



**MEETING AGENDA
OCTOBER 28, 2019**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES FOR MEETING OF SEPTEMBER 17, 2019
3. RULEMAKING
 - A. PROPOSED: PROHIBITION OF ALL INTRA-ARTICULAR JOINT INJECTIONS WITHIN 14 DAYS OF A RACE
 - B. PROPOSED: AMENDMENT TO RULE REGARDING STANDARDS FOR BACKSTRETCH HOUSING AND RELATED FACILITIES
4. ADJUDICATIONS
 - A. IN THE MATTER OF JAMES J. DEGEORGIA, JR.
 - B. IN THE MATTER OF LUIS SAEZ
5. OLD BUSINESS/NEW BUSINESS
6. ADJOURNMENT

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New York State Gaming Commission

Minutes

Meeting of September 17, 2019

A meeting of the Commission was conducted in New York, New York.

1. **Call to Order and Establishment of Quorum**

Executive Director Robert Williams called the meeting to order at 4:12 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Chairman Barry Sample and Commissioners John Crotty, John Poklemba and Jerry Skurnik.

2. **Consideration of Minutes for Meeting of July 22, 2019**

The Commission considered previously circulated draft minutes of the meeting conducted on July 22, 2019. The minutes were accepted as circulated.

3. **Rulemaking**

- a. **PROPOSAL: Rider Licensing, Health and Safety Package.** The Commission considered the proposal of rules relative to rider licensing, health and safety.

ON A MOTION BY: Commissioner Skurnik

APPROVED: 4-0

Chairman Sample noted that he had been informed that had Commissioners Moschetti and Snyder been present, they would have voted in favor of rule proposal.

- b. **PROPOSAL: Unqualified Horses.** The Commission considered proposed amendments to rules governing the qualification of horses for harness racing.

ON A MOTION BY: Commissioner Crotty

APPROVED: 4-0

Chairman Sample noted that he had been informed that had Commissioners Moschetti and Snyder been present, they would have

voted in favor of rule proposal.

- c. **PROPOSAL: Triple Wager in Harness Racing.** The Commission considered proposed amendments to rules governing the triple wager rule in harness racing.

ON A MOTION BY: Commissioner Skurnik

APPROVED: 4-0

Chairman Sample noted that he had been informed that had Commissioners Moschetti and Snyder been present, they would have voted in favor of rule proposal.

- d. **PROPOSAL: Jackpot Super High Five Wager in Harness Racing.** The Commission considered the proposal of a new wager for harness racing to be called the Jackpot Super High Five.

ON A MOTION BY: Commissioner Crotty

APPROVED: 4-0

Chairman Sample noted that he had been informed that had Commissioners Moschetti and Snyder been present, they would have voted in favor of rule proposal.

- e. **PROPOSAL: Pick-Six Jackpot Pools in Harness Racing.** The Commission considered the proposal of a new wager for harness racing to be called the jackpot or rainbow wager.

ON A MOTION BY: Commissioner Poklemba

APPROVED: 4-0

Chairman Sample noted that he had been informed that had Commissioners Moschetti and Snyder been present, they would have voted in favor of rule proposal.

- f. **PROPOSAL: Consensus Rulemaking Package.** The Commission considered the proposal of technical consensus rulemaking amendments will delete an obsolete, erroneous and redundant statement and add a new definitional term for use within both Thoroughbred and Standardbred racing.

ON A MOTION BY: Commissioner Skurnik

APPROVED: 4-0

Chairman Sample noted that he had been informed that had Commissioners Moschetti and Snyder been present, they would have voted in favor of rule proposal.

4. Adjudication

a. In the Matter of Dominique Long

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed on a 6-0 vote to accept the conclusion of the hearing officer that the gaming registration should be granted and modified the hearing officer report with respect to the statutory interpretation underlying the decision.

5. Consideration of Employment Restriction Waiver. The Commission unanimously found that there were no other qualified candidates with the desired experience for the position of State Steward and thusly waived for good cause the pre-employment restrictions for Braulio Baeza, Jr. to be employed in such position.

