce a restricted time period applicable to corticosteroid joint injections due to various factors (see *Agency Finding # 4*) and because this threshold is consistent with effectively proscribing the administration of even a small clinical dose in a single joint within seven days before a horse's next race. A seven day waiting period before a Thoroughbred horse's next race is important to ensure that the horse is treated sufficiently before its next race to permit the attending veterinarian to re-evaluate the condition of the horse after treating the horse with such corticosteroid joint injection.

24. Methylprednisolone: 100 pg/ml in plasma

Agency Finding # 6:

The thresholds for betamethasone and triamcinolone acetonide require that such drugs be administered only as a joint injection because if betamethasone or any formulation of triamcinolone were administered outside of the joint capsule then such drug could be detected in race day samples at a concentration in excess of the threshold for a much longer period of time than the applicable (seven day) restricted time period. With this requirement in place, the restricted time periods for these two corticosteroids provide a reasonable assurance that a person who complies with them will not incur a threshold violation, as further described in Agency Finding # 4.

The Commission makes the following rulemaking fact findings with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to "Restricted Time Period for Systemic Administrations of Corticosteroids to Thoroughbred Horses" (SGC-49-13-00021-P).

Agency Finding # 7:

The following corticosteroids are sufficient to provide good veterinary care to a Thoroughbred race horse close to race day, when a veterinarian has determined there is a therapeutic value in treating the horse with a systemic administration of such a corticosteroid, and the pharmacology of such drugs has been sufficiently studied to permit the Commission to assess and control their use by means of laboratory tests. These are the only two corticosteroids for which such findings currently can be made and that are the subject of a national movement toward more uniformity. The Commission finds that it is reasonable to limit the corticosteroids that may be used within seven days before a horse's next race to the systemic use of these corticosteroids:

1. Dexamethasone
2. Prednisolone

The Commission makes the following rulemaking fact findings with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to "Restricted Time Period after IV Administrations of Flunixin to Thoroughbred Horses" (SGC-49-13-00022-P).

Agency Finding # 8:

The Commission finds that it is necessary and proper to repeal the previous permission to inject a Thoroughbred horse with flunixin until 24 hours before its next race and to restore our historic restricted time period of administration by any means until 48 hours before a horse's next race. For 34 years, from 1971 to 2005, the latter was the restricted time period in New York and there were no complaints and few positives. The shorter restricted time period has resulted in a large number of rule violations and is inappropriate because of a number of factors, *e.g.*, (1) flunixin is often obtained from a compounding pharmacy which cannot be provide an accurate and reliable concentration of the drug as well as a pharmaceutical company and the Commission does not want regulated parties who comply with its restricted time periods to incur a threshold violation; (2) many regulated persons (*e.g.*, trainers) have incurred a drug positive after having confused the limited route of administration (IV only) permitted since 2005 and given flunixin as an oral paste that has a longer clearance and detection time of the drug; (3) a 48-hour restricted time period for all permitted nonsteroidal anti-inflammatory drugs ("NSAID") eliminates the artificial incentive for a regulated party to choose flunixin for treating a horse close to its next race when there are other permitted NSAIDs that are more efficient and predictable (a longer half-life); (4) a 48-hour restricted time period for all NSAIDs prevents administrations of multiple NSAIDs ("stacking") for a period of 48 hours before a horse's next race; (5) a restricted time period of 48 hours does not permit any NSAID administrations the day before a horse races and this enhances the ability of the Commission to regulate drug use in the stables; (6) the Commission expects, based on the available research data, that regulated parties would have inadvertent positives were the Commission to adopt a restricted time period for flunixin of 32 hours; (7) the Commission would introduce complexity and confusion with a 32-hour restricted time period rather than our standard multiples of 24 hours (*e.g.*, 24, 48, 72, 96 hours) before race day; (8) a 48-hour restricted time period ensures that a person who complies with the restricted time period will not incur a drug positive with a clinical dose, the assurance described in *Agency Finding # 1*; (9) a restricted time period of 48 hours minimizes how much a pre-race flunixin administration can interfere with an examining veterinarian's detection of lameness in the hours immediately preceding a race.

The Commission makes the following rulemaking fact findings with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to "This Proposal Would Limit the Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Thoroughbred Racing" (SGC-49-13-00019-P).

Agency Finding # 9:

The threshold for methylprednisolone requires, in order for the use restriction for such drug to provide the assurance that is described in *Agency Finding # 1*, that the administration of any methylprednisolone acetate (*e.g.*, Depo Medrol) causes the horse to be ineligible to race until the horse tests below the threshold and is released to race by the stewards. A clinical dose of this drug may result in a positive test for more than 50 days after some joint injections, yet a small clinical dose in a different joint may result in a concentration in the horse's plasma below the threshold value within seven days. As a result, a single restricted time period may be unreasonable for this drug. The Commission also lacks sufficient scientific data to formulate a reasonably precise restricted time period that can protect regulated parties in all circumstances, as further described in *Agency Findings # 4 and # 5*. There are too many unknown variables to adopt a specific time period for this drug. Rather than prohibit the use of any formulation of this drug, which might be the best therapeutic option in some circumstances, a use restriction that the horse must test negative and be released to race by the stewards will limit the use of this drug to such circumstances and provide the Commission and regulated parties with a use restriction that is reasonable to apply.

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of $3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimus business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Compliance Requirements: Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than $4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs: The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be $3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts: The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations.

Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation: Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

New York State Gaming Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Restrictions on the Use of Clenbuterol in Standardbred Racing

I.D. No. SGC-37-14-00005-P

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

Proposed Action: Addition of section 4120.2(p) to Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restrictions on the use of clenbuterol in standardbred racing.

Purpose: To enhance the integrity and safety of standardbred horse racing.

Text of proposed rule: A new subdivision (p) would be added to section 4120.2 of 9 NYCRR, as follows:

(p) Clenbuterol shall be administered only under the general supervision of a treating veterinarian and in a manner not exceeding its use for treating respiratory disorders.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 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), 104(1), 104(19) and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to enhance the integrity and safety of standardbred pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to restrict the administration of clenbuterol to the treatment of respiratory disorders in standardbred horses.

This proposal would add a new subdivision (p) to Section 4120.4 of 9 NYCRR, requiring that clenbuterol be administered only as prescribed by a veterinarian for the treatment of respiratory disorders. Clenbuterol is a bronchodilor and expectorant that is FDA-approved for treating bronchial disorders in racehorses. Treating veterinarians often dispense clenbuterol to the horse's trainer, with instructions to administer the drug to the horse orally on a daily basis. A typical treatment regimen may be for two to 14 days, which is what the manufacturer recommends.

There have been reports of continuous daily clenbuterol administrations, however, to achieve an anabolic-like repartitioning effect, meaning that body fat is replaced by muscle mass. These reports in New York have been about thoroughbred racing, for which the Commission has undertaken and proposed remedial measures, but the drug could have a similar effect on standardbred horses. This anabolic-like effect has the potential to increase race performance, although such overuse can cause side effects that damage the health and racing ability of a race horse and continuous use of clenbuterol reduces its beneficial effects for bronchodilation and mucusiliary clearance.

Regardless of the precise effect such misuse of clenbuterol might have on a horse's race performance, the manipulation of a horse's racing ability with drugs is a matter of primary regulatory concern. Horse racing is sustained by pari-mutuel wagering, and the use of drugs to manipulate race performance has a negative effect on competitors, fan interest, public support, and the amount wagered by the betting public.

This proposal will require a veterinarian to supervise generally the administration of any clenbuterol that is dispensed. This means that the use of such clenbuterol, i.e., oral administrations under the direction of the horse's trainer, may occur only as instructed by the veterinarian. In addition, the clenbuterol cannot be given for longer than is needed to treat a bronchial disorder. A veterinarian bears similar responsibilities when dispensing any prescription drug, such as clenbuterol. This rule will permit the Commission to provide further enforcement in the pari-mutuel racing industry.

There is no existing rule of the Commission that directly regulates treatment regimens for clenbuterol. The adoption of these requirements will help to prevent the overuse of clenbuterol in standardbred racing.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would 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. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

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

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers or their designated treating veterinarians will be required to make entries on the Commission's free online reporting system.

7. Duplication: None.

8. Alternatives. The Commission considered and rejected an alternative requirement that a standardbred racehorse cannot race within 14 days of any clenbuterol treatment. Such a rule would deprive the horses of beneficial treatments when actively racing, and market forces (weekly racing) and the Commission's existing 96-hour restricted time period are discouraging the overuse of clenbuterol. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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 only authorizes the Commission to engage in its own enforcement action when there is an unsupervised or excessive administration of the prescription drug clenbuterol. Such regulation will serve to enhance the integrity of racing and the health and safety of racehorses, and the medication will continue to be permitted for its beneficial effects. This rule will not impose an adverse economic impact on 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

Limits Betamethasone, Methylprednisolone and Triamcinolone to Only Joint Injections in Thoroughbred Racehorses

I.D. No. SGC-37-14-00006-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 4043.2(i)(2) of Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Limits betamethasone, methylprednisolone and triamcinolone to only joint injections in thoroughbred racehorses.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Text of proposed rule: Section 4043.2 of 9 NYCRR would be amended as follows:

§ 4043.2. Restricted use of drugs, medications and other substances.

(i) In addition, a horse may not race for the following periods of time:

(2) for at least seven days following a joint injection of any corticosteroid*; and the following corticosteroids may be administered only by means of a joint injection: betamethasone, any formulation of methylprednisolone and any formulation of triamcinolone*;

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to make it possible for the Commission to regulate corticosteroid joint injections effectively with laboratory thresholds that are violated only when a thoroughbred horse races too soon after receiving such a treatment.

The Commission has proposed adopting national regulatory thresholds for three corticosteroids, betamethasone and various formulations of methylprednisolone or triamcinolone, that are used to alleviate joint soreness by means of joint injection. Such thresholds are based on the concentration of these drugs at seven days after the horses are given a joint injection of such drugs, which is considered enough time to allow a treating or examining veterinarian to determine whether a thoroughbred horse has recovered from a joint ailment before it may race again. Other research has shown, however, that such thresholds are exceeded for a much longer period of time when these drugs are given to a horse by other means, such as intramuscular injection ("IM") or orally, and it is not possible to determine from laboratory test results which route of administration has been used. Methylprednisolone acetate given by an IM administration, for example, has been found in a horse's blood at a concentration exceeding its proposed threshold for longer than 95 days, rather than for only seven days.

This proposal would limit the use of these three corticosteroids to only joint injections. This will ensure that a threshold violation in blood samples taken from a horse on race day is the result of an improper joint injection within seven days of the horse's race, and protect horsepersons from inadvertently incurring an equine drug positive by having given these drugs to a horse by means other than a joint injection.

There are other corticosteroids that are more commonly administered to treat a racehorse by means other than joint injection, and they do not persist in a horse's bodily system for more than 72 hours. As a result, this proposal will not have an adverse effect on treating to a horse with corticosteroids by means other than a joint injection.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of various medications.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new mandatory duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives. This rule amendment is to assure horsepersons that the Commission's restricted time periods are consistent with the separately proposed national regulatory laboratory thresholds for these equine drugs that have been recommended by the Racing Medication and Testing Consortium and the Association of Racing Commissioners, International, Inc. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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 concerns the restricted administration of certain drugs to thoroughbred racehorses. These medications, three corticosteroids frequently used for equine corticosteroid joint injections, will be limited to such means of administration by this proposal, to protect horsepersons from inadvertent violations of proposed new regulatory thresholds for such drugs that are based on administrations solely by joint injections, and to ensure that any violations of such thresholds reliably indicate an administration of such drugs by joint injection within the applicable restricted time period before the horse races. Such regulations serve to enhance the health and safety of racehorses on race day. These medications will continue to be permitted for joint injections, and other corticosteroids that are more commonly administered by other means than by joint injection will continue to be permitted for such uses. This rule will not have an adverse economic impact on reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Reporting of Standardbred Corticosteroid Joint Injections to the Commission

I.D. No. SGC-37-14-00007-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 4120.4 of Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Reporting of standardbred corticosteroid joint injections to the Commission.

Purpose: To enhance the integrity and safety of standardbred horse racing.

Text of proposed rule: A new subdivision (b) would be added to section 4120.4 of 9 NYCRR, as follows:

§ 4120.4. Trainer's responsibility.

(a) A trainer shall be responsible at all times for the condition of all horses trained by him or her. No trainer shall start or permit a horse in his or her custody, care or control to be started if such trainer knows, or might have known cause to believe, that the horse has received any drug or other restricted substance that could result in a positive test. The trainer shall be held responsible for any positive test unless such trainer can show by substantial evidence that neither such trainer nor any employee nor agent was responsible for the administration of the drug or other restricted substance. Every trainer must guard each horse trained by him or her in such manner and for such period of time prior to racing the horse so as to prevent any person whether or not employed by or connected with the owner or trainer from administering any drug or other restricted substance to such horse contrary to this Part.

(b) Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the commission, by the trainer to the commission within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purposes of assisting with pre-race veterinary examinations.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 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), 104(1), 104(19) and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to enhance the integrity and safety of standardbred pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking to amend Commission Rule 4120.4 is necessary to monitor the administration of corticosteroid joint injections to standardbred horses.

