



**Gaming  
Commission**

## January 26, 2015 Meeting Book



Meeting Agenda  
January 26, 2015

1. Call to Order and Establishment of Quorum
2. Consideration of Minutes, Meeting of December 22, 2014
3. Report of Executive Director
4. Rulemaking
  - a. SGC-28-14-00006-E, Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)
  - b. Proposed Rulemaking: Prohibited Substances in Thoroughbred Racing
5. Adjudications
  - a. In the Matter of Steven Kazmar
  - b. In the Matter of Graham Lewis
6. New/Old Business
7. Scheduling of Next Meeting
8. Adjournment

###

**NEW YORK STATE  
GAMING COMMISSION MEETING**

**MINUTES**

**MEETING of DECEMBER 22, 2014**

**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 12:21 p.m. by Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance were Chairman Mark Gearan, and Commissioners John Crotty, Peter Moschetti, John Poklemba, Barry Sample and Todd Snyder.

**2. Consideration of the Minutes from November 24, 2014**

The Commission considered previously circulated draft minutes of the meeting conducted on November 24, 2014. The minutes were accepted as circulated.

**3. Report of Executive Director**

Executive Director Robert Williams provided an update on the gaming license recommendations made by the Gaming Facility Location Board. The Board announced on December 17th recommendations of Montreign Operating Company, LLC, in Sullivan County in Region One, Zone Two; Capital Region Gaming LLC, Schenectady County in Region Two, Zone Two; and Lago Resort & Casino, LLC, Seneca County in Region Five, Zone Two.

**4. Rulemaking**

**a. Emergency and Proposed Rulemaking: Jockey Injury Compensation Fund Plan and Assessment**

This item was withdrawn, given that the Jockey Injury Compensation Fund submitted a 2015 plan of operation on December 20, 2014, which will be processed under delegated authority to the executive director.

Chairman Gearan asked Mr. Williams to explain items 4-b through 4-l, which all related to regulation of drugs to horses in harness racing. Mr. Williams explained that these rules were proposed originally in November 2013 and that certain ones were re-proposed, with a few revisions, in March 2014. In addition, Mr. Williams stated the Commission held a public hearing to seek additional input in January 2014. He noted that as a result of the hearing, the Commission was in a position to make findings of fact in regard to certain rulemaking proposals. Gaming Commission Equine Medical Director Scott Palmer, who recommended the rules be effective no earlier than April 1, 2015 so as to provide adequate notice to practitioners, further described aspects of the proposals and the basis of the proposed findings of fact.

- b. **SGC-49-13-00011-P: Per Se Regulatory Standardbred Thresholds for Equine Drugs (Adoption)**
- c. **SGC-49-13-00015-P: Per Se Regulatory Standardbred Threshold and Restricted Time Period for Flunixin (Adoption)**
- d. **SGC-49-13-00018-P: Per Se Regulatory Standardbred Threshold and Restricted Time Period for DMSO (Adoption)**
- e. **SGC-49-13-00017-P: Restricted Time Period for Standardbred Firocoxib Use (Adoption)**
- f. **SGC-49-13-00009-RP: Restricted Time Periods for Clenbuterol Use on Standardbred Racehorses (Adoption)**
- g. **SGC-37-14-00005-P: Restrictions on the Use of Clenbuterol in Standardbred Racing (Adoption)**
- h. **SGC-37-14-00007-P: Reporting of Standardbred Corticosteroid Joint Injections to the Commission (Adoption)**
- i. **SGC-49-13-00014-P: Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Standardbred Racing (Adoption)**

Chairman Gearan asked for a Motion to Adopt the eight rules labeled as Items 4.b through 4.i:

ON A MOTION BY: Commissioner Crotty  
APPROVED: 6-0

Chairman Gearan then asked for a Motion to adopt fourteen findings as agency fact finding relative to four specific rule proposals.

ON A MOTION BY: Commissioner Poklemba  
APPROVED: 6-0

- j. **SGC-49-13-00012-P: Per Se Regulatory Standardbred Threshold and Restricted Time Period for Betamethasone and Triamcinolone Acetonide (Withdraw)**
- k. **SGC-49-13-00013-P: Per Se Regulatory Standardbred Threshold and Restricted Time Period for Dexamethasone and Prednisolone (Withdraw)**
- l. **SGC-49-13-00010-P: Per Se Regulatory Standardbred Threshold Limited to 24 Drugs, Special Corticosteroid Rules (Withdraw)**

Chairman Gearan asked for a Motion to withdraw three previously proposed rules labelled Items 4.j through 4.l, two of which related to standards and restricted time periods for certain corticosteroid injections and the third of which related to corticosteroid detection thresholds

ON A MOTION BY: Commissioner Crotty  
APPROVED: 6-0

- m. **Proposed Rulemaking: Equine Doping Multiple-Violator Minimum Penalty**

Chairman Gearan asked Mr. Williams to introduce for consideration a proposal that would require specific minimum penalties for multiple medication violations. Mr. Williams stated that the rulemaking is recommended nationally by the Association of Racing Commissioners International, and the concept is supported widely by other non-governmental entities including the New York Racing Association, Inc., The Jockey Club and the New York Thoroughbred Horsemen's Association. Commissioner Poklemba asked for and received clarification on the comment period that will apply to this proposal.

