

mission 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:

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 (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.

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 (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.

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

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

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

#### Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19), 301(1, 2) and 902(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and is directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public's confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

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

3. Needs and benefits. This rule making is necessary to prohibit the administration of the anabolic steroid stanozolol to race horses, such that the presence of only endogenous anabolic steroids will be permitted under the Commission's rules, in order to enhance the safety and integrity of horse racing.

The current rule that strictly regulates the presence of anabolic steroids in racehorses permits the presence of three endogenous substances, which occur naturally in horses, and one exogenous substance that is present only when administered to a horse. See 9 NYCRR §§ 4043.15 (thoroughbred) and 4120.12 (harness). This rule provides a threshold concentration for the three endogenous anabolic steroids, to distinguish the naturally occurring level of such substances from illegal supplemental administrations. This rule also provides a threshold concentration for stanozolol, an exogenous substance, with a threshold that was included originally in such rule because stanozolol persists in the horse's bodily system for several months. The Commission did not want to exclude from racing the racehorses that had been lawfully treated with stanozolol before the adoption of this regulation.

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 proposal would phase out the permissive threshold for stanozolol with an effective date of six months after the final adoption of this rule making proposal. As some horses may have been lawfully administered this drug well before racing, and in compliance with the current permissive threshold, staff recommends that the proposed ban on any amount of stanozolol be scheduled to take effect in this manner to avoid excluding horses whose owners and trainers had treated the horse in compliance with existing rules.

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.

#### 4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. There is no cost caused to the regulated parties by not administering the anabolic steroid stanozolol.

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

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

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

6. Paperwork: There will be no additional paperwork.

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

8. Alternatives: The Commission considered not eliminating the permissive stanozolol threshold but rejected this because no purpose is served by not phasing out the undesirable practice of intentionally administering this drug.

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

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

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

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

This proposal would discontinue the permissive presence at threshold amounts of the drug stanozolol, the only anabolic steroid that is neither endogenous to a racehorse nor already banned by the Commission. There is no valid reason to administer this substance to a healthy racehorse, and there are better alternatives that are permitted for horses that are sick or injured. As some horses may have been lawfully administered this drug in compliance with the current permissive threshold, and the drug does not dissipate for several months, the proposed ban will take effect six months after the adoption of the rule change.

This rule will serve to enhance the health and safety of racehorses and the integrity of racing. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Suspension and Revocation of a Lottery Agent's License

I.D. No. SGC-52-15-00008-P

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

**Proposed Action:** Amendment of section 5001.19 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19); Tax Law, sections 1601, 1604, 1605 and 1607

**Subject:** Suspension and revocation of a lottery agent's license.

**Purpose:** To revise the rules for the procedure and grounds for suspension and revocation of a lottery license for sales agents.

**Text of proposed rule:** Section 5001.19 of Title 9 of the NYCRR is amended to read as follows:

§ 5001.19. Suspension and revocation of license.

(a) At the discretion of the commission, the agent's license may be suspended or revoked or have such license renewal rejected for any of the reasons set forth in section 1607 of the Tax Law or for any of the following reasons, or any combination thereof:

[(1) failure to account for lottery tickets received or the proceeds of lottery tickets or failure to comply with instructions of the commission concerning licensed activity;]

[(2) conviction of any offense as defined in the Penal Law;]

[(3)](1) failure to file any returns or reports or to keep records or to pay any fee or tax as may be required by this Part [in or pursuant to the acts];

[(4) fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the Lottery;]

[(5) failure to furnish a surety or other bond in such amount as may be required by the commission;]

[(6) the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, and public convenience is adequately served by other licensees;]

[(7)](2) a material change since issuance of the license with respect to any matter required to be considered by the commission as provided in [either the acts or] this Part;

(3) *failure to sell a sufficient number of lottery tickets required by the licensing agreement between the agent and the commission, when the commission has notified the agent of such insufficiency in writing and the agent fails to make satisfactory improvements, in the discretion of the commission, within the time set forth in the notice of insufficiency;*

[(8)](4) [when the agent violates] *violation of any of the provisions of the acts, rules and regulations of the [division] commission, the licensing agreement between the agent and the commission or any of the conditions of licensing set forth in section 5000.10 of this Part, or failure to follow procedures, policies or instructions of the commission;*

[(9)](5) [whenever] *failure of the agent [does not] to display commission point-of-sale material in a manner readily available to the public;*

