(1) Within one business day of binding the insurance coverage, a certificate of insurance evidencing the existence and terms of the policy;

(2) Within 30 days from the inception date of the policy:

(i) the certificate of insurance specified in Section 16.4(b)(1) of this part; and

(ii) the following information:

(a) The identity of the insured and a statement that the insured meets the minimum commercial risk premium and financial condition standards for a "large commercial insured" pursuant to Section 6303(b) of the Insurance Law;

(b) Major type of insurance;

(c) Rate services organization classification (such as Insurance Service Organization classification), if applicable, or, if not applicable, a description of the class to be written;

(d) Risk manager name, employer and contact information, including mailing address, phone number and email address, and a statement that the insurer has verified that the risk manager who assisted in the negotiation and purchase of the policy on behalf of the insured meets the qualifications required by section 6303(b)(2) of the Insurance Law; and

(e) The New York producer license number, if the risk manager is required to be a New York licensed producer; and

(3) with respect to] a policy form that has not been previously filed with the superintendent[, the policy form,]. *The insurer shall file the policy form in a form and manner acceptable to the superintendent,* within three business days after first delivery of a policy using the form, but no later than 60 calendar days after the inception date of the policy.

(c)(1) An insurer required to make a filing or a submission to the superintendent electronically pursuant to this Part may apply to the superintendent for an exemption from the electronic filing requirement by submitting a written request to the superintendent for approval at least 30 days in advance of making the filing or submission.

(2) The request for an exemption shall:

(i) Identify the time period for which the insurer is requesting the exemption; and

(ii) Specify whether the insurer is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.

Section 16.8(e) is amended to read as follows:

(e) Where a policy includes coverage for both New York and non-New York exposures, the total premium for all exposures may be used for purposes of determining class 1 or class 3 eligibility pursuant to section [16.1(f)] *16.1(j)* of this Part. However, a report filed with the superintendent showing special risk premiums and losses shall only include risks related to New York exposures unless the statement filing instructions specify otherwise.

Section 16.9(a)(2) is amended to read as follows:

(2) in which the insurer shall maintain *or have electronic access to* the underwriting files, experience statistics, financial and other records, applicable to business underwritten and transacted under section 6302 of the Insurance Law, subject to examination by the [Department of Financial Services] *superintendent* as often as the superintendent deems necessary.

Text of proposed rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, 1 State Street, New York, New York 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Data, views or arguments may be submitted to: Hoda Nairooz, New York State Department of Financial Services, 1 State Street, New York, New York 10004, (212) 480-5595, email: hoda.nairooz@dfs.ny.gov

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Consensus Rule Making Determination

This rulemaking conforms section 16.4 to recent amendments made by Chapter 75 of the Laws of 2013 to Insurance Law section 6303(a)(3), to extend the expiration date of the statute to June 30, 2015, and repeal the requirement that insurers file a certificate of insurance with the Department of Financial Services within one business day of writing such a policy.

This rulemaking also corrects: (1) the reference in section 16.8(e) to section 16.1(f) to read 16.1(j) and (2) inadvertent revisions that were made to section 16.9(a)(2) when that section was updated as part of the consolidated action to amend multiple Parts of 11 NYCRR to revise references that were outdated as a result of the consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services.

Because the amendment merely conforms section 16.4 with the revisions made to Insurance Law section 6303(a)(3) by Chapter 75 of the Laws of 2013, corrects a minor error in section 16.8, and corrects recent inadvertent revisions to section 16.9, no person or entity is likely to object to this rulemaking. Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act ("SAPA") § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

Job Impact Statement

Amendment of the regulation will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule. The proposed rule amends section 16.4 to remove certain current requirements in order to conform section 16.9 with the revisions recently made to Insurance Law section 6303(a)(3) by Chapter 75 of the Laws of 2013. The rulemaking also corrects: (1) the reference made in section 16.8(e) to section 16.1(f) to read 16.1(j) and (2) corrects an inadvertent revision that was made to section 16.9(a)(2) when that section was updated as part of the consolidated action to amend multiple Parts of 11 NYCRR to revise references that were outdated as a result of the consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services.

The Department of Financial Services believes that the amended rule will not result in any adverse job or employment impact.

New York State Gaming Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Clenbuterol

I.D. No. SGC-49-13-00009-P

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

Proposed Action: Addition of sections 4120.3(a)(17), 4120.2(k); and repeal of section 4120.2(g)(5) of Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for clenbuterol.

Purpose: To enhance the integrity and safety of standardbred horse racing with new clenbuterol rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new paragraph (17) would be added to subdivision (a) of the separately proposed new section 4120.3 to read as follows:

4120.3. Equine drug thresholds; per se

a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

* * *

(17) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma.

A new Subdivision (k) would be added to Section 4120.2 as follows:

(k) A horse may not race for at least 14 days following an administration of clenbuterol.

Subdivision (g) of Section 4120.2 would be amended as follows:

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

* * *

[(5) clenbuterol;]

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to standardbred race horses of the drug clenbuterol close to race day, and to simplify compliance by horsepersons and the enforcement of the equine drug rules in New York by adopting a proposed national permissible regulatory laboratory threshold for such drug. This proposal would also amend the restricted time period before a horse may race after a treatment with clenbuterol to ensure that horsepersons who comply with the Commission's restricted time periods will not incur an equine drug positive, including for exceeding the proposed clenbuterol Per Se threshold.

The proposed rule would establish for clenbuterol a regulatory laboratory threshold that was developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). The purpose of the threshold is to permit the administration of clenbuterol, but only 14 days or more before a horse's next race. Clenbuterol is an FDA-approved drug for veterinary treatment of respiratory ailments, a common affliction of race horses routinely confined to stalls. It is widely accepted, however, that clenbuterol has become an abused drug that is regularly administered because of its anabolic steroid properties which have the potential to affect race horse health and performance. According to RMTC and other experts, standardbred horses should be able to race without routine use of clenbuterol, in part because all of the competitors would face the same restrictions on its use. Some significant concerns and opposition have been raised to the rule proposal, however, by standardbred horsepersons, their organizations at New York racetracks, and their national organization, The United States Trotting Association, Inc. ("USTA"). The Commission has established equine drug rules that are identical for both standardbreds and thoroughbreds, except where justified by substantial differences between the breeds and racing practices.

The primary focus of comments from standardbred horsepersons has been on the different impact that the proposed regulations of clenbuterol and corticosteroids could have on standardbred racing, where horses race much more often (typically every seven days), and have far fewer breakdowns, compared to thoroughbred racing. Any drug that cannot be used during the week before a horse's next race has a disproportionate impact in standardbred racing, where horses often race weekly, in comparison to thoroughbred racing. In addition, standardbred horses break down less frequently, are a sturdier breed of horse, and race under conditions that create considerably less force on the horse's limbs. In view of such concerns, before progressing with final rulemaking, the Commission will conduct a public hearing to gather all relevant input and fully consider the potential impacts of the proposed clenbuterol limitations given current standardbred practice.

The proposed rule would add clenbuterol to the accepted medications whose detection would be permitted in race-day samples, albeit with a restricted time period of 14 days before a horse's next race, and establish the same threshold proposed in other states. Such threshold is meant to include clenbuterol as a recognized drug among a specific set of medications that are all that is needed for routine veterinary care close to race day of any racing horse and that can be effectively regulated by means of laboratory testing. Such drugs, which total 24, were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

The net effect of the new rule would be to help ensure, in conjunction with New York's restricted time period drug rule set forth in Section 4120.2, that no use of clenbuterol would be permitted that might affect race performance through such drug's anabolic steroid properties. The proposed rule would make it an automatic ("Per Se") violation of the Commission's equine drug rules to race a horse whose race-day blood or urine samples exceed the proposed clenbuterol regulatory laboratory threshold. The proposed rule would also amend Section 4120.2 to change the restricted time period during which a horse may not race after treatment with clenbuterol from 96 hours to 14 days.

A Per Se threshold rule would also make it easier for the Commission to establish that an improper equine drug administration has occurred. The proposed rule, unlike the restricted time period rule set forth in Section 4120.2, can be enforced without requiring either expert opinion evidence of the time of administration or direct evidence (e.g., veterinary records) to establish that an administration occurred within the restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

Adoption of an appropriate new Per Se equine clenbuterol rule would enhance the integrity of horse racing by limiting the drugs that can be used close to race day to only those that are well-accepted, necessary, and capable of control by means of laboratory testing. Such a rule would encourage the entry into New York races of horses stabled out-of-state if it makes the New York rule more consistent with those of other states.