APPROVED ON A ROLL CALL: 4-0

Chairman Sample noted that Commissioners Moschetti and Snyder indicated that had they been present, they would have voted in favor of granting such waiver.

6. Old Business/New Business

a. Old Business

No new business was discussed.

b. New Business

No new business was presented

7. Adjournment

Prior to adjournment, Chairman Sample recognized the recent passing of Robert A. Liebers, who served as a Commission hearing officer. Sample noted that Liebers was an accomplished personal injury and general litigation attorney who practiced in Jamestown, New York and ably handled some of the Commission's most challenging hearings. Sample stated that Liebers had

served with great dedication and distinction and extended the Commission's most sincere condolences to his daughters Britalena and Christine and sons Andrew and David.

No next meeting was set before adjourning at 4:32 p.m.

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Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns

Date: October 22, 2019

Re: Proposed Rulemaking for intra-articular treatment regulation (9 NYCRR §§ 4043.2(c), (e), (f), (g), (i))

This proposal would amend the restricted time period for the intra-articular injection (“IA”) of any substance to a Thoroughbred horse to match the proposal of a 14-day restricted time period for a corticosteroid joint injection (“CJI”) before a horse’s next race. The current restriction for all joint injections is one week before racing, with exceptions for some enumerated substances that are permitted.* The proposal provides that intra-articular injections of the enumerated permitted substances would be prohibited. In addition, the proposal would amend 9 NYCRR section 4043.2(i), which includes a limitation on CJIs before the next race, to add the same 14-day limitation for all other intra-articular joint injections.

The largest effect of the proposal on routine horse care will be to preclude a horse from racing within 14 days after the administration of hyaluronic acid or its derivatives by joint injection. Hyaluronic acid is a joint lubricant in the synovial capsules surrounding a horse’s hock, knee and ankle joints. Synthetic hyaluronic acid is administered to restore joint fluid and facilitate better joint movement. This proposal would in no way prevent the use of hyaluronic acid and other disease-modifying agents; it only would provide a time frame for their use that would protect the horse. Hyaluronic acid could continue to be administered by other means (*e.g.*, orally) until 48 hours before racing.

The purpose of the proposal is to enhance the protection of Thoroughbred race horses by allowing a greater time frame following the administration of any intra-articular joint injection. A 14-day waiting period would provide more time for a horse to be worked out at speed, providing a fuller opportunity to evaluate the treatment. This increased opportunity would allow ample time for a diagnosis to be determined, other beneficial therapy to be administered, and the horse to be

* Section 4043.2(c) currently permits innocuous treatments such as antibiotics and stomach ulcer drugs by any means until 24 hours before racing. Section 4043.2(e) currently permits an array of routine medications such as hyaluronic acid derivatives by any means until 48 hours before racing. Sections 4043.2(f) and (g) have similar restrictions for 72 or 96 hours before racing, reflecting how long the medication may affect the horse and the need for laboratory thresholds reliably to distinguish close-in administrations.

evaluated following lameness treatment with any IA, all of which would better ensure that the horse is fit to race. The longer restricted period is expected to improve the safety of the horses and riders.

Mid-Atlantic racing commission officials and horse persons recommended this change at their most recent meeting on October 2, 2019, following a presentation by New York State Gaming Commission Equine Medical Director Scott E. Palmer, VMD.

The text of the proposed rule is attached.

[REDACTED]

attachment

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

Subdivisions (c), (e), (f), (g) and (i) of section 4043.2 of 9 NYCRR would be amended, as follows:

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

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

* * *

(c) The following substances may be administered by any means except by joint injection until 24 hours before the scheduled post time of the race in which the horse is to compete:

* * *

(e) The following substances are permitted to be administered by any means except by joint injection until 48 hours before the scheduled post time of the race in which the horse is to compete:

* * *

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

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

* * *

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

* * *

(3) for at least 14 days following any other injection of a joint; and

[(3)] (4) for at least 14 days following an administration of clenbuterol or firocoxib.

