



**MEETING AGENDA  
FEBRUARY 27, 2017**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF JANUARY 23, 2017
3. REPORT OF EXECUTIVE DIRECTOR
4. RULEMAKING
  - A. RE-PROPOSED: SGC-45-16-00004-P ANTI-STACKING OF NSAIDS AND DICLOFENAC MADE A 48 HOUR NSAID
5. ADJUDICATIONS
  - A. IN THE MATTER OF DINYA NEWSSTAND
  - B. IN THE MATTER OF EMPIRE STATE DELI
  - C. IN THE MATTER OF HATHI, INC. DBA FRIENDS GROCERIES
6. OLD BUSINESS/NEW BUSINESS
7. SCHEDULING OF NEXT MEETING
8. ADJOURNMENT

###

**NEW YORK STATE  
GAMING COMMISSION**

**MINUTES**

**MEETING of JANUARY 23, 2017**

**NEW YORK, NEW YORK**

A meeting of the Commission was conducted in New York, New York. A video-conference location was also maintained in Schenectady, New York.

**1. Call to Order**

Executive Director Robert Williams called the meeting to order at 12:38 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance in New York were Commissioners Peter Moschetti, John Poklemba and Barry Sample. Commissioner Moschetti was unanimously elected as presiding officer for the meeting.

**2. Consideration of the Minutes from December 13, 2016**

The Commission considered previously circulated draft minutes of the meeting conducted on December 13, 2016. The minutes were accepted as circulated.

**3. Report of the Executive Director**

Executive Director Williams provided a brief report on the status of the various commercial casino development projects, discussed a few elements of the Commission's responsible horse aftercare initiative and introduced the final version of the video that will be required viewing for certain applicants and applicant renewals seeking a racing license.

**4. Rulemaking**

**a. ADOPTION: SGC-45-16-00002-P, Permit Jockeys to Wear Trade Logos and Own Name on Jockey Clothing**

The Commission considered adoption of a rule regarding advertising and promotional materials on jockeys in Thoroughbred racing.

ON A MOTION BY: Commissioner Poklemba  
APPROVED: 3-0

**b. ADOPTION: SGC-47-16-00002-P, Bonding of Video Lottery Agents to Prevent Potential Loss of State Revenue Earned from Video Lottery Gaming**

The Commission considered adoption of a rule regarding the bonding of video lottery agents.

ON A MOTION BY: Commissioner Sample  
APPROVED: 3-0

**c. ADOPTION: SGC-47-16-00017-P, Expands the Conflict of Interest Restrictions on Racing Secretaries and Their Assistants and Substitutes**

The Commission considered adoption of regulations regarding conflicts of interest restrictions for Standardbred racing secretaries and assistant race secretaries.

ON A MOTION BY: Commissioner Sample  
APPROVED: 3-0

**d. PROPOSED THOROUGHBRED RULEMAKING: Exercise-Induced Pulmonary Hemorrhage (EIPH)**

The Commission considered proposal of regulations that would strengthen regulations related to exercise-induced pulmonary hemorrhage in thoroughbred racing.

ON A MOTION BY: Commissioner Poklemba  
APPROVED: 3-0

**e. PROPOSAL: THOROUGHBRED RULEMAKING: Minimum Penalty Enhancement**

The Commission considered proposal of regulations intended to conform New York's existing rules regarding minimum penalty enhancement to recent changes in the national model rules.

ON A MOTION BY: Commissioner Sample  
APPROVED: 3-0

**f. PROPOSED THOROUGHBRED RULEMAKING: Out-of-Competition Testing**

The Commission considered proposal of regulations intended to conform New York's existing rules regarding Thoroughbred out-of-competition sample collection to recent changes in the national model rules.

ON A MOTION BY: Commissioner Poklemba  
APPROVED: 3-0

**g. PROPOSED THOROUGHBRED RULEMAKING: Prohibited Substances**

The Commission considered proposal of regulations to prohibit in Thoroughbred horse racing the substances that the World Anti-Doping Agency prohibits at all times unless an athlete has a restricted therapeutic use exemption, based on restricted therapeutic uses that are appropriate for horse racing; to require that no drug may be administered to a horse engaged in horse racing activities unless recommended by an attending veterinarian; and to prohibit the experimental use of performance altering substances on racehorses.