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.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The proposed limitation on the use of clenbuterol to 14 days before a horse's next race would require trainers either to treat the horse with a different medication for respiratory ailments or not to race the horse for 14 days after treating it with clenbuterol. The latter option is inconsistent with the typical practice of racing a standardbred horse on a weekly basis for much of the calendar year.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI, and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of the drug clenbuterol by regulating its use by the adoption of a Per Se regulatory laboratory threshold. All trainers will be able to comply with this proposed threshold. No competitors will be able to use this restricted substances in violation of the same thresholds. The threshold will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because it is being proposed as part of a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt this threshold by January 2014, and this threshold is favored by the other American racing jurisdictions, which all voted for this threshold as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no adverse economic impact or reporting, recordkeeping, or other compliance requirements on

small businesses in rural or urban areas or on employment opportunities. No local government activity is involved. Trainers have been meeting various restrictions for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances. The time restriction period for clenbuterol will be raised from 96 hours to 14 days before racing.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold Limited to 24 Drugs, Special Corticosteroid Rules

I.D. No. SGC-49-13-00010-P

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

Proposed Action: Addition of sections 4120.2(n) and 4120.3(c) to Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold limited to 24 drugs, special corticosteroid rules.

Purpose: To enhance the integrity and safety of standardbred horse racing by limiting standardbred equine drugs.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Subdivision (c) would be added to proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

* * *

(c) A horse shall have raced in violation of this section if the laboratory conducting tests by or for the commission is able to determine from such horse's race-day urine or blood sample that a drug or other substance for which no permissible threshold is established in this Part had been administered to such horse before its race, unless such drug or other substance by its nature could not affect a horse's organ systems.

A new subdivision (n) would be added to Section 4120.2 as follows:

(n) A horse may race following the administration of a corticosteroid that is not specifically identified in other subdivisions of this section only if:

(1) the trainer of the horse discloses, in writing, such administration to the judges before race day; and

(2) the administration of such corticosteroid cannot be detected by laboratory tests, conducted by or for the commission, in a race-day urine or blood sample.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of drugs and other substances that can be administered close to race day, and to simplify compliance by horsepersons and enforcement of the equine drug rules in New York, by adopting a set of national permissible regulatory laboratory thresholds for drugs that are necessary and sufficient to provide good veterinary care close to race day.

The proposed rule would complement the regulatory laboratory thresholds that were developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). These thresholds are intended by RMTC and ARCI to apply in all horse racing jurisdictions. The drugs for which RMTC and ARCI have established thresholds are intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists. These thresholds are separately proposed by the Commission in contemporaneous rulemaking.

As set forth in proposed Section 4120.3, detection in race-day samples of administrations of other drugs or other substances that could affect race performance would be a rule violation. The use of a drug or other substance that cannot affect race performance, a trait that is defined in veterinary terms as having no effect on the body systems of the horse, however, would not be affected by this rulemaking.

In addition, this proposed rulemaking would adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to standardbred race horses close to race day. The Commission's separate proposals to adopt a set of national regulatory laboratory thresholds for five corticosteroids that are necessary and sufficient to provide good veterinary care close to race day would create a zero threshold for the administration of any other corticosteroids. Although the corticosteroids for which thresholds are proposed are sufficient to provide good veterinary care to a racing horse, the use of other corticosteroids is not intended to be restricted for a horse not close to race day and so long as the administration of any such corticosteroid cannot be detected on race day.

This new rule will limit the use of such non-threshold corticosteroids by requiring that the trainer disclose their use to the judges before race day and the horse tests below the proposed regulatory threshold (i.e., zero) on race day. This will permit a veterinarian to use such corticosteroids, despite the presence of readily available other corticosteroids for which the Commission has proposed non-zero thresholds, if the veterinarian determines that some veterinary need would be advanced by doing so. For example, the rule would allow a veterinarian to administer a wide range of corticosteroid treatments for a horse that is not currently engaged in racing and is recovering from some illness or injury but would restrict the use close to a horse's next race of non-threshold corticosteroids that would be detectable on race day.

As a result, the Commission's restricted time periods will continue to provide assurances to horsepersons who comply with them that their horses will not give rise to an equine drug positive, including under the national regulatory laboratory standards that have been proposed by the Commission.

The new rule will enhance the integrity and safety of horse racing by limiting the drugs and other substances that have a race day threshold greater than zero, and by limiting which corticosteroids can be used close to race day to those that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons because there are readily available alternative corticosteroids. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the state, or local government. The rule will be

implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI, and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the running of a race horse after administration of the corticosteroids for which there are readily available alternatives and known and widely accepted laboratory thresholds and establishes a zero threshold in race days sample for drugs and other substances that are not governed by the newly proposed national regulatory laboratory thresholds for standardbred horses. The other corticosteroids are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available, including betamethasone, dexamethasone, prednisolone, and triamcinolone acetonide. The drugs with specified thresholds encompass of the medications that are needed and sufficient to provide good veterinary care to a racing horse close to race day. The proposed rules are entirely limited to equine drug standards and testing, and merely modify the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING
HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Thresholds for Equine Drugs

I.D. No. SGC-49-13-00011-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 4120.2; renumbering of section 4120.3 to 4120.18; and addition of new section 4120.3 to Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred thresholds for equine drugs.

Purpose: To ehance the integrity and safety of standardbred horse racing by adopting permissive thresholds for 16 accepted medications.

Public hearing(s) will be held at: 10:30 a.m.-3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Section 4120.3 ("Other prohibitions") would be renumbered Section 4120.18.

Section 4120.2(h) would be renumbered Section 4120.2(o).

A new Section 4120.3 would be added to read as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

(1) Acepromazine: 10 ng/ml HEPS in urine;

(2) Butorphanol:

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

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

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

(4) Detomidine:

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

(ii) any detomidine in plasma;

(5) Diclofenac: 5 ng/ml in plasma;

(6) Firocoxib: 20 ng/ml in plasma;

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

(8) Glycopyrrolate: 3 pg/ml in plasma;

(9) Ketoprofen: 10 ng/ml in plasma;

(10) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;

(11) Mepivacaine:

(i) 10 ng/ml of total hydroxymepivacaine in urine; or

(ii) any hydroxymepivacaine in plasma;

(12) Methocarbamol: 1 ng/ml in plasma;

(13) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;

(14) Phenylbutazone: 2 mcg/ml in plasma;

(15) Procaine penicillin: 25 ng/ml of procaine in plasma; and

(16) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A laboratory finding that a horse has not exceeded a threshold set forth in this section shall not constitute a defense to a violation of any other section of this subchapter.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of drugs and other substances that can be administered close to race day, and to simplify compliance by horsepersons and enforcement of the equine drug rules in New York, by adopting a set of national permissible regulatory laboratory thresholds for drugs that are necessary and sufficient to provide good veterinary care close to race day.

Section 4120.3(a) of the proposed rule would establish for 16 commonly used drugs regulatory laboratory thresholds that were developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). These thresholds are intended by RMTC and ARCI to apply in all horse racing jurisdictions. These 16 drugs are among those whose selection by RMTC and ARCI is intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

The net effect of the new rule would be to help ensure, in conjunction with New York's restricted time period equine drug rules, that no pharmacologically significant residue of these 16 drugs from an adminis-

tration that could affect race performance will be present in the horse during a pari-mutuel race, while recognizing that these 16 medications are well-accepted, necessary, and capable of being regulated by known threshold values. This rule would make it an automatic ("Per Se") violation of the Commission's equine drug rules to race a horse whose race-day blood or urine samples exceed any of these regulatory laboratory thresholds. This will supplement the Commission's rule in Section 4120.2 that restricts the time period in which certain drugs may be used. Between them, the two rules will provide standards governing when and how various drugs or other substances can permissibly be administered to race horses.

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commissions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt these thresholds by January 2014. The rule will therefore simplify the veterinary treatment issues faced by trainers who are licensed to race in more than one jurisdiction, many of whom train their horses and obtain veterinary care in reference primarily to their host state's rules. The adoption of more uniform equine drug rules will make it easier for an out-of-state trainer to decide to race a horse in New York when abiding by the equine drug rules of the other jurisdiction. Horsepersons who are confident that they will not commit an unintended violation of New York's equine drug rules are more likely to enter their horses to race in New York, which will improve the depth and quality of the fields in New York races. The new rule will, therefore, make it easier for trainers and owners who race in multiple states to comply with the New York equine drug rules and to race in New York, while affording protection to the betting public against the manipulation of a horse's race performance with drugs and other substances.