[(10)](6) [whenever] *finding by the commission [finds] that the agent's experience, character[,] and general fitness are such that the agent's participation as a lottery sales agent is inconsistent with public interest or convenience or for any other reason within the discretion of the commission; [or]*

[(11)](7) *failure to notify the commission, in writing, within a reasonable time of any arrest, indictment, or service of a summons, or conviction for any felony whether within or without the State of New York, or within or without the United States, occurring during the term of the license or the renewal thereof; or*

(8) *failure to cooperate with an investigation of the commission, attempt to frustrate or obstruct such an investigation or provision of false or misleading information to the commission during the course of such an investigation.*

(b) *An agent may establish, as an affirmative defense to a suspension or revocation based upon insufficient sales, whether under paragraph (3) of subdivision (a) of this section or otherwise, that such agent's failure to sell a sufficient number of tickets was caused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate, such as extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances and that nevertheless, despite such mitigation, reasonably excuse such agent's sales performance.*

(c) *If the commission orders the temporary suspension of a sales agent's license pending any prosecution, investigation or hearing, the sales agent shall permit the commission to retrieve lottery equipment, tickets and other material provided by the commission that may be in the sales agent's possession. Failure to cooperate in the commission's retrieval effort shall constitute separate grounds for suspension or revocation of the sales agent's license. A sales agent under a temporary suspension shall continue to remit amounts owed to the commission when required during such temporary suspension.*

[(b)](d) Upon termination of an agent's license for any reason, the agent shall [go to the agent's assigned bank on a date designated by the commission for the purpose of rendering the agent's final lottery accounting. Surrender] *comply with the commission's instructions in regard to payment of remaining amounts owed by the agent and surrender of the agent's license, lottery equipment, tickets and other material provided by the commission [shall be as prescribed by the commission. Upon failure of any agent to settle such agent's accounts on or before the designated date,]. If the agent fails to comply with such instructions, the commission may take steps to impose such penalties and exercise such enforcement powers as may be provided for by law, including referral of the debt for collection or further action. The sales agent may be liable in the amount of the debt, plus any collection costs, penalties, interest and attorney fees to which the commission may be entitled.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, P.O. 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, 1605 and 1607, 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 1605 authorizes the licensing of lottery sales agents and sets forth criteria for licensing, while Tax Law Section 1607 establishes that a lottery license may be suspended or revoked.

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 refine a current rule that sets forth grounds for suspension and revocation of a lottery sales agent license.

3. **Needs and benefits:** This rulemaking will refine 9 NYCRR Section 5001.19 of the Commission's regulations, which sets forth grounds for suspension and revocation of licenses issued to lottery sales agents. Amendments to Section 5001.19 are proposed to eliminate duplication of Tax Law Section 1607, to make non-substantive and stylistic corrections to the text of the rule and to make explicit additional grounds for suspension or revocation of a sales agent license. Overall, the rulemaking will benefit sales agents by providing a more complete and detailed description of the grounds for license suspension and revocation, which the Commission hopes will limit the instances in which agents engage in such conduct. By clarifying the Commission's authority to discipline agents under such circumstances, the Commission's ability to suspend or revoke the license of an unsuitable agent is also improved.

The amendments will revise Section 5001.19 of the Commission's regulations to provide that an agent's failure to meet minimally acceptable sales levels as determined by the Commission for that particular agent is grounds for suspension or revocation of the agent's license. Section 5001.10(a) of the Commission's current regulations requires a sales agent, as a condition of licensing, to comply with the licensing agreement and any rules, regulations, procedures, policies and instructions promulgated or issued by the Commission. The lottery sales agent licensing agreement contains an obligation of the agent to achieve the level of sales required by the Commission. Thus, maintaining sufficient sales is currently a condition of licensing. The proposed amendments would make explicit that failure to meet this condition is grounds for suspension or revocation of an agent license.

To protect the sales agent, the amendments would require the Commission to notify the sales agent of a sales deficiency in writing and set forth a time in which the sales agent could show satisfactory improvement. The amendment would also allow the sales agent to raise, as an affirmative defense to a suspension or revocation based on insufficient sales, that the agent's sales performance is reasonably excused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate. Examples are extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events or circumstances.