In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such time periods.



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

To: Commissioners
From: Edmund C. Burns
Date: October 22, 2019
Re: Proposed Rulemaking for Backstretch Worker Housing (9 NYCRR Part 4560)

For Commission consideration is a proposal to extend regulations adopted earlier this year that set forth standards for housing maintained on the grounds of certain thoroughbred racetracks to all racetrack housing at Thoroughbred and Standardbred racetracks. At present Aqueduct Racetrack, Belmont Park, Buffalo Raceway, Finger Lakes Racetrack, Monticello Raceway, Saratoga Harness, Saratoga Race Course, Vernon Downs and Yonkers Raceway all maintain housing.

The proposed rule provides, which among other things, standards for buildings and residential rooms, sanitary, water, garbage removal and pest control, is generally modeled after the New York Department of Health's Migrant Farmworker Housing regulations.

A copy of the proposed text is attached.

[REDACTED]

attachment

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

Part 4047 of article 1 of subchapter A of Chapter I of subtitle T of 9 NYCRR would be renumbered as Part 4560 of a new subchapter I of Chapter I of subtitle T of 9 NYCRR and amended to read as follows:

Subchapter I Housing

PART [4047] 4560

Backstretch Worker Housing

Section	
[4047.1] <u>4560.1</u>	Definitions
[4047.2] <u>4560.2</u>	Applicability
[4047.3] <u>4560.3</u>	Annual inspection required
[4047.4] <u>4560.4</u>	Location and grounds
[4047.5] <u>4560.5</u>	Housing standards
[4047.6] <u>4560.6</u>	New construction requirements
[4047.7] <u>4560.7</u>	Sanitary facility requirements
[4047.8] <u>4560.8</u>	Provision for laundry facilities
[4047.9] <u>4560.9</u>	Garbage; refuse
[4047.10] <u>4560.10</u>	Pest control
[4047.11] <u>4560.11</u>	Responsibilities of occupants
[4047.12] <u>4560.12</u>	Water
[4047.13] <u>4560.13</u>	Variance and waiver

§ [4047.1] 4560.1. Definitions.

The following definitions are applicable throughout this Part:

(a) *Adequate* means sufficient to accomplish the purposes for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled; an activity conducted; or act performed, in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this Part.

[(b) *Association* means an entity authorized to conduct racing on which pari-mutuel wagering occurs.]

[(c)] (b) *Backstretch workers* are individuals required to be licensed [under Part] pursuant to Parts 4002 or 4101 of this Title who are employed to care for horses at any entity that conducts pari-mutuel wagering at a racetrack.

[(d)] (c) *Backstretch worker housing* means buildings or other structures pertaining thereto, any part of which may be used or occupied by persons employed as backstretch workers as or relating to housing. Such housing includes sleeping facilities provided in whole or in part by the employer of such persons; owner; lessee; or operator thereof, with or without stipulated agreement as to the duration of a backstretch worker's stay. Such

housing includes bathing and toilet facilities for the use of the occupants. All the facilities do not need to be in the same structure but must be readily accessible to, and under the control of, the occupants.

[(e)] (d) *Executive director* means the Executive Director of the Commission or the executive director's designee.

[(f)] (e) *Hot water* means water heated or tempered to provide a temperature of 110 to 120 degrees Fahrenheit at the point of use.

[(g)] (f) *Potable water* means water provided or used for consumption or for washing, showering or cooking purposes.

