



**Gaming  
Commission**

**MEETING AGENDA  
SEPTEMBER 24, 2015**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF SEPTEMBER 10, 2015
3. REPORT OF EXECUTIVE DIRECTOR
4. RULEMAKING
  - A. ADOPTION: SGC-33-15-00013-P NUMBERS AND WIN 4 CHANGES
  - B. PROPOSED AMENDMENT: BONDING OF VIDEO LOTTERY AGENTS
  - C. PROPOSED AMENDMENT: UNQUALIFIED STANDARDBRED HORSE
  - D. PROPOSED AMENDMENT: STANDARDBRED DEFINITION OF "WIRE"
  - E. PROPOSED AMENDMENT: POST RACE TESTING OF CLAIMED HORSES
  - F. PROPOSED AMENDMENT: VETERINARY TECHNICIANS
  - G. PROPOSED AMENDMENT: CONTRACT APPRENTICE JOCKEYS
  - H. PROPOSED AMENDMENT: 48-HOUR RESTRICTIONS
  - I. PROPOSED AMENDMENT: BAN THE USE OF STANOZOLOL
  - J. PROPOSED AMENDMENT: STANDARDBRED COUPLING OF ENTRIES
  - K. PROPOSED AMENDMENT: USE OR REMOVAL OF HOPPLES

- L. PROPOSED AMENDMENT: THOROUGHBRED TRAINER CONTINUING EDUCATION
  - M. PROPOSED AMENDMENT: THOROUGHBRED PICK-FOUR, PICK-FIVE AND PICK-SIX POOLS
  - N. PROPOSED AMENDMENT: PER SE THRESHOLDS AND TIME RESTRICTIONS
5. ADJUDICATIONS
- A. IN THE MATTER OF MICHAEL BROWN
  - B. IN THE MATTER OF THE DISQUALIFICATION AND PLACEMENT OF THE HORSE 'KIWI IDEAL N'
6. OLD BUSINESS/NEW BUSINESS
- A. OLD BUSINESS
  - B. NEW BUSINESS
    - 1. STAFF REPORT IN REGARD TO ALLEGATIONS ADVANCED BY THE PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS IN REGARD TO THE PRACTICES OF KDE EQUINE, LLC ET AL.
7. SCHEDULING OF NEXT MEETING
8. ADJOURNMENT

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**NEW YORK STATE  
GAMING COMMISSION MEETING**

**MINUTES**

**MEETING of SEPTEMBER 10, 2015**

**NEW YORK, NEW YORK**

A meeting of the N.Y.S. Gaming Commission was conducted in New York, New York.

**1. Call to Order**

The meeting was called to order at 12:15 p.m. by Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Commissioners John Crotty, Peter Moschetti, John Poklemba, Barry Sample and Todd Snyder. Commissioner Moschetti was unanimously elected as presiding officer for the meeting.

**2. Consideration of the Minutes from August 24, 2015**

The Commission considered previously circulated draft minutes of the meeting conducted on August 24, 2015. The minutes were then accepted as circulated.

**3. Report of Executive Director**

Executive Director Robert Williams discussed the Lasix and Retired Racehorse events, the recently completed meet at the Saratoga Race Course, the upcoming N.Y. Sire Stakes Nights of Champions and the upcoming events in relation to the Request For Applications to Develop a Commercial Casino Facility in Zone 2, Region 5.

**4. Rulemaking**

**a. Adoption: SGC-29-15-00026-P, Powerball Amendment**

The Commission considered adoption of an amendment to Powerball rules to allow for necessary regulatory changes to be effective to prevent operational cessation of Powerball.

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

**b. Adoption: SGC-29-15-00012-P, Definitions for Commercial Gaming Facility**

The Commission considered adoption of rules in regards to Commercial Gaming Rules Definitions.

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

**c. Adoption: SGC-29-15-00013-P, Gaming Facility Licensing**

The Commission considered adoption of rules in regards to Commercial Gaming Entity Licensing.

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

**d. Adoption: SGC-29-15-00015-P, Licensing & Regulations of Employees and Vendors**

The Commission considered adoption of rules in regards to Commercial Gaming Employee and Vendor Licensing.

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

**e. Adoption: SGC-29-15-00014-P, Minority women owned business enterprises request**

The Commission considered adoption of rules in regards to Minority- and Women- Owned Business Enterprises.

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

**5. Adjudication**

- a. In the Matter of Kevin Erbe.** 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 5-0 vote, to accept the Hearing Officer's recommendation that the applicant's license denial be upheld.

**6. New Business/Old Business**

No new or old business was presented.

**7. Scheduling of Next Meeting**

The next regular meeting was announced as being scheduled for Noon on September 24, 2015. The primary meeting location will be in Brooklyn.

**8. Adjournment**

The meeting was adjourned at 12:37 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:** September 16, 2015  
**Re:** Adoption of Rulemaking for New Wager in Numbers and Win-4 Lottery Games (9 NYCRR §§ 5009.2 and 5010.2)

For Commission consideration is the adoption of amendments allowing for the introduction of a new “Close Enough” wager type for the Lottery Division’s Numbers and Win-4 draw games.

The Numbers and Win-4 draw games typically account for approximately 23 percent of traditional lottery sales, which amounted to approximately \$1.7 billion during the previous two fiscal years. The Division seeks to make these games appealing to new players by introducing the Close Enough wager type, which is designed for players who might be attracted to the chance of winning a smaller prize for near wins.

Several stylistic changes are also proposed to increase consistency.

A copy of the excerpt from the *State Register* that includes text of the proposed amendments is attached. The public comment period expires on October 5, 2015. To date, no comments have been received. If the Commission wishes to adopt this rulemaking, it may do so contingent on there being no public comment, and direct staff to file the Notice of Adoption on October 6, 2015, so that the Division of Lottery may implement the game changes as expeditiously as possible.

[REDACTED]

cc: Robert Williams, Executive Director  
Gardner Gurney, Acting Director, Division of Lottery

- 6. Paperwork: This rule does not impose any additional paperwork.
- 7. Duplication: This rule will not duplicate any existing state or federal rule.
- 8. Alternatives: The Department considered making this rule applicable to the entire state. However, since the major concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storm. In addition, the Department could have made the rule apply to all claims, even those that had been settled before the effective date of the rule. However, after meeting with industry trade groups and hearing their concerns, the Department modified the rule to make clear that, for claims that had already been made as of the rule's effective date, only those that were denied or unresolved as of the rule's effective date are covered by the rule. The Department also changed the rule so that it applies only to disputes where the parties's positions are \$1,000 or more apart.
- 9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements. The regulation does not apply to claims made under policies issued under the national flood insurance program.
- 10. Compliance schedule: Insurers will be required to comply with this rule upon the Superintendent's filing the rule with the Secretary of State.

**Regulatory Flexibility Analysis**

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers authorized to do business in New York State, none of which fall within the definition of a "small business" as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business" because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: "Rural areas," as used in State Administrative Procedure Act ("SAPA") § 102(10), means counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of 200,000 or greater population, "rural areas" means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein. While insurers affected by this rule may be headquartered in rural areas, the rule itself only applies within the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange. None of these counties is a rural area, and the Department of Financial Services ("Department") does not believe that there are any towns within any of those counties that would be considered to be rural areas within the SAPA definition.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule would not impose any additional reporting or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by requiring insurers to participate in mediation sessions when an insured with a claim subject to the rule requests mediation of his or her claim.

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers may also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

4. Minimizing adverse impact: The Department considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Because the public health, safety, or general welfare has been endangered, establishment of differing compliance or reporting

requirements or timetables based upon whether or not the damage occurred in a rural area is not appropriate. However, the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus the impact of the rule on rural areas is minimized, since none of those counties are rural areas.

5. Rural area participation: Public and private interests in rural areas have had a continual opportunity to participate in the rule making process since the first publication of the emergency measure in the State Register on March 13, 2013, which was published again in the State Register on May 20, 2015. The emergency measure also has been posted on the Department's website continually since March 13, 2013.

**Job Impact Statement**

The Department of Financial Services does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities. This rule provides insureds with open or denied claims for loss or damage to personal and real property, except damage to automobiles, arising in New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange counties between October 26, 2012 and November 15, 2012, with an option to participate in a mediation program to facilitate the negotiation of their claims with their insurers.

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## New York State Gaming Commission

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

**Numbers and Win-4 Lottery Wagers**

**I.D. No.** SGC-33-15-00013-P

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

**Proposed Action:** Amendment of sections 5009.2 and 5010.2 of Title 9 NYCRR.

**Statutory authority:** Tax Law, sections 1601, 1604 and 1612(a)(4); Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

**Subject:** Numbers and Win-4 lottery wagers.

**Purpose:** To allow the Commission to introduce a new type of lottery wager to raise revenue for education.

**Text of proposed rule:** Pursuant to the authority granted by Tax Law Sections 1601, 1604 and 1612(a)(4) and Racing, Pari-Mutuel Wagering and Breeding Law Sections 103(2) and 104(1,19), the New York State Gaming Commission hereby proposes this amendment of subdivision (b) of Section 5009.2 and subdivision (b) of Section 5010.2 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

PART 5009  
New York's Numbers  
\* \* \*

§ 5009.2. Game Description.

New York's Numbers game shall determine winners from tickets by matching a permutation or segment of a three-digit number from 000 to and including 999, randomly drawn at a regularly scheduled daily drawing or by succeeding in a game feature as set forth in subdivisions (h) and (i) of this section. Correctly matching the three-digit number or designated permutation thereof shall entitle the ticket holder to one of those prizes as described below:

(a) New York Numbers game bets may be purchased for a minimum of 50 cents and in multiples thereof to a maximum of \$5.

(b) The following types of bets [are] may be made available for purchase:

(1) Straight. A three-digit number designed to match in exact order the three-digit winning number drawn for a given day.

(2) Six-way box. A three-digit number in which all three digits are unique (for example, "123"), designed to match in any order the three-digit winning number drawn for a given day.

(3) Three-way box. A three-digit number in which two of the digits

are the same (for example, “122”), designed to match in any order the three-digit winning number drawn for a given day.

(4) Front pair. A two-digit number designed to match in exact order the first and second digits of the three-digit winning number drawn for a given day.

(5) Back pair. A two-digit number designed to match in exact order the second and third digits of the three-digit winning number drawn for a given day.

(6) Straight/six-way box. A three-digit number in which all three digits are unique (for example, “123”), that generates one straight bet and one six-way box bet. Straight/six-way box bets are limited to 50 cents for each bet type for a ticket price of \$1.

(7) Straight/three-way box. A three-digit number in which two of the digits are the same (for example, “122”), that generates one straight bet and one three-way box bet. Straight/three-way box bets are limited to 50 cents for each bet type for a ticket price of \$1.

(8) Combination six-way. A three-digit number in which all three digits are unique (for example, “123”), that generates six straight bets. The minimum cost [for which] of a combination six-way wager is \$3 (6 bets x 50 cents minimum bet).

(9) Combination three-way. A three-digit number in which two of the digits are the same (for example, “122”), that generates three straight bets. The minimum cost [for which] of a combination three-way wager is \$1.50 (3 bets [X] x 50 cents minimum bet).

(10) Close Enough. A three-digit number, of which each digit must match or be one number greater or less than the corresponding digit of the three-digit number selected in a drawing. For purposes of this wager, one number greater than nine is defined as zero and one number less than zero is defined as nine. A detailed description of the odds, prize structure, wager price, play instructions and any further information in regard to this wager shall be communicated to the public and set forth on the website for the New York Lottery in advance of offering this wager. Such detailed description shall be consistent with the game rules otherwise set forth in this Part in regard to other wagers and features of the New York's Numbers game.

(c) Prize structure and odds for the Numbers game.