The Per Se rule also will make it easier for the Commission to establish that an improper equine drug administration has occurred. The new rule, unlike the restricted time period rule set forth in Section 4120.2, can be enforced without requiring either expert opinion evidence of the time of administration or direct evidence (e.g., veterinary records) to establish that an administration occurred within the restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

The adoption of the proposed Per Se equine drug rule will enhance the integrity of horse racing by creating regulatory thresholds for drugs whose use close to race day is well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will encourage the entry into New York races of more horses that are stabled out-of-state by making the New York rules more consistent with those of other states.

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.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff reviewed the cost factors and determined that the rule can be implemented with little or no additional costs. To the extent that a less expensive alternative drug might not be permitted close to race day under the new rules, this was determined to be off-set by the anticipated overall reduction in the use of equine drugs by all horsepersons.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of 16 specified medications by regulating their use by the adoption of Per Se regulatory laboratory thresholds. All trainers will be able to comply with these proposed thresholds. No competitors will be able to use these restricted substances in violation of the same thresholds. The thresholds will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because they are being proposed as a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt each of these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activity is involved. Trainers have been meeting these thresholds for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances, with the exception of the long-lasting drug firocoxib. The threshold for firocoxib will require trainers not to use this drug for 14 days before racing.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Betamethasone and Triamcinolone Acetonide

I.D. No. SGC-49-13-00012-P

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

Proposed Action: Addition of sections 4120.2(e)(23) and 4120.3(a)(18), (19) to Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for betamethasone and triamcinolone acetonide.

Purpose: To enhance the integrity and safety of standardbred horse racing with new corticosteroid rules.

Public hearing(s) will be held at: 10:30 a.m.-3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraphs (18) and (19) would be added to subdivision (a) of a proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

* * *

(18) Betamethasone: 10 pg/ml in plasma;

(19) Triamcinolone acetonide: 100 pg/ml in plasma.

Paragraph (23) would be added to subdivision (e) of section 4120.2 as follows:

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

* * *

(23) notwithstanding paragraph (9) of this subdivision, the corticosteroids betamethasone and triamcinolone acetonide are not substances that are permitted to be administrated by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to standardbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs that have been recommended by the Racing Medication and Testing Consortium ("RMTC") and the Association of Racing Commissioners International, Inc. ("ARCI"). The full proposal of such organizations includes five corticosteroids that are necessary and sufficient to provide good veterinary care close to race day, including betamethasone and triamcinolone acetonide. The proposed rule would also exclude these two drugs from the 48-hour restriction in Section 4120.2(e)(9), thereby making them subject to the general one-week restriction of Section 4120.2(h). This change would increase the restricted time period before a horse's next race during which these two drugs could be administered from 48 hours to seven days. Although restricting any drug for seven or more days may interfere with the horse's standard racing schedule, the Commission has separately proposed thresholds for two other readily available corticosteroids (prednisolone and dexamethasone) that could be used until 72 hours before a horse's next race.

This proposed new rule will enhance the integrity and safety of horse racing by limiting which corticosteroids can be used before race day to those, including these two, that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the RMTC and the ARCI. No alternatives have been considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of the drugs betamethasone and triamcinolone acetonide by regulating their use by the adoption of Per Se regulatory laboratory thresholds. All trainers will be able to comply with the proposed thresholds. No competitors will be able to use these restricted substances in violation of the same thresholds. The thresholds will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because it is being proposed as part of a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activity is involved. Trainers have been meeting various restrictions for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances. These thresholds require that a horse cannot race for another seven days, but the Commission's separate proposals for the corticosteroids prednisolone and dexamethasone permit such readily available substitutes to be used until 72 hours before racing.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Dexamethasone and Prednisolone

I.D. No. SGC-49-13-00013-P

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

Proposed Action: Amendment of section 4120.2(e)(9); and addition of sections 4120.2(e)(24), (f)(9), (10) and 4120.3(a)(20), (21) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for dexamethasone and prednisolone.

Purpose: To enhance the integrity and safety of standardbred horse racing with new corticosteroid rules.

Public hearing(s) will be held at: 10:30 a.m.-3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraphs (20) and (21) would be added to subdivision (a) of a proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

* * *

(20) Dexamethasone: 10 pg/ml in plasma;

(21) Prednisolone: 1 ng/ml in plasma.

Subdivision (e) of Section 4120.2 would be amended as follows:

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

* * *

(9) hormones and non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadotropin, glucocorticoids [(e.g., Prednisolone, Depomedrol)], except in joint injections as restricted in subdivision (i) of this section;

* * *

(24) notwithstanding paragraph (9) of this subdivision, the corticosteroids dexamethasone and prednisolone are not substances that are permitted to be administrated by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

Subdivision (f) of Section 4120.2 would be amended as follows:

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

* * *

(9) dexamethasone.

(10) prednisolone.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to standardbred race horses close to race day. The Commission has separately proposed to adopt a set of other national regulatory laboratory thresholds for drugs that have been recommended by the Racing Medication and Testing Consortium ("RMTC") and the Association of Racing Commissioners International, Inc. ("ARCI"). The full proposal of such organizations includes five corticosteroids that are necessary and sufficient to provide good veterinary care close to race day, including dexamethasone and prednisolone. The proposed rule would establish laboratory thresholds for dexamethasone and prednisolone. The proposed rule also would increase the restricted time period before a horse's next race during which these two drugs could be administered from 48 hours to 72 hours. The adoption of these thresholds would limit the corticosteroids that could be administered without interfering with the use of corticosteroids to treat a standardbred horse during the period when it may participate in pari-mutuel races on a weekly basis. Racing each week, at least for a substantial part of the year, is normal practice for standardbred horse racing.

This proposed new rule will enhance the integrity and safety of horse racing by limiting which corticosteroids can be used before race day to those, including these two, that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the RMTC and the ARCI. No alternatives have been considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of the drugs dexamethasone and prednisolone by regulating their use by the adoption of Per Se regulatory laboratory thresholds. All trainers will be able to comply with the proposed thresholds. No competitors will be able to use these restricted substances in violation of the same thresholds. The thresholds will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because it is being proposed as part of a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activity is involved. Trainers have been meeting various restrictions for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances. These thresholds require that a horse cannot race for another 72 hours, which should not interfere with a standardbred horse's usual racing schedule.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

This Proposal Would Limit the Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Standardbred Racing

I.D. No. SGC-49-13-00014-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 4120.2(e)(9); and addition of sections 4120.2(e)(25), (l) and 4120.3(a)(22) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: This proposal would limit the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) in standardbred racing.

Purpose: To enhance the integrity and safety of standardbred horse racing with new corticosteroid rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraph (22) would be added to subdivision (a) of a proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

***

(22) Methylprednisolone: 100 pg/ml in plasma.

Subdivision (e) of Section 4120.2 would be amended as follows:

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

***

(9) hormones and non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadotropin, glucocorticoids [(e.g., Prednisolone, Depomedrol)], except in joint injections as restricted in subdivision (i) of this section;

***

(25) notwithstanding paragraph (9) of this subdivision, the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) is not a substances that is permitted to be administrated by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

A new subdivision (l) would be added to Section 4120.2 as follows:

(l) A horse may not race after an administration of methylprednisolone acetate (e.g., Depo Medrol) unless such horse subsequently tests negative, i.e., below the threshold established in section 4120.3 of this Part, for such drug in a test conducted by the commission at the sole expense of the trainer of the horse, and is released to race by the Presiding Judge.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to standardbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs, including other corticosteroids, that are necessary and sufficient to provide good veterinary care close to race day. The adoption of this proposal would limit the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol). This corticosteroid has been identified as particularly harmful to the long term health of treated joints and tissues, and potentially affects race performance for an unusually long period of time, according to the Commission's scientific consultant Dr. George A. Maylin. It has also been reported to persist after certain administrations at a concentration which exceeds the proposed threshold for as long as 99 days. The long period of time during which an administration of this drug might cause a violation of the proposed threshold was confirmed by the Commission when it conducted an extensive study of the veterinary records of over 75 horses whose tests results were in excess of the proposed threshold in the first half of 2013. The most reasonable restriction that could provide assurance to standardbred horsepersons that compliance would protect them from violation of the proposed thresholds is one that would require the horse to test negative before racing again. Accordingly, the new rule would require that any horse treated with this corticosteroid, methylprednisolone acetate (e.g., Depo Medrol), has to be tested at the expense of the trainer below the proposed threshold and then released by the presiding judge before the horse may race again. As a result, for those horsepersons who choose not to use the less restricted and equally available alternative corticosteroids (betamethasone, dexamethasone, prednisolone, and triamcinolone acetate), the Commission provides a means to return the horse to racing that is consistent with the proposed thresholds and with the overall purpose of reducing the use of this relatively harmful corticosteroid.