[(h)] (g) A *public health hazard* is any condition that reasonably could be expected to be responsible for illness, physical injury or death. Any of the following violations are public health hazards that require the executive director to order immediate correction or to institute immediate action as provided in the law and in this Part:

- (1) The condition of the electric service, wiring or electrical system components is such a that an imminent fire or shock hazard exists.
- (2) Installation or operation of stoves, including cook stoves or other heat producing equipment constituting a fire hazard or inadequate venting of fumes.
- (3) Failure to provide required fire exits or blockage of a required exit by locking or other obstruction.
- (4) Use of construction materials resulting in an imminent fire or structural safety hazard.
- (5) A potable water system serving the backstretch worker housing that contains contaminants in excess of the levels prescribed in applicable sections of Part 5 of Title 10 NYCRR.
- (6) Treatment of the backstretch worker housing water system, when required for disinfection or removal of contaminants, is not continuous.
- (7) Presence of cross-connections or other faults in the plumbing system that result, or may result, in contamination of the potable water supply.
- (8) Inadequately treated sewage discharging on the ground surface in an area accessible to backstretch worker housing occupants, or in a manner that may contaminate food service areas or result in pollution of a ground or surface water supply source.
- (9) Storage of hazardous materials, including agricultural chemicals and pesticides or their containers, in a manner that is hazardous to the health or safety of the housing

occupants, or contamination of housing by materials that are hazardous to the health and safety of the housing occupants.

(10) Other conditions that constitute a public health hazard.

(h) Racetrack operator has the meaning set forth in Part 4000.3 of article 1 of subchapter A, with respect to thoroughbred racing, and Part 4100.1 of subchapter B, with respect to harness racing, of Chapter I of this Title.

(i) *Sewage* means the waste from a flush toilet, bath, sink, shower, laundry tray or tub, dishwashing or laundry machine, or the water-carried waste from any other fixture or equipment or machine.

(j) *Uniform code* means the New York State Uniform Fire Prevention and Building Code of this Title.

§ [4047.2] 4560.2. Applicability.

Backstretch worker housing provided by [an association hosting 200 or more beds] a racetrack operator shall be maintained in accordance with this Part. [If an association maintains housing at multiple locations, the number of beds shall be aggregated to determine the applicability of this Part.]

§ [4047.3] 4560.3. Annual inspection required.

(a) [An association] Inspection. A racetrack operator that provides backstretch worker housing shall, at least annually, submit to an inspection of such housing. The inspection shall be conducted by a designated representative of the commission or a local housing authority for the jurisdiction in which the racetrack operator is located and shall be consistent with this Part and requirements in the Property Maintenance Code of the Uniform Code.

(b) Seasonal occupation. For backstretch worker housing that is occupied seasonally, no occupancy shall be allowed until after the required inspection has been made and the executive director has granted permission for such occupancy.

§ [4047.4] 4560.4. General obligations.

(a) Sound condition. Each [association] racetrack operator shall be responsible for maintaining all housing facilities in a structurally sound condition that prevents infestation by rodents, flies, cockroaches, mosquitoes, bats and other vermin.

(b) Drainage. All backstretch worker housing facilities shall be well drained and be free of depressions where water may pool and stagnate. The site or sites shall be located where disposal of sewage can be provided in a safe, sanitary manner that neither creates nor is likely to create a public health nuisance or health hazard.

(c) Clean and sanitary condition. The grounds of backstretch worker housing shall be maintained in a clean and sanitary condition and be free of noxious plants. Driveways and access roads shall be maintained to allow free and safe vehicular access to the property.

(d) Storage of dangerous materials. No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for backstretch worker housing, except for those needed for current household use. Agriculture chemicals including pesticides shall not be stored in a housing area.

(e) Contamination. Whenever the buildings of [an association] a racetrack operator are contaminated, or suspected of being contaminated by hazardous materials, chemicals or pesticides, the occupancy or use of the housing facilities may be restricted by the commission until required decontamination and/or corrective actions are completed.

(f) Reporting. Each [association] racetrack operator shall have the affirmative responsibility to report to the commission in writing any injury, serious illness, death or fire occurring at or within backstretch worker housing. Such reporting shall be made immediately when practicable, but in no case later than 24 hours following the reportable issue.

§ [4047.5] 4560.5. Housing standards.