This proposal would amend Section 4120.4 of 9 NYCRR, which is the Trainer's Responsibility rule, to require that a trainer report any equine corticosteroid joint injections to the Commission within 48 hours of treatment. The proposal further authorizes trainers to delegate such reporting responsibility to the treating veterinarians, who have the information (e.g., dose, drug) necessary to make such reports.

The reporting of corticosteroid joint injections will enable the veterinarians who perform pre-race examinations of standardbred horses at the racetracks to make a better evaluations of the condition of the horse, including by identifying a pattern of redundant treatments that have the potential to misrepresent the true clinical condition of a horse. These pre-race examinations are intended to prevent sore or lame horses from racing, to enhance the integrity of the races and the safety of the equine and human participants.

This reporting will permit the Commission to review the corticosteroid joint injection data to learn which joints are treated, the age distribution of horses that receive such treatments, any relationship between such treatments and injuries or chronic joint disabilities, and the frequency of repetitious joint treatments. Sore joints are a common ailment suffered by standardbred racehorses. The veterinary literature suggests that other modalities might better treat such conditions and that corticosteroid joint injections might contribute to further degeneration of sore joints under certain circumstances.

This amendment would also provide the Commission with timely notice of any potential ailments, notify the racing secretaries when horses are ineligible to enter upcoming races because of a recent corticosteroid joint injection, and ensure that documentation is available if a horse's fitness comes into question.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs of compliance by regulated parties will be minimal. The Commission has developed a free online reporting system for this data, already in use for thoroughbred racehorses, whose trainers and veterinarians have reported such information on a timely basis at minimal cost since December 26, 2012.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The Commission can readily use its thoroughbred corticosteroid reporting system for standardbred horsepersons.

There will be no costs to local government because the New York State Gaming 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: The Commission relied on its experience collecting such information from thoroughbred horsepersons.

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

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers or their designated treating veterinarians will be required to make entries on the Commission's free online reporting system.

7. Duplication: None.

8. Alternatives: These rule amendments are based on the success of this reporting requirement for thoroughbred racing. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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. The proposed amendment requires the trainer of a standardbred racehorse, or the treating veterinarian if designated by the trainer, to report equine corticosteroid joint injections to the Commission. Under current rules, the records of such treatments are required to be maintained by the treating veterinarian and must be disclosed to the Commission on demand. This proposal standardizes such reporting, which will be implemented through a free online reporting system for such information that is currently used to collect such data from thoroughbred horsepersons by the Commission. The rule does not impose any significant technological changes on the industry for the reasons set forth above. The routine collection of this data will provide more information about the successful treatment of sore joints in racehorses, and as such will have a positive effect on horseracing, the care and treatment of racehorses, and the revenue generated through pari-mutuel wagering and breeding in New York State. This will not adversely impact rural areas or jobs or local governments.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Restricted Time Periods for Clenbuterol Use on Standardbred Racehorses

I.D. No. SGC-49-13-00009-RP

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

Proposed Action: Amendment of sections 4120.2(g)(5) and 4120.3(a); and addition of section 4120.2(k) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time periods for clenbuterol use on standardbred racehorses.

Purpose: To enhance the integrity and safety of standardbred horse racing.

Text of revised rule: The revised rule making would delete the proposed new paragraph (17) of subdivision (a) of Section 4120.3:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

***

[(17) Clenbuterol:
(i) 140 pg/ml in urine; or
(ii) any clenbuterol in plasma.]

The rule making would revise the proposed amendment to subdivision (g) of Section 4120.2, as follows:

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

***

[[](5) clenbuterol, *except as provided in subdivision (k) of this section*;[]]

The rule making would revise the proposed new subdivision (k) of Section 4120.2, as follows:

(k) *If a horse has been required to qualify when not showing a current performance within 30 days or more and has not yet raced after qualifying, then such* [A] horse may not race for at least 14 days following an administration of clenbuterol.

Revised rule compared with proposed rule: Substantial revisions were made in sections 4120.2(g)(5), (k) and 4120.3(a)(17).

Text of revised proposed rule and any required statements and analyses may be obtained from Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This revised rule making is necessary to create

reasonable restrictions for standardbred horse racing that will control and minimize the administration to the horses of the drug clenbuterol for its improper anabolic-like effects, while still permitting the common use of clenbuterol for its FDA-approved purpose of treating a horse's bronchial disorders.

The Commission had proposed a rule that would establish a restricted time period of 14 days before a horse could race after an administration of clenbuterol and a corresponding regulatory laboratory threshold that was developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). Clenbuterol is an FDA-approved drug for veterinary treatment of respiratory ailments, a common affliction of race horses confined to stalls. Clenbuterol became an abused drug, however, that was being continuously administered to thoroughbred horses in New York because of its anabolic steroid properties, which have the potential to affect race horse health and performance. This misuse of clenbuterol prompted thoroughbed industry representatives to propose a 14-day ban to reverse such effect of the drug before racing, which the Commission adopted in December 2012, and laboratory threshold that is the subject of a separate Commission rule proposal. Since this rule was proposed, however, significant concerns have arisen concerning the creation of a 14-day ban for standardbred racing in which horses are generally raced on a weekly basis. A 14-day ban would require a horseperson using clenbuterol properly on a standardbred horse for the treatment of a respiratory disorder to miss several racing opportunities, a problem that is not typical for thoroughbred racing in New York. These concerns were shared with the Commission at a public rule-making hearing held by the Commission and attended by practicing standardbred veterinarians and various horseperson organization representatives, including the standardbred horseperson's national organization, the United States Trotting Association, Inc. In addition, the frequency of racing in standardbred racing minimizes the abuse of clenbuterol in standardbred racing, because the drug must be administered continuously for a longer period of time than one week to produce muscle growth, according to existing research. The revisions to Section 4120.2(g)(5) and the addition of a new subdivision (k) of section 4120.2 will prohibit the use of clenbuterol on standardbred horses for 14 days before racing only when the horse is returning from a lay-off from racing for 30 days or more. This criterion was selected because a standardbred horse that does not race for 30 days or more could be treated with clenbuterol to generate muscle growth but is generally required to participate in a qualifying race before the horse may race again. This gives the horseperson clear notice of when the 14-day ban will be applied to a horse, while still allowing standardbred horses that regularly race to benefit from appropriate short-term uses of clenbuterol to treat respiratory disorders. The permissible short-term use of clenbuterol is governed by the Commission's current restriction against administering any clenbuterol for 96 hours before a horse may race. This revised rule strikes proposed Section 4120.3(a)(17) in order to eliminate the proposed Per Se threshold for clenbuterol for standardbred racing because such a threshold is too strict for a 96-hour restricted time period.

The primary purpose of this revision is to permit the appropriate use of clenbuterol to treat bronchial disorders of standardbred horses without unnecessarily forcing a treated horse to miss racing opportunities, while protecting the sport from any misuse of the drug for its anabolic-like effects. This rule making is also important to discourage any continual overuse of the drug clenbuterol, which research demonstrates causes a serious risk to the health of a horse. It should be noted that the Commission has also proposed, in a separate standardbred rule making, that a veterinarian must generally supervise every clenbuterol administration and further restricts its use to the treatment of only respiratory disorders.

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. There will be no costs to local government because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The revised proposal limits the use of clenbuterol to 14 days before a horse's next race only when the horse is returning to racing after a lay-off of 30 days or more, thus requiring trainers to treat a horse's respiratory ailments with a different medication only when such treatment alternatives will not interfere with the horse's racing schedule. Based on its experience regulating standardbred racing, the Commission does not believe the rule making will result in significant costs.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel standardbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI and the comments received at the hearing. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as this revised rule is adopted.

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

This rulemaking proposal does not necessitate a revision to the previously published analyses and statement and does not have an adverse affect on small businesses, local governments, jobs, or rural areas.

Assessment of Public Comment

Public comments were received from numerous sources in the standardbred horseracing industry in opposition to the proposed ban against racing a horse within 14 days of any administration of clenbuterol. They commented that this ban would prevent a horse from racing on the industry-standard weekly basis when properly treated with clenbuterol for a respiratory disorder, which is the approved and widely practiced use of this drug in standardbred racing. The Commission has responded to these comments by limiting the proposed 14-day ban to horses that have to qualify following a lay-off of 30 days or more. The revisions to the rule recognize that regularly racing horses do not have sufficient time between races, particularly because the Commission already bans any use of the drug for 96 hours before a horse's next race, to gain the muscle building effects of clenbuterol. Any respiratory disorders that arise while returning from a long lay-off can be reasonably treated by alternative methods of treatment.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Per Se Thoroughbred Regulatory Thresholds for Equine Drugs

I.D. No. SGC-49-13-00020-RP

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

Proposed Action: Renumbering of section 4043.3 to section 4043.13; and addition of new section 4043.3 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se thoroughbred regulatory thresholds for equine drugs.

Purpose: To enhance the integrity and safety of thoroughbred horse racing by adopting Per Se thresholds for 24 common medications.

Text of revised rule: Section 4043.3 ("Other prohibitions") of 9 NYCRR would be renumbered section 4043.13.

A new section 4043.3 would be added to Part 4043 of 9 NYCRR to read as follows:

Section 4043.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

(1) Acepromazine: 10 ng/ml HEPS in urine;
(2) Betamethasone: 10 pg/ml in plasma;
(3) Butorphanol:
(i) 300 ng/ml of total butorphanol in urine; or
(ii) 2 ng/ml of free butorphanol in plasma;
(4) Clenbuterol:
(i) 140 pg/ml in urine; or
(ii) any clenbuterol in plasma;
(5) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in plasma;
(6) Detomidine:
(i) 1 ng/ml of any metabolite of detomidine in urine; or
(ii) any detomidine in plasma;
(7) Dexamethasone: 5 pg/ml in plasma;
(8) Diclofenac: 5 ng/ml in plasma;
(9) DMSO: 10 mcg/ml in plasma;
(10) Firocoxib: 20 ng/ml in plasma;
(11) Flunixin: 20 ng/ml in plasma;
(12) Furosemide: 100 ng/ml in plasma and a specific gravity of urine less than 1.010;

(13) Glycopyrrolate: 3 pg/ml in plasma;
(14) Ketoprofen: 10 ng/ml in plasma;
(15) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;
(16) Mepivacaine:
(i) 10 ng/ml of total hydroxymepivacaine in urine; or
(ii) any hydroxymepivacaine in plasma;
(17) Methocarbamol: 1 ng/ml in plasma;
(18) Methylprednisolone: 100 pg/ml in plasma;
(19) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;
(20) Phenylbutazone: 2 mcg/ml in plasma;
(21) Prednisolone: 1 ng/ml in plasma;
(22) Procaine penicillin: 25 ng/ml of procaine in plasma;
(23) Triamcinolone acetonide: 100 pg/ml in plasma; and
(24) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A laboratory finding that a horse has not exceeded a threshold set forth in this section shall not constitute a defense to a violation of any other section of this Subchapter.

Revised rule compared with proposed rule: Substantial revisions were made in section 4043.3(a) and (b).

Text of revised 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, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This revised rule making is necessary to make it an automatic ("Per Se") rule violation in New York to exceed a set of national regulatory laboratory thresholds for 24 drugs that are among the most commonly used to provide veterinary care close to race day.

Section 4043.3(a) of the proposed rule would establish as Per Se rule violations in New York the regulatory laboratory thresholds developed by the Racing Medication and Testing Consortium ("RMTC") with the participation and support of the New York Thoroughbred Horsemen's Association ("NYTHA") that represents the thoroughbred trainers and owners who participate in racing at tracks operated by The New York Racing Association ("NYRA"), and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). These thresholds are intended by RMTC and ARCI to apply in all horse racing jurisdictions.

Subdivision (a) has been revised to state explicitly that a violation occurs when a thoroughbred threshold is exceeded and to improve the technical description of test uncertainty for quantified laboratory test results.

The revised rule omits a previously proposed subdivision (b). The original concept of RMTC and ARCI included a limit-of-detection threshold for all other, "unapproved" drugs (the "LOD-threshold"), which reduces a lengthy list to just 24 medications that are allowed to treat illness and injury of any racing horse close to race day. RMTC instructed that "approved" intra-articular corticosteroids, for example, "are the only [ones] that can be present in race-day samples" in February 2013. NYTHA's attorney in March 2013 stated, "The presence of … any other medication or drug in a sample collected from a horse will be strictly prohibited" and "You can't find any other sport that allows just 24 drugs." An RMTC official approved the wording of New York's LOD-threshold proposal in March 2013. ARCI wrote that all other substances "will be considered 'prohibited,' meaning they should not be present in a post-race sample at any level [except for suggested limits for endogenous substances and environmental contaminants]" in April 2013. The New York draft proposal was shared as a reference document with other ARCI member states in July 2013. The Commission proposed the LOD-threshold in November 2013, then such national leaders independently "backed away" from recommending a "level of detection" policy and now encourage all racing commissions to continue their separate policies with regard to "unapproved" drugs.

New York is known for equine drug rules that are among the strictest in the nation to restrict the use of legal (including "unapproved") drugs on horses and to require trainers to disclose what treatments their horses have received. These restrictions reduce the field size of New York racing, sometimes substantially, such as when horsepersons are unable to plan far enough ahead to discontinue some of the drug regimens that their home states permit. New York's restrictions nevertheless serve the salutary purpose of enhancing the health and safety of horses and jockeys, and the integrity of New York racing. Were the Commission to adopt a much stricter, LOD-threshold, without the support of other racing jurisdictions or national leaders, however, it may severely reduce the horses that ship in to race in New York, cause racehorses to compete in less protective jurisdictions, and ultimately result in net damage to racehorses and New York racing. As a result, the Commission has revised its original proposal to eliminate its proposed subdivision (b), the LOD-threshold.