The new rule will enhance the integrity and safety of horse racing by limiting the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) and encouraging horsepersons to use other corticosteroids that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons because there are readily available alternative corticosteroids. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any new mandatory duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the Racing Medication and Testing Consortium and the Association of Racing Commissioners, International, Inc. The Commission considered and rejected the alternative of restricting a horse from racing for a period of 99 days after any administration of this corticosteroid.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the use of a standardbred race horse after administration of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol), for which there are readily available alternatives that are relatively less harmful to a horse's health and safety and have less potential to affect the race performance, by means of continuing efficacy, for a considerable period of time after administration of the drug. Other corticosteroids are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available, including betamethasone, dexamethasone, prednisolone, and triamcinolone acetonide. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities.

The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Flunixin

I.D. No. SGC-49-13-00015-P

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

Proposed Action: Repeal of section 4120.2(d); amendment of section 4120.2(e); and addition of section 4120.3(a)(24) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for flunixin.

Purpose: To enhance the integrity and safety of standardbred horse racing with new flunixin equine drug rules.

Public hearing(s) will be held at: 10:30 a.m.-3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraph (24) would be added to subdivision (a) of the proposed new section 4120.3 as follows:

4120.3. Additional Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

* * *

(24) Flunixin: 20 ng/ml in plasma.

Subdivision (d) of Section 4120.2 of 9 NYCRR would be repealed:

(d) [The following non-steroidal anti-inflammatory drug may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete:

(1) flunixin.] (*Reserved*)

The final unnumbered paragraph of subdivision (e) of Section 4120.2 of 9 NYCRR would be amended as follows:

None of these substances may be administered within 48 hours of the scheduled post time of the race in which the horse is to compete[, except that flunixin may be used in accordance with the specific authorization set forth in subdivision (d) of this section]. 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 48 hours.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to assure the public's confidence and preserve the high degree of integrity of racing at pari-mutuel betting tracks by regulating the use of drugs and medications in race horses so that the horses are fit and healthy, but not running on substances that have the potential to affect the outcome of a given race.

3. Needs and benefits: This rule is necessary to ensure that standardbred horses are not medicated to the point of adversely affecting the integrity of horseracing and the health and safety of race horses. The Commission believes that adopting its previous 48-hour flunixin administration rule is more appropriate than the rule adopted in 2005.

Flunixin, also known by the trade name Banamine, is a non-steroidal anti-inflammatory drug used to treat inflammation and soreness in racehorses. From 1971 to 2005, the administration of flunixin was not permitted less than 48 hours before races in New York. There were few post-race positives during that 30-year period.

Prompted by an effort of the Racing Medication and Testing Consortium ("RMTC") and other states, such as New Jersey and Maryland, the former Racing and Wagering Board adopted a rule to allow intravenous use of flunixin within 24 hours of a race effective January 4, 2006. Flunixin continued to be restricted within 48 hours of racing when administered by any other means. Among the benefits sought was to create consistency throughout the racing states so veterinarians could have a certain threshold under which they could provide therapeutic treatment. This movement was supported by the Mid-Atlantic Consortium of Racing States, which also sought uniform levels.

During the past five years in New York, this 24-hour rule for flunixin has been violated more than any other Commission equine drug rule. There have been more than 80 flunixin drug violations by thoroughbred and standardbred horses. There are many suspected reasons for this. It has become routine for flunixin to be obtained from compounding pharmacies, which are less accurate and reliable at providing a drug with a specific known concentration than a pharmaceutical company. The use of flunixin paste, on a regular and even daily basis, has become more common. In several instances, trainers have been confused about the Commission's rules allowing only IV use of flunixin during 48 to 24 hours before racing. In addition to newer drug regimens that include frequent administrations of flunixin paste, 11 trainers unwittingly admitted during agency investigations that they thought the paste was a permissible means to administer flunixin until 24 hours before a horse's next race.

The RMTC has recently proposed a mandatory regulatory laboratory threshold for flunixin that, depending on the specific horse and other variables, might possibly result in a trainer who abides by the 24-hour restriction nevertheless violating the proposed new threshold. The Commission's restricted time periods are designed to assure that one who complies with them will not be charged with an equine drug rule violation in New York.

Accordingly, the Commission's proposed rule would return to the longstanding, time-tested, and familiar practice of restricting the administration of flunixin to 48 hours prior to a race. The Commission and industry have considerable experience with banning flunixin for 48 hours as a result of this being the rule in New York State from 1971 through 2005. During those 34 years, there were relatively few rule violations, or complaints about the rule from horsepersons, or veterinary complaints about the care, treatment, health, or safety of our race horses. The 48-hour restricted time period will reduce the number of equine drug positives that occur in New York by providing horsepersons with an added safety cushion to avoid equine drug positives and greater certainty that compliance with the time period will result in the Commission's laboratory not reporting an equine drug violation.

Concerns that veterinarians will be restricted in their ability to treat a horse are mitigated by the fact the Commission's rules will continue to permit veterinarians to administer several different non-steroidal anti-inflammatory drugs until 48 hours before a horse's next race, and to provide veterinary care for inflamed or sore bodily tissues without restriction when the horse is not scheduled to race in the immediate future.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: The rule will not impose new or additional costs on regulated persons. The rule merely revises an existing rule in regards to allowable dosage of a medication.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff determined that the rule will impose no additional costs because the rule does not create any new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely makes a modification to a medication rule.

5. Local government mandates: The supervision and regulation of pari-mutuel racing activities are the sole responsibility of the New York State Gaming Commission, and do not involve local governments. Therefore, this rule will not impose any local government mandates.

6. Paperwork: No new paperwork will be required. This rule will be implemented utilizing existing regulations and procedures.

7. Duplication: Since the New York State Gaming Commission is exclusively responsible for the regulation of pari-mutuel racing activities in New York State, there are no other relevant rules or other legal requirements of the State or federal governments regarding the administration of flunixin to race horses.

8. Alternative approaches: No other alternative was considered in light of the Commission's preferred course of action to specifically revert to the previous standard.

9. Federal standards: There are no federal standards applicable to the subject area of state-regulated pari-mutuel racing activities.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely removes the 24-hour rule allowing for the administration of the drug flunixin to standarbred race horses. Flunixin will still be allowed as a 48-hour drug. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Various Drugs

I.D. No. SGC-49-13-00016-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 4120.2(e)(14); addition of section 4120.2(e)(20), (22), (f)(11); and repeal of section 4120.2(f)(2), (4) and (g)(6) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for various drugs.

Purpose: To enhance the integrity and efficiency of standardbred horse racing with new equine drug rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Subdivision (e) of Section 4120.2 would be amended as follows:

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

***

(14) the following nonsteroidal anti-inflammatory drugs (NSAID's): [P]*p*henylbutazone (e.g., Butazolidin); *diclofenac*; [F]*f*lunixin (e.g., Banamine); meclofenamic acid (*e.g.,* Arquel); naproxon (e.g., Naprosyn, Equiproxen), *and* ketoprofen (e.g., Orudis);

***

(20) dantrolene;

***

(22) methocarbamol (e.g., Robaxin).

Subdivision (f) of Section 4120.2 would be amended as follows:

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

(1) antihistamines;

[(2) dantrolene]

***

[(4) methocarbamol (e.g., Robaxin);]

***

(11) detomidine.

Subdivision (g) of Section 4120.2 would be amended as follows:

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

***

[(6) detomidine;]

***

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the administration of various substances for which the available analytic methodologies to detect an administration of the substance in a time and manner that could affect race performance have become more sensitive and precise. These substances can now be detected reliably in plasma samples in which the concentration of the target analytes can be linked more closely to the time of administration and to the potential of the substance to remain efficacious when the horse is racing. In the past, the available methodologies that were generally accepted as valid and reliable for detecting and confirming the administration of the parent drugs were less sensitive and less precise. To avoid false positives and to effectively regulate these substances using laboratory testing, the Commission previously adopted longer periods of restriction than were necessarily required to prevent the substances from being efficacious while a treated horse was racing. Compliance with those time restrictions was necessary for there to be a level playing field for all competitors and appropriate given the available science. More recent research and technological advances, however, including the development of a set of national regulatory laboratory thresholds by the Racing Medication and Testing Consortium ("RMTC") and others, now permits the Commission to propose a 24-hour reduction in the restricted time periods that apply to the following drugs: for dantrolene and methocarbamol, from 72 hours to 48 hours, and for detomidine from 72 hours to 48 hours. Consistent with the proposal to adopt more precise laboratory thresholds, the Commission also proposes to add diclofenac, which currently may not be used within a week before the horse's next race, to the list of non-steroidal anti-inflammatory drugs that may be used until 48 hours before a horse's next race.