(a) Buildings. All buildings provided by [associations] racetrack operators for sleeping shall have each of the following:

(1) a floor that is constructed of smooth, readily cleanable, durable material such as sealed concrete, close-grained wood or composition material;

(2) a minimum ceiling height of at least seven feet;

(3) adequate natural light and ventilation in all common use rooms and areas. Adequate artificial lighting and mechanical ventilation may be provided in lieu of natural light and ventilation in toilet rooms and shower rooms;

(4) at least one separate wall-type electric duplex outlet in addition to the required electric light fixture in each bathroom, washroom, laundry room and eating space. All electrical components, wiring and appliances shall be properly installed and maintained in accordance with applicable state or local building codes and the National Electric Code;

(5) at least two exits from each occupied floor. Where sleeping rooms are located above the ground floor, at least one outside exit from each floor above the ground floor is required. Any stairway extending beyond two occupied floors in a building shall have tight-fitting, self-closing doors that have a minimum three quarter-hours fire rating at each floor level. The doors shall swing in the direction of exit travel. For buildings

with room access from within enclosed space, stairways shall be enclosed within smoke-tight walls;

(6) a type 2A rated fire extinguisher in a readily accessible location not more than 100 feet from each housing facilities. In addition, a minimum of a type 5BC rated extinguisher shall be provided within 30 feet of all rooms containing cooking facilities. Any extinguisher with an equivalent ABC rating may also be provided; and

(7) smoke detection devices that are designed adequately, installed and maintained in compliance with General Business Law section 399-ccc.

(b) *Rooms.* All rooms provided by [associations] racetrack operators for sleeping shall have each of the following:

(1) natural light by means of at least one exterior window that, if the window can be opened, has screening with a tight-fitting frame. Natural ventilation may be provided by exterior openings that can be opened in lieu of a mechanical ventilating system;

(2) lockable exterior doors that have a tight fitting and are outfitted with door sweeps;

(3) electrical switches, outlets and at least one electric light. Electric components in a room shall be installed to State or local building codes and maintained in a manner that does not endanger the health or safety of the occupants. The use of flexible (extension) cords shall not be used for permanent wiring;

(4) battery-operated smoke detectors that are maintained in working order, or any other approved fire alarm system as otherwise permitted in writing by the executive director;

(5) dimensions of not be less than seven feet in any direction and not less than 70 square feet of floor area if single occupancy and not less than 50 square feet of floor area for each occupant if greater than single occupancy. In housing where occupants are permitted to cook, live and sleep in the same room, a minimum of 100 square feet of floor area is required for each occupant;

(6) heating capable of maintaining a minimum temperature of 68 degrees Fahrenheit in each room, if the rooms are used or occupied between September 1st and June 1st. When regulation of the temperature is not controlled by the occupants, the heating facilities must be operated to maintain minimum temperature requirements in all occupied rooms during the specified time period. Fossil-fuel-powered heaters shall be prohibited;

(7) beds or bunks, complete with required springs and mattresses. There shall be a clear space of at least 27 inches above the sleeping surface of a bed or bunk; and

(8) adequate space for the storage of clothes and personal possessions of each occupant. As a minimum, such space shall include 21 square feet of wall storage area that has a minimum depth of 12 inches and is equipped with clothes rods or hooks

and shelving for each occupant. Other provisions that provide equivalent storage capacity for each person may be substituted as approved in writing by the executive director.

(c) *Dining.* When meals are not furnished or sold to the occupants, adequate cooking and dining facilities shall be provided. This requirement may be accomplished by providing either a common cooking area consisting of a separate well lighted and ventilated room that is equipped adequately for cooking and dining, or by providing facilities for cooking and dining within each individual housing facility. When the required cooking and dining facilities are provided within individual housing units, the facilities shall:

(1) be located either in a separate room, or a separate area of at least 10 square feet per person shall be set aside for such purpose;

(2) contain a properly installed cook stove with a minimum of two burners in each individual housing unit. Existing housing with common cooking areas shall have adequate cook stoves providing a ratio of two burners per five occupants or fraction thereof, unless otherwise authorized by the executive director;

(3) have an adequate amount of food and utensil storage shelves and counter space for food preparation with shelves and counters constructed of materials that are non-toxic, non-absorbent and easily cleanable;

(4) have adequate provisions for safe storage and mechanical refrigeration of food at a temperature of not more than 45 degrees Fahrenheit;

(5) have table and chairs or equivalent seating with adequate capacity for the intended use;

(6) have a dishwash sink that is supplied with cold running water, adequate in size for the intended use and adequately installed with hot water readily accessible for dishwashing needs; and

(7) have non-absorbent, easily cleaned wall and floor surfaces in food preparation, cooking and dishwashing areas.

§ [4047.6] 4560.6. New construction requirements.

(a) *Notification.* No backstretch worker housing, or any portion thereof, shall be constructed or enlarged for occupancy or use, and no property shall be converted for occupancy or used as backstretch worker housing, without the executive director being first notified in writing. The required notice of construction, enlargement or conversion shall be submitted on a form, approved by the executive director, at least 30 days prior to beginning such construction. The notice may be supplemented by such further information, plans or specifications as the executive director may require.

(b) *Code requirements.* All new construction and alterations, enlargements, conversions or relocation of mobile homes, shall conform with the Uniform Code. A certificate of

occupancy, or equivalent documentation to certify the construction was completed in conformance with the Uniform Code requirements, shall be obtained prior to occupancy and be available for review on request by the executive director.

§ [4047.7] 4560.7. Sanitary facility requirements.

(a) Shower facilities. Shower facilities, separate for each sex, shall be provided. There shall be:

- (1) at least one shower head provided for every 15 residents, or fraction thereof;
- (2) an adequate supply of tempered water or both hot and cold running water at every shower head;
- (3) floors constructed and maintained with non-absorbent, non-skid materials and sloped to floor drains; and
- (4) adequate, dry dressing space in common use facilities.

Separate facilities for each sex are not required when the facilities are located in individual housing units.

(b) Toilet facilities. Toilet facilities shall be provided for groups of each sex. These facilities shall be:

- (1) located within 200 feet of each sleeping room;
- (2) constructed of cleanable materials and maintained in good repair;
- (3) in a quantity as follows:
 - (i) at least one toilet for every 15 residents or fraction thereof of the sex for whom the toilet facility is designated; and
 - (ii) at least one urinal for every 30 resident men or fraction thereof in a toilet facility designated for men, which urinals may be substituted for up to a maximum of one-third of the required toilets, or additional flush toilets may be provided in place of required urinals.

(c) Ventilation. Adequate ventilation shall be provided in each shower room and toilet room. Mechanical ventilation may be provided in lieu of natural ventilation, as approved by the executive director.

§ [4047.8] 4560.8. Provision for laundry facilities.

Mechanical clothes washers, laundry trays, tubs and sinks shall be provided in the ratio of at least 1 for every 50 residents or fraction thereof. Such facilities also shall have adequate provisions for drying clothes.

§ [4047.9] 4560.9. Garbage; refuse.

An adequate number of covered storage receptacles shall be provided and readily available for the storage of garbage and refuse. Such garbage and refuse shall be removed in a timeframe to ensure that no accumulation outside the covered storage receptacles is required. The storage receptacles shall be constructed of durable, cleanable materials and be maintained in a sanitary condition and in good repair. Garbage and refuse shall not be allowed to accumulate on the surface of the ground.

§ [4047.10] 4560.10. Pest control.

(a) Control. Each [association] racetrack operator shall conduct a program of abatement to control the presence of rodents, flies, cockroaches, mosquitoes, bats and other vermin in and around backstretch worker housing and animal feed storage areas. The methods of control shall include, without limitation:

(1) the daily removal of all materials that contribute to the breeding and harboring of vermin, such as horse excrement, garbage, refuse or any other putrid or offensive animal or vegetable matter; and

(2) a program of spraying or baiting for insects or rodents.

(b) Pest management protocol. Each [association] racetrack operator shall file with the commission on an annual basis an integrated pest management protocol that incorporates pest management industry-standard best practices.

(c) Third-party providers. Should [an association] a racetrack operator undertake pest control by a third party, only certified commercial pesticide applicators or commercial pesticide technicians shall be used.

§ [4047.11] 4560.11. Responsibilities of occupants.

(a) Occupant responsibilities. All occupants of backstretch worker housing are responsible for maintaining their housing unit and common use areas in a reasonably clean and sanitary condition; for exercising safe practices and proper care when using the facilities and equipment provided; for the sanitary storage and disposal of garbage and refuse that they generate using the facilities provided; for not using any unapproved heating or cooking device; and for occupancy of the property in accordance with the capacity limit.

(b) Obligation to report. Occupants who observe a public health hazard have an affirmative obligation to report promptly the concern to both management of the [association] racetrack operator and to the commission.

§ [4047.12] 4560.12. Water.

Every water supply serving backstretch worker housing shall comply with requirements of Part 5 of Title 10 NYCRR and also shall meet the following requirements:

(a) *Contaminants.* The water supply shall not exceed the maximum contaminant levels set forth in sections 5-1.51 and 5-1.52 of Subpart 5-1 of Part 5 of Title 10 NYCRR.

(b) *Minimum standards.* Potable water shall be adequate in quantity and quality and shall be available readily to resident occupants of the housing. Only potable water shall be so delivered or piped.

(c) *Source protection.* All potable water sources and distribution systems shall be designed, located, constructed and maintained to provide protection against contamination or pollution. All pumps, piping, fixtures and appurtenances shall be installed and maintained adequately to protect against contamination of any water source.

(d) *Connections prohibited.* There shall be no physical connection between the potable water supply and any non-potable water supply. Any fixture, installation or equipment that is subject to back-siphonage shall be installed and maintained adequately to protect against contamination of any water source.

(e) *Pressure.* A minimum pressure of 20 pounds per square inch, at peak demand, shall be maintained in all parts of the distribution system.

(f) *Reports on water treatment.* When a water treatment process is required to maintain adequate water quality, accurate and complete reports on the operation of the treatment system shall be maintained daily and submitted to the executive director at a frequency specified on a form supplied for this purpose.

(g) *Interruptions, changes in sources or treatments.* Any incident or condition that effects the quantity or quality of the onsite potable water supply shall be reported to the executive director within 24 hours of occurrence. There shall be no changes made to the source or method of treatment of a potable water supply, either temporary or permanent, without first receiving written approval from the executive director. An adequate supply of potable water must be provided and maintained during all times of operation.

§ [4047.13] 4560.9. Variance and waiver.

(a) *Variance.* In order to allow time to comply with a provision of this Part, [an association] a racetrack operator may submit a written request to the executive director for a variance. Such variance request shall not be granted unless the [association] racetrack operator demonstrates that the health and safety of the housing occupants and the public will not be prejudiced by the variance and that there are practical difficulties or hardships in immediate compliance with the provisions. [An] A racetrack operator shall meet all terms of an approved variance, including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the executive director specifies. A variance shall end one year from its date of issuance, unless such variance is granted for a lesser period of time or otherwise extended.

(b) *Waiver.* In order to accept alternative arrangements that do not meet a provision of this Part, [an association] a racetrack operator may submit a written request to the

executive director for a waiver from a specific provision of this Part. Such request shall not be granted unless the [association] racetrack operator can demonstrate that circumstances exist that are beyond the control of the [association] racetrack operator, compliance with the provision would present a hardship and that the public and housing occupants' health and safety will not be endangered by granting such a waiver. [An] A racetrack operator must meet all terms of any approved waiver. A waiver shall remain in effect indefinitely unless revoked by the executive director.