The amendments also make explicit a rule that failure to cooperate with an investigation of the Gaming Commission, or any attempt to frustrate or obstruct an investigation by the Gaming Commission, is grounds for suspension or revocation. This amendment is necessary to ensure that sales agents cooperate with investigations conducted by the Commission to ensure the highest integrity of sales agents and lottery games.

New subdivision (c) of Section 5001.19 incorporates an existing provision of the sales agent licensing agreement requiring the agent to allow the Commission to retrieve lottery equipment, tickets and other material provided by the Commission that may be in the agent's possession if the Commission orders the temporary suspension of the sales agent's license pending any prosecution, investigation or hearing. The rule will require a sales agent under temporary suspension to continue to remit amounts owed to the Commission when required during such temporary suspension. Subdivision (c) will also provide that failure to cooperate in the Commission's retrieval effort shall constitute separate grounds for suspension or revocation of the agent's license. These provisions will limit loss of revenue resulting from the Commission's inability to recover amounts owed by the agent, lottery tickets, equipment or signage that can be used by other sales agents.

Revised subdivision (d) of Section 5001.19 updates procedures for winding up terminated sales agent licenses to align such procedures with

preferred practice. Upon termination of an agent's license for any reason, the rule will require the agent to comply with the commission's instructions in regard to payment of remaining amounts owed by the agent and surrender of the agent's license, lottery equipment, tickets and other material provided by the commission. Revised subdivision (d) will further state that the Commission may take steps to impose penalties and exercise enforcement powers as may be provided for by law, including referral of the debt for collection. The sales agent may be liable in the amount of the debt, plus any collection costs, penalties, interest and attorney fees to which the Commission may be entitled. Therefore, this rule decreases the risk of lost revenue when an agent's license is revoked.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. A lottery sales agent is already required, as a condition of licensing, to comply with the licensing agreement and the Commission's instructions regarding licensed activity. This rulemaking will make explicit the Commission's authority to suspend or revoke an agent that violates such conditions of licensing.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated.

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.

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

8. Alternatives: No other alternatives were considered.

9. Federal standards: There are no relevant 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 adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

This rulemaking will make explicit the Commission's authority to suspend or revoke the license of an agent that violates existing conditions of licensing. While an agent is required to achieve the level of sales required by the Commission for such agent, the amendments are helpful to small businesses that hold lottery licenses because the Commission will be required to notify an underperforming sales agent of any sales deficiency in writing and set forth a reasonable time in which the sales agent can show satisfactory improvement. The revised regulation will permit a small business facing possible disciplinary action for sales deficiency to argue that its performance is reasonably excused by factors outside the control of the agent that the agent has taken reasonable steps to mitigate. Overall, the rulemaking will benefit sales agents, including small businesses, by providing a more complete and detailed description of the grounds for license suspension and revocation, which the Commission hopes will limit the instances in which agents engage in such conduct. There will be no new reporting, record keeping or other compliance requirements imposed upon small businesses or local governments or rural areas. The proposed rulemaking 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.

## Department of Health

### EMERGENCY RULE MAKING

#### Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

**I.D. No.** HLT-52-15-00004-E

**Filing No.** 1068

**Filing Date:** 2015-12-10

**Effective Date:** 2015-12-10

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

**Action taken:** Amendment of Parts 487 and 488 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a--460-g, 461 and 461-a--461-h

**Finding of necessity for emergency rule:** Preservation of public safety.

**Specific reasons underlying the finding of necessity:** Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations, as a "state oversight agency" of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center Chapter 501 which took effect on June 30, 2013, and the Justice Center becomes operational.

Among the facilities covered by Chapter 501 are adult homes and enriched housing programs having a capacity of eighty or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the mental hygiene law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds. Given the effective date of Chapter 501, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such adult homes and enriched housing programs for an additional period likely extending several months. Absent emergency promulgation, such persons would be denied initial coordinated protections for several additional months, creating an unacceptable risk to residents. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will be implemented subsequently, as required by the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to Sections 20, 34, 131-o, 460, 460-a—460-g, 461, 461-a—461-h of the Social Services Law; and L. 1997, ch.436; and and L. 2012, ch. 501.

**Subject:** Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

**Purpose:** Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

**Substance of emergency rule:** The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions specific to facilities subject to the Justice Center of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian," "facility subject to the Justice Center," "psychological abuse," "Department," and "unlawful use or administration of a controlled substance" at sections 487.2(d)(1)-(13) and 488.2(c)(1)-13;

- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;

- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;