The new rules will enhance the integrity and safety of horse racing by establishing the same regulatory thresholds that are proposed and publicly supported by the racing commissions in the mid-Atlantic and other states with pari-mutuel standardbred horse racing.

4. Costs:
(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of various medications.
(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.
(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new mandatory duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.
5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.
6. Paperwork: There will be no additional paperwork.
7. Duplication: None.
8. Alternatives: This rule amendment is to assure horsepersons that the Commission's restricted time periods are consistent with the separately proposed national regulatory laboratory thresholds for these equine drugs that have been recommended by the RMTC and the Association of Racing Commissioners, International, Inc. No other alternatives were considered.
9. Federal standards: None.
10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely adjusts the restricted time periods after the treatment of a standardbred race horse with dantrolene, detomidine, diclofenac, or methocarbamol to most closely approximate the period after administration of such drugs that should be accorded before a horseperson races a standardbred horse, given the proposed adoption of the national regulatory laboratory thresholds for such drugs. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact orreporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Standardbred Firocoxib Use

I.D. No. SGC-49-13-00017-P

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

Proposed Action: Addition of section 4120.2(m) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time period for standardbred firocoxib use.

Purpose: To enhance the integrity and safety of standardbred horse racing with a firocoxib equine drug rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new subdivision (m) would be added to section 4120.2 as follows:

(m) A horse may not race for at least 14 days following an administration of firocoxib.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.
2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.
3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of the drug firocoxib, a non-steroidal anti-inflammatory drug with an unusually long duration of action, and to ensure that horsepersons who use this drug will not unwittingly violate the national regulatory laboratory threshold for this drug that the Commission has separately proposed.

This drug is among those whose selection by the Racing Medication and Testing Consortium ("RMTC") and adoption as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI") is intended to apply in all horse racing jurisdictions. The drugs for which RMTC and ARCI have established thresholds are intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

This proposed rule would prohibit the administration of firocoxib within 14 days of a race. Currently, the administration of firocoxib is permitted up to one week before a race under the general restriction of Section 4120.2(h). The 14-day restrictive time period would be consistent with the separately proposed regulatory threshold for firocoxib that establishes an automatic ("Per Se") violation of the Commission's equine drug rules if a standardbred horse's race-day blood or urine sample exceeds 20 ng/ml in plasma. Between them, the regulatory threshold for firocoxib and the time restriction for firocoxib will provide clear standards governing when and how firocoxib can permissibly be administered to race horses.

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commissions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt the ARCI thresholds by January 2014. The separately proposed Per Se rule for firocoxib also will make it easier for the Commission to establish that an improper equine drug administration has occurred.

The proposed changes to the Commission's restricted time period for firocoxib in New York will ensure that horsepersons who treat their horses in compliance with this new time period would not violate the separately proposed threshold for this drug. Both measures will help ensure the integrity of horse racing by allowing the use of this well-accepted and necessary drug, which is capable of control by means of laboratory testing, only at a time when it would have a potential effect on race performance.

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.
(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.
(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the

rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI, and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely proposes the adoption of a restricted time period that supports the separately proposed national regulatory laboratory threshold for firocoxib and accords sufficient time for the proposed threshold not to be violated, if the horse were sampled on race day and tested for this drug. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. The amendment does not impact upon State Administrative Procedure Act § 102(8), nor do it affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for DMSO

I.D. No. SGC-49-13-00018-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 4120.2(a)(1); and addition of sections 4120.2(e)(21) and 4120.3(a)(23) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se regulatory standardbred threshold and restricted time period for DMSO.

Purpose: To enhance the integrity and safety of standardbred horse racing with new DMSO equine drug rules.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraph (23) would be added to subdivision (a) of a proposed new section 4120.3 as follows:

4120.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this rule if any of the following substances are found by the laboratory testing for the commission to be present in a race day urine or blood sample taken from such horse at a concentration in excess of any one or more of the thresholds listed below. The test for each sample shall include an evaluation of the method of uncertainty and the imprecision of the analytical test.

***

(23) DMSO: 10 mcg/ml in plasma.

Paragraph 1 of subdivision (a) of Section 4120.2 would be amended as follows:

4120.2 Restricted use of drugs, medication and other substances.

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

(a) The following substances are permitted to be used at any time up to race time:

(1) topical applications (such as antiseptics, ointments, salves, [DMSO,] leg rubs, leg paints and liniments) which may contain antibiotics but do not contain benzocaine, *DMSO,* steroids or other drugs;

***

A new paragraph 21 would be added to subdivision (e) of Section 4120.2 as follows:

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

***

(21) dimethyl sulfoxide (i.e., DMSO).

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of standardbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of drugs and other substances that can be administered close to race day, and to simplify compliance by horsepersons and enforcement of the equine drug rules in New York, by adopting another one of the national regulatory laboratory thresholds for drugs that are necessary and sufficient to provide good veterinary care close to race day.

The proposed rule would apply the regulatory laboratory threshold that was developed by the Racing Medication and Testing Consortium ("RMTC") and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI") for the drug dimethyl sulfoxide (i.e., DMSO). These thresholds established by RMTC and ARCI are intended to apply in all horse racing jurisdictions and are intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

The net effect of the proposed rule would be to help ensure, in conjunction with New York's restricted time period equine drug rules, that no pharmacologically significant residue of DMSO from an administration that could affect race performance will be present in the standardbred horse during a pari-mutuel race, while recognizing that this medication is well-accepted, necessary, and capable of being regulated by known threshold values. This rule would make it an automatic ("Per Se") violation of the Commission's equine drug rules to race a standardbred horse whose race-day blood or urine samples exceed this drug's proposed regulatory laboratory threshold. This rule making would also amend Section 4120.2(e) to prohibit the administration of DMSO within 48 hours of a race. Currently, topical administration of DMSO is permitted any time (under Section 4120.2(a)(1)), and other administrations of DMSO are permitted up to one week before a race (under the general restriction of Section 4120.2(h)). The proposed regulatory laboratory threshold for DMSO is consistent with an administration of DMSO at least 48 hours before a horse's next race.

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commis-

sions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt this threshold by January 2014. The rule will therefore simplify the veterinary treatment issues faced by trainers who are licensed to race in more than one jurisdiction, many of whom train their horses and obtain veterinary care in reference primarily to their host state's rules. The adoption of more uniform equine drug rules will make it easier for an out-of-state trainer to decide to race a horse in New York when abiding by the equine drug rules of the other jurisdiction. Horsepersons who are confident that they will not commit an unintended violation of New York's equine drug rules are more likely to enter their horses to race in New York, which will improve the depth and quality of the fields in New York races. The new rule will, therefore, make it easier for trainers and owners who race in multiple states to comply with the New York equine drug rules and to race in New York, while affording protection to the betting public against the manipulation of a horse's race performance with drugs and other substances.

The Per Se rule also will make it easier for the Commission to establish that an improper equine drug administration has occurred. The proposed regulatory threshold can be enforced without requiring either expert opinion evidence of the time of administration or direct evidence (e.g., veterinary records) to establish that an administration occurred within the restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

The proposed adoption of this new Per Se equine drug rule for DMSO and related changes to the restricted time periods for its administration will enhance the integrity of horse racing by creating regulatory thresholds for this drug whose use close to race day is well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will encourage the entry into New York races of more horses that are stabled out-of-state by making the New York rules more consistent with those of other states.

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.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI, and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely proposes the adoption of the national regulatory laboratory threshold for dimethyl sulfoxide (i.e., DMSO) when used on standardbred horses and adjusts the restricted time periods after the treatment of the horse with such drug to accord sufficient time for the proposed DMSO thresholds not to be violated, if the horse were sampled on race day and tested for this drug. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. The amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

This Proposal Would Limit the Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Thoroughbred Racing

I.D. No. SGC-49-13-00019-P

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

Proposed Action: Addition of section 4043.2(k) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: This proposal would limit the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) in thoroughbred racing.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new subdivision (k) would be added to section 4043.2 as follows:

(k) A horse may not race after an administration of methylprednisolone acetate (e.g., Depo Medrol) unless such horse

(1) subsequently tests below the threshold set forth in section 4043.3 of this Part for such drug in a test conducted by or for the commission at the sole expense of the trainer of the horse; and

(2) is released to race by the stewards.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104(1), (19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to thoroughbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs, including five corticosteroids, that are necessary and sufficient to provide good veterinary care close to race day. The adoption of these thresholds would limit the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol). This corticosteroid has been identified as particularly harmful to the long term health of treated joints and tissues, and potentially affects race performance for an unusually long period of time, according to the Commission's scientific consultant Dr. George A. Maylin. It has also been reported to persist after certain administrations at a concentration which exceeds the proposed threshold for as long as 99 days. The long period of time during which an administration of this drug might cause a violation of the proposed threshold was

confirmed by the Commission when it conducted an extensive study of the veterinary records of over 75 horses whose tests results were in excess of the proposed threshold in the first half of 2013. The most reasonable restriction that could provide assurance to thoroughbred horsepersons that compliance would protect them from violation of the proposed thresholds is one that would require the horse to test negative before racing again. Accordingly, the new rule would require that any horse treated with this corticosteroid, methylprednisolone acetate (e.g., Depo Medrol), has to be tested at the expense of the trainer below the proposed threshold and then released by the stewards before the horse may race again. As a result, for those horsepersons who choose not to use the less restricted and equally available alternative corticosteroids (betamethasone, dexamethasone, prednisolone, and triamcinolone acetate), the Commission provides a means to return the horse to racing that is consistent with the proposed thresholds and with the overall purpose of reducing the use of this relatively harmful corticosteroid.