ON A MOTION BY: Commissioner Moschetti  
APPROVED: 6-0

## 5. Adjudications

### a. In the Matter of Charlie Amaro (FL 55-2014)

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 unanimously sustained the Hearing Officer's Report and Recommendations.

### b. In the Matter of Charlie Amaro (FL 67-2014)

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 unanimously sustained the Hearing Officer's Report and Recommendations.

### c. In the Matter of Jose Baez

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 unanimously sustained the Hearing Officer's Report and Recommendations.

### d. In the Matter of Disqualification of Always for You (Louis A. Gutierrez)

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 unanimously sustained the Hearing Officer's Report and Recommendations.

### e. In the Matter of Disqualificaiton of Kisses and Kicks (David P. McNeight, Jr.)

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 unanimously sustained the Hearing Officer's Report and Recommendations.

f. **In the Matter of Pedro Rodriguez**

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 unanimously sustained the Hearing Officer's Report and Recommendations.

6. **New Business/Old Business**

a. **New Business**

Commissioner Poklemba requested that the Commission consider a rule specifying that a placement decision is unappealable unless there is a genuine issue of material of fact concerning a mistake of law, ministerial error or fraud. Staff will research and report regarding the request.

b. **Old Business**

No action on old business was taken.

7. **Scheduling of Next Meeting**

Chairman Gearan suggested that the Commission maintain the present schedule of meetings to be on the fourth Monday of every month, which would make the next meeting on January 26, 2015.

8. **Adjournment**

The meeting was adjourned at 12:51 p.m.

###



MEMORANDUM

**To:** All Commissioners

**From:** Edmund C. Burns

**Date:** January 13, 2015

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

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

By publication in the State Register on July 16, 2014, September 10, 2014, November 12, 2014 and again on January 7, 2015, the Commission extended the emergency adoption. The emergency rule will expire February 16, 2015. Accordingly, for Commission consideration is the re-adoption of Part 5300 as an emergency rule, with such re-adoption to be filed with the Department of State prior to the expiration of the current emergency rule. The text of the rules has not changed since the initial emergency adoption on March 31, 2014. A copy of the proposed text is attached.

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

[REDACTED]

attachment

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

**PART 5300**

**Gaming Facility Applications**

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

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

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

(b) *Applicant information.*

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

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

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

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

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

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

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

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

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

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

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

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

- (2) An applicant shall identify all conflicts of interest including:
- (i) Any relationship or affiliation of the applicant, manager or any of their respective affiliates that currently exist with any member, employee, consultant or agent of the New York Gaming Facility Location Board or the Commission that is a conflict of interest, or may be perceived as a conflict of interest, during the application process. Further, if any such conflict should arise during the term of the application process, the applicant shall notify the New York Gaming Facility Location Board in writing of such conflict.
  - (ii) Any public officials or officers or employees of any governmental entity, and immediate family members of said public officials, officers or employees, who directly or indirectly own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instruments issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the applicant, the manager, or their affiliates.
  - (iii) Any persons not identified in subparagraph (ii) of this paragraph who have any arrangement, written or oral, to receive any compensation from anyone in connection with the application, the application process or the obtaining of a gaming facility license.
- (3) If the applicant does not identify any conflict of interest, or perceived conflict of interest, the applicant shall state that no direct or indirect conflict of interest, or potential conflict of interest, exists with respect to such proposal.
- (4) If the applicant identifies a direct or indirect conflict of interest, or potential conflict of interest, the applicant shall disclose the conflict of interest or potential conflict of interest and the steps the applicant will take to resolve such conflict of interest or potential conflict of interest.
- (5) The New York Gaming Facility Location Board shall make the final determination as to whether any activity constitutes a conflict of interest. The decision of such board shall be final and without recourse; however, such board shall not make any such decision without providing the applicant or manager, as applicable, with an opportunity to present comments.
- (6) An applicant shall identify any current or previous contract that the applicant has had with, and any current or previous licenses that the applicant has been issued by or under, any department or agency of New York State.
- (7) If the gaming facility will be managed by a manager that is different from the applicant, the applicant shall describe the relationship between the manager and the applicant including, without limitation, a summary of the terms of any and all agreements, contracts or understanding between the manager and the applicant.
- (8) An applicant shall submit, as applicable, copies of the following documents that apply to the applicant, the applicant's owners, any manager or any of the manager's owners:
- (i) certified copy of its certificate of incorporation, articles of incorporation or corporate charter;
  - (ii) by-laws as amended through the date of the application;
  - (iii) certified copy of its certificate of formation or articles of organization of a limited liability company;
  - (iv) limited liability company agreement or operating agreement as amended through the date of the application;
  - (v) certified copy of its certificate of partnership;
  - (vi) partnership agreement as amended through the date of the application;
  - (vii) certified copy of its certificate of limited partnership;