Bet type	Odds	For each \$ .50 bet	For each \$1 bet	Comment
Straight	1:1,000	\$250	\$500	
Box six-way	1:167	\$40	\$80	
Box three-way	1:333	\$80	\$160	
Front pair	1:100	\$25	\$50	
Back pair	1:100	\$25	\$50	
Straight/box six-way	1:167	\$290 \$440	n/a n/a	If straight hits If box only
Straight/box three-way	1:[133] 333	\$330 \$80	n/a n/a	If straight hits If box only
Combination six-way	1:167	\$250	\$500	
Combination three-way	1:333	\$250	\$500	
Close Enough (straight match)	1:1,000	\$125	\$250	
Close Enough (1 digit, 1 off)	1:167	\$12	\$24	
Close Enough (2 digits, 1 off)	1:83	\$2	\$4	
Close Enough (3 digits, 1 off)	1:125	\$4	\$8	
Close Enough (overall; any prize)	1:37			

\* \* \*

(h) *Lucky Sum*. Lucky Sum is a feature of New York's Numbers game. Lucky Sum shall determine winners from bet tickets by correctly matching the sum of the player's number selection against the sum of the winning numbers drawn by the commission for that drawing.

\* \* \*

(2) Lucky Sum wagers shall not be placed with pairs or *Close Enough* wagers.

\* \* \*

(i) A New York's Numbers type of bet or game feature may be added at the discretion of the commission, so long as such game feature is an alternative or additional method for playing the game within the same basic game design and a detailed description of the odds, prize structure, wager price, play instructions and any further information in regard to how a player may use such feature, if offered, shall be communicated to the public and set forth on the website for the New York Lottery in advance of offering such feature.

\* \* \*

PART 5010

Win-4

\* \* \*

§ 5010.2. Game description.

The Win-4 game shall determine winners from tickets matching a permutation of a four-digit number from 0000 to and including 9999 randomly drawn at a regularly scheduled drawing conducted by the Lottery as described in section 5010.4 of this Part drawing or by succeeding in a game feature as set forth in subdivisions (g) and (h) of this section. Correctly matching the winning four-digit number drawn, or a designated permutation thereof shall entitle the ticket holder to one of the prizes described in subdivision (c) of this section.

(a) Win-4 bets may be purchased for a minimum of 50 cents and in multiples of 50 cents thereof to a maximum of \$5.

(b) The following types of bets [will] may be used in the determination of winners for the specified draw day indicated on the bet ticket[.]:

(1) Straight. A four-digit number (for example, “1234”) designed to match in exact sequence the [4-digit] four-digit winning number drawn.

(2) Twenty-four-way box. A four-digit number in which all four digits are unique (for example, “1234”) designed to match in any order the winning four-digit number drawn for a given day.

(3) Twelve-way box. A four-digit number in which two of the digits are the same (for example, “1233”) designed to match in any order the winning four-digit number drawn for a given day.

(4) Six-way box. A four-digit number in which there are two pairs of identical numbers (for example, “1122”) designed to match in any order the winning four-digit number drawn for a given day.

(5) Four-way box. A four-digit number in which three of the digits are the same (for example, “1112”) designed to match in any order the winning four-digit number drawn for a given day.

(6) *Front pair*. A two-digit number chosen to match in exact order the first and second digits of the four-digit winning number selected in a drawing.

(7) *Back pair*. A two-digit number chosen to match in exact order the third and fourth digits of the four-digit winning number selected in a drawing.

[(6)] (8) Straight/twenty-four-way box. A four-digit number in which all four digits are unique (for example, “1234”) that generates one straight bet and one box bet on a single ticket. Straight/box bets are limited to 50 cents for each bet type for a ticket price of \$1.

[(7)] (9) Straight/twelve-way box. A four-digit number in which two of the digits are the same (for example, “1233”) that generates one straight bet and one box bet on a single ticket. Straight/box bets are limited to 50 cents for each bet type for a ticket price of \$1.

[(8)] (10) Straight/six-way box. A four-digit number in which there are two pairs of identical digits (for example, “1122”) that generates one straight bet and one box bet on a single ticket. Straight/box bets are limited to 50 cents for each bet type for a ticket price of \$1.

[(9)] (11) Straight/four-way box. A four-digit number in which three of the digits are the same (for example, “1112”) that generates one straight bet and one box bet on a single ticket. Straight/box bets are limited to 50 cents for each bet type for a ticket price of \$1.

[(10)] (12) Twenty-four-way combination. A four-digit number in which all four digits are unique (for example, “1234”) that generates 24 straight bets on a single ticket. The minimum cost [for which] of a 24-way combination wager is \$12 (24 bets x \$.50 minimum bet).

[(11)] (13) Twelve-way combination. A four-digit number in which two of the digits are the same (for example, "1233") that generates 12 straight bets on a single ticket. The minimum cost [for which] of a 12-way combination wager is \$6 (12 bets x \$.50 minimum bet).

[(12)] (14) Six-way combination. A four-digit number in which there are two pairs of identical digits (for example, "1122") that generates six straight bets on a single ticket. The minimum cost [for which] of a six-way combination wager is \$3 (6 bets x \$.50 minimum bet).

[(13)] (15) Four-way combination. A four-digit number in which three of the digits are the same (for example, "1112") that generates four straight bets on a single ticket. The minimum cost [for which] of a four-way combination wager is \$2 (4 bets x \$.50 minimum bet).

(16) Close Enough. A four-digit number, of which each digit must match or be one number greater or less than the corresponding digit of the four-digit number selected in a drawing. For purposes of this wager, one number greater than nine is defined as zero and one number less than zero is defined as nine. A detailed description of the odds, prize structure, wager price, play instructions and any further information in regard to this wager shall be communicated to the public and set forth on the website for the New York Lottery in advance of offering this wager. Such detailed description shall be consistent with the game rules otherwise set forth in this Part in regard to other wagers and features of the Win-4 game.

(c) Prize structure and game odds for Win-4.

Bet Type and Prize Payouts Per Amount Bet

Bet Type	50 cents	\$1	\$2	\$3	\$4	\$5
Straight	\$2,500	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000
Box(24)	\$100	\$200	\$400	\$600	\$800	\$1,000
Box(12)	\$200	\$400	\$800	\$1,200	\$1,600	\$2,000
Box(6)	\$400	\$800	\$1,600	\$2,400	\$3,200	\$4,000
Box(4)	\$600	\$1,200	\$2,400	\$3,600	\$4,800	\$6,000
Front Pair	\$25	\$50				
Back Pair	\$25	\$50				
Straight/Box (24)	\$2,600 \$100	If Straight hits If Box only				
Straight/Box (12)	\$2,700 \$100	If Straight hits If Box only				
Straight/Box (6)	\$2,900 \$400	If Straight hits If Box only				
Straight/Box (4)	\$3,100 \$600	If Straight hits If Box only				
Combination (all types)	\$2,500	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000
Close Enough (straight match)	\$1,250	\$2,500				
Close Enough (1 digit, 1 off)	\$62	\$124				
Close Enough (2 digits, 1 off)	\$12	\$24				

Close Enough (3 digits, 1 off)	\$7	\$14
Close Enough (4 digits, 1 off)	\$16	\$32
Game odds:		
Bet type	Odds	
Straight	1:10,000	
Box(24)	1:417	
Box(12)	1:833	
Box(6)	1:1,667	
Box(4)	1:2,500	
Front Pair	1:100	
Back Pair	1:100	
Straight/Box (24)	1:417	
Straight/Box (12)	1:833	
Straight/Box (6)	1:1,667	
Straight/Box (4)	1:2,500	
Combination (24)	1:417	
Combination (12)	1:833	
Combination (6)	1:1,667	
Combination (4)	1:2,500	
Close Enough (straight match)	1:10,000	
Close Enough (1 digit, 1 off)	1:1,250	
Close Enough (2 digits, 1 off)	1:417	
Close Enough (3 digits, 1 off)	1:313	
Close Enough (4 digits, 1 off)	1:625	
Close Enough (overall; any prize)	1:123	

\* \* \*

(g) *Lucky Sum*. Lucky Sum is a feature of the Win-4 game. Lucky Sum shall determine winners from bet tickets by correctly matching the sum of the player's number selection against the sum of the winning numbers drawn by the Lottery for that drawing.

(1) Lucky Sum wagers shall not be placed with pairs or *Close Enough* wagers.

\* \* \*

(h) *A Win-4 type of bet or game feature may be added at the discretion of the commission, so long as such game feature is an alternative or additional method for playing the game within the same basic game design and a detailed description of the odds, prize structure, wager price, play instructions and any further information in regard to how a player may use such feature, if offered, shall be communicated to the public and set forth on the website for the New York Lottery in advance of offering such feature.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, One 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 this rule by Tax Law Sections 1601, 1604 and 1612(a)(4) and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1612(a)(4) describes the distribution of revenues for the NEW YORK'S NUMBERS and WIN-4 games.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. **Legislative Objectives:** To allow the Commission to introduce a new wager type for NEW YORK'S NUMBERS and WIN-4 lottery games that will raise revenue for education.

3. **Needs and Benefits:** This rulemaking would permit the Commission to offer the Close Enough wager type in connection with the Lottery Division's popular NEW YORK'S NUMBERS and WIN-4 games. This new wager type would allow a player to collect a prize if each of the player's selections either matches or is one number greater or less than the corresponding digit of the winning combination selected in a particular NEW YORK'S NUMBERS or WIN-4 drawing.

The NEW YORK'S NUMBERS and WIN-4 draw games typically account for approximately 23 percent of traditional lottery sales, which amounted to approximately \$1.7 billion during the previous two fiscal years. The NEW YORK'S NUMBERS and WIN-4 games continue to provide significant revenue for education in New York State even though few changes or improvements have been necessary to stimulate player interest in NEW YORK'S NUMBERS and WIN-4 since the games were introduced in the early 1980s (e.g., twice-daily drawings began in 2001, additional wager types were introduced in 2007). The Commission seeks to make these games appealing to new players by introducing the Close Enough wager type, which is designed for players who prefer a bet type in which more winning number combinations may entitle the player to a prize even though the prize amounts that can be won may be smaller than prize amounts available for existing wager types. The Commission intends to introduce this feature after reprogramming of Lottery systems is completed and tested.

The proposed rule amends 9 NYCRR Section 5009.2 of the Commission's regulations, which describes the NEW YORK'S NUMBERS game and identifies available wager types that can be purchased. A description of the Close Enough wager type for the NEW YORK'S NUMBERS game is added to the existing regulation, as well as the odds of winning each Close Enough prize level and the amount of the prize won at each prize level for \$1 and \$.50 Close Enough wagers in the NEW YORK'S NUMBERS game.

As provided in the rule, a player who purchases a Close Enough ticket in the NEW YORK'S NUMBERS game can win a prize under the following circumstances:

(i) each of the player's selections matches the corresponding digits drawn (Example: player selects 147, drawing result is 147);

(ii) two of the player's selections match the corresponding digits drawn and the player's remaining selection is one number greater or less than the corresponding digit drawn (Example: player selects 147, drawing result is 146; 148; 137; 157; 047 or 247);

(iii) one of the player's selections matches the corresponding digit drawn and the player's remaining selections are one number greater or less than the corresponding digits drawn (Example: player selects 147; drawing result is 136; 138; 156; 158; 046, 048, 246, 248, 037, 057, 237 or 247); and

(iv) all three of the player's selections are one number greater or less than the corresponding digits drawn. (Example: player selects 147, drawing result is 036, 038, 056, 058, 236, 238, 256 and 258).

For purposes of this wager, one number greater than nine is defined as zero and one number less than zero is defined as nine.

In addition, the opening paragraph of 9 NYCRR Section 5009.2 is clarified to describe accurately that winners can be determined by matching numbers or by succeeding in other game features. Section 5009.2(b) is amended to make optional the offering of each of the various types of wagers. Sections 5009.2(b)(8) and (9) are amended to make stylistic changes consistent with other portions of the rule. Section 5009.2(h)(2) is amended to provide that the Lucky Sum feature cannot be played with the Close Enough wager. Section 5009.2(i) would grant flexibility to develop additional wager types or features for this game, so long as information about odds, prize structure and play instructions are communicated to the public and set forth on the New York Lottery's website.

The proposed rule amends 9 NYCRR Section 5010.2 of the Commission's regulations, which describes the WIN-4 game and identifies available wager types that can be purchased. A description of the Close Enough wager type for the WIN-4 game is added to the existing regulation, as well as the odds of winning each Close Enough prize level and the amount of the prize won at each prize level for \$1 and \$.50 Close Enough wagers in the WIN-4 game.

As provided in the rule, a player who purchases a Close Enough ticket in the WIN-4 game can win a prize under the following circumstances:

(i) each of the player's selections matches the corresponding digits drawn (Example: player selects 1467, drawing result is 1467);

(ii) three of the player's selections match the corresponding digits drawn and the player's remaining selection is one number greater or less than the corresponding digit drawn (Example: player selects 1467, drawing result is 1466, 1468, 1457, 1477, 1367, 1467, 0467 and 2467);

(iii) two of the player's selections match the corresponding digits drawn and the player's other selections are one number greater or less than the corresponding digits drawn (Example: player selects 1467, drawing result is 1456, 1458, 1476, 1478, 1366, 1368, 1556, 1568, 1357, 1377, 1557, 1577, 0457, 0477, 2457, 2477, 0466, 0468, 2466, 2468, 0367, 0567, 2367 and 2567);

(iv) one of the player's selections matches the corresponding digit drawn and the player's remaining selections are one number greater or less than the corresponding digits drawn (Example: player selects 1467; drawing result is 1356, 1358, 1376, 1378, 1556, 1558, 1576, 1578, 0456, 0458, 0476, 0478, 2456, 2458, 2476, 2478, 0366, 0368, 0566, 0568, 2366, 2368, 2566, 2568, 0357, 0377, 0557, 0577, 2357, 2377, 2557 and 2577); and

(v) all four of the player's selections are one number greater or less than the corresponding digits drawn. (Example: player selects 1467, drawing result is 0356, 0358, 0376, 0578, 0556, 0558, 0576, 0578, 2356, 2358, 2376, 2578, 2556, 2558, 2576 and 2578).

For purposes of this wager, one number greater than nine is defined as zero and one number less than zero is defined as nine.

In addition, the opening paragraph of 9 NYCRR Section 5010.2 is clarified to describe accurately that winners can be determined by matching numbers or by succeeding in other game features. Section 5010.2(b) is amended to make optional the offering of each of the various types of wagers. Sections 5010.2(b), 5010.2(b)(1), (11), (12) and (13) and 5010.2(g) are amended to make stylistic changes consistent with other portions of the rule. New paragraphs (6) and (7) are added to Section 5010.2(b) to describe existing Front pair and Back pair wagers, and subsequent paragraphs within such subdivision are renumbered accordingly. Game odds are added for Front pair and Back pair wagers. Section 5010.2(g)(1) is amended to provide that the Lucky Sum feature cannot be played with the Close Enough wager. Section 5010.2(h) would grant flexibility to develop additional wager types or features for this game, so long as information about odds, prize structure and play instructions are communicated to the public and set forth on the New York Lottery's website.

The prize structures for the NEW YORK'S NUMBERS and WIN-4 Close Enough game features are consistent with Tax Law Section 1612(a)(4), which describes the distribution of revenues for the NEW YORK'S NUMBERS and WIN-4 games.

The Commission anticipates that the Close Enough wager type will increase ticket sales in the NEW YORK'S NUMBERS and WIN-4 games due to favorable feedback from players and retailers surveyed as well as the positive performance of similar wager types in other jurisdictions, including Missouri, North Carolina, Michigan and Florida. The Commission expects that introduction of the new wager type will increase ticket sales for NEW YORK'S NUMBERS by 1.5 percent and Win-4 by 2.5 percent, which would earn an additional \$6 million for aid to education in the current fiscal year and an additional \$12 million for Fiscal Year 2016-17.

4. Costs:  
 a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. Existing lottery agents will be able to sell these tickets the same as they do other lottery games.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated. The Commission can administer this game using existing resources.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Commission's experience operating State Lottery games for more than 40 years.

5. Local Government Mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements. Lottery agents will be able to report the sales of this game using the same electronic reporting system.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending these regulations is to continue offering the games presently offered. This alternative was rejected because offering new games and introducing game features to existing games are proven to generate greater revenue for education by attracting the interest of players and providing them with another game choice.

9. Federal Standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance Schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon its adoption.  
**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 rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

The rule making allows the Commission to offer customers a new play option, the Close Enough wager type for the New York's Numbers and Win-4 lottery games. This addition will impose no significant technological changes. No local government activity is involved. Lottery sales agents offer new or different lottery games only in order to increase sales. Customers are not required to play. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The new lottery game wager type will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rule making.

## Office for People with Developmental Disabilities

### EMERGENCY RULE MAKING

#### Day and Residential Habilitation Changes

**I.D. No.** PDD-33-15-00004-E

**Filing No.** 671

**Filing Date:** 2015-08-04

**Effective Date:** 2015-10-01

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

**Action taken:** Amendment of Subparts 635-9 and 635-10; and Part 671 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** The emergency adoption of amendments that eliminate individual day habilitation and supplemental individual day habilitation and add allowable services under residential habilitation is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

OPWDD has been involved in ongoing discussions with the Centers for Medicare and Medicaid Services (CMS) to align the structure of its Home and Community Based Services (HCBS) waiver service delivery and funding systems with CMS expectations. The amendments in the emergency regulations were developed as a result of these discussions, and are necessary to bring OPWDD's HCBS waiver services into full compliance with federal HCBS waiver funding requirements, by October 1, 2015, in order to fulfill OPWDD's commitment to CMS.

Given the timeframe of the negotiations with CMS, and the requirement that the changes required as a result of these negotiations be fully implemented by October 1, 2015, the rules are being proposed as emergency regulations in order to realize the required effective date of October 1, 2015. Failure to achieve the October 1, 2015 effective date will result in loss of federal funding that is needed to provide and fund services for individuals with developmental disabilities. Consequently, without the emergency amendments, federal funding for reimbursement to providers would not be available thereby jeopardizing the health, safety, and welfare of individuals receiving services.

**Subject:** Day and Residential Habilitation Changes.

**Purpose:** To discontinue Individual Day Habilitation and add allowable services under Residential Habilitation.

**Text of emergency rule:** • Existing subparagraph 635-9.1(a)(1)(xxii) is amended as follows:

(xxii) Supervised community residences (CRs) and supervised individualized residential alternatives (IRAs) [facilities shall assume] are responsible for the cost of [services which]:

(a) services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]

(b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.]; and

(c) services specified in subparagraph 635-10.4(b)(1)(xvi) of this Part and paragraph 671.5(a)(7) of this Title that, prior to October 1, 2015, may have been separately billed to Medicaid.

• A new subparagraph 635-9.1(a)(1)(xxiii) is added as follows:

(xxiii) Supportive CRs and supportive IRAs are responsible for the cost of services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part and paragraph 671.5(a)(8) of this Title.

• Existing paragraph 635-9.1(a)(3) is amended as follows:

(3) Family care.

(i) The sponsoring agency (see glossary) [shall assume] is responsible for the cost of:

(a) Any item or service for which the sponsoring agency has been paid or will be reimbursed from local, State, or Federal funds. This includes services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part.

Note: Existing clauses (b)-(k) of this subparagraph and subparagraph (ii) of this paragraph are unchanged.

• Existing subparagraph 635-10.4(b)(1)(xv) is amended as follows:

(xv) Residential habilitation services in a supervised IRA [shall] include [services which]:

(a) services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]

(b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.];

(c) services that, prior to October 1, 2015, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and

(d) services specified in subparagraph (xvi) of this paragraph that, prior to October 1, 2015, may have been separately billed to Medicaid.



# Gaming Commission

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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:** September 16, 2015

**Re:** Proposed Rulemaking for Bonding of Video Lottery Agents  
(9 NYCRR § 5103.5)

For Commission consideration is a draft amendment to the regulation governing bonding requirements for video lottery gaming agents. This proposal was on the agenda of the Commission's August 24, 2015 meeting, but several Commissioners requested revisions to the proposed text of the rule.

Since the commencement of video lottery gaming, agents have been required to provide a bond that corresponded with no less than a defined percentage of five days of estimated average daily net win. The percentage used for the last decade has been 65, set to mirror the State's statutory revenue retention from the facilities (that is, net win minus the 35 percent agent and vendor retention).

Since establishment of that initial percentage, laws have modified agent and vendor retention. In general, the agent and vendor retention is no longer 35 percent; the State retention is no longer 65 percent. The agent and vendor retention and the State retention now vary at each video gaming facility. Amendment of the existing rule will allow the flexibility to require bond coverage from each video gaming facility that is commensurate with the State retention percentage at such facility.

While the existing rule allows Commission staff to grant waivers of the 65 percent requirement for good cause, amendment of the rule would make the bonding requirement consistent with the original intent: to secure five days of the State's share of net win at a facility.

The text would be amended as follows:

## **§ 5103.5. Bonding of video lottery gaming agents.**

(a) The commission shall require [a] each video lottery gaming agent to provide to the commission a bond or other surety agreement, including





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Edmund C. Burns, General Counsel

**To:** Commissioners  
**From:** Edmund C. Burns  
**Date:** September 16, 2015  
**Re:** Proposed Rulemaking for Unqualified Standardbred Horses (9 NYCRR § 4113.5).

For Commission consideration is a proposed amendment to an outdated standardbred rule. The proposal would allow the Commission to permit a standardbred horse to race for 30 days longer without a recent qualifying race when inclement weather or other unexpected events interfere with racing. The proposal would also delete an archaic reference to a racing calendar of June to September each year.

The text of the proposed amendment is as follows:

## **§ 4113.5. Unqualified horses.**

(a) A horse shall be deemed unqualified and must qualify once before being allowed to start in any overnight pari-mutuel event for the following reasons:

(1) The horse does not show a charted line of a current performance meeting the qualifying standards at the track for the class of race. Current performance shall be defined as a start within 30 days of the date of the race to which declared. [A performance on or after September 1 of the preceding year, shall be considered current for a horse making such horse's first start of the current year before June 1 at Vernon Downs, Saratoga Raceway, Monticello Raceway, and Goshen Historic Track.] Official workouts shall be acceptable as qualifying performances for this paragraph for horses with previous satisfactory races. The commission may extend the qualifying standards from 30 to as many as 60 days for appropriate reasons, including track closings, equine sickness, inclement weather or other unexpected events that interfere with the opportunities for otherwise eligible horses to race.



Commissioners  
September 16, 2015  
Page 2

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



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

**To:** Commissioners  
**From:** Edmund C. Burns  
**Date:** September 16, 2015  
**Re:** Proposed Rulemaking for the Standardbred Definition of "Wire"  
(9 NYCRR § 4100.1).

For the Commission's consideration is a proposed technical revision to the Commission's definition of the term "wire," which denotes the finish line of the race, in Standardbred racing rules.

The proposed amendment uses a definition that is more flexible, allowing greater use of technology when appropriate. The text of the proposed amendment is as follows:

## § 4100.1. Definitions.

(a) As used in this Subchapter, the following definitions are applicable:

\* \* \*

(48) *Wire* means a real or imaginary finish line from the [center of the judge's stand] photo-finish camera to a point immediately across[,] from the camera and at right angles to[,] the track.

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



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

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** September 16, 2015

**Re:** Proposed Rulemaking for the Post-Race Testing Claimed Horses (9 NYCRR §§ 4038.5, 4038.17, 4109.3, 4109.5).

For the Commission's consideration are proposed revisions to the Commission's horse racing rules in relation to the cost and frequency of post-race testing of claimed horses to determine whether an impermissible drug or other substance was administered to the horse. A positive test result gives the claimant the option to void the claim.

These proposals would discontinue the commission's universal post-race sampling of claimed horses and replace it with a program of sampling at the expense of the claimant when the claimant requests this service on the claim form. The purpose of this proposal is to eliminate the burdensome State expense of testing every claimed horse. Many claimants do not elect to void a claim even if the sample tests positive, and New York is the only major racing commission to provide unrequested sampling of every claimed horse at no expense to the claimant.

The Thoroughbred stewards and Standardbred judges would retain their discretion to order the post-race sampling of any horse at the expense of the Commission. A claimant would continue to be able to void a claim if a Commission-ordered sample proved to be positive for the presence of a prohibited substance.

The text of the proposed rules is attached.

[REDACTED]

attachment

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

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4038.5, 4038.17, 4109.3, 4109.5 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTERS A AND B

**§ 4038.5. Requirements for claim; determination by stewards.**

(a) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the racing secretary or the racing secretary's designee, at least 10 minutes before post time. Claim slip forms must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim. Each person desiring to make a claim, unless the person has such amount to the person's credit with the association, must first deposit with the association the whole amount of the claim, in a manner approved by the racing secretary or designee for which a receipt will be given. Unless funds of the claimant available in the claimant's account with the association are sufficient, in the judgment of the stewards, to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. If such funds are sufficient, an amount sufficient to pay for the post-race testing requested on the claim form shall be frozen in such claimant's account to secure anticipated costs of testing. All claims shall be passed upon by the stewards. The person determined at the closing time for claiming to have the right of claim shall become the owner of the horse when the start is effected, whether the horse is sound or unsound or injured before or during the race or after the race, except that:

(1) the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section 4038.19 of this Part unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

(2) a claim shall be void for any horse that dies during a race or is euthanized on the track following a race; and

(3) a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

In the event more than one person should enter a claim for the same horse, the disposition of the horse shall be decided by lot by the stewards. Any horse so claimed shall then be taken to the test barn for delivery to the claimant after [the] any test sample is taken.

**§ 4038.17. Horses claimed—testing.**

Each horse claimed in a race shall [be designated by the stewards for] undergo post-race blood and urine testing if the claimant requested such testing, at the expense of the claimant, on the claim form. The original trainer shall remain responsible for the claimed horse until [the] any on-track post-race sample collection has been completed.

**§ 4109.3. Claiming procedure.**

(a) *Claimant's credit.* The claimant must have to [his] the claimant's credit with the track an amount equivalent to the specified claiming price, the applicable sales tax, the cost of transferring the registration[,] and the fee for the test for equine infectious anemia. No claims shall be accepted

unless such credit is certified in writing by an authorized track official and such written certification is included with the claim. Unless the claimant also has to the claimant's credit an amount sufficient to pay the cost of any post-race testing requested on the claim form by the claimant, the commission shall not conduct such testing. No track official of [said] the racing association shall give any information as to the filing of any claim or claim information to the public and horsemen until after the race has been run.

**§ 4109.5. Horses claimed—testing.**

[Each horse claimed in a race shall be designated by the judges for post-race blood and urine testing.] Section 4038.17 of this Chapter shall apply to standardbred racing as if set forth fully herein.



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

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** September 16, 2015

**Re:** Proposed Rulemaking for Veterinary Technicians  
(9 NYCRR §§ 4002.1(b) and (g), 4002.7, 4002.8, 4002.11, 4002.14(a), 4002.20, 4005.1, 4005.5, 4012.1(a) and (e), 4012.4(c) and (d), 4043.11, 4101.24(b), (d) and (g), 4101.37, 4120.6, 4120.9(a), (c) and (d) and 4120.19).

For the Commission's consideration are proposed amendments to various Commission rules that would permit the supervised use of veterinarian technicians at New York racetracks.

The purpose of these proposals is to make it more feasible for horsepersons and racetracks to provide appropriate veterinary care by permitting the use of supervised veterinarian technicians.

These proposals would create a license category for veterinary technicians and would apply to such personnel the same license fee and restrictions for recordkeeping, horse ownership, the possession and disposal of needles and drugs, and Commission approval when employed by a racetrack as currently apply to veterinarians, as well as require that such personnel act under the direction and general supervision of a licensed veterinarian. Veterinary technicians currently are licensed under a general services licensing category.

Veterinary technician is a regulated profession subject to professional education and State licensing requirements, including continuing education. Veterinary technicians are competent to perform certain functions at "the direction and under the general supervision of a licensed veterinarian." 8 NYCRR § 62.7(b) (Rules of New York State Department of Education); see *also id.* at §§ 62.2, 62.4, 62.5, 62.7 and 62.8.

These proposals also make stylistic changes to the applicable Commission.

The text of the proposed rules is attached.

attachment

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

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4002.1(b) AND (g), 4002.7, 4002.8, 4002.11, 4002.14(a), 4002.20,  
4005.1, 4005.5, 4012.1(a) and (e), 4012.4(c) AND (d), 4043.11, 4101.24(b), (d) AND (g), 4101.37,  
4120.6, 4120.9(a), (c) AND (d) AND 4120.19 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTERS A AND B

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, the New York State Gaming Commission hereby proposes this amendment of Sections 4002.1(b) and (g), 4002.7, 4002.8, 4002.11, 4002.14(a), 4002.20, 4005.1, 4005.5, 4012.1(a) and (e), 4012.4(c) and (d), 4043.11, 4101.24(b), (d) and (g), 4101.37, 4120.6, 4120.9(a), (c) and (d) and 4120.19 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

**Subchapter A**

**Thoroughbred Racing**

**§ 4002.1. Occupational licenses.**

\* \* \*

(b) No person shall participate in or at any thoroughbred race meet as a managing owner, racing owner, trainer, assistant trainer, jockey, apprentice jockey, jockey agent, veterinarian, veterinary technician, farrier, stable employee, track supplier, equipment supplier, salesman, or agent or be the holder or operator of any concession, or perform any service, including [but not limited to] without limitation the conduct of negotiations on behalf of any person or persons who engage in any racing activities or perform any services in connection with the conduct of any thoroughbred race meet, or engage in any occupation or employment at any thoroughbred race meet unless such person shall have received an occupational license from the commission, with the following exceptions:

- (1) public officers and public employees engaged in the performance of their official duties; and
- (2) persons exempted by the commission from the occupational license requirement.

\* \* \*

(g) Each applicant for an occupational license shall pay an annual license fee at the time of the filing of the application. [The] In addition to the statutory license fees for owners, trainers, assistant trainers, jockeys, jockey agents, and stable employees set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 220(1), license fees are: [original owner—\$100; owner renewal, jockey—\$50; trainer, assistant trainer, veterinarian—\$30; jockey agent,]

- (1) farrier, track management, veterinary technician—\$20;
- (2) mutuel—\$10;
- (3) [stable employees (grooms, etc.)] cleaning and food service workers, exercise rider, authorized agent—\$5; and

(4) all others—\$10.

Such fees shall be multiplied by two for two-year terms and by three for three-year terms.

#### **§ 4002.7. Term of license.**

Each such license, unless revoked for cause, shall be for the period of no more than one, two or three years, expiring on the applicant's birth date, as prescribed by Racing, Pari-Mutuel Wagering and Breeding Law section 220(1). [An applicant who applies for a license that if issued would take effect less than six months prior to the applicant's birth date may, by payment of a 50 percent higher fee, receive a license that shall not expire until the applicant's second succeeding birth date.] A renewal license for owner, trainer, assistant trainer, jockey, jockey agent, racing official, mutuel employee, maintenance employee of the [NYRA] New York Racing Association, Inc., veterinarian, veterinary technician, farrier, track management or track security employee shall be for three years unless an individual establishes good cause for a shorter term or the commission, in the commission's discretion, determines a shorter term.

#### **§ 4002.8. Qualifications for license.**

[If the commission shall find that the financial responsibility, experience, character and general fitness of the applicant are such that the participation of such person will be consistent with the public interest, convenience or necessity and with the best interests of racing generally in conformity with the purposes of the law, it shall grant a license.] In [this connection] considering qualifications for a license pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 220(2), the commission may establish criteria to be met concerning specific license occupations as a condition for licensing. If the commission shall find that the applicant fails to meet any of said conditions, it shall not grant such license and it shall notify the applicant of the denial.

#### **§ 4002.11. Refund of fees.**

[Within one year from the date of payment and upon the audit of the State Comptroller, the Department of State may refund any fee paid pursuant to this Part for which no license is issued, or refund that portion of the payment that is in excess of the amount prescribed by this Part.] Refund of fees is governed by Racing, Pari-Mutuel Wagering and Breeding Law section 200(4).

#### **§ 4002.14. Certain disqualifications.**

(a) No person shall be eligible for an owner's or trainer's license if, during the term of such license, he or she would practice as farrier, [or] veterinarian, or veterinary technician with horses racing under the jurisdiction of the commission; provided, however, that a duly licensed owner may personally shoe a horse owned by him or her upon applying for and receiving a certificate of fitness therefore from the commission.

#### **§ 4002.20. Badge identification system.**

All licenses and participants shall comply with the requirements of subdivision (b) of section [4003.50(b)] 4003.50 of this [Title] Article and shall be subject to the provisions of subdivision (h) of section [4003.50(h)] 4003.50 of this [Title] Article for failure to so comply.

\* \* \*

**§ 4005.1. Commission approval required.**

[Before entering upon the discharge of their duties,] None of the following officials employed by any association [shall be approved] is permitted to perform duties unless approved in writing by the commission[, viz]: all stewards, racing secretaries, handicappers, starters, placing judges, clerks of the scales, paddock and patrol judges, timers, examining veterinarians and track veterinarians, veterinary technicians and such other persons as the commission may designate from time to time because of their importance in the actual conduct of racing.

**§ 4005.5. Veterinarians restricted**

No veterinarian or veterinary technician employed by the commission or by an association shall be permitted, during the period of his or her employment, to treat or prescribe for any horse for compensation or otherwise, except in case of emergency or [in the case of] race day medication [as authorized] permitted by section 4043.2 of this Subchapter.

**§ 4012.1. Possession of hypodermic equipment and controlled substances.**

(a) No person other than a commission veterinarian, track veterinarian, [or] a practicing veterinarian licensed by the commission [shall] or a veterinary technician who is licensed by the commission and acting with commission approval at the direction and under the general supervision of such a veterinarian, is permitted to have or possess in or upon the premises of a licensed or franchised race track, including premises that the person occupies or has a right to occupy, or [shall] is permitted to have or possess in his or her personal property or effects upon such premises, the following:

- (1) any equipment that may be used for hypodermic injection or other infusion into a horse or any vial, bottle or cartridge designed and usable for such purposes; or
- (2) any controlled substance, listed in [schedule] schedules I through IV of section 812 of title 21 of the United States Code, title 21] (Food and Drugs)[, section 812,] or any drug that has not been approved for use in the horse by the Federal Food and Drug Administration. Not included in this prohibition are liniments, antiseptics, ointments, leg paints, washes and other products commonly used in the daily care of horses.

\* \* \*

(e) A report shall be made to the Bureau of Narcotics of the Department of the Treasury of the United States of all cases in which it is reported to the commission that narcotics or other controlled substances have been detected in a specimen from any horse[; and if]. If any veterinarian or physician has been involved [therein] in any such case, a similar report shall be made to the New York State Education Department.

\* \* \*

**§ 4012.4. Records of veterinarian.**

\* \* \*

(c) Before a licensed veterinarian administers or prescribes any drug or restricted substance for a horse, such veterinarian shall ascertain by reasonable inquiry whether the horse has been entered to

race at any track, and if the horse has been entered such veterinarian shall not administer or prescribe any drug or restricted substance within the time or manner restricted by [these rules] this Chapter. If the horse has not been entered to race, but the administration is of a drug that is not permitted to be administered within 72 hours of a racing program, or longer, the veterinarian shall so inform the trainer of that fact and of the time applicable. If, however, an emergency exists involving the life or health of the horse, the veterinarian may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the [State] commission veterinarian or stewards at the pertinent track.

(d) The attending veterinarian or veterinary technician shall complete and submit daily a form prescribed by the commission that contains the name of each horse entered to race on that day and treated by the attending veterinarian, or a veterinary technician acting at the direction and under the general supervision of such veterinarian, with furosemide. The form shall also contain the following information:

- (1) name of the track;
- (2) name of the trainer;
- (3) description of the horse;
- (4) tattoo number; and
- (5) the dose, route and time of administration.

The form must be signed by the attending veterinarian (and by the veterinary technician, if any) and filed at a location designated by the commission.

#### **§ 4043.11. Use and disposal of hypodermic syringes and needles.**

To ensure drug testing accuracy, all hypodermic syringes and needles may be used only once by a track or practicing veterinarian or veterinary technician. The collection, security and disposal of the used syringes and needles are the responsibility of a track or practicing veterinarian or veterinary technician.

### **Subchapter B**

#### **Harness Racing**

#### **§ 4101.24. Occupational licenses.**

\* \* \*

(b) No person shall participate in or at any harness horse race meet as owner, driver, trainer, assistant trainer, groom, farrier, harness goods supplier, salesman, veterinarian, veterinary technician, agent, or be the holder or operator of any concession, or perform any service, including [but] without [limiting the generality thereof,] limitation the conduct of negotiations on behalf of any person or persons who engage in any racing activities or perform any services in connection with the conduct of any harness horse race meet, or engage in any occupation or employment at any harness horse race meet, unless such person shall have received an occupational license from the commission with the following exceptions:

- (1) Public officers and public employees engaged in the performance of their official duties.
- (2) Persons exempted by the commission from the occupational license requirement.

\* \* \*

(d) Each such license, unless revoked for cause, shall be for the period of no more than one, two or three years, expiring on the applicant's birth date, as prescribed by Racing, Pari-Mutuel Wagering and Breeding Law section 309(1); provided, however, that the commission may, pending final determination of any question under [section 309 of the] Racing, Pari-Mutuel Wagering and Breeding Law[, as amended,] section 309 issue a temporary license upon such terms and conditions as it may deem necessary or desire to effectuate the provisions of such chapter. No person shall be qualified to receive or hold an occupational license if he or she is not a bona fide participant in harness racing. [An applicant who applies for a license that, if issued, would take effect less than six months prior to the applicant's birth date may, by payment of a 50 percent higher fee, receive a license that shall not expire until the applicant's second succeeding birth date.] A renewal license for owner, trainer, assistant trainer, driver, racing official, mutuel employee, veterinarian, veterinary technician, farrier, track management or track security employee shall be for three years unless an individual establishes good cause for a shorter term or the commission, in the commission's discretion, determines a shorter term.

\* \* \*

(g) Each applicant for an occupational license shall pay an annual license fee at the time of the filing of the application. [The] In addition to the statutory license fees for owners, trainers, assistant trainers, drivers, farriers and stable employees set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 309(1), license fees to be paid shall be as follows: [original owner—\$100; owner renewal—\$50; trainer, assistant trainer, driver, farrier,]

- (1) veterinarian, track management—\$20; [stable employees (grooms, etc.),]
- (2) cleaning and food service workers—\$5; and
- (3) all others—\$10.

Such fees shall be multiplied by two for two-year terms and by three for three-year terms.

#### **§ 4101.37. Restrictions on veterinarians, veterinary technicians and farriers.**

(a) A veterinarian or veterinary technician is prohibited from participating as owner, trainer or driver at any track at which a horse treated by such veterinarian is racing.

(b) A horse treated by a veterinarian is a horse upon which the veterinarian has practiced within the previous two weeks and such horse shall be deemed to be racing if it shall be drawn in to race on either of the two racing days prior to or the racing day upon which a horse owned, trained or driven by such veterinarian is to race.

(c) The prohibitions of this rule shall apply in like manner to a farrier and a veterinary technician.

(d) The functions of a veterinary technician shall be performed only at the direction and under the general supervision of a licensed veterinarian.

**§ 4120.6. Possession of hypodermic equipment and controlled substances.**

(a) No person other than a commission veterinarian, track veterinarian, [or] a practicing veterinarian licensed by the commission [shall] or a veterinary technician who is licensed by the commission and acting with commission approval at the direction and under the general supervision of such a veterinarian, is permitted to have or possess in or upon the premises of a licensed harness race track, including premises that [such veterinarian] the person occupies or has a right to occupy, or [shall] is permitted to have or possess in his or her personal property or effects upon such premises, the following:

(1) any equipment [which] that may be used for hypodermic injection or other infusion into a horse or any vial, bottle or cartridge designed and usable for such purposes; or

(2) any controlled substance, listed in [schedule] schedules I through IV of section 812 of title 21 of the United States Code, [title 21] (Food and Drugs)[, section 812,] or any drug that has not been approved for use in the horse by the Federal Food and Drug Administration. Not included in this prohibition are liniments, antiseptics, ointments, leg paints, washes and other products commonly used in the daily care of horses.

\* \* \*

(e) A report shall be made to the Bureau of Narcotics of the Department of the Treasury of the United States of all cases in which it is reported to the commission that narcotics or other controlled substances have been detected in a specimen from any horse[; and if]. If any veterinarian or physician has been involved [therein] in any such case, a similar report shall be made to the New York State Education Department.

**§ 4120.9. Records of veterinarian.**

\* \* \*

(c) Before a licensed veterinarian administers or prescribes any drug or restricted substance for a horse, such veterinarian shall ascertain by reasonable inquiry whether the horse has been entered to race at any track, and if the horse has been entered such veterinarian shall not administer or prescribe any drug or restricted substance within the time or in a manner restricted by this [Part] Chapter. If the horse has not been entered to race, but the administration is of a drug that is not permitted to be administered within 72 hours of a racing program, or longer, the veterinarian shall so inform the trainer of the fact and of the time applicable. If, however, an emergency exists involving the life or health of the horse, the veterinarian may proceed to treat or prescribe for the horse[, ] but shall report the matter as promptly as practicable to the commission veterinarian or judges at the pertinent track.

(d) The attending veterinarian or veterinary technician shall complete and submit daily a form prescribed by the commission that contains the name of each horse entered to race on that day and treated by the attending veterinarian, or a veterinary technician acting at the direction and under the general supervision of such veterinarian, with furosemide. The form shall also contain the following information:

(1) name of the track;

- (2) name of the trainer;
- (3) description of the horse;
- (4) tattoo number; and
- (5) the dose, route and time of administration.

The form must be signed by the attending veterinarian (and by the veterinary technician, if any) and filed at a location designated by the commission.

\* \* \*

**§ 4120.19. Use and disposal of hypodermic syringes and needles.**

To ensure drug testing accuracy, all hypodermic syringes and needles may be used only once by a track or practicing veterinarian or veterinary technician. The collection, security and disposal of the used syringes and needles are the responsibility of a track or practicing veterinarian or veterinary technician.



# 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:** September 16, 2015  
**Re:** Proposed Rulemaking for Contract Apprentice Jockeys  
(9 NYCRR § 4032.1)

For Commission consideration is a proposed amendment of an outdated Thoroughbred horse racing rule. The proposal would delete the provision for an extra weight allowance for an apprentice jockey who continues to ride for the jockey's "original contract employer." This provision had existed to reward stables that brought a young jockey into racing through a defunct system of a jockey needing a sponsoring stable for housing, food, medical care, training and eligibility for a jockey license.

The text of the proposed amendment is as follows:

## **§ 4032.1. Apprentice weight allowances.**

An apprentice jockey licensed in accordance with section 4002.26 of this Article may claim the following weight allowances in all overnight races except stakes and handicaps:

\* \* \*

[(e) a contracted apprentice may claim an allowance of three pounds for an additional one year while riding horses owned or trained by the original contract employee.]

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



# Gaming Commission

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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:** September 16, 2015  
**Re:** Proposed Rulemaking for 48-Hour Restrictions  
(9 NYCRR §§ 4043.2(e) and 4120.2(e)).

For Commission consideration are proposed revisions to the Commission's horse racing rules in regard to the 48-hour restricted time period for the pre-race medication of horses.

These proposals would no longer permit the use of more than one non-steroidal anti-inflammatory drug ("NSAID") within one week of racing. New York permits the use of various NSAIDs until 48 hours before racing, which allows humane and beneficial veterinary care to be provided for mild inflammation. The duration of effect of such NSAIDs, when administered singly, will dissipate by race day.

NSAIDs can be administered in combinations, however, that increase the potency and duration of effect of the drugs. Thus, two NSAIDs that are administered in sub-clinical doses inside of 48 hours before racing, which is not permissible, can be effective on race day; but the concentrations found by the Commission's testing laboratory will be indistinguishable from two standard ("clinical") doses that are given permissibly at least 48 hours before racing. Further, clinical doses that are given permissibly at least 48 hours before racing could remain efficacious on race day. These uses, which interfere with the ability to detect illicit administrations within 48 hours of racing and potentially endanger the health and safety of the horses and the drivers or jockeys on race day, are not necessary to provide veterinary care to a horse that is actively racing. The restriction on the use of NSAIDs to one week before racing, except allowing one to be used until 48 hours before racing, addresses these concerns, while permitting the appropriate use of NSAIDs.

These proposals also make stylistic changes.

The text of the proposed rules is attached.

attachment

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

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4043.2(e) AND 4120.2(e) OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTERS A AND B

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, the New York State Gaming Commission hereby proposes this amendment of Sections 4043.2(e) and 4120.2(e) of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read 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): [Phenylbutazone (e.g., Butazolidin)] diclofenac, [Flunixin] flunixin (e.g., Banamine), ketoprofen (e.g., Orudis), meclofenamic acid (e.g., Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] and phenylbutazone (e.g., Butazolidin);

\* \* \*

**§ 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 (e.g., Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] and phenylbutazone (e.g., Butazolidin);

\* \* \*

[(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.]



# Gaming Commission

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Barry Sample, Commissioner  
Todd R. Snyder, Commissioner

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

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** September 16, 2015

**Re:** Proposed Rulemaking to Ban the Use of Stanozolol (9 NYCRR §§ 4043.15 and 4120.12).

For Commission consideration are proposed revisions to the Commission's horse racing rules that strictly regulate the use of anabolic steroids in racehorses.

This proposal would discontinue the permissive presence at threshold amounts of stanozolol, the only anabolic steroid that is neither endogenous to a horse nor already banned by the Commission.

The Commission's prohibition of anabolic steroids includes permissible threshold amounts for four anabolic steroids. Three of these exceptions are for endogenous substances that are naturally present in a horse, and their thresholds are at a concentration that occurs naturally in a horse.

This proposal phases out the other permissible threshold amount, for the anabolic steroid stanozolol, that was initially included as an exception only because of the long clearance time (many months) of this exogenous drug. As some horses may have been lawfully administered this drug well before racing, and comply with the current permissive threshold, staff recommends that the proposed ban on any amount of stanozolol be scheduled to take effect six months after the adoption of the rule change.

This proposal is consistent with national rulemaking proposals and with the Commission's intended prohibition of any administration of an anabolic steroid to a horse that is actively racing.

The text of the proposed rules is attached.

attachment

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

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4043.15 AND 4120.12 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTERS A and B

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, the New York State Gaming Commission hereby proposes this amendment of Sections 4043.15 and 4120.12 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

**§ 4043.15. Anabolic steroids.**

(a) Anabolic steroids shall not be administered except [that the] as permitted by subdivision (d) of this section. A violation of this section may be established by a finding by the laboratory conducting tests for the commission that an anabolic steroid was present in a blood sample taken from such horse, except for the following substances [may be administered during permitted time frames and] at concentrations that [on race day] are less than these thresholds:

(1) Boldenone: All horses may have less than 100 pg/ml (including free boldenone and boldenone liberated from its conjugates) in plasma;

(2) Nandrolone:

(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 500 pg/ml in plasma.

[(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.]

[(4)] (3) Testosterone:

(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 2,000 pg/ml in plasma.

[(5)] (4) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

(b) Any other anabolic steroids are prohibited to be administered.

(c) Post-race plasma samples collected from intact males must be identified to the laboratory.

(d) Any horse to which [a permissible] an anabolic steroid that is listed in subdivision (a) of this section has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

(e) A violation of this section shall be considered a positive test within the meaning of this Part.

## § 4120.12. Anabolic Steroids.

(a) Anabolic steroids shall not be administered except [that the] as permitted in subdivision (d) of this section. A violation of this section may be established by a finding by the laboratory conducting tests for the commission that an anabolic steroid was present in a blood sample taken from such horse, except for the following substances [may be administered during permitted time frames and] at concentrations that [on race day] are less than these thresholds:

(1) Boldenone: All horses may have less than 100 pg/ml (including free boldenone and boldenone liberated from its conjugates) in plasma;

(2) Nandrolone:

(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 500 pg/ml in plasma.

[(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.]

[(4)] (3) Testosterone:

(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 2,000 pg/ml in plasma.

[(5)] (4) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

(b) Any other anabolic steroids are prohibited to be administered.

(c) Post-race plasma samples collected from intact males must be identified to the laboratory.

(d) Any horse to which [a permissible] an anabolic steroid that is listed in subdivision (a) of this section has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

(e) A violation of this section shall be considered a positive test within the meaning of this Part.



# Gaming Commission

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Barry Sample, Commissioner  
Todd R. Snyder, Commissioner

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

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** September 16, 2015

**Re:** Proposed Rulemaking for Standardbred Coupling of Entries (9 NYCRR § 4111.15).

For Commission consideration is a proposed revision to the Commission's coupled entries rule for standardbred races. The proposal is consistent with the revisions that the Commission recently made to Commission rules for coupled entries in thoroughbred races.

This proposal would provide that for stakes races of \$25,000 or more, separately owned horses having the same trainer may be uncoupled, although horses owned and trained by the same trainer would continue to be coupled entries. For stakes races of \$100,000 or more, all horses with common ownership may be uncoupled. In both cases, the uncoupling of horses would be subject to the discretion of the presiding judge to couple the entries in the interest of the wagering public.

The text of the proposed rules is attached.

[REDACTED]

attachment

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

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTION 4111.15 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTER B

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, the New York State Gaming Commission hereby proposes this amendment of Section 4111.15 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

**§ 4111.15. Coupling of entries.**

(a) In all races starters shall be coupled when owned in whole or in part or under the control of, or trained by the same person, or trained in the same stable or by the same management, or where, in the discretion of the judges, it is necessary to protect the public interest. A horse to be driven by a full-time employee of another driver in the race shall be considered as racing from the same stable. If a race is divided into two or more divisions, such starters shall be seeded into separate divisions where possible, first on the basis of ownership[, next on the basis of training,] and [finally] by stable, [but the] then on the basis of training. The divisions in which they compete and their post positions shall be drawn by lot. Whenever such horses are coupled in the same race, the presiding judge shall approve the second and additional drivers.

(1) Except for stakes races with a purse of \$25,000 or more, horses trained by the same trainer but owned by different, separate owners may be uncoupled. The presiding judge has the discretion to couple such horses, however, to protect the interests of the wagering public. Trainers with an ownership interest in more than one horse must have their horses coupled.

(2) Except for stakes races with a purse of \$100,000 or more, horses with common ownership may be uncoupled. The presiding judge has the discretion to couple such horses, however, to protect the interests of the wagering public.

(b) Except by express permission of the commission, coupled entries are prohibited in overnight events.

(c) After post positions have been drawn, horses may be coupled as an entry (or uncoupled, if erroneously coupled) but such race, as divided[,] and as post positions have been drawn, shall be final.



# Gaming Commission

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Barry Sample, Commissioner  
Todd R. Snyder, Commissioner

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

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** September 16, 2015

**Re:** Proposed Rulemaking for Use or Removal of Hopples  
(9 NYCRR §§ 4113.5 and 4117.3).

For Commission consideration are proposed revisions to the Commission's horse racing rules in regard to the use or removal of hobbles for standardbred horses. Hobbles are leather or plastic straps that go around a horse's body and legs to keep the horse on proper gait, either pacing or trotting. Staff believes that there is a modern consensus in the industry and with regulators that typically Standardbred horses are able to race well regardless of a change in such equipment and that the wagering public is able to handicap sufficiently based on information in the race program.

These proposals would allow the trainer discretion when entering a horse to race to change whether a horse will use hobbles or not, subject to oversight by the Commission judges at the racetrack. The disqualification rule would no longer require the judges' permission for a horse's first use of hobbles. Instead, the program would be required to report any changes in a horse's use of hobbles. The amendments would also allow a trainer more flexibility to change hobbles as appropriate for local track configurations and conditions without incurring the time and expense of requalifying a horse.

The text of the proposed rules is attached.

[REDACTED]

attachment

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

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4113.5 AND 4117.3 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTER B

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, the New York State Gaming Commission hereby proposes this amendment of Sections 4113.5 and 4117.3 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

**§ 4113.5. Unqualified horses.**

(a) A horse shall be deemed unqualified and must qualify once before being allowed to start in any overnight pari-mutuel event for the following reasons:

(1) The horse does not show a charted line of a current performance meeting the qualifying standards at the track for the class of race. Current performance shall be defined as a start within 30 days of the date of the race to which declared. A performance on or after September 1 of the preceding year, shall be considered current for a horse making such horse's first start of the current year before June 1 at Vernon Downs, Saratoga Raceway, Monticello Raceway, and Goshen Historic Track. Official workouts shall be acceptable as qualifying performances for this paragraph for horses with previous satisfactory races.

(2) The horse is changing gait [or putting on or taking off hobbles unless available performance lines show that the horse has raced satisfactorily in such manner previously and in the opinion of the judges can be expected to give a satisfactory performance.]

(3) The horse does not meet additional standards prescribed by the racing secretary and posted in the declaration room.

(4) The judges, in their discretion, determine a horse to be unqualified because, without interference to it, it has made breaks in two consecutive purse races or in the purse race immediately following its qualifying to race.

**§ 4117.3. Use or removal of hobbles.**

(a) [If a horse has warmed up in hobbles or raced one heat of a race in hobbles, such hobbles shall not be removed from a horse or altered without permission of the presiding judge.] The trainer has discretion on the use of hobbles, subject to the judges cancelling any change in the use of hobbles on a horse in the exercise of the judges' discretion to protect the integrity of racing and the wagering public.

(b) [A horse habitually wearing hobbles shall not be permitted to start in a race without them except by permission of the presiding judge. A horse habitually racing free-legged shall not be permitted to wear hobbles in a race except with such permission. A failure to obtain permission to add, remove or make alterations in hobbles may be deemed to be a fraud in racing.] The entry of a horse shall state whether such horse will use hobbles or not. Failure to include a change on the entry form disallows any addition or subtraction of hobbles for the race. Every change in a horse's use of hobbles must be included in the program.

(c) Any person found culpable of removing or altering a horse's hobbles during a race or between races for the purpose of fraud shall be suspended or expelled.



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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:** September 16, 2015

**Re:** Proposed Rulemaking for Thoroughbred Trainer Continuing Education (9 NYCRR §§ 4002.8)

For Commission consideration are proposed revisions to the Commission's thoroughbred racing rules in regard to the qualifications for an occupational license as a thoroughbred trainer or assistant trainer.

This proposal would require that all thoroughbred trainers (including assistant and private trainers) complete at least four hours of continuing education each year. The Jockey Club has developed and is offering online programs for trainers. The stewards have provided continuing education programs for interested trainers for many years at New York racetracks. The proposal includes an exemption for a trainer who rarely participates in New York racing, subject to the permission of the State steward.

Commission staff has participated in discussions in the Thoroughbred industry in regard to this proposal. Staff intends to initiate discussions with Standardbred interests to prepare a similar program. Some additional stylistic changes are proposed.

The text of the proposed amendment is as follows:

## **§ 4002.8. Qualifications for license.**

(a) If the commission [shall find] finds that the financial responsibility, experience, character and general fitness of the applicant are such that the participation of such person will be consistent with the public interest, convenience or necessity and with the best interests of racing generally in conformity with the purposes of the law, [it] the commission shall grant a license. In this connection, the commission may establish criteria to be met concerning specific license occupations as a condition for licensing. If the commission [shall find] finds that the applicant fails to meet any of said conditions, [it] the commission shall not grant such license and [it] the commission shall notify the applicant of the denial.

(b) In order to maintain a current license, trainers and assistant trainers must complete at least four hours per calendar year of continuing education courses approved by the commission. Trainers and assistant trainers who are not domiciled in New York and have 12 or fewer starts during the previous 12 months may request a waiver of this requirement from the State steward.



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



# Gaming Commission

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

**To:** Commissioners  
**From:** Edmund C. Burns  
**Date:** September 16, 2015  
**Re:** Proposed Rulemaking for Pick-Four, Pick-Five and Pick-Six Pools (9 NYCRR §§ 4011.23, 4011.24, 4011.25 and 4011.26).

For Commission consideration are proposed revisions to the Commission's pari-mutuel wagering rules in regard to the pick-four, pick-five and pick-six pools on thoroughbred horse races. The proposals would make such wagers consistent by eliminating discrepancies that arose when such wagers were authorized over a period of many years. The proposal also sets forth rules for pick-five pool wagering into Commission regulations.

These proposals provide that if a horse were scratched from a race, then the substitute entry for bettors in the pick-"n" pool would be the betting favorite in the win pool at the close of wagering on the race (and if identical sums were wagered on more than one favorite, then the one with the lowest program number). If there are surface changes (e.g., due to weather conditions) for races in a pick-"n" sequence, then the pick-"n" will be cancelled when no bettor has correctly selected the winner in at least one race that is run on its original surface, and otherwise the pick "n" winners will be determined as if every bet on the races with surface changes were winning bets on such races. The amendments also establish a consistent practice, when a certain number of races in a pick-"n" sequence are cancelled, for when the pool is also cancelled.

The Commission's Division of Horse Racing and Pari-Mutuel Wagering formulated the proposals in consultation with The New York Racing Association, Inc., which supports the proposals.

These proposals also make stylistic changes and renumber the three pick-"n" rules in serial order.

The text of the proposed rules is attached.



attachment

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

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4011.23, 4011.24, 4011.25 AND 4011.26 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTER A

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, the New York State Gaming Commission hereby proposes this amendment of Sections 4011.23, 4011.24, 4011.25 and 4011.26 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

**Section 4011.24 (WIN-3) is renumbered as section 4011.23.**

**§ [4011.26. Pick four pools] 4011.24. Pick-four pools.**

(a) The [pick four] pick-four (or other approved name) is a form of pari-mutuel wagering conducted on four races specifically designated as [pick four] pick-four races by the commission. Each bettor selects, in order, the first placed horse in each of the four races designated and advertised by the track as [pick four] pick-four races, in the race order so designated by the commission.

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

(c) Resale of [pick four] pick-four tickets from one individual to another is prohibited, shall be grounds for ejection, and may be deemed illegal gambling.

(d) Races in which [pick four] pick-four pools shall be conducted shall be clearly designated in the program and racing cards issued by the corporation.

(e) The design of the [pick four] pick-four tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(f) *Scratched horses and nonstarters.* At any time after wagering begins on the [pick four] pick-four pool, should an entire betting entry or field be scratched or declared a nonstarter in any [pick four] pick-four race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the [pick four] pick-four pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the track in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field [upon which the most wagering money has been registered at the track in the place pool at the close of place pool betting for that race] with the lowest program number shall be designated.) Wagers in the [pick four] pick-four pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except at tracks with totalisator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), in which case, the wagers upon scratched constituent horses will be deemed wagers upon the “designated horse” in such race]. In case no starter remains representing any betting entry or field, wagers upon such entry or field shall be deemed wagers upon the “designated horse” in the race

affected by the scratch. Should the balance of a betting entry or field race as a [nonbetting] non-betting starter for purposes of other pari-mutuel pools, as provided in sections 4009.20 and 4009.21 of this Article, wagers upon such entry or field shall be deemed wagers upon the “designated horse” for such race. Should a programmed starter be scratched or declared a nonstarter in any pick-four race prior to the start of the first leg, [the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg] affected bettors may select another betting interest if the wager can be canceled and a replacement wager issued prior to the start of the first race of the pick-four, or obtain a cancellation of the wager prior to the start of the first race of the pick-four. If neither option is exercised, wagers upon such scratched or declared nonstarter shall be deemed wagers upon the “designated horse” for such race.

(g) *Failure to select a winning combination.*

(1) If no [pick four] pick-four ticket is sold combining the winners of the four pick four races, all [pick four] pick-four tickets designating three winners shall be considered winning tickets and the net pool distributed equally to holders of [said] such tickets.

(2) If no [pick four] pick-four ticket is sold combining the winners of three such races, all [pick four] pick-four tickets designating two winners shall be considered winning tickets and the net pool distributed equally to holders of [said] such tickets.

(3) If no [pick four] pick-four ticket is sold combining the winners of two such races, all [pick four] pick-four tickets designating one winner shall be considered winning tickets and the net pool distributed equally to holders of [said] such tickets.

(4) If no [pick four] pick-four ticket is sold designating any winner to win in the designated [pick four] pick-four races, the [pick four] pick-four shall be declared off and the gross pool refunded.

[(5)] (h) *Surface transfers.* When the condition of the turf course(s) warrants a change of racing surface in any of the legs of the [pick four] pick-four races, and such change has not been known to the public prior to the close of wagering for the [pick four] pick-four pool, the stewards shall declare [the] such changed [leg(s)] leg to be an “all win” [race(s)] race for pick-four wagering purposes only. An “all win” [race(s)] race will assign the winner of that [race(s)] race to each pick-four ticket holder as [their] such ticket holder’s selection for that race. If there is a surface transfer in one or more legs of the pick-four, then those who selected the winners in the greatest number of non-surface transfer legs shall share the net pool; if there are no wagers selecting the winner of at least one of the non-surface transfer races, then the entire pool for such program shall be refunded.

[(6)] If any of the designated races are cancelled or declared “no race,” the [pick four] pick-four will be determined by the winners of the remaining race or races.]

(i) *Race cancellations.*

(1) If one or two of the legs of the pick-four races are cancelled or declared no race or non-betting, then those who selected the winners in the greatest number of other legs shall share the net pool.

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

(3) If any of the designated races of the pick-four are cancelled or declared no race or non-betting prior to the first leg being made official, then the pick-four shall be declared off and the gross pool refunded.

[(h)] (j) *Dead heats.* In the event of a dead heat for win in any or all [pick four] pick-four races, all [pick four] pick-four tickets designating either horse to win in said race or races shall be eligible for participation in the remaining [pick four] pick-four races, and the net pool shall be equally distributed to the winners, that is, the net pool will be divided by the total amount represented by all winning tickets and the resulting price, per dollar, and after breakage, shall be the payoff price, which shall be uniform for any winning combination.

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

[(j)] (l) Copies of this section shall be made available free of charge by the track to the public in the public betting area of the track.

#### **§ 4011.25. Pick-five pools.**

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

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

(c) If there is a dead heat for first in any of the pick-five contests involving:

(1) contestants representing the same betting interest, then the pick-five pool shall be distributed as if no dead heat occurred; or

(2) contestants representing two or more betting interests, then the pick-five pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(d) Should a betting interest in any of the pick-five contests be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substituted selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting

interests that became winners as a result of the substitution, in addition to the normal winning combination.

(e) Race cancellations.

(1) If one or two of the legs of the pick-five races are cancelled or declared no race or non-betting, then those who selected the winners in the greatest number of other legs shall share the net pool.

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

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

(f) Surface Transfer. When the condition of a turf course warrants a change of racing surface to a non-turf course in any of the legs of the pick-five races, and such change has not been known to the public prior to the close of wagering for the pick-five pool, then such changed leg, or legs, shall be deemed an "all win" race, or races, for pick-five wagering purposes only. Such "all win" declaration will assign the winner of that race to each pick-five bettor as such bettor's selection for that race. Except for pick-five pools in which a final distribution is to be made, a pick-five with surface transfer(s) shall be handled as follows:

(1) In the event that there was a surface change to a non-turf course in only one of the legs of a pick-five wager, then the bettors who selected the winners of the four legs for which there were no surface changes shall share that day's net pool for such wager as well as any carryover.

(2) In the event that there was a surface change to a non-turf course in more than one of the legs of a pick-five wager, then the bettors who selected the winners of all the legs for which there were no surface changes shall share that day's net pool for such wager but shall not share any carryover (any such previous carryover to be carried over to the next performance's pick-five wager pool).

(3) In the event that there are one or more surface change races in the pick-five, and there are no wagers selecting the winner(s) of all of the non-surface-change races in the pick-five sequence, the net pool for such program shall be carried over to the next performance's pick-five wager pool.

(4) When there is a final distribution scheduled, if there are one or more surface change races in the pick-five and there are no wagers selecting the winner(s) of at least one of the non-surface change races, the entire pool for such program shall be refunded; if there is any carryover accumulated from previous programs, such carryover shall be carried over as provided in subdivision (j) of this section for subsequent distribution. The commission may also order a final distribution for an earlier time in the commission's discretion.

(g) The pick-five carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick-five carryover equals or exceeds the designated cap, the pick-five carryover will be frozen until such carryover is won or distributed under the other provisions of this rule. After the pick-five carryover is frozen, 100 percent of the net pool that

ordinarily would be added to the pick-five carryover shall be distributed to those whose selection finished first in the greatest number of pick-five contests for that performance.

(h) A written request for permission to distribute the pick-five carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and performance for the distribution.

(i) Should the pick-five carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick-five contests, the net pool, with any carryover, shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick-five contests. The pick-five carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(1) upon written approval from the commission as provided in subdivision (h) of this section;

(2) upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick-(n) wagering to another or when the pick-five is discontinued;

(3) on the closing performance of the meet or split meet; and

(4) on the last performance of the year.

(j) If for any reason the pick-five carryover must be held over to the corresponding pick-five pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick-five carryover plus accrued interest shall then be added to the net pick-five pool of the following meet on a date and performance so designated by the commission.

(k) With the written approval of the commission, the association may contribute to the pick-five carryover a sum of money up to the amount of any designated cap.

(l) Other than the display of the will-pays after the penultimate leg in the pick-five sequence, providing information to any person in regard to covered combinations, amounts wagered on specific combinations, numbers of tickets sold or number of live tickets remaining is strictly prohibited. This subdivision shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

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

(n) The retention rate for the pick-five pool is 15 percent.

#### **§ [4011.23. Pick six pools] 4011.26. Pick-six pools.**

[The rules in this section shall govern all pick six pari-mutuel pools conducted by a thoroughbred track operator.]

(a) *Wagering tickets.* A pick six pari-mutuel pool known as the “pick six,” or such other name as may be approved by the commission, is authorized to be conducted by a thoroughbred track operator

upon the outcome of six designated pari-mutuel races to be contested at such operator's track on the same racing program, such designation to be made by the track operator with the approval of the commission. Such pool shall be separate and distinct from all other pari-mutuel pools conducted at such track. Wagers in such pool shall be represented by pari-mutuel tickets immediately distinguishable from pari-mutuel tickets issued in other pools. A wager, which shall select a winner for each designated race, shall be included on the same pari-mutuel ticket that shall be issued prior to the start of the first designated [pick six] pick-six race. Races designated for the [pick six] pick-six pool shall be clearly described as such in the official program.

(b) *Winners and carry-overs.* In general, after deductions for cancellations, refunds and statutory takeout, 75 percent of the resulting [pick six] pick-six net pool for the day shall be distributed, less breaks, to the holders of [tickets] wagers selecting the winners of all six designated races in the pool, or to the holders of the [tickets] wagers selecting [five winners out of six and have] the winners of the designated races with no more than [one] three "all win" [event] events, and no other races are cancelled [or declared "all win"] in the pick-six [sequences] sequence or races, and 25 percent of such net pool shall be distributed to the holders of the [remaining tickets] wagers selecting the most winners. (Such takeout shall be established at a rate between the range of 15 percent to 36 percent inclusively. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter.) Should there be no wager selecting winners of all six designated races, or [five winners and] to the holders of wagers selecting the winners of the designated races with no more than [one] three "all win" events, then 25 percent of the net pool shall be distributed, less breaks, to the holders of [tickets] wagers selecting the winners of the most [pick six] pick-six races, and the 75 percent of the net pool reserved for holders of [tickets] wagers selecting six winners, or [five winners and] to the holders of wagers selecting the winners of the designated races with no more than [one] three "all win[.]" events shall be carried over and added to and distributed with the 75-percent net pool share of the next [subsequent pick six] pick-six pool in which a wager correctly selects the winners of all six designated pick six races, or five winners and no more than one "all win." Carryovers from prior [pick six] pick-six pools, advertised guaranteed amounts or advertised added amounts will be distributed to winners in such day's [pick six] pick-six pools, provided that there is no more than one "all win" event and no other races are cancelled [or declared "all win"] in the [pick six] pick-six sequence.

(c) *Added payments to winners.* In addition to the [75-percent net pool] 75-percent-net-pool share and any carry-overs distributable when a wager correctly selects winners of all six designated races, or five winners and no more than one "all win" of a [pick six] pick-six pool, there shall be distributed by the track operator from its own funds, upon such occurrence, any amounts it has advertised that it will add to the total distribution, or any amounts necessary to yield an advertised guaranteed total distribution.

(d) *Intermediate distributions.* Prior to the last two weeks of a race meeting at a track, a date and program approved by the commission may be announced by the track operator at which (provided no one thereafter correctly selects the winners of all six designated races, or five winners and no more than one "all win" of a [pick six] pick-six pool through such program) accumulated carry-overs in an amount announced by the track operator will be added to the 25 percent of the net pool distributable to wagers selecting the winners of the most races of the [pick six] pick-six pool conducted on such program if no one correctly selects all six winners, or five winners and no more than one "all win." The balance of undistributed carry-overs above such announced amount, plus any carry-over from such program, shall in turn carry over for distribution with subsequent [pick six] pick-six pools conducted by

such track operator at such track. An intermediate distribution may also be directed at any time, upon three days' notice by the commission, of such portion or all of the accumulated carry-over money as may be directed by the commission.

(e) *Final distribution.* The track shall select, with the approval of the commission, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting (which for purposes of this section shall mean the end of assigned racing dates at a track after which such track operator will operate at another track) when there shall be a final distribution of all accumulated carry-overs together with 75 percent of the net pool of the [pick six] pick-six pool conducted during such program to the holders of wagers selecting the winners of the most [pick six] pick-six races contested during such program and 25 percent of such net pool shall be distributed to the holders of the remaining [tickets] wagers selecting the next most winners; except that, if only one, two or three such races are conducted, then all accumulated carry-overs and the entire net pool shall be distributed to the holders of wagers selecting the most winners of such one, two or three races. Thereafter, no pick-six pools will be conducted during such week. In the event that all [pick six] pick-six races on the program designated for final distribution are cancelled, and no further programs are conducted at the meeting, the commission shall require that a [pick six] pick-six pool be conducted on the first program of the next [subsequent] race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

(f) *Dead heats.* Each horse in a dead heat for win shall be considered the winner, and no allocations among wagers shall be made as a result thereof, unlike the practice in a pari-mutuel win pool. The payoff price per dollar shall be the same for each class of winning wager.

(g) *Scratched horses and nonstarters.* At any time after wagering begins on the [pick six] pick-six pool, should an entire betting entry or field be scratched or declared a nonstarter in any [pick six] pick-six race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the [pick six] pick-six pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the track in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field with the lowest program number shall be designated.) Wagers in the [pick six] pick-six pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except at tracks with totalisator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), in which case, the wagers upon scratched constituent horses will be deemed wagers upon the "designated horse" in such race. In case no starter remains representing any betting entry or field, wagers upon such entry or field shall be deemed wagers upon the "designated horse" in the race affected by the scratch. Should the balance of a betting entry or field race as a nonbetting starter for purposes of other pari-mutuel pools, as provided in section 4009.20 of this Article, wagers upon such entry or field shall be deemed wagers upon the "designated horse" for such race. Should a programmed starter be scratched or declared a nonstarter prior to the start of the first leg, [the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg] affected bettors may select another betting interest, if a wager can be canceled and a replacement wager issued before the start of the first race of the pick-six, or obtain a cancellation of the wager before the start of the first race of

the pick-six. If neither option is exercised, then wagers upon such scratched or declared nonstarter shall be deemed wagers upon the “designated horse” for such race.

(h) *Race cancellations [and surface transfers].* Except for [pick six] pick-six pools in which an intermediate or final distribution is to be made, should one or more pick-six races be cancelled or declared no race or non-betting, no carry-overs from prior [pick six] pick-six pools, advertised guaranteed amounts nor advertised added amounts will be distributed to winners in such day's [pick six] pick-six pool; and

(1) if more than three such races are contested, 75 percent [only] of that program's net pool shall be distributed, less breaks, to holders of wagers upon the winners of all [pick six] pick-six races actually contested for such pool, and 25 percent of such program's net pool, less breaks, shall be distributed to the holders of [the remaining tickets] wagers selecting the next most winners; should no wager select the winners of all [pick six] pick-six races actually contested, 25 percent of that net pool shall be distributed, less breaks, to the holders of wagers selecting the most winners of the [pick six] contested pick-six races [contested], and the 75-percent balance shall be carried over as elsewhere provided in this section[,] for subsequent distribution;

(2) if three or fewer such races are contested, then the entire pool for such program shall be refunded. [When the condition of the turf course(s) warrants a change of racing surface in any of the legs of the pick six races, and such change has not been known to the public prior to the close of wagering for the pick six pool, the stewards shall declare the changed leg(s) an “all win” race for pick six wagering purposes only. An “all win” race will assign the winner of that race to each pick six ticketholder as their selection for that race.] and

(3) if any of the designated races are canceled or declared no race or non-betting before the first leg being made official, then the pick-six shall be declared off and the gross pool refunded.

(i) Surface transfers. When the condition of a turf course warrants a change of racing surface in any of the legs of the pick-six races, and such change has not been known to the public prior to the close of wagering for the pick-six pool, then the stewards shall declare the changed leg an “all win” race for pick-six wagering purposes only. An “all win” race will assign the winner of that race to each pick-six bettor as such bettor’s selection for that race. Except for pick-six pools in which an intermediate or final distribution is to be made, a pick-six with surface transfer(s) shall be handled as follows:

(1) If there is one surface transfer race in the pick-six sequence of designated races combined with the winners of the five other designated races, 75 percent of such program’s net pool, less breaks, and any carryovers, advertised guaranteed amounts or advertised added amounts, shall be distributed to the holders of such wagers, and 25 percent of such program’s net pool shall be distributed, less breaks, to the holders of wagers selecting the most winners; should no wager include the winners of all five non-surface transfer races in the pick–six sequence, 25 percent of such net pool shall be distributed, less breaks, to the holders of wagers selecting the most winners of the non-surface transfer races in the pick-six sequence, and the 75-percent balance shall be carried over as elsewhere provided in this section for subsequent distribution.

(2) If there are two or three surface transfer races in the pick-six sequence, no carryovers from prior pick-six pools, advertised guaranteed amount or advertised added amounts will be distributed to winners in such day’s pick-six pool, and 75 percent of such program’s net pool shall be distributed, less breaks, to holders of wagers selecting the winners of all non-surface transfer

aces in the pick-six sequence, and 25 percent of such program's net pool shall be distributed, less breaks, to holders of wagers selecting the most winners; should no wager include the winners of all the non-surface-transfer races in the pick-six sequence, 25 percent of such net pool shall be distributed, less breaks, to the holders of wagers selecting the most winners of the non-surface-transfer races in the pick-six sequence, and the 75 percent balance shall be carried over as elsewhere provided in this section for subsequent distribution.

(3) If there are more than three surface transfer races in the pick six sequence, no carry-overs from prior pick six pools, advertised guaranteed amounts or advertised added amounts will be distributed to winners in such day's pick six pool, and 25-percent of that program's net pool shall be distributed, less breaks, to holders of wagers selecting the winners of the most non-surface-transfer races in the pick-six sequence, and the 75-percent balance shall be carried over as elsewhere provided in this section for subsequent distribution.

(4) If there are one or more surface transfer races in the pick-six sequence, and there are no wagers selecting the winner(s) of at least one of the non-surface-transfer races, the entire pool for such program shall be refunded; in the event there is a final distribution scheduled, and no further programs are conducted at the meeting, the commission shall require that a pick-six pool be conducted on the first program of the next race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

[(i)] (j) Seed money or insurance allocation. Except where the established takeout is higher than the prevailing takeout established for non-carryover days, a percentage designated by the track operator and approved by the commission, not exceeding two percent of the total daily pick six pool wagering, shall be held apart by the track operator from the takeout of each pick-six pool to reimburse such track operator for the cost of any insurance it may secure to guarantee minimum distributions to winners of such pools, or to reimburse a track operator for funds such track operator expends for added money or guaranteed minimum distributions to winners of such pools. Any accumulation of such allocations not necessary to reimburse a track for expenditures actually incurred for such purposes shall be added to the amounts distributable in the pool designated for final distribution for the meeting.

[(j)] (k) Posting of winning combinations. Every pick six wagering combination entitled to a payoff shall be posted publicly by the track operator together with the payoff price [therefor].

[(k)] (l) Trust funds. Carry-over monies shall be held in a separate account in trust by track operators for the benefit of participants in [pick six] pick-six pools until distributed.

[(l)] (m) No reduction in guaranteed distributions. Advertised added monies or minimum distributions shall not apply to intermediate or final distributions, unless a wager correctly selects winners of all six designated races, or five winners and no more than one "all win" of the [pick six] pick-six pool. A guaranteed minimum distribution or guaranteed added money amount, once advertised, may not be reduced and shall continue to be guaranteed by the track operator for every [pick six] pick-six pool for the balance of the meeting.

[(m)] (n) Betting information. Unless otherwise ordered by the commission, information concerning combinations wagered upon or not wagered upon in a [pick six] pick-six pool shall not be disclosed by the tote operator, or otherwise, until the final leg of a [pick six] pick-six wager remains as the only race

to be contested for completion of the [pick six] pick-six wager. The operation of the totalisator equipment and reports generated thereby, as well as the communication of any information concerning such pool, shall be subject to the strict supervision of the commission.

[(n)] (o) *Nontransferability.* [Pick six] Pick-six tickets shall be nontransferable, and violations of this subdivision may lead to confiscation and cancellation of such tickets in addition to other disciplinary action.

[(o)] (p) *Unforeseen circumstances.* Should circumstances occur that are not foreseen in this section, questions [arising thereby] shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of [pick six] pick-six pools are final and unappealable.

[(p)] (q) *Posting of rules.* These rules shall be posted in the public area of the track by the track operator and copies [thereof] shall be made available to the public by the track operator.

[(q)] (r) *Interfacing of off-track wagers.* Interfacing of off-track wagers shall be accomplished according to procedures approved by the commission. In the event there is a failure to interface all such wagers with on-track wagers in accordance with such procedures, the procedure for distribution of the pool and computation of payoff prices shall be approved by the commission.



## Gaming Commission

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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:** September 17, 2015

**Re:** Proposed Rulemaking for Per Se Thresholds and Time Restrictions  
(9 NYCRR §§ 4043.2(i), 4043.3, and 4120.3).

For Commission consideration are proposed revisions to the Commission's horse racing rules that regulate the use of certain substances with per se thresholds and restricted time periods.

These proposals would align the Commission's laboratory thresholds for controlled therapeutic medications with the latest ones approved by the Association of Racing Commissioners International, Inc. ("ARCI"). ARCI recommends adding a threshold for albuterol (a bronchodilator) and lowering the threshold for ketaprofen, a non-steroidal anti-inflammatory drug ("NSAID"). Both recommendations are consistent with the Commission's existing time restrictions for albuterol (96 hours) and NSAIDs (48 hours) that ensure a horseperson will not inadvertently commit threshold violations. ARCI's Scientific Advisory Committee recommends adopting two thresholds for cobalt, a dietary element: one (50 ng/ml) detects the intentional overuse of cobalt, a practice that has no valid purpose and cannot occur without using refined products, and another (300 ng/ml) imposes a blood-doping level of penalty when the violation has occurred undeniably. Cobalt is reportedly misused in a manner that causes serious central nervous system distress and blood-doping to a horse.

These proposals would also add a threshold for isoflupredone, a corticosteroid; restrict its use to only joint injections in Rule 4043.2(i)); and establish a requirement that the Commission first warn a trainer whose horse tests in excess of corticosteroid thresholds when the corticosteroid joint injection causing the threshold violation is shown in documentary evidence (pre-race report to Commission, veterinary records) to have been administered safely in compliance with the Commission's seven-day restricted time period for Thoroughbred racehorses. Unlike the other proposals, these corticosteroid rule proposals are limited to one breed because the Commission has different corticosteroid standards for Thoroughbred and Standardbred racing.

The text of the proposed rules is attached.

attachment

Commissioners  
September 17, 2015  
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cc: Robert Williams, Executive Director  
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering

NEW YORK STATE GAMING COMMISSION  
AMENDMENT OF SECTIONS 4043.2, 4043.3 AND 4120.3 OF  
NEW YORK CODES, RULES AND REGULATIONS  
TITLE 9, SUBTITLE T, CHAPTER I, SUBCHAPTERS A AND B

Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, the New York State Gaming Commission hereby proposes this amendment of Sections 4043.2, 4043.3 and 4120.3 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

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

Drugs and medications are permitted to be used only in accordance with the following provisions.

\* \* \*

(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 prednisolone or dexamethasone;
- (2) for at least seven days following a joint injection of a corticosteroid; and the following corticosteroids may be administered only by means of a joint injection: betamethasone, isoflupredone, any formulation of methylprednisolone and any formulation of triamcinolone;
- (3) for at least 14 days following an administration of clenbuterol or firocoxib.

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 time periods.

**§ 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) Albuterol: 1 ng/ml in urine;
- [(2)] (3) Betamethasone: 10 pg/ml in plasma;
- [(3)] (4) Butorphanol:
  - (i) 300 ng/ml of total butorphanol in urine; or
  - (ii) 2 ng/ml of free butorphanol in plasma;

[(4)] (5) Clenbuterol:

- (i) 140 pg/ml in urine; or
- (ii) any clenbuterol in plasma;

(6) Cobalt: 50 ng/ml in plasma;

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

[(6)] (8) Detomidine:

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

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

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

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

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

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

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

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

(16) Isoflupredone: 100 pg/ml in plasma;

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

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

[(16)] (19) Mepivacaine:

- (i) 10 ng/ml of total hydroxymepivacaine in urine; or
- (ii) any hydroxymepivacaine in plasma;

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

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

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

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

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

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

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

[(24)] (27) 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.

(c) Special provisions.

(1) Cobalt. A person who is found responsible for a violation of this section for the substance cobalt, when the detected concentration of cobalt exceeds 300 ng/ml in plasma, shall incur the same penalty described in paragraph (2) of subdivision (b) of section 4043.12 of this Part.

(2) Corticosteroid joint injection. It shall not be a violation of this section for the drug betamethasone, isoflupredone or triamcinolone acetonide when:

(i) the laboratory positive resulted from an administration that was recorded in the contemporaneous veterinary records of the horse, reported to the commission in compliance with subdivision (b) of section 4043.4 of this Part before the horse raced, and administered to the horse in compliance with subdivision (i) of section 4043.2 of this Part at least seven days before the race; and

(ii) the commission had not previously issued a warning to the trainer that the commission laboratory reported finding such substance, in a urine or blood sample collected from any horse trained by such trainer, at a concentration in excess of the threshold set forth in subdivision (a) of this section.

**§ 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 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) Albuterol: 1 ng/ml in urine;

[(2)] (3) Butorphanol:

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

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

(4) Cobalt: 50 ng/ml in plasma;

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

[(4)] (6) Detomidine:

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

[(5)] (7) Diclofenac: 5 ng/ml in plasma;

[(6)] (8) DMSO: 10 mcg/ml in plasma;

[(7)] (9) Firocoxib: 20 ng/ml in plasma;

[(8)] (10) Flunixin: 20 ng/ml in plasma;

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

[(10)] (12) Glycopyrrolate: 3 pg/ml in plasma;

[(11)] (13) Ketoprofen: [10] 2 ng/ml in plasma;

[(12)] (14) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;

[(13)] (15) Mepivacaine:

- (i) 10 ng/ml of total hydroxymepivacaine in urine; or
- (ii) any hydroxymepivacaine in plasma;

[(14)] (16) Methocarbamol: 1 ng/ml in plasma;

[(15)] (17) Methylprednisolone: 100 pg/ml in plasma;

[(16)] (18) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;

[(17)] (19) Phenylbutazone: 2 mcg/ml in plasma;

[(18)] (20) Procaine penicillin: 25 ng/ml of procaine in plasma; and

[(19)] (21) 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.

(c) A person who is found responsible for a violation of this section for the substance cobalt, when the detected concentration of cobalt exceeds 300 ng/ml in plasma, shall incur the same penalty described in paragraph (2) of subdivision (d) of section 4120.17 of this Part.