The new rule will enhance the integrity and safety of horse racing by limiting the use of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol) and encouraging horsepersons to use other corticosteroids that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons because there are readily available alternative corticosteroids. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the state, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any new mandatory duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the Racing Medication and Testing Consortium, the New York Thoroughbred Horsemen's Association, and the Association of Racing Commissioners, International, Inc. The Commission considered and rejected the alternative of restricting a horse from racing for a period of 99 days after any administration of this corticosteroid.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the use of a race horse after administration of the corticosteroid methylprednisolone acetate (e.g., Depo Medrol), for which there are readily available alternatives that are relatively less harmful to a horse's health and safety and have less potential to affect the race performance, by means of continuing efficacy, for a considerable period of time after administration of the drug. Other corticosteroids are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available, including betamethasone, dexamethasone, prednisolone, and triamcinolone acetonide. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Thoroughbred Regulatory Thresholds for Equine Drugs

I.D. No. SGC-49-13-00020-P

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

Proposed Action: Renumbering of section 4043.3 to 4043.13; and addition of new section 4043.3 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Per Se thoroughbred regulatory thresholds for equine drugs.

Purpose: To enhance the integrity and safety of thoroughbred horse racing by adopting permissive thresholds for 24 accepted medications.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Section 4043.3 ("Other prohibitions") of 9 NYCRR would be renumbered Section 4043.13, and

A new Section 4043.3 would be added to Part 4043 of 9 NYCRR, to read as follows:

Section 4043.3. Equine drug thresholds; per se

(a) A horse shall have raced in violation of this section if any of the following substances is found, by the laboratory conducting tests for the commission, to be present in a race-day urine or blood sample taken from such horse at a concentration listed below. The test for each sample shall include an evaluation of the method of uncertainty and imprecision of the analytical test.

(1) Acepromazine: 10 ng/ml HEPS in urine;
(2) Betamethasone: 10 pg/ml in plasma;
(3) Butorphanol:
(i) 300 ng/ml of total butorphanol in urine; or
(ii) 2 ng/ml of free butorphanol in plasma;
(4) Clenbuterol:
(i) 140 pg/ml in urine; or
(ii) any clenbuterol in plasma;
(5) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in plasma;
(6) Detomidine:
(i) 1 ng/ml of any metabolite of detomidine in urine; or
(ii) any detomidine in plasma;
(7) Dexamethasone: 5 pg/ml in plasma;
(8) Diclofenac: 5 ng/ml in plasma;
(9) DMSO: 10 mcg/ml in plasma;
(10) Firocoxib: 20 ng/ml in plasma;
(11) Flunixin: 20 ng/ml in plasma;
(12) Furosemide: 100 ng/ml in plasma and a specific gravity of urine less than 1.010;
(13) Glycopyrrolate: 3 pg/ml in plasma;
(14) Ketoprofen: 10 ng/ml in plasma;
(15) Lidocaine: 20 pg/ml of total 3-hydroxylidocaine in plasma;
(16) Mepivacaine:
(i) 10 ng/ml of total hydroxymepivacaine in urine; or
(ii) any hydroxymepivacaine in plasma;
(17) Methocarbamol: 1 ng/ml in plasma;
(18) Methylprednisolone: 100 pg/ml in plasma;
(19) Omeprazole: 1 ng/ml of omeprazole sulfide in urine;
(20) Phenylbutazone: 2 mcg/ml in plasma;
(21) Prednisolone: 1 ng/ml in plasma;
(22) Procaine penicillin: 25 ng/ml of procaine in plasma;
(23) Triamcinolone acetonide: 100 pg/ml in plasma; and
(24) Xylazine: 10 pg/ml of total xylazine and its metabolites in plasma.

(b) A horse shall have raced in violation of this section if the laboratory conducting tests by or for the commission is able to determine from such horse's race-day urine or blood sample that a drug or other substance for which no permissible threshold is established in this Part had been administered to such horse before its race, unless such drug or other substance by its nature could not affect a horse's organ systems.

(c) A laboratory finding that a horse has not exceeded a threshold set

forth in this section shall not constitute a defense to a violation of any other section of this subchapter.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of drugs and other substances that can be administered close to race day, and to simplify compliance by horsepersons and enforcement of the equine drug rules in New York, by adopting a set of national permissible regulatory laboratory thresholds for drugs that are necessary and sufficient to provide good veterinary care close to race day.

Section 4043.3(a) of the proposed rule would establish, for 24 commonly used equine drugs, regulatory laboratory thresholds that were developed by the Racing Medication and Testing Consortium ("RMTC"), with the participation and support of the New York Thoroughbred Horsemen's Association ("NYTHA") that represents the thoroughbred trainers and owners who participate in racing at tracks operated by The New York Racing Association ("NYRA"), and adopted as a model rule by the Association of Racing Commissioners International, Inc. ("ARCI"). These thresholds are intended by RMTC and ARCI to apply in all horse racing jurisdictions. The selected 24 drugs are intended to encompass all of the medications that would be needed for routine veterinary care close to race day of any racing horses and that can be effectively regulated by means of laboratory testing. Such drugs were identified after lengthy consultation by the RMTC with the American Association of Equine Practitioners and many of the horse racing industry's leading chemists and pharmacologists.

As set forth in proposed Section 4043.3(b), any detection in race-day samples of an administration of other drugs or other substances that could affect race performance would be a rule violation. The use of a drug or other substance that cannot affect race performance, a trait that is defined in veterinary terms as having no effect on the body organ systems of the horse, however, would not be affected by the new rule.

The net effect of the new rule would be to help ensure, in conjunction with New York's restricted time period equine drug rules, that no pharmacologically significant residue of any drug or medication that could affect race performance will be present in the horse during a pari-mutuel race, while limiting the number of drugs that are used close to race day to these 24 that are well-accepted, necessary, and capable of being regulated by known threshold values. This rule would make it an automatic ("Per Se") violation of the Commission's equine drug rules to race a horse whose race-day blood or urine samples exceed these regulatory laboratory thresholds. This will supplement the Commission's rule in Section 4043.2 that restricts the time periods in which certain drugs can be used. Between them, the two rules will provide clear standards governing when and how various drugs or other substances can permissibly be administered to race horses.

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commissions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt these thresholds by January 2014. The rule will therefore simplify the veterinary treatment issues faced by trainers who are licensed to race in more than one jurisdiction, many of whom train their horses and obtain veterinary care in reference primarily to their host state's rules. The adoption of more uniform equine drug rules will make it easier for an out-of-state trainer to decide to race a horse in New York when abiding by the equine drug rules of the other jurisdiction. Horsepersons who are confident that they will not commit an unintended violation of New York's equine drug rules are more likely to enter their horses to race in New York, which will improve the depth and quality of the fields in New York races. The new rule will, therefore, make it easier for trainers and owners who race in multiple states to comply with the New York equine drug rules and to race in New York, while affording protection to the betting public against the manipulation of a horse's race performance with drugs and other substances.

The Per Se rule also will make it easier for the Commission to establish that an improper equine drug administration has occurred. The new rule, unlike the restricted time period rule set forth in Section 4043.2, can be enforced without requiring either expert opinion evidence of the time of administration or direct evidence (e.g., veterinary records) to establish that an administration occurred within the restricted time period. This will simplify the enforcement of the Commission's equine drug rules.

The adoption of the proposed Per Se equine drug rule will enhance the integrity of horse racing by limiting which drugs can be used close to race day to only those that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will also protect the health and safety of thoroughbred race horses and their exercise riders and jockeys by creating uniform equine drug practices that limit the medication of racing horses close to race day to only those medications that are known to be safe and effective for providing a sufficient degree of veterinary care. Finally, the new rule will encourage the entry into New York races of more horses that are stabled out-of-state by making the New York rules more consistent with those of other states.