The remaining proposed thresholds for 24 drugs will help ensure, in conjunction with New York's restricted time period equine drug rules, that no pharmacologically significant residue of any drug or medication that endanger a horse or jockey or affect race performance will be present in the horse during a pari-mutuel race. The rule will make it an automatic or "Per Se" violation of the Commission's equine drug rules to race a horse whose race-day blood or urine samples exceed these regulatory laboratory thresholds. This will supplement the Commission's rule in Section 4043.2 that restricts the time periods in which certain drugs can be used before a horse's next race. Between them, the two rules will provide clear standards governing when and how various drugs or other substances can permissibly be administered to race horses.

The new rule will provide an advantage for horsepersons helping to make impermissible concentrations of 24 common drugs in a horse on race day more uniform among all the racing jurisdictions. Most racing commissions, including the neighboring mid-Atlantic states and Massachusetts, have publicly pledged to adopt these thresholds. The rule will therefore simplify the veterinary treatment issues faced by trainers who are licensed to race in more than one jurisdiction, many of whom train their horses and obtain veterinary care in reference primarily to their home state's rules. The adoption of more uniform equine drug rules will make it easier for an out-of-state trainer to decide to race a horse in New York when abiding by the equine drug rules of the other jurisdiction. Horsepersons who are more confident that they will not commit an unintended violation of New York's equine drug rules are more likely to enter their horses to race in New York, which will improve the depth and quality of the fields in New York races. The new rule will, therefore, make it easier for trainers and owners who race in multiple states to comply with the New York equine drug rules and to race in New York, while affording protection to the betting public against the manipulation of a horse's race performance with drugs and other substances and for the health and safety of the horses and jockeys.

The Per Se rule also will make it easier for the Commission to establish that an improper equine drug administration has occurred. The new rule, unlike the restricted time period rule set forth in Section 4043.2, can be enforced without requiring either expert opinion or direct evidence (e.g., veterinary records) of the time of administration to demonstrate that an administration occurred within a restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

The adoption of the proposed Per Se equine drug rule will enhance the integrity of horse racing and help protect the health and safety of thoroughbred race horses and their exercise riders and jockeys with uniform Per Se thresholds for 24 common equine drugs, and will encourage the entry into New York races of more horses that are stabled out-of-state.

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.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff reviewed the cost factors and determined that the rule can be implemented with little or no additional costs.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and

recommendations of the RMTC and the ARCI and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal does not necessitate a revision to the previously published analyses and statement and does not have an adverse affect on small businesses, local governments, jobs, or rural areas.

Assessment of Public Comment

One public comment was received in response to the publication of the proposed rule-making in the December 4, 2013 State Register. A member of the public wrote in support of any legitimate attempt to curtail an alleged widespread abuse of medication in horse racing. The Commission agrees with this suggestion and its revised proposal will result in greater ease of enforcement of agency rules that restrict the use of equine drugs in a manner that promotes the participation of racehorses in New York and enhances the health and safety of horses and jockeys.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emergency Medical Services

I.D. No. HLT-37-14-00003-P

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

Proposed Action: Amendment of Part 800 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3002

Subject: Emergency Medical Services.

Purpose: To clarify terminology, eliminate vagueness, address legal statutes/crimes and incorp. modern professional, ethical and moral standards.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): This proposal amends Sections 800.3, 800.6, 800.8, 800.9, 800.15 and 800.16 of Part 800 (Emergency Medical Services) of Title 10 of the Official Code of Rules and Regulations of the State of New York (10 NYCRR) particularly as they relate to certification, recertification and continuing medical education recertification requirements, required conduct of every person certified under Part 800 and the suspension or revocation of certification.

Section 800.3 of 10 NYCRR contains all the definitions that apply to Part 800 (Emergency Medical Services). Definitions amended in this proposal are "emergency medical technician", "primary territory", "course sponsor", and "learning contract". New definitions added are "continuous practice", "criminal offense", "incompetence", "negligence", "non-criminal offense", "patient abandonment", "patient abuse", "patient contact", "regulatory violation", "scope of practice", "state approved protocols", and "treatment".

Section 800.6 of 10 NYCRR sets forth the Initial Certification Requirements and has been revised to remove the emergency medical technician-defibrillation (EMT-D) category as a level for which certification is available. This section is also revised to strengthen the language regarding criminal offenses and incorporates references to the new Section 800.3 definitions as offenses that applicants must not have been convicted of in order to qualify for initial certification.

Section 800.8 of 10 NYCRR outlines the Recertification requirements for applicants. This section adds that an applicant must enroll in a recertification course provided by an approved course sponsor as set forth in Section 800.20 (Course Sponsors) and complete the requirements for recertification at the level at which recertification is sought. Also added is that, within one year after passing the practical skills examination, the applicant must pass the State written certification examination for the level at which the certification is sought except at the certified instructor coordinator level and certified lab instructor level. Similar to the Section 800.6 provisions it strengthens the language regarding criminal offenses and incorporates references to the new Section 800.3 definitions as offenses that applicants must not have been convicted of in order to qualify for recertification.

Section 800.9 of 10 NYCRR contains the Continuing Medical Education Recertification provisions previously titled Continuing Education. This section authorizes candidates who have demonstrated competence in applicable behavioral and performance objectives, and who have demonstrated completion of appropriate continuing medical education may be entitled to have their certification renewed without being required to successfully complete a state practical skills and written examination. It then sets forth the parameters for recertification using continuing medical education and once again strengthens the language regarding criminal offenses and incorporates references to the new Section 800.3 definitions as offenses that applicants must not have been convicted of in order to qualify for continuing medical education recertification.

Section 800.15 of 10 NYCRR outlines the Required Conduct for every person certified at any level pursuant to Part 800 of 10 NYCRR or Article 30 of the Public Health Law, adhering to currently acceptable prehospital practice standards, maintenance of confidentiality at all times with certain exceptions, and compliance with the terms of a Medical Order of Life Sustaining Treatment (MOLST) form or a non-hospital Do Not Resuscitate (DNR) form, or a patient's DNR bracelet or necklace with certain exceptions.

Section 800.16 of 10 NYCRR sets forth the Suspension or Revocation of Certification provisions. This section expands the criteria for which a suspension or revocation of certification will apply incorporating the new definitions contained in Section 800.3 and failure to meet the requirements contained in Sections 800.6, 800.8, 800.9 and 800.15.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Article 30 (Emergency Medical Services), Section 3002. Section 3002 sets forth the provisions creating the New York State Emergency Medical Services Council and specifies that it shall have the power, by an affirmative vote of a majority of those present, subject to approval by the Commissioner, to enact, and from time to time, amend and repeal, rules and regulations establishing minimum standards for ambulance services, ambulance service certification, advanced life support first response services, the provision of prehospital emergency medical care, public education, the development of a statewide emergency medical services system, the provision of ambulance services outside of the primary territory specified in the ambulance services' certificate and the training, examination, and certification of certified first responders, emergency medical technicians, and advanced emergency medical technicians; provided, however that such minimum standards must be consistent with the staffing standards established by the staffing standards, ambulance services and advanced life support first response services provisions outlined in PHL Section 3005-a.

Legislative Objectives:

The purpose of PHL Article 30 is to promote the public health, safety and welfare by providing certification for pre-hospital care providers and all advanced life support first response and ambulance services.

Needs and Benefits:

The Department's Bureau of Emergency Medical Services (BEMS) is charged with enforcement of 10 NYCRR Part 800 (State Emergency Medical Services Code). When the NYS EMS system was founded, the original PHL Article 30 and Title 10 New York Codes Rules and Regulations (NYCRR) Part 800 provisions addressed the provision of emergency medical services at the time; incorporating the practices, standards, ethics, morals, crimes and punishments of the day. In the early 1990's, PHL Article 30 and 10 NYCRR Part 800 underwent major revisions so as to reflect changes that had occurred over the previous 20 years in EMS and health care and society as a whole. Moreover, these significant changes were enacted so as the Department could maintain the standard of an essential public health service (EMS) provided in the most responsible manner.

Now again, another 20 years later, the Department is faced with trying to apply outdated rules to a modern system. It is impractical and difficult for the Department to try to update what was long ago determined an essential public health service under rules that no longer apply, as well as try to apply rules from two decades ago to situations that did not exist two decades ago.

Of greatest concern is that the current rules make it difficult for the Department to adequately regulate an essential public health service, and for the Commissioner to adequately protect the health and welfare of

(1) Within one business day of binding the insurance coverage, a certificate of insurance evidencing the existence and terms of the policy;

(2) Within 30 days from the inception date of the policy:

(i) the certificate of insurance specified in Section 16.4(b)(1) of this part; and

(ii) the following information:

(a) The identity of the insured and a statement that the insured meets the minimum commercial risk premium and financial condition standards for a "large commercial insured" pursuant to Section 6303(b) of the Insurance Law;

(b) Major type of insurance;

(c) Rate services organization classification (such as Insurance Service Organization classification), if applicable, or, if not applicable, a description of the class to be written;

(d) Risk manager name, employer and contact information, including mailing address, phone number and email address, and a statement that the insurer has verified that the risk manager who assisted in the negotiation and purchase of the policy on behalf of the insured meets the qualifications required by section 6303(b)(2) of the Insurance Law; and

(e) The New York producer license number, if the risk manager is required to be a New York licensed producer; and

(3) with respect to] a policy form that has not been previously filed with the superintendent[, the policy form,]. *The insurer shall file the policy form in a form and manner acceptable to the superintendent,* within three business days after first delivery of a policy using the form, but no later than 60 calendar days after the inception date of the policy.

(c)(1) An insurer required to make a filing or a submission to the superintendent electronically pursuant to this Part may apply to the superintendent for an exemption from the electronic filing requirement by submitting a written request to the superintendent for approval at least 30 days in advance of making the filing or submission.

(2) The request for an exemption shall:

(i) Identify the time period for which the insurer is requesting the exemption; and

(ii) Specify whether the insurer is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.

Section 16.8(e) is amended to read as follows:

(e) Where a policy includes coverage for both New York and non-New York exposures, the total premium for all exposures may be used for purposes of determining class 1 or class 3 eligibility pursuant to section [16.1(f)] *16.1(j)* of this Part. However, a report filed with the superintendent showing special risk premiums and losses shall only include risks related to New York exposures unless the statement filing instructions specify otherwise.

Section 16.9(a)(2) is amended to read as follows:

(2) in which the insurer shall maintain *or have electronic access to* the underwriting files, experience statistics, financial and other records, applicable to business underwritten and transacted under section 6302 of the Insurance Law, subject to examination by the [Department of Financial Services] *superintendent* as often as the superintendent deems necessary.

Text of proposed rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, 1 State Street, New York, New York 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Data, views or arguments may be submitted to: Hoda Nairooz, New York State Department of Financial Services, 1 State Street, New York, New York 10004, (212) 480-5595, email: hoda.nairooz@dfs.ny.gov

Public comment will be received until: 45 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.

Consensus Rule Making Determination

This rulemaking conforms section 16.4 to recent amendments made by Chapter 75 of the Laws of 2013 to Insurance Law section 6303(a)(3), to extend the expiration date of the statute to June 30, 2015, and repeal the requirement that insurers file a certificate of insurance with the Department of Financial Services within one business day of writing such a policy.

This rulemaking also corrects: (1) the reference in section 16.8(e) to section 16.1(f) to read 16.1(j) and (2) inadvertent revisions that were made to section 16.9(a)(2) when that section was updated as part of the consolidated action to amend multiple Parts of 11 NYCRR to revise references that were outdated as a result of the consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services.

Because the amendment merely conforms section 16.4 with the revisions made to Insurance Law section 6303(a)(3) by Chapter 75 of the Laws of 2013, corrects a minor error in section 16.8, and corrects recent inadvertent revisions to section 16.9, no person or entity is likely to object to this rulemaking. Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act ("SAPA") § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

Job Impact Statement

Amendment of the regulation will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule. The proposed rule amends section 16.4 to remove certain current requirements in order to conform section 16.9 with the revisions recently made to Insurance Law section 6303(a)(3) by Chapter 75 of the Laws of 2013. The rulemaking also corrects: (1) the reference made in section 16.8(e) to section 16.1(f) to read 16.1(j) and (2) corrects an inadvertent revision that was made to section 16.9(a)(2) when that section was updated as part of the consolidated action to amend multiple Parts of 11 NYCRR to revise references that were outdated as a result of the consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services.

The Department of Financial Services believes that the amended rule will not result in any adverse job or employment impact.

New York State Gaming Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Clenbuterol

I.D. No. SGC-49-13-00009-P

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

Proposed Action: Addition of sections 4120.3(a)(17), 4120.2(k); and repeal of section 4120.2(g)(5) of Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for clenbuterol.

Purpose: To enhance the integrity and safety of standardbred horse racing with new clenbuterol rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new paragraph (17) would be added to subdivision (a) of the separately proposed new section 4120.3 to read as follows:

4120.3. Equine drug thresholds; per se

a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

* * *

(17) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma.

A new Subdivision (k) would be added to Section 4120.2 as follows:

(k) A horse may not race for at least 14 days following an administration of clenbuterol.

Subdivision (g) of Section 4120.2 would be amended as follows:

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

* * *

[(5) clenbuterol;]

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to standardbred race horses of the drug clenbuterol close to race day, and to simplify compliance by horsepersons and the enforcement of the equine drug rules in New York by adopting a proposed national permissible regulatory laboratory threshold for such drug. This proposal would also amend the restricted time period before a horse may race after a treatment with clenbuterol to ensure that horsepersons who comply with the Commission's restricted time periods will not incur an equine drug positive, including for exceeding the proposed clenbuterol Per Se threshold.

The proposed rule would establish for clenbuterol a regulatory laboratory threshold that was developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). The purpose of the threshold is to permit the administration of clenbuterol, but only 14 days or more before a horse's next race. Clenbuterol is an FDA-approved drug for veterinary treatment of respiratory ailments, a common affliction of race horses routinely confined to stalls. It is widely accepted, however, that clenbuterol has become an abused drug that is regularly administered because of its anabolic steroid properties which have the potential to affect race horse health and performance. According to RMTC and other experts, standardbred horses should be able to race without routine use of clenbuterol, in part because all of the competitors would face the same restrictions on its use. Some significant concerns and opposition have been raised to the rule proposal, however, by standardbred horsepersons, their organizations at New York racetracks, and their national organization, The United States Trotting Association, Inc. ("USTA"). The Commission has established equine drug rules that are identical for both standardbreds and thoroughbreds, except where justified by substantial differences between the breeds and racing practices.

The primary focus of comments from standardbred horsepersons has been on the different impact that the proposed regulations of clenbuterol and corticosteroids could have on standardbred racing, where horses race much more often (typically every seven days), and have far fewer breakdowns, compared to thoroughbred racing. Any drug that cannot be used during the week before a horse's next race has a disproportionate impact in standardbred racing, where horses often race weekly, in comparison to thoroughbred racing. In addition, standardbred horses break down less frequently, are a sturdier breed of horse, and race under conditions that create considerably less force on the horse's limbs. In view of such concerns, before progressing with final rulemaking, the Commission will conduct a public hearing to gather all relevant input and fully consider the potential impacts of the proposed clenbuterol limitations given current standardbred practice.

The proposed rule would add clenbuterol to the accepted medications whose detection would be permitted in race-day samples, albeit with a restricted time period of 14 days before a horse's next race, and establish the same threshold proposed in other states. Such threshold is meant to include clenbuterol as a recognized drug among a specific set of medications that are all that is needed for routine veterinary care close to race day of any racing horse and that can be effectively regulated by means of laboratory testing. Such drugs, which total 24, were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

The net effect of the new rule would be to help ensure, in conjunction with New York's restricted time period drug rule set forth in Section 4120.2, that no use of clenbuterol would be permitted that might affect race performance through such drug's anabolic steroid properties. The proposed rule would make it an automatic ("Per Se") violation of the Commission's equine drug rules to race a horse whose race-day blood or urine samples exceed the proposed clenbuterol regulatory laboratory threshold. The proposed rule would also amend Section 4120.2 to change the restricted time period during which a horse may not race after treatment with clenbuterol from 96 hours to 14 days.

A Per Se threshold rule would also make it easier for the Commission to establish that an improper equine drug administration has occurred. The proposed rule, unlike the restricted time period rule set forth in Section 4120.2, can be enforced without requiring either expert opinion evidence of the time of administration or direct evidence (e.g., veterinary records) to establish that an administration occurred within the restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

Adoption of an appropriate new Per Se equine clenbuterol rule would enhance the integrity of horse racing by limiting the drugs that can be used close to race day to only those that are well-accepted, necessary, and capable of control by means of laboratory testing. Such a rule would encourage the entry into New York races of horses stabled out-of-state if it makes the New York rule more consistent with those of other states.

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.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The proposed limitation on the use of clenbuterol to 14 days before a horse's next race would require trainers either to treat the horse with a different medication for respiratory ailments or not to race the horse for 14 days after treating it with clenbuterol. The latter option is inconsistent with the typical practice of racing a standardbred horse on a weekly basis for much of the calendar year.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI, and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of the drug clenbuterol by regulating its use by the adoption of a Per Se regulatory laboratory threshold. All trainers will be able to comply with this proposed threshold. No competitors will be able to use this restricted substances in violation of the same thresholds. The threshold will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because it is being proposed as part of a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt this threshold by January 2014, and this threshold is favored by the other American racing jurisdictions, which all voted for this threshold as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no 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 activity is involved. Trainers have been meeting various restrictions for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances. The time restriction period for clenbuterol will be raised from 96 hours to 14 days before racing.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold Limited to 24 Drugs, Special Corticosteroid Rules

I.D. No. SGC-49-13-00010-P

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

Proposed Action: Addition of sections 4120.2(n) and 4120.3(c) to Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold limited to 24 drugs, special corticosteroid rules.

Purpose: To enhance the integrity and safety of standardbred horse racing by limiting standardbred equine drugs.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Subdivision (c) would be added to proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

* * *

(c) A horse shall have raced in violation of this section if the laboratory conducting tests by or for the commission is able to determine from such horse's race-day urine or blood sample that a drug or other substance for which no permissible threshold is established in this Part had been administered to such horse before its race, unless such drug or other substance by its nature could not affect a horse's organ systems.

A new subdivision (n) would be added to Section 4120.2 as follows:

(n) A horse may race following the administration of a corticosteroid that is not specifically identified in other subdivisions of this section only if:

(1) the trainer of the horse discloses, in writing, such administration to the judges before race day; and

(2) the administration of such corticosteroid cannot be detected by laboratory tests, conducted by or for the commission, in a race-day urine or blood sample.

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of drugs and other substances that can be administered close to race day, and to simplify compliance by horsepersons and enforcement of the equine drug rules in New York, by adopting a set of national permissible regulatory laboratory thresholds for drugs that are necessary and sufficient to provide good veterinary care close to race day.

The proposed rule would complement the regulatory laboratory thresholds that were developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). These thresholds are intended by RMTC and ARCI to apply in all horse racing jurisdictions. The drugs for which RMTC and ARCI have established thresholds are intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists. These thresholds are separately proposed by the Commission in contemporaneous rulemaking.

As set forth in proposed Section 4120.3, detection in race-day samples of administrations of other drugs or other substances that could affect race performance would be a rule violation. The use of a drug or other substance that cannot affect race performance, a trait that is defined in veterinary terms as having no effect on the body systems of the horse, however, would not be affected by this rulemaking.

In addition, this proposed rulemaking would adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to standardbred race horses close to race day. The Commission's separate proposals to adopt a set of national regulatory laboratory thresholds for five corticosteroids that are necessary and sufficient to provide good veterinary care close to race day would create a zero threshold for the administration of any other corticosteroids. Although the corticosteroids for which thresholds are proposed are sufficient to provide good veterinary care to a racing horse, the use of other corticosteroids is not intended to be restricted for a horse not close to race day and so long as the administration of any such corticosteroid cannot be detected on race day.

This new rule will limit the use of such non-threshold corticosteroids by requiring that the trainer disclose their use to the judges before race day and the horse tests below the proposed regulatory threshold (i.e., zero) on race day. This will permit a veterinarian to use such corticosteroids, despite the presence of readily available other corticosteroids for which the Commission has proposed non-zero thresholds, if the veterinarian determines that some veterinary need would be advanced by doing so. For example, the rule would allow a veterinarian to administer a wide range of corticosteroid treatments for a horse that is not currently engaged in racing and is recovering from some illness or injury but would restrict the use close to a horse's next race of non-threshold corticosteroids that would be detectable on race day.

As a result, the Commission's restricted time periods will continue to provide assurances to horsepersons who comply with them that their horses will not give rise to an equine drug positive, including under the national regulatory laboratory standards that have been proposed by the Commission.

The new rule will enhance the integrity and safety of horse racing by limiting the drugs and other substances that have a race day threshold greater than zero, and by limiting which corticosteroids can be used close to race day to those that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons because there are readily available alternative corticosteroids. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the state, or local government. The rule will be

implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI, and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the running of a race horse after administration of the corticosteroids for which there are readily available alternatives and known and widely accepted laboratory thresholds and establishes a zero threshold in race days sample for drugs and other substances that are not governed by the newly proposed national regulatory laboratory thresholds for standardbred horses. The other corticosteroids are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available, including betamethasone, dexamethasone, prednisolone, and triamcinolone acetonide. The drugs with specified thresholds encompass of the medications that are needed and sufficient to provide good veterinary care to a racing horse close to race day. The proposed rules are entirely limited to equine drug standards and testing, and merely modify the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING
HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Thresholds for Equine Drugs

I.D. No. SGC-49-13-00011-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 4120.2; renumbering of section 4120.3 to 4120.18; and addition of new section 4120.3 to Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred thresholds for equine drugs.

Purpose: To ehance the integrity and safety of standardbred horse racing by adopting permissive thresholds for 16 accepted medications.

Public hearing(s) will be held at: 10:30 a.m.-3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Section 4120.3 ("Other prohibitions") would be renumbered Section 4120.18.

Section 4120.2(h) would be renumbered Section 4120.2(o).

A new Section 4120.3 would be added to read as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

(1) Acepromazine: 10 ng/ml HEPS in urine;

(2) Butorphanol:

(i) 300 ng/ml of total butorphanol in urine; or

(ii) 2 ng/ml of free butorphanol in plasma;

(3) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in plasma;

(4) Detomidine:

(i) 1 ng/ml of any metabolite of detomidine in urine; or

(ii) any detomidine in plasma;

(5) Diclofenac: 5 ng/ml in plasma;

(6) Firocoxib: 20 ng/ml in plasma;

(7) Furosemide: 100 ng/ml in plasma and a specific gravity of urine less than 1.010;

(8) Glycopyrrolate: 3 pg/ml in plasma;

(9) Ketoprofen: 10 ng/ml in plasma;

(10) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;

(11) Mepivacaine:

(i) 10 ng/ml of total hydroxymepivacaine in urine; or

(ii) any hydroxymepivacaine in plasma;

(12) Methocarbamol: 1 ng/ml in plasma;

(13) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;

(14) Phenylbutazone: 2 mcg/ml in plasma;

(15) Procaine penicillin: 25 ng/ml of procaine in plasma; and

(16) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A laboratory finding that a horse has not exceeded a threshold set forth in this section shall not constitute a defense to a violation of any other section of this subchapter.

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of drugs and other substances that can be administered close to race day, and to simplify compliance by horsepersons and enforcement of the equine drug rules in New York, by adopting a set of national permissible regulatory laboratory thresholds for drugs that are necessary and sufficient to provide good veterinary care close to race day.

Section 4120.3(a) of the proposed rule would establish for 16 commonly used drugs regulatory laboratory thresholds that were developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). These thresholds are intended by RMTC and ARCI to apply in all horse racing jurisdictions. These 16 drugs are among those whose selection by RMTC and ARCI is intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

The net effect of the new rule would be to help ensure, in conjunction with New York's restricted time period equine drug rules, that no pharmacologically significant residue of these 16 drugs from an adminis-

tration that could affect race performance will be present in the horse during a pari-mutuel race, while recognizing that these 16 medications are well-accepted, necessary, and capable of being regulated by known threshold values. This rule would make it an automatic ("Per Se") violation of the Commission's equine drug rules to race a horse whose race-day blood or urine samples exceed any of these regulatory laboratory thresholds. This will supplement the Commission's rule in Section 4120.2 that restricts the time period in which certain drugs may be used. Between them, the two rules will provide standards governing when and how various drugs or other substances can permissibly be administered to race horses.

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commissions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt these thresholds by January 2014. The rule will therefore simplify the veterinary treatment issues faced by trainers who are licensed to race in more than one jurisdiction, many of whom train their horses and obtain veterinary care in reference primarily to their host state's rules. The adoption of more uniform equine drug rules will make it easier for an out-of-state trainer to decide to race a horse in New York when abiding by the equine drug rules of the other jurisdiction. Horsepersons who are confident that they will not commit an unintended violation of New York's equine drug rules are more likely to enter their horses to race in New York, which will improve the depth and quality of the fields in New York races. The new rule will, therefore, make it easier for trainers and owners who race in multiple states to comply with the New York equine drug rules and to race in New York, while affording protection to the betting public against the manipulation of a horse's race performance with drugs and other substances.

The Per Se rule also will make it easier for the Commission to establish that an improper equine drug administration has occurred. The new rule, unlike the restricted time period rule set forth in Section 4120.2, can be enforced without requiring either expert opinion evidence of the time of administration or direct evidence (e.g., veterinary records) to establish that an administration occurred within the restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

The adoption of the proposed Per Se equine drug rule will enhance the integrity of horse racing by creating regulatory thresholds for drugs whose use close to race day is well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will encourage the entry into New York races of more horses that are stabled out-of-state by making the New York rules more consistent with those of other states.

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.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff reviewed the cost factors and determined that the rule can be implemented with little or no additional costs. To the extent that a less expensive alternative drug might not be permitted close to race day under the new rules, this was determined to be off-set by the anticipated overall reduction in the use of equine drugs by all horsepersons.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of 16 specified medications by regulating their use by the adoption of Per Se regulatory laboratory thresholds. All trainers will be able to comply with these proposed thresholds. No competitors will be able to use these restricted substances in violation of the same thresholds. The thresholds will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because they are being proposed as a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt each of these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no 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 activity is involved. Trainers have been meeting these thresholds for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances, with the exception of the long-lasting drug firocoxib. The threshold for firocoxib will require trainers not to use this drug for 14 days before racing.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Betamethasone and Triamcinolone Acetonide

I.D. No. SGC-49-13-00012-P

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

Proposed Action: Addition of sections 4120.2(e)(23) and 4120.3(a)(18), (19) to Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for betamethasone and triamcinolone acetonide.

Purpose: To enhance the integrity and safety of standardbred horse racing with new corticosteroid rules.

Public hearing(s) will be held at: 10:30 a.m.-3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraphs (18) and (19) would be added to subdivision (a) of a proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

* * *

(18) Betamethasone: 10 pg/ml in plasma;

(19) Triamcinolone acetonide: 100 pg/ml in plasma.

Paragraph (23) would be added to subdivision (e) of section 4120.2 as follows:

(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:

* * *

(23) notwithstanding paragraph (9) of this subdivision, the corticosteroids betamethasone and triamcinolone acetonide are not substances that are permitted to be administrated by any means until 48 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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to standardbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs that have been recommended by the Racing Medication and Testing Consortium ("RMTC") and the Association of Racing Commissioners International, Inc. ("ARCI"). The full proposal of such organizations includes five corticosteroids that are necessary and sufficient to provide good veterinary care close to race day, including betamethasone and triamcinolone acetonide. The proposed rule would also exclude these two drugs from the 48-hour restriction in Section 4120.2(e)(9), thereby making them subject to the general one-week restriction of Section 4120.2(h). This change would increase the restricted time period before a horse's next race during which these two drugs could be administered from 48 hours to seven days. Although restricting any drug for seven or more days may interfere with the horse's standard racing schedule, the Commission has separately proposed thresholds for two other readily available corticosteroids (prednisolone and dexamethasone) that could be used until 72 hours before a horse's next race.

This proposed new rule will enhance the integrity and safety of horse racing by limiting which corticosteroids can be used before race day to those, including these two, that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the RMTC and the ARCI. No alternatives have been considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of the drugs betamethasone and triamcinolone acetonide by regulating their use by the adoption of Per Se regulatory laboratory thresholds. All trainers will be able to comply with the proposed thresholds. No competitors will be able to use these restricted substances in violation of the same thresholds. The thresholds will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because it is being proposed as part of a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no 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 activity is involved. Trainers have been meeting various restrictions for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances. These thresholds require that a horse cannot race for another seven days, but the Commission's separate proposals for the corticosteroids prednisolone and dexamethasone permit such readily available substitutes to be used until 72 hours before racing.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Dexamethasone and Prednisolone

I.D. No. SGC-49-13-00013-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 4120.2(e)(9); and addition of sections 4120.2(e)(24), (f)(9), (10) and 4120.3(a)(20), (21) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for dexamethasone and prednisolone.

Purpose: To enhance the integrity and safety of standardbred horse racing with new corticosteroid rules.

Public hearing(s) will be held at: 10:30 a.m.-3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraphs (20) and (21) would be added to subdivision (a) of a proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

* * *

(20) Dexamethasone: 10 pg/ml in plasma;

(21) Prednisolone: 1 ng/ml in plasma.

Subdivision (e) of Section 4120.2 would be amended as follows:

(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:

* * *

(9) hormones and non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadotropin, glucocorticoids [(e.g., Prednisolone, Depomedrol)], except in joint injections as restricted in subdivision (i) of this section;

* * *

(24) notwithstanding paragraph (9) of this subdivision, the corticosteroids dexamethasone and prednisolone are not substances that are permitted to be administrated by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

Subdivision (f) of Section 4120.2 would be amended as follows:

(f) The following substances may be administered by any means until 72 hours before the scheduled post time of the race in which the horse is to compete:

* * *

(9) dexamethasone.

(10) prednisolone.

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to standardbred race horses close to race day. The Commission has separately proposed to adopt a set of other national regulatory laboratory thresholds for drugs that have been recommended by the Racing Medication and Testing Consortium ("RMTC") and the Association of Racing Commissioners International, Inc. ("ARCI"). The full proposal of such organizations includes five corticosteroids that are necessary and sufficient to provide good veterinary care close to race day, including dexamethasone and prednisolone. The proposed rule would establish laboratory thresholds for dexamethasone and prednisolone. The proposed rule also would increase the restricted time period before a horse's next race during which these two drugs could be administered from 48 hours to 72 hours. The adoption of these thresholds would limit the corticosteroids that could be administered without interfering with the use of corticosteroids to treat a standardbred horse during the period when it may participate in pari-mutuel races on a weekly basis. Racing each week, at least for a substantial part of the year, is normal practice for standardbred horse racing.

This proposed new rule will enhance the integrity and safety of horse racing by limiting which corticosteroids can be used before race day to those, including these two, that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the RMTC and the ARCI. No alternatives have been considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of the drugs dexamethasone and prednisolone by regulating their use by the adoption of Per Se regulatory laboratory thresholds. All trainers will be able to comply with the proposed thresholds. No competitors will be able to use these restricted substances in violation of the same thresholds. The thresholds will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because it is being proposed as part of a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no 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 activity is involved. Trainers have been meeting various restrictions for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances. These thresholds require that a horse cannot race for another 72 hours, which should not interfere with a standardbred horse's usual racing schedule.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

This Proposal Would Limit the Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Standardbred Racing

I.D. No. SGC-49-13-00014-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 4120.2(e)(9); and addition of sections 4120.2(e)(25), (l) and 4120.3(a)(22) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: This proposal would limit the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) in standardbred racing.

Purpose: To enhance the integrity and safety of standardbred horse racing with new corticosteroid rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraph (22) would be added to subdivision (a) of a proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

***

(22) Methylprednisolone: 100 pg/ml in plasma.

Subdivision (e) of Section 4120.2 would be amended as follows:

(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:

***

(9) hormones and non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadotropin, glucocorticoids [(e.g., Prednisolone, Depomedrol)], except in joint injections as restricted in subdivision (i) of this section;

***

(25) notwithstanding paragraph (9) of this subdivision, the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) is not a substances that is permitted to be administrated by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

A new subdivision (l) would be added to Section 4120.2 as follows:

(l) A horse may not race after an administration of methylprednisolone acetate (e.g., Depo Medrol) unless such horse subsequently tests negative, i.e., below the threshold established in section 4120.3 of this Part, for such drug in a test conducted by the commission at the sole expense of the trainer of the horse, and is released to race by the Presiding Judge.

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to standardbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs, including other corticosteroids, that are necessary and sufficient to provide good veterinary care close to race day. The adoption of this proposal would limit the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol). This corticosteroid has been identified as particularly harmful to the long term health of treated joints and tissues, and potentially affects race performance for an unusually long period of time, according to the Commission's scientific consultant Dr. George A. Maylin. It has also been reported to persist after certain administrations at a concentration which exceeds the proposed threshold for as long as 99 days. The long period of time during which an administration of this drug might cause a violation of the proposed threshold was confirmed by the Commission when it conducted an extensive study of the veterinary records of over 75 horses whose tests results were in excess of the proposed threshold in the first half of 2013. The most reasonable restriction that could provide assurance to standardbred horsepersons that compliance would protect them from violation of the proposed thresholds is one that would require the horse to test negative before racing again. Accordingly, the new rule would require that any horse treated with this corticosteroid, methylprednisolone acetate (e.g., Depo Medrol), has to be tested at the expense of the trainer below the proposed threshold and then released by the presiding judge before the horse may race again. As a result, for those horsepersons who choose not to use the less restricted and equally available alternative corticosteroids (betamethasone, dexamethasone, prednisolone, and triamcinolone acetate), the Commission provides a means to return the horse to racing that is consistent with the proposed thresholds and with the overall purpose of reducing the use of this relatively harmful corticosteroid.

The new rule will enhance the integrity and safety of horse racing by limiting the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) and encouraging horsepersons to use other corticosteroids that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons because there are readily available alternative corticosteroids. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any new mandatory duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the Racing Medication and Testing Consortium and the Association of Racing Commissioners, International, Inc. The Commission considered and rejected the alternative of restricting a horse from racing for a period of 99 days after any administration of this corticosteroid.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the use of a standardbred race horse after administration of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol), for which there are readily available alternatives that are relatively less harmful to a horse's health and safety and have less potential to affect the race performance, by means of continuing efficacy, for a considerable period of time after administration of the drug. Other corticosteroids are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available, including betamethasone, dexamethasone, prednisolone, and triamcinolone acetonide. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities.

The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Flunixin

I.D. No. SGC-49-13-00015-P

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

Proposed Action: Repeal of section 4120.2(d); amendment of section 4120.2(e); and addition of section 4120.3(a)(24) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for flunixin.

Purpose: To enhance the integrity and safety of standardbred horse racing with new flunixin equine drug rules.

Public hearing(s) will be held at: 10:30 a.m.-3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraph (24) would be added to subdivision (a) of the proposed new section 4120.3 as follows:

4120.3. Additional Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

* * *

(24) Flunixin: 20 ng/ml in plasma.

Subdivision (d) of Section 4120.2 of 9 NYCRR would be repealed:

(d) [The following non-steroidal anti-inflammatory drug may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete:

(1) flunixin.] (*Reserved*)

The final unnumbered paragraph of subdivision (e) of Section 4120.2 of 9 NYCRR would be amended as follows:

None of these substances may be administered within 48 hours of the scheduled post time of the race in which the horse is to compete[, except that flunixin may be used in accordance with the specific authorization set forth in subdivision (d) of this section]. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 48 hours.

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to assure the public's confidence and preserve the high degree of integrity of racing at pari-mutuel betting tracks by regulating the use of drugs and medications in race horses so that the horses are fit and healthy, but not running on substances that have the potential to affect the outcome of a given race.

3. Needs and benefits: This rule is necessary to ensure that standardbred horses are not medicated to the point of adversely affecting the integrity of horseracing and the health and safety of race horses. The Commission believes that adopting its previous 48-hour flunixin administration rule is more appropriate than the rule adopted in 2005.

Flunixin, also known by the trade name Banamine, is a non-steroidal anti-inflammatory drug used to treat inflammation and soreness in racehorses. From 1971 to 2005, the administration of flunixin was not permitted less than 48 hours before races in New York. There were few post-race positives during that 30-year period.

Prompted by an effort of the Racing Medication and Testing Consortium ("RMTC") and other states, such as New Jersey and Maryland, the former Racing and Wagering Board adopted a rule to allow intravenous use of flunixin within 24 hours of a race effective January 4, 2006. Flunixin continued to be restricted within 48 hours of racing when administered by any other means. Among the benefits sought was to create consistency throughout the racing states so veterinarians could have a certain threshold under which they could provide therapeutic treatment. This movement was supported by the Mid-Atlantic Consortium of Racing States, which also sought uniform levels.

During the past five years in New York, this 24-hour rule for flunixin has been violated more than any other Commission equine drug rule. There have been more than 80 flunixin drug violations by thoroughbred and standardbred horses. There are many suspected reasons for this. It has become routine for flunixin to be obtained from compounding pharmacies, which are less accurate and reliable at providing a drug with a specific known concentration than a pharmaceutical company. The use of flunixin paste, on a regular and even daily basis, has become more common. In several instances, trainers have been confused about the Commission's rules allowing only IV use of flunixin during 48 to 24 hours before racing. In addition to newer drug regimens that include frequent administrations of flunixin paste, 11 trainers unwittingly admitted during agency investigations that they thought the paste was a permissible means to administer flunixin until 24 hours before a horse's next race.

The RMTC has recently proposed a mandatory regulatory laboratory threshold for flunixin that, depending on the specific horse and other variables, might possibly result in a trainer who abides by the 24-hour restriction nevertheless violating the proposed new threshold. The Commission's restricted time periods are designed to assure that one who complies with them will not be charged with an equine drug rule violation in New York.

Accordingly, the Commission's proposed rule would return to the longstanding, time-tested, and familiar practice of restricting the administration of flunixin to 48 hours prior to a race. The Commission and industry have considerable experience with banning flunixin for 48 hours as a result of this being the rule in New York State from 1971 through 2005. During those 34 years, there were relatively few rule violations, or complaints about the rule from horsepersons, or veterinary complaints about the care, treatment, health, or safety of our race horses. The 48-hour restricted time period will reduce the number of equine drug positives that occur in New York by providing horsepersons with an added safety cushion to avoid equine drug positives and greater certainty that compliance with the time period will result in the Commission's laboratory not reporting an equine drug violation.

Concerns that veterinarians will be restricted in their ability to treat a horse are mitigated by the fact the Commission's rules will continue to permit veterinarians to administer several different non-steroidal anti-inflammatory drugs until 48 hours before a horse's next race, and to provide veterinary care for inflamed or sore bodily tissues without restriction when the horse is not scheduled to race in the immediate future.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: The rule will not impose new or additional costs on regulated persons. The rule merely revises an existing rule in regards to allowable dosage of a medication.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff determined that the rule will impose no additional costs because the rule does not create any new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely makes a modification to a medication rule.

5. Local government mandates: The supervision and regulation of pari-mutuel racing activities are the sole responsibility of the New York State Gaming Commission, and do not involve local governments. Therefore, this rule will not impose any local government mandates.

6. Paperwork: No new paperwork will be required. This rule will be implemented utilizing existing regulations and procedures.

7. Duplication: Since the New York State Gaming Commission is exclusively responsible for the regulation of pari-mutuel racing activities in New York State, there are no other relevant rules or other legal requirements of the State or federal governments regarding the administration of flunixin to race horses.

8. Alternative approaches: No other alternative was considered in light of the Commission's preferred course of action to specifically revert to the previous standard.

9. Federal standards: There are no federal standards applicable to the subject area of state-regulated pari-mutuel racing activities.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely removes the 24-hour rule allowing for the administration of the drug flunixin to standarbred race horses. Flunixin will still be allowed as a 48-hour drug. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Various Drugs

I.D. No. SGC-49-13-00016-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 4120.2(e)(14); addition of section 4120.2(e)(20), (22), (f)(11); and repeal of section 4120.2(f)(2), (4) and (g)(6) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for various drugs.

Purpose: To enhance the integrity and efficiency of standardbred horse racing with new equine drug rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Subdivision (e) of Section 4120.2 would be amended as follows:

(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:

***

(14) the following nonsteroidal anti-inflammatory drugs (NSAID's): [P]*p*henylbutazone (e.g., Butazolidin); *diclofenac*; [F]*f*lunixin (e.g., Banamine); meclofenamic acid (*e.g.,* Arquel); naproxon (e.g., Naprosyn, Equiproxen), *and* ketoprofen (e.g., Orudis);

***

(20) dantrolene;

***

(22) methocarbamol (e.g., Robaxin).

Subdivision (f) of Section 4120.2 would be amended as follows:

(f) The following substances may be administered by any means until 72 hours before the scheduled post time of the race in which the horse is to compete:

(1) antihistamines;

[(2) dantrolene]

***

[(4) methocarbamol (e.g., Robaxin);]

***

(11) detomidine.

Subdivision (g) of Section 4120.2 would be amended as follows:

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

***

[(6) detomidine;]

***

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the administration of various substances for which the available analytic methodologies to detect an administration of the substance in a time and manner that could affect race performance have become more sensitive and precise. These substances can now be detected reliably in plasma samples in which the concentration of the target analytes can be linked more closely to the time of administration and to the potential of the substance to remain efficacious when the horse is racing. In the past, the available methodologies that were generally accepted as valid and reliable for detecting and confirming the administration of the parent drugs were less sensitive and less precise. To avoid false positives and to effectively regulate these substances using laboratory testing, the Commission previously adopted longer periods of restriction than were necessarily required to prevent the substances from being efficacious while a treated horse was racing. Compliance with those time restrictions was necessary for there to be a level playing field for all competitors and appropriate given the available science. More recent research and technological advances, however, including the development of a set of national regulatory laboratory thresholds by the Racing Medication and Testing Consortium ("RMTC") and others, now permits the Commission to propose a 24-hour reduction in the restricted time periods that apply to the following drugs: for dantrolene and methocarbamol, from 72 hours to 48 hours, and for detomidine from 72 hours to 48 hours. Consistent with the proposal to adopt more precise laboratory thresholds, the Commission also proposes to add diclofenac, which currently may not be used within a week before the horse's next race, to the list of non-steroidal anti-inflammatory drugs that may be used until 48 hours before a horse's next race.

The new rules will enhance the integrity and safety of horse racing by establishing the same regulatory thresholds that are proposed and publicly supported by the racing commissions in the mid-Atlantic and other states with pari-mutuel standardbred horse racing.

4. Costs:
(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of various medications.
(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.
(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new mandatory duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.
5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.
6. Paperwork: There will be no additional paperwork.
7. Duplication: None.
8. Alternatives: This rule amendment is to assure horsepersons that the Commission's restricted time periods are consistent with the separately proposed national regulatory laboratory thresholds for these equine drugs that have been recommended by the RMTC and the Association of Racing Commissioners, International, Inc. No other alternatives were considered.
9. Federal standards: None.
10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely adjusts the restricted time periods after the treatment of a standardbred race horse with dantrolene, detomidine, diclofenac, or methocarbamol to most closely approximate the period after administration of such drugs that should be accorded before a horseperson races a standardbred horse, given the proposed adoption of the national regulatory laboratory thresholds for such drugs. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact orreporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Standardbred Firocoxib Use

I.D. No. SGC-49-13-00017-P

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

Proposed Action: Addition of section 4120.2(m) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time period for standardbred firocoxib use.

Purpose: To enhance the integrity and safety of standardbred horse racing with a firocoxib equine drug rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new subdivision (m) would be added to section 4120.2 as follows:

(m) A horse may not race for at least 14 days following an administration of firocoxib.

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.
2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.
3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of the drug firocoxib, a non-steroidal anti-inflammatory drug with an unusually long duration of action, and to ensure that horsepersons who use this drug will not unwittingly violate the national regulatory laboratory threshold for this drug that the Commission has separately proposed.

This drug is among those whose selection by the Racing Medication and Testing Consortium ("RMTC") and adoption as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI") is intended to apply in all horse racing jurisdictions. The drugs for which RMTC and ARCI have established thresholds are intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

This proposed rule would prohibit the administration of firocoxib within 14 days of a race. Currently, the administration of firocoxib is permitted up to one week before a race under the general restriction of Section 4120.2(h). The 14-day restrictive time period would be consistent with the separately proposed regulatory threshold for firocoxib that establishes an automatic ("Per Se") violation of the Commission's equine drug rules if a standardbred horse's race-day blood or urine sample exceeds 20 ng/ml in plasma. Between them, the regulatory threshold for firocoxib and the time restriction for firocoxib will provide clear standards governing when and how firocoxib can permissibly be administered to race horses.

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commissions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt the ARCI thresholds by January 2014. The separately proposed Per Se rule for firocoxib also will make it easier for the Commission to establish that an improper equine drug administration has occurred.

The proposed changes to the Commission's restricted time period for firocoxib in New York will ensure that horsepersons who treat their horses in compliance with this new time period would not violate the separately proposed threshold for this drug. Both measures will help ensure the integrity of horse racing by allowing the use of this well-accepted and necessary drug, which is capable of control by means of laboratory testing, only at a time when it would have a potential effect on race performance.

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.
(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the

rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI, and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely proposes the adoption of a restricted time period that supports the separately proposed national regulatory laboratory threshold for firocoxib and accords sufficient time for the proposed threshold not to be violated, if the horse were sampled on race day and tested for this drug. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. The amendment does not impact upon State Administrative Procedure Act § 102(8), nor do it affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for DMSO

I.D. No. SGC-49-13-00018-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 4120.2(a)(1); and addition of sections 4120.2(e)(21) and 4120.3(a)(23) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for DMSO.

Purpose: To enhance the integrity and safety of standardbred horse racing with new DMSO equine drug rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraph (23) would be added to subdivision (a) of a proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

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(23) DMSO: 10 mcg/ml in plasma.

Paragraph 1 of subdivision (a) of Section 4120.2 would be amended as follows:

4120.2 Restricted use of drugs, medication and other substances.

Drugs and medications are permitted to be used only in accordance with the following provisions.

(a) The following substances are permitted to be used at any time up to race time:

(1) topical applications (such as antiseptics, ointments, salves, [DMSO,] leg rubs, leg paints and liniments) which may contain antibiotics but do not contain benzocaine, *DMSO,* steroids or other drugs;

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A new paragraph 21 would be added to subdivision (e) of Section 4120.2 as follows:

(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:

***

(21) dimethyl sulfoxide (i.e., DMSO).

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, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of drugs and other substances that can be administered close to race day, and to simplify compliance by horsepersons and enforcement of the equine drug rules in New York, by adopting another one of the national regulatory laboratory thresholds for drugs that are necessary and sufficient to provide good veterinary care close to race day.

The proposed rule would apply the regulatory laboratory threshold that was developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI") for the drug dimethyl sulfoxide (i.e., DMSO). These thresholds established by RMTC and ARCI are intended to apply in all horse racing jurisdictions and are intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

The net effect of the proposed rule would be to help ensure, in conjunction with New York's restricted time period equine drug rules, that no pharmacologically significant residue of DMSO from an administration that could affect race performance will be present in the standardbred horse during a pari-mutuel race, while recognizing that this medication is well-accepted, necessary, and capable of being regulated by known threshold values. This rule would make it an automatic ("Per Se") violation of the Commission's equine drug rules to race a standardbred horse whose race-day blood or urine samples exceed this drug's proposed regulatory laboratory threshold. This rule making would also amend Section 4120.2(e) to prohibit the administration of DMSO within 48 hours of a race. Currently, topical administration of DMSO is permitted any time (under Section 4120.2(a)(1)), and other administrations of DMSO are permitted up to one week before a race (under the general restriction of Section 4120.2(h)). The proposed regulatory laboratory threshold for DMSO is consistent with an administration of DMSO at least 48 hours before a horse's next race.

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commis-

sions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt this threshold by January 2014. The rule will therefore simplify the veterinary treatment issues faced by trainers who are licensed to race in more than one jurisdiction, many of whom train their horses and obtain veterinary care in reference primarily to their host state's rules. The adoption of more uniform equine drug rules will make it easier for an out-of-state trainer to decide to race a horse in New York when abiding by the equine drug rules of the other jurisdiction. Horsepersons who are confident that they will not commit an unintended violation of New York's equine drug rules are more likely to enter their horses to race in New York, which will improve the depth and quality of the fields in New York races. The new rule will, therefore, make it easier for trainers and owners who race in multiple states to comply with the New York equine drug rules and to race in New York, while affording protection to the betting public against the manipulation of a horse's race performance with drugs and other substances.

The Per Se rule also will make it easier for the Commission to establish that an improper equine drug administration has occurred. The proposed regulatory threshold can be enforced without requiring either expert opinion evidence of the time of administration or direct evidence (e.g., veterinary records) to establish that an administration occurred within the restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

The proposed adoption of this new Per Se equine drug rule for DMSO and related changes to the restricted time periods for its administration will enhance the integrity of horse racing by creating regulatory thresholds for this drug whose use close to race day is well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will encourage the entry into New York races of more horses that are stabled out-of-state by making the New York rules more consistent with those of other states.

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.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI, and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely proposes the adoption of the national regulatory laboratory threshold for dimethyl sulfoxide (i.e., DMSO) when used on standardbred horses and adjusts the restricted time periods after the treatment of the horse with such drug to accord sufficient time for the proposed DMSO thresholds not to be violated, if the horse were sampled on race day and tested for this drug. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. The amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

This Proposal Would Limit the Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Thoroughbred Racing

I.D. No. SGC-49-13-00019-P

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

Proposed Action: Addition of section 4043.2(k) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: This proposal would limit the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) in thoroughbred racing.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new subdivision (k) would be added to section 4043.2 as follows:

(k) A horse may not race after an administration of methylprednisolone acetate (e.g., Depo Medrol) unless such horse

(1) subsequently tests below the threshold set forth in section 4043.3 of this Part for such drug in a test conducted by or for the commission at the sole expense of the trainer of the horse; and

(2) is released to race by the stewards.

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, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104(1), (19) and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to thoroughbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs, including five corticosteroids, that are necessary and sufficient to provide good veterinary care close to race day. The adoption of these thresholds would limit the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol). This corticosteroid has been identified as particularly harmful to the long term health of treated joints and tissues, and potentially affects race performance for an unusually long period of time, according to the Commission's scientific consultant Dr. George A. Maylin. It has also been reported to persist after certain administrations at a concentration which exceeds the proposed threshold for as long as 99 days. The long period of time during which an administration of this drug might cause a violation of the proposed threshold was

confirmed by the Commission when it conducted an extensive study of the veterinary records of over 75 horses whose tests results were in excess of the proposed threshold in the first half of 2013. The most reasonable restriction that could provide assurance to thoroughbred horsepersons that compliance would protect them from violation of the proposed thresholds is one that would require the horse to test negative before racing again. Accordingly, the new rule would require that any horse treated with this corticosteroid, methylprednisolone acetate (e.g., Depo Medrol), has to be tested at the expense of the trainer below the proposed threshold and then released by the stewards before the horse may race again. As a result, for those horsepersons who choose not to use the less restricted and equally available alternative corticosteroids (betamethasone, dexamethasone, prednisolone, and triamcinolone acetate), the Commission provides a means to return the horse to racing that is consistent with the proposed thresholds and with the overall purpose of reducing the use of this relatively harmful corticosteroid.

The new rule will enhance the integrity and safety of horse racing by limiting the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) and encouraging horsepersons to use other corticosteroids that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons because there are readily available alternative corticosteroids. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the state, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any new mandatory duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the Racing Medication and Testing Consortium, the New York Thoroughbred Horsemen's Association, and the Association of Racing Commissioners, International, Inc. The Commission considered and rejected the alternative of restricting a horse from racing for a period of 99 days after any administration of this corticosteroid.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the use of a race horse after administration of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol), for which there are readily available alternatives that are relatively less harmful to a horse's health and safety and have less potential to affect the race performance, by means of continuing efficacy, for a considerable period of time after administration of the drug. Other corticosteroids are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available, including betamethasone, dexamethasone, prednisolone, and triamcinolone acetonide. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Thoroughbred Regulatory Thresholds for Equine Drugs

I.D. No. SGC-49-13-00020-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 4043.3 to 4043.13; and addition of new section 4043.3 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se thoroughbred regulatory thresholds for equine drugs.

Purpose: To enhance the integrity and safety of thoroughbred horse racing by adopting permissive thresholds for 24 accepted medications.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Section 4043.3 ("Other prohibitions") of 9 NYCRR would be renumbered Section 4043.13, and

A new Section 4043.3 would be added to Part 4043 of 9 NYCRR, to read as follows:

Section 4043.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration listed below. The test for each sample shall include an evaluation of the method of uncertainty and imprecision of the analytical test.

(1) Acepromazine: 10 ng/ml HEPS in urine;
(2) Betamethasone: 10 pg/ml in plasma;
(3) Butorphanol:
(i) 300 ng/ml of total butorphanol in urine; or
(ii) 2 ng/ml of free butorphanol in plasma;
(4) Clenbuterol:
(i) 140 pg/ml in urine; or
(ii) any clenbuterol in plasma;
(5) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in plasma;
(6) Detomidine:
(i) 1 ng/ml of any metabolite of detomidine in urine; or
(ii) any detomidine in plasma;
(7) Dexamethasone: 5 pg/ml in plasma;
(8) Diclofenac: 5 ng/ml in plasma;
(9) DMSO: 10 mcg/ml in plasma;
(10) Firocoxib: 20 ng/ml in plasma;
(11) Flunixin: 20 ng/ml in plasma;
(12) Furosemide: 100 ng/ml in plasma and a specific gravity of urine less than 1.010;
(13) Glycopyrrolate: 3 pg/ml in plasma;
(14) Ketoprofen: 10 ng/ml in plasma;
(15) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;
(16) Mepivacaine:
(i) 10 ng/ml of total hydroxymepivacaine in urine; or
(ii) any hydroxymepivacaine in plasma;
(17) Methocarbamol: 1 ng/ml in plasma;
(18) Methylprednisolone: 100 pg/ml in plasma;
(19) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;
(20) Phenylbutazone: 2 mcg/ml in plasma;
(21) Prednisolone: 1 ng/ml in plasma;
(22) Procaine penicillin: 25 ng/ml of procaine in plasma;
(23) Triamcinolone acetonide: 100 pg/ml in plasma; and
(24) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A horse shall have raced in violation of this section if the laboratory conducting tests by or for the commission is able to determine from such horse's race-day urine or blood sample that a drug or other substance for which no permissible threshold is established in this Part had been administered to such horse before its race, unless such drug or other substance by its nature could not affect a horse's organ systems.

(c) A laboratory finding that a horse has not exceeded a threshold set

forth in this section shall not constitute a defense to a violation of any other section of this subchapter.

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, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of drugs and other substances that can be administered close to race day, and to simplify compliance by horsepersons and enforcement of the equine drug rules in New York, by adopting a set of national permissible regulatory laboratory thresholds for drugs that are necessary and sufficient to provide good veterinary care close to race day.

Section 4043.3(a) of the proposed rule would establish, for 24 commonly used equine drugs, regulatory laboratory thresholds that were developed by the Racing Medication and Testing Consortium ("RMTC"), with the participation and support of the New York Thoroughbred Horsemen's Association ("NYTHA") that represents the thoroughbred trainers and owners who participate in racing at tracks operated by The New York Racing Association ("NYRA"), and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). These thresholds are intended by RMTC and ARCI to apply in all horse racing jurisdictions. The selected 24 drugs are intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

As set forth in proposed Section 4043.3(b), any detection in race-day samples of an administration of other drugs or other substances that could affect race performance would be a rule violation. The use of a drug or other substance that cannot affect race performance, a trait that is defined in veterinary terms as having no effect on the body organ systems of the horse, however, would not be affected by the new rule.

The net effect of the new rule would be to help ensure, in conjunction with New York's restricted time period equine drug rules, that no pharmacologically significant residue of any drug or medication that could affect race performance will be present in the horse during a pari-mutuel race, while limiting the number of drugs that are used close to race day to these 24 that are well-accepted, necessary, and capable of being regulated by known threshold values. This rule would make it an automatic ("Per Se") violation of the Commission's equine drug rules to race a horse whose race-day blood or urine samples exceed these regulatory laboratory thresholds. This will supplement the Commission's rule in Section 4043.2 that restricts the time periods in which certain drugs can be used. Between them, the two rules will provide clear standards governing when and how various drugs or other substances can permissibly be administered to race horses.

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commissions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt these thresholds by January 2014. The rule will therefore simplify the veterinary treatment issues faced by trainers who are licensed to race in more than one jurisdiction, many of whom train their horses and obtain veterinary care in reference primarily to their host state's rules. The adoption of more uniform equine drug rules will make it easier for an out-of-state trainer to decide to race a horse in New York when abiding by the equine drug rules of the other jurisdiction. Horsepersons who are confident that they will not commit an unintended violation of New York's equine drug rules are more likely to enter their horses to race in New York, which will improve the depth and quality of the fields in New York races. The new rule will, therefore, make it easier for trainers and owners who race in multiple states to comply with the New York equine drug rules and to race in New York, while affording protection to the betting public against the manipulation of a horse's race performance with drugs and other substances.

The Per Se rule also will make it easier for the Commission to establish that an improper equine drug administration has occurred. The new rule, unlike the restricted time period rule set forth in Section 4043.2, can be enforced without requiring either expert opinion evidence of the time of administration or direct evidence (e.g., veterinary records) to establish that an administration occurred within the restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

The adoption of the proposed Per Se equine drug rule will enhance the integrity of horse racing by limiting which drugs can be used close to race day to only those that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will also protect the health and safety of thoroughbred race horses and their exercise riders and jockeys by creating uniform equine drug practices that limit the medication of racing horses close to race day to only those medications that are known to be safe and effective for providing a sufficient degree of veterinary care. Finally, the new rule will encourage the entry into New York races of more horses that are stabled out-of-state by making the New York rules more consistent with those of other states.

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.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff reviewed the cost factors and determined that the rule can be implemented with little or no additional costs. To the extent that a less expensive alternative drug might not be permitted close to race day under the new rules, this was determined to be off-set by the anticipated overall reduction in the use of equine drugs by all horsepersons.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use of equine drugs close to race day to 24 specified medications and regulates their use by the adoption of Per Se regulatory laboratory thresholds. Although this might result in a veterinarian not using a less expensive alternative drug on occasion, more expensive drugs will not have to be used to maintain a competitive edge because none of the other participants will be able to use them either. It is also anticipated that any additional costs would be more than off-set by the reduced use generally of equine drugs in the time period before race day, greater ease in complying with racing rules, and simplification of veterinary care. These benefits will accrue due to the limitation of the number of drugs that may permissibly be used. It will also become less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common. The mid-Atlantic states and Massachusetts have all publicly pledged to adopt these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction. The restrictions will standardize veterinary care, make it easier to treat horses that might compete in multiple states, and reduce the overall cost of equine veterinary medical care.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no 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 activity is involved. Trainers have been meeting almost all of these thresholds for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances. The only difference for these 24 drugs are with the long-lasting drug firocoxib, a change for the use of dimethyl sulfoxide ("DMSO"), and a limitation on corticosteroids. The threshold for firocoxib will require trainers not to use this drug for 14 days before racing. DMSO will have to not be used within 48 hours of racing, rather than topical use on race day and otherwise seven days before racing, to comply reliably with the new threshold. Corticosteroids will be limited to five: two will be unaffected, two will be impermissible for systemic use for two more days (seven days rather than five) before racing, and the damaging and long-lasting drug methylprednisolone acetate ("Depo Medrol") may be used but the horse would be unable to race until it tests below the regulatory threshold. These restrictions on corticosteroids will improve the health and longevity of the racing careers of thoroughbred race horses by limiting all trainers. Presently, trainers have to compete against horses that are more freely administered corticosteroids, which can help a horse win its next race but that are a detriment to the horse's health and safety when used too much.

Even though small businesses that own and train thoroughbred race horses will be effected, they will benefit from the reduced use throughout the industry of multiple and more expensive medications as race day approaches, standardized veterinary practices that favor recognized therapeutic medications that provide good veterinary care, limiting competitors to the same set of well-accepted and beneficial equine drugs close to race day, and the greater ease of regulatory compliance when racing in multiple states. This amendment is intended to improve veterinary care and to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Systemic Administrations of Corticosteroids to Thoroughbred Horses

I.D. No. SGC-49-13-00021-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 4043.2(i) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time period for systemic administrations of corticosteroids to thoroughbred horses.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraph (1) of subdivision (i) of Section 4043.2 would be amended as follows:

(i) In addition, a horse may not race for the following periods of time:

(1) for at least five days following a systemic administration of [a corticosteroid] *prednisolone or dexamethasone*;

***

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, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104(1), (19) and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to thoroughbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs, including five corticosteroids, that are necessary and sufficient to provide good veterinary care close to race day. The adoption of these thresholds would limit the corticosteroids that could be administered pursuant to the Commission's current rule restricting a horse treated with any corticosteroid from racing for the next five days. The only corticosteroids that could be administered consistent with such proposed thresholds and with a systemic administration until five days before racing are prednisolone and dexamethasone.

This new rule will limit the corticosteroids that may be administered until five days before racing to only these two, prednisolone and dexamethasone. As a result, the Commission's restricted time periods will continue to provide assurances to horsepersons who comply with them that their horses will not give rise to an equine drug positive, including under the national regulatory laboratory standards that have been proposed by the Commission.

The new rule will enhance the integrity and safety of horse racing by limiting which corticosteroids can be used systemically until within five days before race day to these two, which are well-accepted, necessary, and amenable to control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds. Prednisolone and dexamethasone are the only corticosteroids recognized in the proposed new regulatory thresholds whose administration until five days before a horse's next race will not violate such thresholds. The rule therefore provides greater certainty to horsepersons regarding the corticosteroids that will comply with the Commission's time restriction rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to the allowable corticosteroids to meet the Commission's five-day rule.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the Racing Medication and Testing Consortium, the New York Thoroughbred Horsemen's Association, and the Association of

Racing Commissioners, International, Inc. No alternatives have been considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the corticosteroids that may be administered systemically to a race horse until five days before its next race. The specified corticosteroids, prednisolone and dexamethasone, are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period After IV Administrations of Flunixin to Thoroughbred Horses

I.D. No. SGC-49-13-00022-P

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

Proposed Action: Repeal of section 4043.2(d); and amendment of section 4043.3(e) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time period after IV administrations of flunixin to thoroughbred horses.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Public hearing(s) will be held at: 10:30 a.m. – 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Subdivision (d) of section 4043.2 of 9 NYCRR would be repealed:

(d) [The following non-steroidal anti-inflammatory drug may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete:

(1) flunixin.] (*Reserved*)

The final unnumbered paragraph of subdivision (e) of section 4043.2 of 9 NYCRR would be amended as follows:

None of these substances may be administered within 48 hours of the scheduled post time of the race in which the horse is to compete[, except that flunixin may be used in accordance with the specific authorization set forth in subdivision (d) of this section]. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 48 hours.

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, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to assure the public's confidence and preserve the high degree of integrity of racing at pari-mutuel betting tracks by regulating the use of drugs and medications in race horses so that the horses are fit and healthy, but not running on substances that have the potential to affect the outcome of a given race.

3. Needs and benefits: This rule is necessary to ensure that horses are not medicated to the point of adversely affecting the integrity of horseracing and the health and safety of race horses. The Commission believes that adopting its previous 48-hour flunixin administration rule is more appropriate than the rule adopted in 2005.

Flunixin, also known by the trade name Banamine, is a non-steroidal anti-inflammatory drug used to treat inflammation and soreness in racehorses. From 1971 to 2005, the administration of flunixin was not permitted less than 48 hours before races in New York. There were few post-race positives during that 30-year period.

Prompted by an effort of the Racing Medication and Testing Consortium ("RMTC") and other states, such as New Jersey and Maryland, the former Racing and Wagering Board adopted a rule to allow intravenous use of flunixin within 24 hours of a race effective January 4, 2006. Flunixin continued to be restricted within 48-hours of racing when administered by any other means. Among the benefits sought was to create consistency throughout the racing states so veterinarians could have a certain threshold under which they could provide therapeutic treatment. This movement was supported by the Mid-Atlantic Consortium of Racing States, which also sought uniform levels.

During the past five years in New York, this 24-hour rule for flunixin has been violated more than any other Commission equine drug rule. There have been more than 80 flunixin drug violations by thoroughbred and standardbred horses. There are many suspected reasons for this. Flunixin has become obtained routinely from compounding pharmacies, which are less accurate and reliable at providing a drug with a specific known concentration than a pharmaceutical company. The use of flunixin paste, on a regular and even daily basis, has become more common. In several instances, trainers have been confused about the Commission's rules allowing only IV use of flunixin during 48 to 24 hours before racing. In addition to newer drug regimens that include frequent administrations of flunixin paste, 11 trainers unwittingly admitted during agency investigations that they thought the paste was a permissible means to administer flunixin until 24 hours before a horse's next race.

The RMTC has recently proposed a mandatory regulatory laboratory threshold for flunixin that, depending on the specific horse and other variables, might possibly result in a trainer abiding by the 24-hour restriction and yet violating the proposed new threshold. The Commission's restricted time periods are designed to assure that one who complies with them will not be charged with an equine drug rule violation in New York.

Accordingly, the Commission's proposed rule would return to the longstanding, time-tested, and familiar practice of restricting the administration of flunixin to 48 hours prior to a race. The Commission and industry have considerable experience with banning flunixin for 48 hours as a result of this being the rule in New York from 1971 through 2005. During those 34 years, there were relatively few rule violations, or complaints about the rule from horsepersons, or veterinary complaints about the care, treatment, health, or safety of our race horses. The 48-hour restricted time period will reduce the number of equine drug positives that occur in New York by providing horsepersons with an added safety cushion to avoid equine drug positives and with greater certainty that compliance with the time period will result in the Commission's laboratory not reporting an equine drug violation.

Concerns that veterinarians will be restricted in their ability to treat a horse are mitigated by the fact the Commission's rules will continue to permit veterinarians to administer several different non-steroidal anti-inflammatory drugs until 48 hours before a horse's next race, and to provide veterinary care for inflamed or sore bodily tissues without restriction when the horse is not scheduled to race in the immediate future.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: The rule will not impose new or additional costs on regulated persons. The rule merely revises an existing rule in regards to allowable dosage of a medication.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff determined that the rule will impose no additional costs because the rule does not create any new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely makes a modification to a medication rule.

5. Local government mandates: The supervision and regulation of pari-mutuel racing activities are the sole responsibility of the New York State Gaming Commission, and do not involve local governments. Therefore, this rule will not impose any local government mandates.

6. Paperwork: There will be no new or additional paperwork required as a result of the rule.

7. Duplication: Since the New York State Gaming Commission is exclusively responsible for the regulation of pari-mutuel racing activities in New York State, there are no other relevant rules or other legal requirements of the State or federal governments regarding the administration of flunixin to race horses.

8. Alternative approaches: No other alternative was considered in light of the Commission's preferred course of action to specifically revert to the previous standard.

9. Federal standards: There are no federal standards applicable to the subject area of State-regulated pari-mutuel racing activities.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely removes the 24-hour rule allowing for the administration of the drug flunixin to race horses. Flunixin will still be allowed as a 48-hour drug. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Administrations of Unspecified Corticosteroids to Thoroughbred Horses

I.D. No. SGC-49-13-00023-P

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

Proposed Action: Addition of section 4043.2(l) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time period for administrations of unspecified corticosteroids to thoroughbred horses.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl., Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new subdivision (l) would be added to section 4043.2 as follows:

(l) A horse may race following the administration of a corticosteroid that is not specified in other subdivisions of this section only if:

(1) such administration occurs at least seven days before such race;

(2) the trainer of the horse discloses, in writing, such administration to the stewards before race day; and

(3) the administration of such corticosteroid cannot be detected by laboratory tests, conducted by or for the commission, in a race-day urine or blood sample.

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, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such 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), 104 (1, 19), and 122. 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to thoroughbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs, including five corticosteroids, that are necessary and sufficient to provide good veterinary care close to race day. The adoption of these thresholds would also create a zero threshold for the administration of any other corticosteroids. Although the corticosteroids for which thresholds are proposed are sufficient to provide good veterinary care to a racing horse, the use of other corticosteroids is not intended to be restricted for a horse not close to race day and so long as the administration of any such corticosteroid cannot be detected on race day.

This new rule will limit the use of such non-threshold corticosteroids by requiring that the trainer disclose their use to the stewards before race day, their use occurs at least seven days before racing (as required for all unspecified drugs by the Commission), and the horse tests below the proposed regulatory threshold (i.e., zero). This will permit a veterinarian to use such corticosteroids, despite the presence of readily available other corticosteroids for which the Commission has proposed non-zero thresholds, if the veterinarian determines that some veterinary need would be advanced by doing so. For example, the rule would allow a veterinarian to administer a wide range of corticosteroid treatments to a horse that is not currently engaged in racing and is recovering from some illness or injury but would restrict the use close to a horse's next race of non-threshold corticosteroids that would be detectable on race day.

As a result, the Commission's restricted time periods will continue to provide assurances to horsepersons who comply with them that their horses will not give rise to an equine drug positive, including under the national regulatory laboratory standards that have been proposed by the Commission.

The new rule will enhance the integrity and safety of horse racing by limiting which corticosteroids can be used close to race day to those that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons because there are readily available alternative corticosteroids. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the state, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not

create any mandatory new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate parimutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the Racing Medication and Testing Consortium, the New York Thoroughbred Horsemen's Association, and the Association of Racing Commissioners, International, Inc. The alternative of prohibiting any use of unspecified corticosteroids was considered and rejected. The proposal implements the proposed thresholds while permitting other corticosteroids to be used in a manner that is consistent with the new regulatory scheme.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the use of a race horse after administration of the corticosteroids for which there are readily available alternatives and known and widely accepted laboratory thresholds. The other corticosteroids are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available, including betamethasone, dexamethasone, prednisolone, and triamcinolone acetonide. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

Department of Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Definition of Pediatric Severe Sepsis Update

I.D. No. HLT-49-13-00005-P

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

Proposed Action: Amendment of section 405.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Definition of Pediatric Severe Sepsis Update.

Purpose: Updates pediatric severe sepsis definition to be consistent w/generally accepted medical standards and to reflect current practice.

Text of proposed rule: Subparagraph (ii) of paragraph (8) of subdivision (a) of Section 405.4 is amended to read as follows:

405.4 Medical staff.

(a) Medical staff accountability. The medical staff shall be organized and accountable to the governing body for the quality of medical care provided to all patients.

* * *

(8) Definitions. For the purposes of this section, the following terms shall have the following meanings:

* * *

(ii) for adults, severe sepsis shall mean sepsis plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, severe sepsis shall mean sepsis plus *one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or* two *or more* organ dysfunctions [or acute respiratory distress syndrome]; and

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

Statutory Authority:

Public Health Law ("PHL") Section 2800 provides that "hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state. . ., the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital related services. . ."

PHL Section 2803 authorizes the Public Health and Health Planning Council ("PHHPC") to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

Needs and Benefits:

Sepsis is a range of clinical conditions caused by the body's systemic response to an infection and affects about 750,000 people in the U.S. each year. The mortality rate is alarming – between 20 percent and 50 percent – and the rate largely depends on how quickly patients are diagnosed and treated with powerful antibiotics to battle the bacteria racing through their systems.

In New York State the number of severe sepsis cases increased from 26,001 in 2005 to 43,608 in 2011 - an increase of 68%. Similarly, the number of sepsis cases in New York State increased from 71,049 in 2005 to 100,073 in 2011, an increase of 41%. Sepsis mortality is significant and ranges widely from one hospital to another. In New York, sepsis mortality ranges between 15% and 37%. A patient may have a greater chance of dying from sepsis if care is provided by an institution ill-prepared to deal with this illness or from providers not thoroughly trained in identifying and treating sepsis.

In response to these alarming statistics regulations were enacted effective May 1, 2013 to require all hospitals licensed to operate in New York State to have in place and implement evidence-based protocols for the early identification and treatment of severe sepsis and septic shock.

The Sepsis regulations as originally drafted included a definition of pediatric severe sepsis that was not exactly consistent with the current international definition. This amendment will refine the definition to assure complete consistency. The original wording was as follows:

"for pediatrics, severe sepsis shall mean sepsis plus two organ dysfunctions or acute respiratory distress syndrome."

Proposed revised wording is:

"for pediatrics, severe sepsis shall mean sepsis plus one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more organ dysfunctions"

There is no known opposition to this change. Physicians who specialize in pediatrics and pediatric critical care requested that this change be made to assure absolute consistency with established definitions and avoid any possible confusion on the part of hospitals and clinicians.

COSTS:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Existing Sepsis regulations that require all hospitals to submit evidence-based protocols for the early identification and treatment of sepsis to NYSDOH not later than December 31, 2013 are unchanged. There are no costs associated with this change. There is no impact on consumers or providers. This change assures consistency in definitions but in no way alters the intent or impact of the current regulations.

Costs to Local and State Government:

There is no fiscal impact to State or local government as a result of this regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health associated with this definition change.

Local Government Mandates:

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork:

Andrew M. Cuomo
Governor

Edmund C. Burns
General Counsel

NYS GAMING COMMISSION

MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: November 18, 2014

Re: Proposed Rulemaking: Grounds for suspension and revocation of lottery license
9 NYCRR § 5001.19

For Commission consideration is a draft regulation refining the current rule that sets forth grounds for the suspension and revocation of a lottery license. Current regulations require a sales agent, as a condition of licensing, to comply with the licensing agreement and any rules, regulations, procedures, policies and instructions promulgated or issued by the commission. 9 NYCRR § 5001.10(a). The lottery sales agent license agreement contains an obligation of the agent to achieve the level of sales required by the lottery. Thus, maintaining sufficient sales is currently a condition of licensing. The proposed amendments would make explicit that failure to meet such obligations is a grounds for suspension or revocation of a sales agent license. The amendments would add other grounds for suspension or revocation, including violation of the licensing agreement, violation of the conditions of licensing and noncooperation with or frustration of a Commission investigation.

To protect the sales agent, the amendments would require the Commission to notify the sales agent of a sales deficiency in writing and set forth a time in which the sales agent could show satisfactory improvement. The amendment would also allow the sales agent to raise, as an affirmative defense to a suspension or revocation based on insufficient sales, that the agent's sales performance is reasonably excused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate. Examples are extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances.

Other revisions are proposed to eliminate duplication of statute, align the provisions for winding up terminated sales agent licenses with preferred practice and make stylistic changes.

The text of the proposed amendment is attached.

[redacted]

attachment

cc: Robert Williams, Executive Director
Gardner Gurney, Acting Director, Division of Lottery

Section 5001.19 of Title 9 of the NYCRR is amended to read as follows:

§ 5007.19. Suspension and revocation of license.

(a) At the discretion of the commission, the agent's license may be suspended or revoked or have such license renewal rejected for any of the reasons set forth in section 1607 of the Tax Law or for any of the following reasons, or any combination thereof:

[(1) failure to account for lottery tickets received or the proceeds of lottery tickets or failure to comply with instructions of the commission concerning licensed activity;]

[(2) conviction of any offense as defined in the Penal Law;]

[(3)](1) failure to file any returns or reports or to keep records or to pay any fee or tax as may be required by this Part [in or pursuant to the acts];

[(4) fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the Lottery;]

[(5) failure to furnish a surety or other bond in such amount as may be required by the commission;]

[(6) the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, [and public convenience is adequately served by other licensees;]

[(7)](2) a material change since issuance of the license with respect to any matter required to be considered by the commission as provided in [either the acts or] this Part;

(3) failure to sell a sufficient number of lottery tickets required by the licensing agreement between the agent and the commission, when the commission has notified the agent of such insufficiency in writing and the agent fails to make satisfactory improvements, in the discretion of the commission, within the time set forth in the notice of insufficiency;

[(8)](4) [when the agent violates] violation of any of the provisions of the acts, rules and regulations of the [division] commission, the licensing agreement between the agent and the commission or any of the conditions of licensing set forth in section 5000.10 of this Part, or failure to follow procedures, policies or instructions of the commission;

[(9)](5) [whenever] failure of the agent [does not] to display commission point-of-sale material in a manner readily available to the public;

[(10)](6) [whenever] finding by the commission [finds] that the agent's experience, character[,] and general fitness are such that the agent’s participation as a lottery sales agent is inconsistent with public interest or convenience or for any other reason within the discretion of the commission; [or]

[(11)](7) failure to notify the commission, in writing, within a reasonable time of any arrest, indictment, or service of a summons, or conviction for any felony whether within or without the State of New York, or within or without the United States, occurring during the term of the license or the renewal thereof; or

(8) failure to cooperate with an investigation of the commission, attempt to frustrate or obstruct such an investigation or provision of false or misleading information to the commission during the course of such an investigation.

(b) An agent may establish, as an affirmative defense to a suspension or revocation based upon insufficient sales, whether under paragraph (3) of subdivision (a) of this section or otherwise, that such agent's failure to sell a sufficient number of tickets was caused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate, such as extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances and that nevertheless, despite such mitigation, reasonably excuse such agent's sales performance.

(c) If the commission orders the temporary suspension of a sales agent's license pending any prosecution, investigation or hearing, the sales agent shall permit the commission to retrieve lottery equipment, tickets and other material provided by the commission that may be in the sales agent's possession. Failure to cooperate in the commission's retrieval effort shall constitute separate grounds for suspension or revocation of the sales agent's license. A sales agent under a temporary suspension shall continue to remit amounts owed to the commission when required during such temporary suspension.

[(b)](d) Upon termination of an agent's license for any reason, the agent shall [go to the agent's assigned bank on a date designated by the commission for the purpose of rendering the agent's final lottery accounting. Surrender] comply with the commission's instructions in regard to payment of remaining amounts owed by the agent and surrender of the agent's license, lottery equipment, tickets and other material provided by the commission [shall be as prescribed by the commission. Upon failure of any agent to settle such agent's accounts on or before the designated date,]. If the agent fails to comply with such instructions, the commission may take steps to impose such penalties and exercise such enforcement powers as may be provided for by law, including referral of the debt for collection or further action. The sales agent may be liable in the amount of the debt, plus any collection costs, penalties, interest and attorney fees to which the commission may be entitled.