ON A MOTION BY: Commissioner Poklemba  
APPROVED: 3-0

**h. PROPOSED THOROUGHBRED RULEMAKING: Trainer Medication Log**

The Commission considered proposal of regulations that requires Thoroughbred trainers to keep a record of medications administered by the trainer after having been dispensed by veterinarians.

ON A MOTION BY: Commissioner Sample  
APPROVED: 3-0

**5. Adjudications**

**a. In the Matter of MIKE A. GONZALEZ**

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 3-0 vote, to accept the Hearing Officer's recommendation that the license be revoked, but increased the time period until Mr.

Gonzalez could re-apply for a license from three years to ten years. The Commission also imposed a fine of \$25,000.

**6. New Business/Old Business**

**a. Old Business**

No old business was offered for discussion.

**b. New Business**

No new business was offered for discussion.

**7. Scheduling of Next Meeting**

No specific date for the next Commission meeting was set, although Commissioners were requested to check on availability for February 27th.

**8. Adjournment**

The meeting was adjourned at 1:30 p.m.

**# # #**



# Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500

[www.gaming.ny.gov](http://www.gaming.ny.gov)

John A. Crotty, Commissioner  
Peter J. Moschetti, Jr., Commissioner  
John J. Poklemba, Commissioner  
Barry Sample, Commissioner  
Todd R. Snyder, Commissioner

Robert Williams, Executive Director  
Edmund C. Burns, General Counsel

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** February 16, 2017

**Re:** Proposed Revised Rulemaking for 48-Hour Restrictions  
(9 NYCRR §§ 4043.2(e) and 4120.2(e)).

For Commission consideration is a proposed revision to the pending rulemaking proposal of the Commission for additional time restrictions on the use of non-steroidal anti-inflammatory drugs (“NSAIDs”) before horse races. The intent of this rulemaking is to prevent concurrent and otherwise excessive administrations of NSAIDs in race horses. This practice, commonly known as “stacking,” could be employed to enhance and disguise the presence of prohibited substances in horses from regulators’ testing methods.

NSAIDs act to reduce pain by inhibiting the inflammatory process that is caused by injury and results in inflammation, pain and fever.<sup>1</sup> While NSAIDs mitigate pain and improve healing and recovery from injury, they also inhibit the effects of the natural healing process, including swelling and associated pain that would prevent a horse from sustaining further injury.

Current Commission rules specifically permit the use of six NSAIDs<sup>2</sup> if administered prior to 48 hours before a race. The Commission also has adopted the four national regulatory thresholds for NSAIDs. All other NSAIDs<sup>3</sup> are impermissible within one week of racing.

The pending rulemaking proposal, published in the November 9, 2016 *State Register*, was intended to disallow the use of more than one NSAID within one week of racing, as NSAIDs can be administered in combinations that increase the potency and duration of effect of the drugs. For example, two NSAID administrations in small doses (“sub-clinical”) within 48 hours of racing is not permissible and can affect race-day performance. However, the concentrations found by the Commission’s testing laboratory could be indistinguishable from two standard (“clinical”) doses given permissibly at least 48 hours before racing. In addition, combined clinical doses that are given

<sup>1</sup> In human medicine, NSAIDs with similar effects are aspirin and ibuprophen.

<sup>2</sup> These NSAIDs are diclofenac, flunixin, ketoprofen, meclofenamic acid (Arquel), naproxen and phenylbutazone. Arquel is no longer manufactured.

<sup>3</sup> Other NSAIDs that have been reported as used in veterinary care include carprophen, meloxicam, suxibuzone and vedaprophen.

permissibly at least 48 hours before racing could remain efficacious on race day. Finally, the use of several NSAIDs during the week before a horse's race to prepare the horse aggressively for that race can be debilitating to a horse. Restricting the use of all but one NSAID to one week before racing, and allowing that one NSAID to be used until 48 hours before racing, addresses the aforementioned concerns.

[REDACTED]

### **Public Comments**

The Commission received two public comments, one from the Racing Medication and Testing Consortium ("RMTC") and the other from the New York Thoroughbred Horsemen's Association ("NYTHA").

Both public comments expressed concern about the proposed prohibition on using more than one NSAID for one week before a race, with NYTHA suggesting that the one-week prohibition should be discussed further with RMTC and the Association of Racing Commissioners International, Inc. ("ARCI"). Commission Equine Medical Director Scott Palmer has discussed these comments with representatives of both parties and has consulted further with leading veterinarians, who have expressed their opinions that under certain circumstances, it may be beneficial to the health of a horse to be able to administer a second NSAID during the week before racing. [REDACTED]

[REDACTED]

The comments further suggest that the proposed rules would put New York out of step with other jurisdictions that remedy NSAID stacking by establishing a second set of thresholds lower than the national thresholds for NSAIDs that were widely adopted (including by New York) in 2014.

RMTC cites the ARCI model rule, where the primary thresholds represent an administration given at least 24 hours before racing and the lower secondary thresholds represent administrations given until 48 hours before racing. Under this approach a horse could be given unlimited NSAIDs until 48 hours before racing but only one NSAID in the period of 24-48 hours before racing.

[REDACTED]

When New York adopted the primary NSAID thresholds in 2014, the Commission held a public hearing where it was discussed that a 48-hour (not 24-hour) restricted time period was required to avoid equine drug positives for NSAID administrations of clinical doses that complied with the national thresholds.<sup>4</sup> The ARCI anti-stacking model rule may result in false positives for trainers who follow the recommended withdrawal periods. The ARCI model rule also permits unlimited NSAIDs to be administered in preparation for upcoming races. This has resulted in an unintended consequence:

<sup>4</sup> See *State Register*, Dec. 4, 2013, at p. 33; *State Register*, Dec. 31, 2014, at pp. 60-61.

administering different NSAIDs at 72, 48 and 24 hours before races. Dr. Palmer believes that such a routine use of multiple NSAIDs to prepare a horse aggressively to race is inconsistent with good veterinary care.

Furthermore, the ARCI model rule has no thresholds for many NSAIDs that could be stacked before racing. The ARCI model rule has no restrictions on the use of NSAIDs for which ARCI has not yet adopted a threshold. Accordingly, while recommending that another NSAID be permitted within one week before racing, Commission staff does not recommend what it believes is a deficient ARCI model rule.

Commission staff conferred with Dr. George A. Maylin, Director of the New York Drug Testing and Research Program. As a laboratory director with more than 40 years of experience at inferring times of administration (assuming a clinical dose) of drugs, Dr. Maylin advised that a 96-hour restricted time period would be more enforceable than a 72-hour one (which was considered), given the state of knowledge about such thresholds. The 96-hour restricted period for a second NSAID would prevent stacking while allowing the use of more than one NSAID in the week before racing and provide trainers with the assurance that compliance with the restricted time periods will prevent a drug positive.

[REDACTED]

**Recommendation**

[REDACTED]

[REDACTED] There are circumstances in which a second NSAID might be useful to provide veterinary care. This revision would allow such veterinary care to be given closer to race day while still meeting the objectives of the pending rulemaking proposal. The revision would also be consistent with other jurisdictions' rules. Provided a second NSAID cannot be used within 96 hours of the scheduled post time of the race, a person could still not combine NSAIDs in sub-clinical doses to conceal the administration of both substances within 48 hours before the horse's race. The rule would also prevent an adverse effect on the horse on race day based on the synergy of combined NSAID administrations. In addition, the overuse of NSAIDs aggressively to prepare a horse for racing would be restricted by the use of only two NSAIDs during the week before racing.

The text of the proposed rules (with revised wording in **bold** and highlighted in yellow) is attached.

[REDACTED]

Commissioners  
February 16, 2017  
Page 4

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

Paragraph 14 of subdivision (e) of section 4043.2 of 9 NYCRR would be amended, as follows:

**§ 4043.2. Restricted use of drugs, medication and other substances.**

\* \* \*

(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) no more than one of the following nonsteroidal anti-inflammatory drugs ([NSAID's] NSAIDs): diclofenac, flunixin (e.g., Banamine), ketoprofen (e.g., Orudis), [meclofenamic acid (e.g., Arquel),] naproxen (e.g., Naprosyn, Equiproxen), and phenylbutazone (e.g., [Butazolidin] Butazolidin). One other such NSAID may be administered within one week of the race in which the horse is to compete, provided that such NSAID is administered at least 96 hours before such race;

Paragraphs 9, 14 and 21 of subdivision (e) of section 4043.2 of 9 NYCRR would be amended, as follows:

**§ 4120.2. Restricted use of drugs, medication and other substances.**

\* \* \*

(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, except for any formulation of methylprednisolone, non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadatropin, glucocorticoids, except in joint injections as restricted in subdivision (i) of this section;

\* \* \*

(14) no more than one of the following nonsteroidal anti-inflammatory drugs ([NSAID' s] NSAIDs): [Phenylbutazone (e.g., Butazolidin)] diclofenac, [Flunixin] flunixin (e.g., Banamine), ketoprofen (e.g., Orudis), [meclofenamic acid (Arquel),] naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] and phenylbutazone (e.g., Butazolidin). One other such NSAID may be administered within one week of the race in which the horse is to compete, provided that such NSAID is administered at least 96 hours before such race;

\* \* \*

[(21) notwithstanding paragraph (9) of this subdivision, the corticosteroid methylprednisolone (e.g., Depo Medrol) is not a substance that is 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.]

outside of the left thigh, the rear of the pants between the waistline and the base of the spine or the rear of the helmet;

(3) does not exceed 32 square inches on the outside of each thigh, 10 square inches on the rear of the pants and six square inches on the rear of the helmet; and

(4) appears in black lettering.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, 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 ("Racing Law") Sections 103(2) and 104(1, 19). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. Legislative objectives: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule making is needed to permit the limited use of certain advertising materials on the clothing of jockeys.

The current rules provide that jockeys may not wear any advertising or promotional material without the permission of the stewards. As a result, jockeys are required to obtain permission to wear the standard logos of their trade and to display their own names in a limited fashion on their clothing. It would be more sensible to permit such to be displayed without requiring stewards' permission.

The proposal would amend 9 NYCRR § 4041.6(a) to allow a jockey to wear the logos of the Jockeys' Guild and the Permanently Disabled Jockeys Fund, provided that each logo does not exceed 10 square inches in size.

The proposal would add a new subdivision (d) to 9 NYCRR § 4041.6 to allow a jockey to display his or her legal name on the pants and helmet of the jockey. The name must be in black lettering and be limited in location and size. The permissible locations would be the outer thighs, the rear waist area, and the back of helmet. The size limitations would be 32, 10 and six square inches, respectively, for each display of the jockey's name.

The proposal reflects the input and support of Jockeys' Guild, Inc., a trade organization that represents jockeys who compete in New York horse racing.

#### 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. The jockey will not be required to wear the additional materials that are permitted on the jockey's clothing.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered requiring the Stewards to grant their permission for these displays. This was rejected as inefficient and unnecessary.

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

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not

required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

The proposed amendment permits jockeys to wear their trade organization logos (the Jockeys' Guild and the Permanently Disabled Jockeys Fund) and their own legal names on their clothing without having to gain the permission of the race stewards. The logos and names must be limited in size or location. The amendments will make the wearing of such neutral displays more efficient than under the current rule that requires a jockey obtain advance permission from the stewards.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Anti-Stacking of NSAIDs and Diclofenac Made a 48 Hour NSAID

I.D. No. SGC-45-16-00004-P

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

**Proposed Action:** Amendment of sections 4043.2(e) and 4120.2(e) of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

**Subject:** Anti-stacking of NSAIDs and diclofenac made a 48 hour NSAID.

**Purpose:** To enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

**Text of proposed rule:** Subdivision (e) of section 4043.2 of 9 NYCRR would be amended as follows:

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

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(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:

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(14) *no more than one of the following nonsteroidal anti-inflammatory drugs ([NSAID's] NSAIDs):* [Phenylbutazone (e.g., Butazolidin)] *diclofenac*, [Flunixin] *flunixin* (e.g., Banamine), *ketoprofen* (e.g., *Orudis*), meclufenamic acid (e.g., Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] *and phenylbutazone* (e.g., *Butazolidin*);

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Subdivision (e) of section 4120.2 of 9 NYCRR would be amended as follows:

§ 4120.2. Restricted use of drugs, medication and other substances.

\*\*\*

(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, *except for any formulation of methylprednisolone*, non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadotropin, glucocorticoids, except in joint injections as restricted in subdivision (i) of this section;

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(14) *no more than one of the following nonsteroidal anti-inflammatory drugs ([NSAID's] NSAIDs):* [Phenylbutazone (e.g., Butazolidin)] *diclofenac*, [Flunixin] *flunixin* (e.g., Banamine), *ketoprofen* (e.g., *Orudis*), meclufenamic acid (e.g., Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] *and phenylbutazone* (e.g., *Butazolidin*);

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(18) sulfonamide drugs (e.g., Sulfa; [and]

(19) . . . [.] ; and

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[21] notwithstanding paragraph (9) of this subdivision, the corticosteroid methylprednisolone (e.g., Depo Medrol) is not a substance that is 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.]

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**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, 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 (“Racing Law”) Sections 103(2), 104(1, 19), 301(1, 2) and 902(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and is directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public’s confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

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

3. Needs and benefits. This rule making is necessary to amend the Commission’s rules that permit the use of more than one non-steroidal anti-inflammatory drug (“NSAID”) within one week of racing and to adjust the Commission’s restricted time period governing the administration of the NSAID diclofenac to be consistent with regulatory thresholds.

The current rules permit the use of various approved NSAIDs to treat a horse until 48 hours before racing, 9 NYCRR §§ 4043.2(e)(14) (thoroughbred) and §§ 4120.2(e)(14) (harness), which is an exception to the general rules that no drugs may be used for one week before racing, 9 NYCRR 4043.2(h) (thoroughbred) and 4120.2(n) (harness). The purpose of the 48-hour restricted time period has been to allow more veterinary care for conditions of mild inflammation, but with treatments that cannot affect a horse’s pre-race veterinary examination or race performance. The effect of an NSAID, when administered singly, is known to dissipate by race day.

NSAIDs can be administered in combination, however, to increase the potency and duration of effect of each drug. Two NSAIDs administered in small, sub-clinical doses inside of 48 hours before the race, for example, can have a synergistic effect that makes them efficacious on race day. The testing laboratory cannot distinguish such an impermissible administration from two clinical doses given 48 hours before racing. Also, clinical doses given in combination more than 48 hours before racing can be efficacious for more than two days (i.e., on race day).

The administration of more than one kind of NSAID is not necessary to provide good veterinary care to a horse in active racing.

The proposal would amend the governing rules to allow only one NSAID to be used within one week of racing. As amended, the rules would permit the use of NSAIDs as originally intended, namely, to provide therapeutic relief to a horse while ensuring the administrations are neither efficacious on race day nor endanger the horse, jockey, driver, or race integrity.

The proposal would also amend subdivision (e) of sections 4043.2 and 4120.2 to add diclofenac to the list of permissible NSAIDs. This change will make the restricted time period for diclofenac, which is currently impermissible for one week before racing, consistent with the regulatory threshold that the Commission has adopted for diclofenac. A 48-hour restricted time period will provide an assurance to thoroughbred horsepersons that compliance would protect them from violation of such threshold.

Finally, the proposal makes various changes in style to clarify the rules.

**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. There is no cost to the regulated party by administering only one NSAID to a horse, rather than administering a combination of NSAIDs.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

5. Local government mandates: None. The Commission is the only

governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered the adoption of a complex set of interlocking threshold values for all permissible NSAIDs, whose only advantage would purportedly be to permit more than one NSAID to be administered during the week before a horse races, but rejected this alternative because of its needless complexity and permissiveness.

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

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

These proposals would limit the administration of non-steroidal anti-inflammatory drugs (“NSAIDs”) to using only one kind of NSAID within one week of racing. The practice of using multiple such drugs is not necessary for good veterinary care and may endanger the horse and jockey or driver, as well as race integrity. The proposal would also approve the use of another NSAID, known as diclofenac. These amendments will serve to enhance the health and safety of racehorses and the drivers or jockeys on race day.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

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## State Liquor Authority

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### NOTICE OF WITHDRAWAL

**Updated Price Posting Rules, License Durations, and Recordkeeping Requirements, and Rescinding of Whiskey Dividend Rules**

**I.D. No.** LQR-17-16-00002-W

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

**Action taken:** Notice of proposed rule making, I.D. No. LQR-17-16-00002-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on April 27, 2016

**Subject:** Updated price posting rules, license durations, and recordkeeping requirements, and rescinding of whiskey dividend rules.

**Reason(s) for withdrawal of the proposed rule:** The authority received an industry objection that the addition of a 30 day cutoff for breakage retention didn’t go far enough.

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## Public Service Commission

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### NOTICE OF ADOPTION

**Submetering of Electricity**

**I.D. No.** PSC-26-15-00016-A

**Filing Date:** 2016-10-19

**Effective Date:** 2016-10-19

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

**Action taken:** On 10/13/16, the PSC adopted an order approving 39 Plaza Housing Corporation’s (39 Plaza) petition to submeter electricity at 39 Plaza Street West, Brooklyn, New York.