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.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff reviewed the cost factors and determined that the rule can be implemented with little or no additional costs. To the extent that a less expensive alternative drug might not be permitted close to race day under the new rules, this was determined to be off-set by the anticipated overall reduction in the use of equine drugs by all horsepersons.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use of equine drugs close to race day to 24 specified medications and regulates their use by the adoption of Per Se regulatory laboratory thresholds. Although this might result in a veterinarian not using a less expensive alternative drug on occasion, more expensive drugs will not have to be used to maintain a competitive edge because none of the other participants will be able to use them either. It is also anticipated that any additional costs would be more than off-set by the reduced use generally of equine drugs in the time period before race day, greater ease in complying with racing rules, and simplification of veterinary care. These benefits will accrue due to the limitation of the number of drugs that may permissibly be used. It will also become less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common. The mid-Atlantic states and Massachusetts have all publicly pledged to adopt these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction. The restrictions will standardize veterinary care, make it easier to treat horses that might compete in multiple states, and reduce the overall cost of equine veterinary medical care.

This proposal will have no adverse impact on small businesses, local governments, jobs or rural areas. The rule does not impose any significant technological changes on the industry. It imposes no adverse economic

impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activity is involved. Trainers have been meeting almost all of these thresholds for many years in New York by complying with the Commission's longstanding rules that restrict how long a horse must not race after being treated with various equine drugs and other substances. The only difference for these 24 drugs are with the long-lasting drug firocoxib, a change for the use of dimethyl sulfoxide ("DMSO"), and a limitation on corticosteroids. The threshold for firocoxib will require trainers not to use this drug for 14 days before racing. DMSO will have to not be used within 48 hours of racing, rather than topical use on race day and otherwise seven days before racing, to comply reliably with the new threshold. Corticosteroids will be limited to five: two will be unaffected, two will be impermissible for systemic use for two more days (seven days rather than five) before racing, and the damaging and long-lasting drug methylprednisolone acetate ("Depo Medrol") may be used but the horse would be unable to race until it tests below the regulatory threshold. These restrictions on corticosteroids will improve the health and longevity of the racing careers of thoroughbred race horses by limiting all trainers. Presently, trainers have to compete against horses that are more freely administered corticosteroids, which can help a horse win its next race but that are a detriment to the horse's health and safety when used too much.

Even though small businesses that own and train thoroughbred race horses will be effected, they will benefit from the reduced use throughout the industry of multiple and more expensive medications as race day approaches, standardized veterinary practices that favor recognized therapeutic medications that provide good veterinary care, limiting competitors to the same set of well-accepted and beneficial equine drugs close to race day, and the greater ease of regulatory compliance when racing in multiple states. This amendment is intended to improve veterinary care and to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State.

This proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a Regulatory Flexibility Analysis (for Small Businesses and Local Governments), Rural Area Flexibility Analysis, or Job Impact Statement.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Systemic Administrations of Corticosteroids to Thoroughbred Horses

I.D. No. SGC-49-13-00021-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 4043.2(i) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time period for systemic administrations of corticosteroids to thoroughbred horses.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Paragraph (1) of subdivision (i) of Section 4043.2 would be amended as follows:

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

(1) for at least five days following a systemic administration of [a corticosteroid] *prednisolone or dexamethasone*;

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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, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104(1), (19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to thoroughbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs, including five corticosteroids, that are necessary and sufficient to provide good veterinary care close to race day. The adoption of these thresholds would limit the corticosteroids that could be administered pursuant to the Commission's current rule restricting a horse treated with any corticosteroid from racing for the next five days. The only corticosteroids that could be administered consistent with such proposed thresholds and with a systemic administration until five days before racing are prednisolone and dexamethasone.

This new rule will limit the corticosteroids that may be administered until five days before racing to only these two, prednisolone and dexamethasone. As a result, the Commission's restricted time periods will continue to provide assurances to horsepersons who comply with them that their horses will not give rise to an equine drug positive, including under the national regulatory laboratory standards that have been proposed by the Commission.

The new rule will enhance the integrity and safety of horse racing by limiting which corticosteroids can be used systemically until within five days before race day to these two, which are well-accepted, necessary, and amenable to control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds. Prednisolone and dexamethasone are the only corticosteroids recognized in the proposed new regulatory thresholds whose administration until five days before a horse's next race will not violate such thresholds. The rule therefore provides greater certainty to horsepersons regarding the corticosteroids that will comply with the Commission's time restriction rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to the allowable corticosteroids to meet the Commission's five-day rule.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the Racing Medication and Testing Consortium, the New York Thoroughbred Horsemen's Association, and the Association of

Racing Commissioners, International, Inc. No alternatives have been considered.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the corticosteroids that may be administered systemically to a race horse until five days before its next race. The specified corticosteroids, prednisolone and dexamethasone, are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period After IV Administrations of Flunixin to Thoroughbred Horses

I.D. No. SGC-49-13-00022-P

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

Proposed Action: Repeal of section 4043.2(d); and amendment of section 4043.3(e) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time period after IV administrations of flunixin to thoroughbred horses.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Public hearing(s) will be held at: 10:30 a.m. – 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl. Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Subdivision (d) of section 4043.2 of 9 NYCRR would be repealed:

(d) [The following non-steroidal anti-inflammatory drug may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete:

(1) flunixin.] (*Reserved*)

The final unnumbered paragraph of subdivision (e) of section 4043.2 of 9 NYCRR would be amended as follows:

None of these substances may be administered within 48 hours of the scheduled post time of the race in which the horse is to compete[, except that flunixin may be used in accordance with the specific authorization set forth in subdivision (d) of this section]. 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 48 hours.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to assure the public's confidence and preserve the high degree of integrity of racing at pari-mutuel betting tracks by regulating the use of drugs and medications in race horses so that the horses are fit and healthy, but not running on substances that have the potential to affect the outcome of a given race.

3. Needs and benefits: This rule is necessary to ensure that horses are not medicated to the point of adversely affecting the integrity of horseracing and the health and safety of race horses. The Commission believes that adopting its previous 48-hour flunixin administration rule is more appropriate than the rule adopted in 2005.

Flunixin, also known by the trade name Banamine, is a non-steroidal anti-inflammatory drug used to treat inflammation and soreness in racehorses. From 1971 to 2005, the administration of flunixin was not permitted less than 48 hours before races in New York. There were few post-race positives during that 30-year period.

Prompted by an effort of the Racing Medication and Testing Consortium ("RMTC") and other states, such as New Jersey and Maryland, the former Racing and Wagering Board adopted a rule to allow intravenous use of flunixin within 24 hours of a race effective January 4, 2006. Flunixin continued to be restricted within 48-hours of racing when administered by any other means. Among the benefits sought was to create consistency throughout the racing states so veterinarians could have a certain threshold under which they could provide therapeutic treatment. This movement was supported by the Mid-Atlantic Consortium of Racing States, which also sought uniform levels.

During the past five years in New York, this 24-hour rule for flunixin has been violated more than any other Commission equine drug rule. There have been more than 80 flunixin drug violations by thoroughbred and standardbred horses. There are many suspected reasons for this. Flunixin has become obtained routinely from compounding pharmacies, which are less accurate and reliable at providing a drug with a specific known concentration than a pharmaceutical company. The use of flunixin paste, on a regular and even daily basis, has become more common. In several instances, trainers have been confused about the Commission's rules allowing only IV use of flunixin during 48 to 24 hours before racing. In addition to newer drug regimens that include frequent administrations of flunixin paste, 11 trainers unwittingly admitted during agency investigations that they thought the paste was a permissible means to administer flunixin until 24 hours before a horse's next race.

The RMTC has recently proposed a mandatory regulatory laboratory threshold for flunixin that, depending on the specific horse and other variables, might possibly result in a trainer abiding by the 24-hour restriction and yet violating the proposed new threshold. The Commission's restricted time periods are designed to assure that one who complies with them will not be charged with an equine drug rule violation in New York.

Accordingly, the Commission's proposed rule would return to the longstanding, time-tested, and familiar practice of restricting the administration of flunixin to 48 hours prior to a race. The Commission and industry have considerable experience with banning flunixin for 48 hours as a result of this being the rule in New York from 1971 through 2005. During those 34 years, there were relatively few rule violations, or complaints about the rule from horsepersons, or veterinary complaints about the care, treatment, health, or safety of our race horses. The 48-hour restricted time period will reduce the number of equine drug positives that occur in New York by providing horsepersons with an added safety cushion to avoid equine drug positives and with greater certainty that compliance with the time period will result in the Commission's laboratory not reporting an equine drug violation.