- (viii) limited partnership agreement as amended through the date of the application;
- (ix) other legal instrument of organization;
- (x) joint venture agreement;
- (xi) trust agreement or instrument, each as amended through the date of the application;
- (xii) voting trust or similar agreement; and
- (xiii) stockholder, member or similar agreement.

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

(1) describe its finance and capital structure including:

- (i) capital investment plans;
- (ii) a study completed by an independent expert assessing the size of the potential gaming market for the proposed gaming facility;
- (iii) a detailed financial forecast annually for a period of at least 10 years after opening for gaming on a best-, average- and worst-case basis;
- (iv) a qualitative business plan for the proposed gaming facility describing, at minimum, the components and projected results of the material revenue lines and expense categories of the proposed gaming facility, the applicant's sources and availability of financing, the principal business and financing risks of the proposed gaming facility and plans to mitigate those risks;
- (v) a detailed description of how the project will be financed;
- (vi) a detailed description regarding each financing source;
- (vii) a schedule of the financing sources' anticipated capital structure after construction and first three years of operation of the proposed gaming facility;
- (viii) an analysis of how the financing plans for the application fee, application and suitability investigation expenses, license fee, capital investment deposit, construction and first three years of operation of the proposed gaming facility will affect each financing source's compliance with the financial covenants under its current financing arrangements; and
- (ix) all financial commitments and guarantees the applicant or, if applicable, the manager, or its affiliates is prepared to provide to the Commission over and above the deposit or bond required by subdivision 1 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law to ensure that the gaming facility is completed, license conditions are fulfilled and sufficient working capital is available to allow continuous operation in manner described in the applicant's financial forecasts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) a description of the proposed gaming facility's inclusion within, and coordination with, a regional and local economic plan;
- (3) a description of plans and minimum commitments for use of New York-based suppliers and materials in the construction and operational phases of applicant's project;
- (4) a description of the employment opportunities created by the proposed gaming facility, including, among other things, the number of employees to be employed at the proposed gaming facility and the pay rate and benefits for employees;
- (5) a description of the competitive environment in which the applicant anticipates the proposed gaming facility will operate over the 10 years after opening;
- (6) a description of the target market segments of the gaming facility;
- (7) the marketing plans for the proposed gaming facility with specific reference to pre-opening marketing and opening celebrations; and
- (8) a description of strategies to be used by the applicant to deal with the cyclical/seasonal nature of tourism demand.

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

- (1) identify the location of the proposed gaming facility, including:
  - (i) the dimensions and total acreage of the land that will be developed for the proposed gaming facility;
  - (ii) the address, maps, book and page numbers from the appropriate registry of deeds;
  - (iii) the assessed value of the land for the proposed gaming facility at the time of application, and a description of all ownership interests in the land for the past 20 years, including all easements, options, encumbrances, and other interests in the property, together with all relevant demographic, geographic and environmental information in regard to the site and the surrounding area; and
  - (iv) if the applicant does not currently possess an ownership interest in the location, describe how the applicant intends to acquire the necessary interest in the land in accordance with subdivision 2 of section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law.
- (2) provide copies of current local zoning approvals and any rezoning, variances and/or land use approvals required for the gaming facility site, a detailed explanation of the status of any request for any of the foregoing, together with copies of all filings, including a specific schedule of applications for such approvals and anticipated approval dates;
- (3) provide a description of, and schematics illustrating, the applicant's master plan for the land and the gaming facility site showing major activities and functions, and a phasing plan for the proposed components;
- (4) provide designs for the proposed gaming facility including among other things, a site plan, floor plans, building elevations and perspectives;
- (5) describe the proposed gaming area, including square footage, number and types of table games and slot machines, electronic gaming devices, poker tables and any other forms of gaming, number of gaming positions, specific location of the games and machines in the proposed gaming facility;
- (6) provide a detailed description of the proposed amenities including hotels, meeting and convention facilities, dining facilities, entertainment venues and non-gaming amenities; in addition, provide a statement of how the proposed amenities will compare in quality to other area amenities and those offered in competitive gaming facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) cross-marketing efforts with attractions.

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

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

(1) its workforce development plans including:

- (i) human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program;
- (ii) an affirmative action program that identifies specific goals for the utilization of minorities, women, persons with disabilities and veterans on construction, service and professional jobs; and
- (iii) on-the-job opportunities and training in areas and with respect to demographic groups with high unemployment; and

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

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

#### **§ 5300.2. Background Investigation.**

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

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

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

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

- (1) The name, title, phone number and email address of a person to be contacted in reference to the application;
- (2) The current and former d/b/a or trade names used by the entity;
- (3) The principal business address of the entity;
- (4) The date and place of formation and information concerning each person forming the entity;
- (5) All other names under which the entity has conducted business and give the approximate time periods during which these names were being used;

- (6) All other addresses presently used by the entity and all addresses from which the entity is presently doing business;
- (7) All addresses, other than those listed in paragraph (6) of this subdivision, that the entity held or from which it was conducting business during the last 10-year period, and give the approximate time periods during which such addresses were held;
- (8) A description of the business conducted and intended to be conducted by the entity and its parent, holding, subsidiary and intermediary entities and the general development of such business during the past five years, or such shorter period as the entity or its parent, holding, subsidiary and intermediary entities may have been engaged in business. The description shall include information on matters such as the following:
- (i) competitive conditions in the industry or industries involved and the competitive position of the entity, if known;
  - (ii) the principal products produced and services rendered by the entity and its parent, intermediary and subsidiary entities, the principal markets for said products or services and the methods of distribution;
  - (iii) the sources and availability of raw materials essential to the business of the entity;
  - (iv) the importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises and concessions held; and
  - (v) a description of any material changes in the business entity's mode of conducting the business;
- (9) A description of any former business, not listed in response to paragraph (8) of this subdivision, that the entity or any parent, intermediary or subsidiary company engaged in during the last 10-year period and the reasons for the cessation of such business. Also indicate the approximate time period during which each such business was conducted;
- (10) Information for each director, trustee, and officer of the entity for the last 10 years. Officers include all persons serving as president, secretary, treasurer, chairman of the board, vice-president, general/corporate counsel or any such other officers as may be prescribed by the entity's governing documents;
- (11) The annual compensation of directors, trustees and officers and whether such compensation is in the form of salary, wages, commissions, fees, stock options, bonuses or otherwise;
- (12) The name, business address, date of birth, and position of each person other than a director, trustee or officer, who received annual compensation of more than \$250,000 and the length of time employed and the amount of compensation;
- (13) A description of all bonus, profit sharing, pension, retirement, deferred compensation and similar plans in existence;
- (14) Describe the nature, type, number of authorized and issued shares, terms, conditions, rights and privileges of all classes of voting, non-voting and other stock issued, or to be issued, or other similar indicia of ownership by the entity including the number of shares of each class of stock authorized or to be authorized and the number of shares of each class of stock outstanding, not held by or on behalf of the issuer, or other similar information applicable to other indicia of ownership as of this date;
- (15) The name, home address, and date of birth of each shareholder, the class held, number of shares held and the percentage of outstanding voting or non-voting securities or other ownership interest held;
- (16) A description of the nature, type, terms, covenants, conditions, and priorities of all outstanding debt and security devices utilized by the entity;
- (17) A description of each person or entity holding any outstanding debt and security devices utilized by the entity;

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

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

- (i) the name and address of the financial institution;
- (ii) the type of account;
- (iii) the account number; and
- (iv) the dates held;

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

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

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

- (i) any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
- (ii) any criminal proceeding in which such person has been named a party or an unindicted co-conspirator;
- (iii) any existing civil litigation that resolved within the previous five years to which the entity, its parent, or any subsidiary is a party, if damages are reasonably expected to exceed \$100,000 unless such damages involve claims against the entity that are fully and completely covered under an insurance policy;
- (iv) any judgment order, consent decree or consent order entered against the entity pertaining to a violation or alleged violation of the federal antitrust, trade regulation, or securities laws or similar laws of any jurisdiction; and
- (v) any judgment order, consent decree or consent order pertaining to any state or federal statute, regulation, or code that resulted in a fine or penalty of \$50,000 or more within the past 10 years;

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

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

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

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

- (i) donated or loaned property or anything of value for the purpose of opposing or supporting any government, political party, candidate, or committee, either foreign or domestic;
- (ii) made any loans, donations, or other disbursements to its directors, officers, or employees for the purpose of reimbursing such individuals for political contributions, either foreign or domestic; and
- (iii) maintained a bank account or other account, domestic or foreign, not reflected on the books of the entity, or maintained any account in the name of the nominee of the entity;

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

(28) Provide a copy of the following:

- (i) audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
- (ii) all annual financial statements prepared in the last five years, any exceptions taken to such statements by the independent auditor retained by the entity and the management response thereto;
- (iii) annual reports to shareholders for the last five years;
- (iv) any annual reports prepared within the last five years on Form 10K pursuant to Securities Exchange Act of 1934;
- (v) the last quarterly unaudited financial statements prepared by or for the entity, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed 10Q;
- (vi) any current report prepared due to a change in control of the entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the entities certifying accountant, or other material events, which, if the entity is registered with the SEC, may be satisfied by providing a copy of the most recently filed form 8K;
- (vii) each press release issued by the entity for the past five years;
- (viii) last definitive Proxy or Information Statement filed pursuant to the section 14 of the Securities Exchange Act of 1934;
- (ix) registration statements filed in the last five years pursuant to the Securities Act of 1933; and
- (x) all reports and correspondence submitted in the last five years by independent auditors for the entity that pertain to the issuance of financial statements, managerial advisory services, or internal control recommendations;

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

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

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

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

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

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

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

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

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

(4) a signed, dated and notarized affidavit.

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

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

(2) date of birth;

(3) physical description;

(4) current address and residence history;

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

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

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

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

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

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

(11) education and training;

(12) record of military service;

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

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

- (15) current memberships in any social, labor or fraternal union, club or organization; and
- (16) licenses and other approvals held by or applied for by the applicant or, where specified, the applicant's spouse, in New York State or any other jurisdiction, as follows:
- (i) any professional or occupational license held by or applied for the by the applicant or the applicant's spouse;
  - (ii) motor vehicle registrations and operator licenses held by or applied for by the applicant or the applicant's spouse, and any revocation or suspension thereof;
  - (iii) possession or ownership of any pistol or firearm, or any application for any firearm permit, firearm dealer's license, or permit to carry a pistol or firearm;
  - (iv) any license, permit, approval or registration required to participate in any lawful gambling operation in New York State or any jurisdiction held by or applied for by the applicant; and
  - (v) any denial, suspension or revocation by a government agency of a license, permit or certification held by or applied for by the applicant or the applicant's spouse, or any entity in which the applicant or the applicant's spouse was a director, officer, partner or any owner of a five percent or greater interest;
- (17) any interest in or employment presently or previously held by the applicant with any entity that has applied for a permit, license, certificate or qualification in connection with any lawful gambling or alcoholic beverage operation in New York State or any other jurisdiction; and any current employment or other association by the applicant's family with the gambling or alcoholic beverage industries in New York State or any other jurisdiction;
- (18) civil, criminal and investigatory proceedings in any jurisdiction, as follows:
- (i) arrests, charges or offenses committed by the applicant or any member of the applicant's immediate family;
  - (ii) any instance where the applicant has been named as an unindicted party or co-conspirator in a criminal proceeding or held as a material witness;
  - (iii) any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, grand jury or investigatory body, and any refusal to comply with a request to do so;
  - (iv) any pardons, dismissals, suspensions or deferrals of any criminal investigation, prosecution, or conviction;
  - (v) lawsuits to which the applicant was or is a party;
  - (vi) any citation or charge for a violation of a statute, regulation or code of any jurisdiction, other than a criminal disorderly persons, petty disorderly persons or motor vehicle violation; and
  - (vii) any use, distribution, or possession of any narcotic, hallucinogenic, drug, barbiturate, amphetamine or other substance other than pursuant to a valid prescription issued by a licensed physician;
- (19) any exclusion or barring from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction;
- (20) financial data, as follows:
- (i) all assets and liabilities of the applicant, and the applicant's spouse and dependent children as indicated on the net worth statement and supporting schedules in a format prescribed by the Commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes

- payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;
- (ii) bank accounts, including any right of ownership in, control over or interest in any foreign bank account, and safe deposit boxes;
  - (iii) real estate interests held by the applicant or the applicant's spouse or dependent children;
  - (iv) businesses owned;
  - (v) copies of Federal tax returns and related information;
  - (vi) judgments or petitions for bankruptcy, insolvency or liquidation concerning the applicant or any business entity in which the applicant held a five percent or greater interest, other than a publicly traded corporation, or in which the applicant served as an officer or director;
  - (vii) any business entity in which the applicant was an owner, director or officer that has been placed under some form of governmental administration or monitoring;
  - (viii) any garnishment or attachment of wages, charging order or voluntary wage execution, including the amount, court, nature of the obligation and the holder of the obligation;
  - (ix) any repossessions of real or personal property;
  - (x) any guarantees, co-signatures or insuring of payments of financial obligations of any persons or business entities;
  - (xi) status as executor, administrator or fiduciary of any estate;
  - (xii) life insurance policies on the applicant's life that name someone other than the applicant's family as a beneficiary;
  - (xiii) positions held, assets held, or interest received in any estate or trust;
  - (xiv) whether the applicant has ever been bonded for any purpose or been denied any type of bond, including the nature of the bond and if applicable, the reason for denial;
  - (xv) insurance claims in excess of \$100,000 by the applicant or the applicant's spouse or dependent children;
  - (xvi) referral or finder's fees in excess of \$10,000;
  - (xvii) loans in excess of \$10,000 made or received by the applicant, the applicant's spouse or dependent children;
  - (xviii) gifts in excess of \$10,000 given or received by the applicant or the applicant's immediate family;
  - (xix) brokerage or margin accounts with any securities or commodities dealer;
  - (xx) currency exchanges in an amount greater than \$10,000;
  - (xxi) information regarding any instance where the applicant or any entity in which the applicant was a director, officer or holder of a five percent or greater interest has traded in foreign currencies or in a foreign commodities exchange, sold or purchased discounted promissory notes or other commercial paper, or been a party to any leasing arrangements in excess of \$50,000; and
  - (xxii) information regarding any ownership interest or financial investment by the applicant in any entity that holds or is an applicant for a license issued by the Commission, or in any gambling venture that does not require licensure by the Commission, including persons providing or reasonably anticipated to provide the applicant with support in the financing of such investment or interest; the extent and nature of the applicant's involvement in the management and operation of the entity;

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

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

- (1) the name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;
- (2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the license or investigation process;
- (3) a consent to inspection, searches and seizures and the supplying of handwriting exemplars; and
- (4) a signed, dated and notarized affidavit of truth.

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

- (1) name and nature of position with or interest in a gaming facility license applicant or licensee, a gaming vendor applicant or licensee, or a holding company as applicable;
- (2) current photograph;
- (3) citizenship, and if applicable, resident alien status, including any certificate of naturalization, United States Citizenship and Immigration Services documentation, employment authorization with expiration date, country of which the applicant is a citizen, place of birth, proof of entry to the United States, and name of address of sponsor upon arrival;
- (4) any ownership interest, financial interest, or financial investment in any business entity applying to or presently licensed by the Commission; and
- (5) an applicant shall disclose whether, during the last 10 years, any entity in which it had been a director, officer, or principal employee or a holder of five percent or greater interest has:
  - (i) made or been charged with (either itself or through third parties acting for it) bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;
  - (ii) held a foreign bank account or has had authority to control disbursements from a foreign bank account;
  - (iii) maintained a bank account, or other account, whether domestic or foreign, that is not reflected on the books or records of the business;
  - (iv) maintained a domestic or foreign numbered bank account or other bank account in a name other than the name of the business;
  - (v) donated or loaned corporate funds or corporate property for the use or benefit of, or for the purpose of opposing, any government, political party, candidate or committee either domestic or foreign;
  - (vi) compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposition to any government or political party domestic or foreign; and
  - (vii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign.

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

- (1) United States Internal Revenue Service forms 1040, 1040X and related schedules;
- (2) an audit narrative or failure to file narrative; and
- (3) foreign tax returns and schedules.

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

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

- (1) the name, address, occupation, phone number, email address and years known of persons who can attest to the good character and reputation of the applicant;
- (2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the licensing process, or during any inquiries, investigations or hearings;
- (3) a consent to inspection, searches and seizures and the supplying of handwriting exemplars;
- (4) a notification and authorization form for employment credit report; and
- (5) a signed, dated and notarized affidavit.

### **§ 5300.3. Fingerprinting.**

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

### **§ 5300.4. Duty to Update Application.**

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

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

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

### **§ 5300.5. Application Fees.**

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

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



MEMORANDUM

**To:** All Commissioners

**From:** Edmund C. Burns

**Date:** January 20, 2015

**Re:** Proposed Rulemaking for Thoroughbred Out-of-Competition Testing  
(9 NYCRR §§ 4012.5 and 4043.12)

For Commission consideration are proposed amendments to our thoroughbred out-of-competition testing (“OCT”) rule designed to clarify the existing rule and to add improvements that conform with the amendments to the standardbred OCT rule that took effect on August 6, 2014.

In general, the OCT rule protects race integrity by making it possible to detect the administration of potent doping agents that increase red blood cells, mask pain or increase a horse’s ability to race beyond its natural limits. The OCT rule, which includes a description and prohibition of such doping agents, may also serve to detect “drug cocktails.” A drug cocktail is the administration of various drugs in sub-clinical doses that are efficacious because of drug interactions. Such doping agents and drug cocktails may be readily administered in such a manner as to be undetectable in race-day samples.

**Rulemaking History**

The thoroughbred OCT rule was identical to the standardbred rule when both were adopted in 2009. On July 18, 2012, the Commission amended the thoroughbred OCT rule while litigation was pending that challenged every aspect of the original standardbred OCT rule. After the Commission succeeded on June 6, 2013 in the Appellate Division, Third Department in defeating such challenge, the Commission amended, on August 6, 2014, the standardbred OCT rule to make amendments similar to those already made in the thoroughbred OCT rule. The August 2014 amendments also made further improvements to the Standardbred OCT rule.

On December 18, 2014, the Court of Appeals also upheld the Commission’s authority to engage in standardbred out-of-competition drug testing, holding that the Commission has broad authority to regulate to prevent equine doping and to conduct warrantless administrative searches, including by entering the property of unlicensed persons, such as farm owners who enter into commercial arrangements to stable race horses, to collect samples. The Court of Appeals held that the details of the standardbred OCT rule were mooted by our amendments of August 6, 2014, but affirmed the Third Department decision upholding the original rule.

**Proposed Revision of Thoroughbred Rule**

The thoroughbred OCT rule differs from the current standardbred rule in several important respects. The standardbred rule does not permit a trainer or owner to create a 24-hour delay by electing to bring an off-track horse to a New York racetrack. It permits forensic testing of a sample for any impermissible drugging (such as



**§ 4012.5. Out-of-competition testing.**

(a) [*Sampling horses*] *Out-of-competition collection of samples.*

(1) The commission may at a reasonable time on any date take a blood, urine[,] or other biologic sample, from a horse that is on a nomination list or under the care or control of a trainer or owner who is licensed by the commission, [for the purpose of testing for] in order to enhance the ability of the commission laboratory to detect or confirm the impermissible [presence or] administration of[substances prohibited by section 4043.12 of this Article. The commission shall perform no other forensic tests on a sample.] a drug or other substance to the horse.

[(2)Samples shall be taken under the supervision and direction of a person who is employed or designated by the commission and is qualified to safeguard the health and safety of the horse. Blood samples may be taken only by a licensed veterinarian.]

(2) [(3)] Horses to be tested may be selected at random, for cause[,] or as determined by a commission steward or executive official [or steward].

(3) [(4)] A selected horse that is not made available for sampling is ineligible to race for 180 days, unless the commission determines that circumstances unavoidably prevented the owner and trainer from making the horse available for sampling.

(4) [(5)] If a selected horse is not involved in activities related to racing in New York, then the trainer or owner may represent this to the commission and the commission will not sample the horse. If the trainer makes [this] such a representation and the managing owner has previously provided the commission with a means for the commission to give immediate telephonic notification to the managing owner that the trainer made such a representation, then the commission [will notify] shall transmit such notification to the managing owner [who may make the horse available for sampling in order to preserve such horse's eligibility] and the eligibility of the horse shall be preserved if the managing owner is able to make the horse available for immediate sampling.

(b) [*Cooperation with taking samples*] *Sampling procedure.*

(1) [The owner, trainer, and/or their designees shall cooperate with the person who takes samples by immediately assisting in the location and identification of the horse, making such horse available at a stall or other safe location to collect the samples, and witnessing the taking of such horse's samples.] Samples shall be taken under the supervision and direction of a person who is employed or designated by the commission and is qualified to safeguard the health and safety of the horse. A veterinarian shall collect all blood samples.

(2) The person who takes samples for the commission shall provide identification and disclose the purpose of the sampling to the trainer or designated attendant of the horse. [The person who collects samples on track may require that it be done at the test barn.]

(3) The owner, trainer and/or their designees shall cooperate with the person who takes samples for the commission by immediately assisting in the location and identification of the horse, making the horse available at a stall or other safe location to collect the samples, and witnessing the taking of the samples.

(4) The commission, if requested and in its sole discretion, may permit the owner or trainer to present an off-track horse for sampling at a time and licensed racetrack designated by the commission.

[(i) Before arriving to sample an off-track horse, the commission shall notify the owner or trainer, who may instead make the horse available within 24 hours at a licensed racetrack designated by the commission.]

[(ii) The commission may arrange for the sampling of a horse that is in another jurisdiction by such horse's racing commission or other designated person, provided that they follow the provisions of this rule, and the test results shall also be provided to the other jurisdiction for its regulatory use. The commission shall provide the owner or trainer with this as a reasonable alternative location to make the horse available within 24 hours.]

[(iii)]

(5) An owner or trainer does not consent to a search of the premises by making a horse available for sampling at an off-track location.

(6) The commission may arrange for the sampling of an out-of-state horse by the racing commission or other designated person in the jurisdiction where the horse is located. Such racing commission or other designated person shall follow the relevant provisions of this rule and the test results shall be available to the jurisdiction in which the horse is located for its regulatory use. The commission, if requested and in its sole discretion, may permit the owner or trainer instead to present the horse for sampling in New York State at a time and place designated by the commission.

(7) No person shall knowingly interfere with or obstruct a sampling.

(8) A licensed racetrack at which a horse may be located shall cooperate fully with a person who is authorized to take samples. The person who collects samples for the commission on track may require that the collection be done at the test barn.

[(3) No person shall knowingly interfere with or obstruct a sampling.]

(c) A buyer who was not aware [of the ineligibility of a horse under this rule] that a horse is or may be determined ineligible under this section may void the purchase, provided that [such voiding of the purchase is done] the buyer does so within 10 days after receiving notice of the horse's ineligibility.

(d) An application to the commission for an occupational license shall be deemed to constitute consent for access to any off-track premises on which horses owned and/or trained by the individual applicant are stabled. The applicant shall take any steps necessary to authorize access by commission representatives to such off-track premises.

**Section of 4043.12 of 9 NYCRR would be amended, as follows:**

**§ 4043.12. Prohibited substances.**

(a) *Prohibited substances.*

(1) The presence in or administration to a horse of the following doping agents or drugs, in the absence of extraordinary mitigating circumstances that excuse the owner and trainer from their failure to fulfill their duties and responsibilities, is prohibited at any time:

(i) Blood doping agents: any substance, including a protein- or peptide-based agent or drug, that is capable of abnormally enhancing the oxygenation of body tissues, including but not limited to erythropoietin (EPO), darbepoetin (e.g., Aransep), Oxyglobin, aminoimidazole carboxamide ribonucleotide (“AICAR”), Myo-Inositol Trispyrophosphate (“ITTP”) and Hemopure[, and Aranesp].

(ii) Gene doping agents: a gene, genetic element, or cell that alters the expression of genes for normal physiological functions and that may produce analgesia or enhance the performance of a horse beyond its natural ability, including but not limited to thymosin beta-4 (“TB500”). This shall not apply to such agents when used off-track in an accepted veterinary treatment to assist a disabled horse to become healthy, without producing analgesia or potentially enhancing the performance of the horse beyond its natural ability, provided that such use is documented in the contemporaneous veterinary records of the horse.

(iii) Any other protein- [and] or peptide-based agent or drug that may produce analgesia or enhance the performance of a horse beyond its natural ability, including but not limited to toxins, venoms[, and allosteric effectors.

(iv) [These] The substances described in this paragraph are prohibited regardless of any [other] of the provisions[, including] of section 4043.2[, of this [Subtitle] Part.

(2) No person shall possess or use [these] the prohibited substances described in paragraph (1) of this subdivision on the premises of any licensed racetrack.

(3) It shall be an affirmative defense to a violation of this [rule] section that the person used the prohibited substance only in a time, place[, and] manner specifically permitted in writing by the commission before the administration of such substance; for a recognized therapeutic use; and subject to such appropriate limitations as the commission shall place on the return of the horse to running races.

(b) *Penalties.*

(1) A horse found to be in violation of this rule shall be ineligible to [race] participate in racing until it is certain that the horse is no longer affected by the prohibited substance and for not less than 180 days, after which the horse must qualify in a workout satisfactory to the [judges] stewards and test negative for doping agents and drugs. The minimum fixed period of ineligibility for a horse in violation of this rule shall be reduced from 180 to 30 days if the trainer had never violated this rule or similar rules in other jurisdictions and had, for any violations of Part 4043 or similar rules in other jurisdictions, fewer than 180 days in lifetime suspensions or revocations and fewer than two suspensions or revocations of 15 days or more in the preceding 24 months.

(2) A person who is found responsible for a violation of paragraph (1) of subdivision (a) of this section shall, in the absence of extraordinary mitigating circumstances, incur a minimum penalty of license revocation in addition to any other penalties authorized in this [Title] Article.

(c) A buyer who was not aware that a horse is or may be determined ineligible under this section may void the purchase, provided that [such] the buyer does so within 10 days after receiving notice of the horse's ineligibility.