Concerns that veterinarians will be restricted in their ability to treat a horse are mitigated by the fact the Commission's rules will continue to permit veterinarians to administer several different non-steroidal anti-inflammatory drugs until 48 hours before a horse's next race, and to provide veterinary care for inflamed or sore bodily tissues without restriction when the horse is not scheduled to race in the immediate future.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: The rule will not impose new or additional costs on regulated persons. The rule merely revises an existing rule in regards to allowable dosage of a medication.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Commission staff determined that the rule will impose no additional costs because the rule does not create any new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely makes a modification to a medication rule.

5. Local government mandates: The supervision and regulation of pari-mutuel racing activities are the sole responsibility of the New York State Gaming Commission, and do not involve local governments. Therefore, this rule will not impose any local government mandates.

6. Paperwork: There will be no new or additional paperwork required as a result of the rule.

7. Duplication: Since the New York State Gaming Commission is exclusively responsible for the regulation of pari-mutuel racing activities in New York State, there are no other relevant rules or other legal requirements of the State or federal governments regarding the administration of flunixin to race horses.

8. Alternative approaches: No other alternative was considered in light of the Commission's preferred course of action to specifically revert to the previous standard.

9. Federal standards: There are no federal standards applicable to the subject area of State-regulated pari-mutuel racing activities.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely removes the 24-hour rule allowing for the administration of the drug flunixin to race horses. Flunixin will still be allowed as a 48-hour drug. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Administrations of Unspecified Corticosteroids to Thoroughbred Horses

I.D. No. SGC-49-13-00023-P

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

Proposed Action: Addition of section 4043.2(l) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Restricted time period for administrations of unspecified corticosteroids to thoroughbred horses.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Public hearing(s) will be held at: 10:30 a.m. - 3:30 p.m., Jan. 21, 2014 at State Gaming Commission, One Broadway Center, 6th Fl., Board Rm. (overflow, 5th Fl. Multimedia Rm.), Schenectady, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new subdivision (l) would be added to section 4043.2 as follows:

(l) A horse may race following the administration of a corticosteroid that is not specified in other subdivisions of this section only if:

(1) such administration occurs at least seven days before such race;

(2) the trainer of the horse discloses, in writing, such administration to the stewards before race day; and

(3) the administration of such corticosteroid cannot be detected by laboratory tests, conducted by or for the commission, in a race-day urine or blood sample.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 388-3405, email: info@gaming.ny.gov

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

Public comment will be received until: January 26, 2014.

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer 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. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to adjust the Commission's restricted time period governing the systemic administration of the corticosteroids to thoroughbred race horses close to race day. The Commission has separately proposed to adopt a set of national regulatory laboratory thresholds for drugs, including five corticosteroids, that are necessary and sufficient to provide good veterinary care close to race day. The adoption of these thresholds would also create a zero threshold for the administration of any other corticosteroids. Although the corticosteroids for which thresholds are proposed are sufficient to provide good veterinary care to a racing horse, the use of other corticosteroids is not intended to be restricted for a horse not close to race day and so long as the administration of any such corticosteroid cannot be detected on race day.

This new rule will limit the use of such non-threshold corticosteroids by requiring that the trainer disclose their use to the stewards before race day, their use occurs at least seven days before racing (as required for all unspecified drugs by the Commission), and the horse tests below the proposed regulatory threshold (i.e., zero). This will permit a veterinarian to use such corticosteroids, despite the presence of readily available other corticosteroids for which the Commission has proposed non-zero thresholds, if the veterinarian determines that some veterinary need would be advanced by doing so. For example, the rule would allow a veterinarian to administer a wide range of corticosteroid treatments to a horse that is not currently engaged in racing and is recovering from some illness or injury but would restrict the use close to a horse's next race of non-threshold corticosteroids that would be detectable on race day.

As a result, the Commission's restricted time periods will continue to provide assurances to horsepersons who comply with them that their horses will not give rise to an equine drug positive, including under the national regulatory laboratory standards that have been proposed by the Commission.

The new rule will enhance the integrity and safety of horse racing by limiting which corticosteroids can be used close to race day to those that are well-accepted, necessary, and capable of control by means of laboratory testing. The new rule will continue to ensure that corticosteroids that the Commission permits to be so used will not result in a violation of the proposed laboratory thresholds.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons because there are readily available alternative corticosteroids. The rule merely revises an existing rule in regard to allowable time of administration of a medication.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the state, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not

create any mandatory new duty or obligation. The rule utilizes an existing regulatory framework and medication testing program and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate parimutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that compliance with the Commission's restricted time periods will protect such person against an inadvertent violation of the separately proposed national regulatory laboratory thresholds for equine drugs that have been recommended by the Racing Medication and Testing Consortium, the New York Thoroughbred Horsemen's Association, and the Association of Racing Commissioners, International, Inc. The alternative of prohibiting any use of unspecified corticosteroids was considered and rejected. The proposal implements the proposed thresholds while permitting other corticosteroids to be used in a manner that is consistent with the new regulatory scheme.

9. Federal standards: None.

10. Compliance schedule: It is expected that regulated parties will be able to comply as soon as the proposed rule is adopted.

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

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely limits the use of a race horse after administration of the corticosteroids for which there are readily available alternatives and known and widely accepted laboratory thresholds. The other corticosteroids are sufficient to treat horses close to race day, are well-accepted for their intended purposes, and readily available, including betamethasone, dexamethasone, prednisolone, and triamcinolone acetonide. The rule is entirely limited to equine drug standards and testing, and merely modifies the restriction on administration of an approved drug for race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

Department of Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Definition of Pediatric Severe Sepsis Update

I.D. No. HLT-49-13-00005-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 405.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Definition of Pediatric Severe Sepsis Update.

Purpose: Updates pediatric severe sepsis definition to be consistent w/generally accepted medical standards and to reflect current practice.

Text of proposed rule: Subparagraph (ii) of paragraph (8) of subdivision (a) of Section 405.4 is amended to read as follows:

405.4 Medical staff.

(a) Medical staff accountability. The medical staff shall be organized and accountable to the governing body for the quality of medical care provided to all patients.

* * *

(8) Definitions. For the purposes of this section, the following terms shall have the following meanings:

* * *

(ii) for adults, severe sepsis shall mean sepsis plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, severe sepsis shall mean sepsis plus *one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or* two *or more* organ dysfunctions [or acute respiratory distress syndrome]; and

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

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

Statutory Authority:

Public Health Law ("PHL") Section 2800 provides that "hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state. . ., the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital related services. . ."

PHL Section 2803 authorizes the Public Health and Health Planning Council ("PHHPC") to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

Needs and Benefits:

Sepsis is a range of clinical conditions caused by the body's systemic response to an infection and affects about 750,000 people in the U.S. each year. The mortality rate is alarming – between 20 percent and 50 percent – and the rate largely depends on how quickly patients are diagnosed and treated with powerful antibiotics to battle the bacteria racing through their systems.

In New York State the number of severe sepsis cases increased from 26,001 in 2005 to 43,608 in 2011 - an increase of 68%. Similarly, the number of sepsis cases in New York State increased from 71,049 in 2005 to 100,073 in 2011, an increase of 41%. Sepsis mortality is significant and ranges widely from one hospital to another. In New York, sepsis mortality ranges between 15% and 37%. A patient may have a greater chance of dying from sepsis if care is provided by an institution ill-prepared to deal with this illness or from providers not thoroughly trained in identifying and treating sepsis.

In response to these alarming statistics regulations were enacted effective May 1, 2013 to require all hospitals licensed to operate in New York State to have in place and implement evidence-based protocols for the early identification and treatment of severe sepsis and septic shock.

The Sepsis regulations as originally drafted included a definition of pediatric severe sepsis that was not exactly consistent with the current international definition. This amendment will refine the definition to assure complete consistency. The original wording was as follows:

"for pediatrics, severe sepsis shall mean sepsis plus two organ dysfunctions or acute respiratory distress syndrome."

Proposed revised wording is:

"for pediatrics, severe sepsis shall mean sepsis plus one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more organ dysfunctions"

There is no known opposition to this change. Physicians who specialize in pediatrics and pediatric critical care requested that this change be made to assure absolute consistency with established definitions and avoid any possible confusion on the part of hospitals and clinicians.

COSTS:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Existing Sepsis regulations that require all hospitals to submit evidence-based protocols for the early identification and treatment of sepsis to NYSDOH not later than December 31, 2013 are unchanged. There are no costs associated with this change. There is no impact on consumers or providers. This change assures consistency in definitions but in no way alters the intent or impact of the current regulations.

Costs to Local and State Government:

There is no fiscal impact to State or local government as a result of this regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health associated with this definition change.

Local Government Mandates:

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork: