June 25, 2014 Meeting Book

MEETING AGENDA

JUNE 25, 2014

1. **Call to Order**
2. **Approval of Commission Meeting Minutes for May 27, 2014**
3. **Report of Acting Executive Director**
4. **Appointment to the Gaming Facility Location Board**
5. **Rulemaking**
   - a. **Adoption: Standardbred Out-of-Competition Testing**
   - b. **Proposed: Use of Cellular Phone in Standardbred Paddock**
   - c. **Proposed: Standardbred Officials' Conflict of Interest**
6. **Adjudications**
   - a. **In the Matter of Anthony W. Dutrow**
   - b. **In the Matter of Peter Kazamias**
   - c. **In the Matter of Edward J. Williams**
   - d. **In the Matter of Winkys Pride**
7. **New/Old Business**
8. **Scheduling of Next Meeting**
9. **Adjourn**

Item 2

NEW YORK STATE
GAMING COMMISSION MEETING

MINUTES

MEETING of MAY 27, 2014

NEW YORK, NEW YORK

A meeting of the N.Y.S. Gaming Commission was conducted at Empire State Development, New York, New York.

I. Call to Order

The meeting was called to order at 10:11 a.m. by Acting Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance were Chairman Mark Gearan and Commissioners John Crotty, Peter Moschetti, Jr., John Poklemba, Barry Sample and Todd Snyder.

II. Approval of the Meeting Minutes, March 12, 2014 and March 31, 2014

The Commission considered draft minutes of its meetings conducted on March 12, 2014 and March 31, 2014. The minutes were accepted as offered.

III. Report of Acting Executive Director

Mr. Williams provided an update on the commercial casino facility application process and Belmont Stakes.

IV. Rulemaking

a. Notice of Extension of Emergency Rulemaking for Commercial Casino Forms and Applications

The Commission considered re-adoption of the emergency rule prescribing the forms for the Request for Application to Develop and Operate a Gaming Facility, which was previously approved at the March 31, 2014 meeting. The emergency rule was published in the New York State Register on April 16, 2014. It was noted that no public comments were received in regard to the proposal.

Pursuant to the State Administrative Procedures Act, re-adoption of the emergency rule was necessary to allow the Commission to adopt the rule as permanent.
ON A MOTION BY: Commissioner Snyder
APPROVED: 6-0

b. Proposed Rulemaking for Commercial Casino Forms and Applications

The Commission considered making permanent the re-adopted emergency rule prescribing the forms for the Request for Application to Develop and Operate a Gaming Facility, which was first approved at the March 31, 2014 meeting and effectively re-adopted at the present meeting. The emergency rule was published in the New York State Register on April 16, 2014.

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

c. Emergency Rulemaking on Restrictions on Acceptance of Public Assistance

The Commission considered promulgation of emergency rules to restrict the acceptance of federal public assistance benefits distributed by the State, as required by the federal Middle Class Tax Relief and Job Creation Act of 2012. The federal law required states to put in place policies and procedures to prevent federal public assistance benefits from being used in any electronic benefits transaction at designated types of businesses, including liquor stores, adult entertainment establishments, casinos, racetracks, off-track betting facilities and bingo facilities.

To ensure compliance with the federal mandate, the State legislature authorized the Commission to promulgate regulations on an emergency basis to implement the new law.

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

d. Permanent Rulemaking on Restrictions on Acceptance of Public Assistance

The Commission considered promulgation of permanent rules to restrict the acceptance of federal public assistance benefits distributed

by the State, as required by the federal Middle Class Tax Relief and Job Creation Act of 2012. The federal law required states to put in place policies and procedures to prevent federal public assistance benefits from being used in any electronic benefits transaction at designated types of businesses, including liquor stores, adult entertainment establishments, casinos, racetracks, off-track betting facilities and bingo facilities.

Adoption of emergency rules to ensure compliance with the federal mandate occurred at the present meeting.

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

e. Adoption of New Lottery Game: Cash 4 Life

The Commission considered adoption of rules for a planned multi-state lottery game. The Commission first proposed the rulemaking for this game on March 12, 2014. The proposed rule was published in the State Register on April 9, 2014. It was noted that no public comments were received in regard to the proposal.

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

V. Adjudications

a. In the Matter of Gregory J. Annaloro

The matter involved an appeal of discipline of harness driver who had his license suspended 365 days and was fined $1,000 for allegedly assaulting another driver, verbally abusing a racing official and verbally abusing and making contact with security personnel. The Commission adopted the findings and recommendations of the Hearing Officer, with the clarification that the suspension be reduced to the number of days served as of May 27, 2014.

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

b. In the Matters of Anthony W. Dutrow and Peter Kazamias

Consideration of these matters was deferred.

c. In the Matter of Luis A. Gutierrez

The matter involved an appeal of discipline of a thoroughbred owner-trainer at Finger Lakes Racetrack, who was fined $1,000 and had his licenses suspended for 15 days following a post-race positive drug test found an impermissible level of flunixin in a horse under his charge. The Commission adopted the findings and recommendation of the Hearing Officer.

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

d. In the Matter of Robert S. Messina

The matter involved an appeal by exercise rider who was fined $100 for both disregarding an instruction of the paddock judge at Finger Lakes Racetrack and conducting himself in a disrespectful manner. The Commission adopted the finding and recommendation of the Hearing Officer.

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

VI. Racing Fan Advisory Council Presentation

The Commission received an oral presentation of the Racing Fan Advisory Council, which presented its annual report. Council members Patrick Connors and Michael Amo described elements of the Report and answered various questions from Commissioners.

VII. New Business/Old Business

a. New Business

No new business was discussed.

b. Old Business

1. Steward Transparency. The Commission received a status report from Ronald Ochrym, Acting Director of the Division of Horse Racing and Pari-Mutuel Wagering regarding the various Steward transparency measures raised by Commissioner Crotty at the meeting of March 12, 2014.

2. Problem Gaming Forum. The Commission received a status report from Commission Counsel Edmund Burns regarding how the information received at the April 9, 2014 Problem Gambling Forum was being considered for integration into drafts of the Commission's forthcoming commercial casino gambling regulations.

VIII. Scheduling of Next Meeting

Chairman Gearan noted that the Commission had previously contemplated the establishment of a uniform meeting date. He suggested establishment of the fourth Monday of each month as a meeting date, reserving the right to vary dependent upon Commissioner availability.

IX. Adjournment

Chairman Gearan asked if any Commissioners had additional items to discuss or present. Hearing none, the meeting was adjourned at 11:38 a.m.

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Item 5a.

Andrew M. Cuomo
Governor

NYS GAMING COMMISSION

Edmund C. Burns
General Counsel

MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: June 19, 2014

Re: Adoption of Standardbred Out-of-Competition Testing Rule Amendments
9 NYCRR § 4120.17

For Commission consideration is the adoption of amendments to our standardbred out-of-competition testing ("OCT") rule, proposed by the Commission at its March 12, 2014 meeting. A copy of both the original memorandum for the proposed rulemaking and the April 6, 2014 *State Register* publication are attached.

The proposed amendments will clarify the existing rule, incorporate Commission enforcement protocols, and make the rule more uniform with the Commission's OCT rule for thoroughbred racing. The proposal will also reorganize the existing rule into new subdivisions.

Scope of Proposal

The Commission's OCT program requires New York-licensed owners and trainers to allow their racehorses to be sampled by the Commission on request. The primary reason for OCT is to detect the administration of doping agents that unnaturally change the physiology of the horse, can be administered many weeks or even months before racing in New York, powerfully affect the speed of horses as they are about race, are not required to provide veterinary care and cannot be detected in samples collected from a racehorse on race day. According to Dr. George A. Maylin, the Commission's equine drug testing and research consultant, it is impossible to prevent the use of such doping agents unless the racehorses can be sampled on request.

Out-of-competition testing also makes it possible to detect "drug cocktails." A drug cocktail is the administration of various drugs in sub-clinical doses, thus creating laboratory results in race-day samples that are consistent with normal (clinical) doses of each drug having been administered sufficiently long before race day not to affect the race, but that are actually small doses administered close to racing that are efficacious because of their drug interactions.

Because horses that race in New York may be stabled elsewhere, the OCT rule must allow for the collection of samples from horses located outside the state, or the OCT testing regime would be unduly compromised. In the event that a New York licensee believes that his or her horse will not race in New York in the foreseeable future (six months), the Commission allows a licensee to decline sampling and then not race in New York for such period. Further details about the proposed amendments are set forth in the "Needs and Benefits" section of the agency's Regulatory Impact Statement that was published with the proposed amendments in the *State Register*.

Public Comment and Staff Response

Only one public comment was received. The Empire State Harness Horsemen's Alliance, which represents harness horsemen's organizations at six New York tracks, made a multi-faceted argument.

First, the Alliance argued that there is no statutory authority for out-of-competition testing. One of the horsemen's organization in the Alliance previously made this argument as a plaintiff challenging the Commission's initial out-of-competition rule. In litigation, the Commission contested the argument. The Appellate Division rejected the argument and upheld the Commission's authority.[*] For your reference, the decision is attached.

The Alliance also argued that the Commission should not adopt its proposed amendments because they have many of the same flaws as the initial rule. The comment asserts that the amendment restricting testing to a "reasonable time on any date" is a "hopelessly vague phrase" that invites "arbitrary conduct and selective enforcement while unduly empowering the Commission with unbridled power." The exact phrase has, however, been upheld by courts many times as an appropriate description of when searches may occur permissibly.

The comment further objected that the proposed Rule 4120.17(b)(7)(iii) retains a provision requiring a horse stabled out of state but within 100 miles of a New York racetrack to be brought to such racetrack for testing. Staff notes that the proposed amendment of Rule 4120.17(b)(7) would make such travel necessary only where the Commission has reasonable grounds to believe that an impermissible administration of a drug or substance has occurred and when the agency's preferred method of collection, assistance from another racing commission or by a designee of the Commission, is unavailable.

The alliance also stated that the Commission should be required to double the evidence normally collected, arguing that samples must be collected for licensees themselves to test. Staff disagrees. No law enforcement program in the State, including prosecutions for driving while intoxicated, requires collection of samples for the defense.

Finally, the Alliance alleged that the list of prohibited substances in proposed Rule 4120.17(c) is "vague" and "inconsistent" and is "contradictory when compared against other portions" of Part 4120, though it fails to describe any particular contradiction. Staff again disagrees.

Staff Recommendation

[redacted]

attachments

cc: Robert Williams, Acting Executive Director
Ronald Ochrym, Acting Director, Division of Horse Racing and Pari-Mutuel Wagering
Dr. Scott Palmer, Equine Medical Director

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[*] *Matter of Ford v. New York St. Racing and Wagering Bd.*, 107 A.D.3d 1071 (3d Dep't), *leave denied*, 22 N.Y.3d 947 (2013).

with, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

Section 6911 of the Education Law, as added by Chapter 364 of the Laws of 2013, effective September 27, 2014, establishes certification for clinical nurse specialists and protects the title "clinical nurse specialist" and the designation "CNS" to ensure that only those properly educated and prepared to be clinical nurse specialists hold themselves out as such. The proposed amendment to section 52.12 of the Regulations of the Commissioner and addition of section 64.8 to the Regulations of the Commissioner of Education implement Chapter 364 of the Laws of 2013 by establishing criteria for certification as a clinical nurse specialist, including: registration, admission, curriculum and credential requirements for clinical nurse specialist education programs; an application filing requirement; and license and education requirements.

The proposed amendment would also repeal certain regulatory provisions relating to nurse practitioner certification in section 64.4 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

The proposed amendment to section 52.12 of the Regulations of the Commissioner and addition of section 64.8 of the Regulations to the Commissioner of Education implement specific statutory requirements and directives. Therefore, any impact on jobs and employment opportunities created by establishing certification requirements for clinical nurse specialists is attributable to the statutory requirement, not the proposed amendment and rule, which simply establish standards that conform to the requirements of the statute.

The proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that they will have no adverse impact on jobs or employment opportunities attributable to their adoption or only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

New York State Gaming Commission

EMERGENCY RULE MAKING

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-15-14-00001-E

Filing No. 263

Filing Date: 2014-03-31

Effective Date: 2014-03-31

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

Action taken: Addition of sections 5300.1-5300.5 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The Commission has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law (the "PML"), will issue a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York. The immediate adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted therewith, as required by subdivision 2 of section 1307 of the PML, to enable the Gaming Facility Location Board to carry out its statutory duties. Standard rule making procedures would prevent the Gaming Facility Location Board from commencing the fulfillment of its statutory duties.

Subject: Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Substance of emergency rule: This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission ("Commission") to prescribe the form of the applications for a gaming facility license.

The new Part of the Gaming Commission regulations describes the form of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant's duty to update its application with any updates following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 28, 2014.

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

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prohibited Substances and Out of Competition Drug Testing for Harness Racing

I.D. No. SGC-15-14-00005-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 4120.17 of Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 122 and 902(1)

Subject: Prohibited substances and out of competition drug testing for harness racing.

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

Text of proposed rule: Section 4120.17 of 9 NYCRR would be amended as follows:

§ 4120.17. Out-of-competition testing.

(a) Out-of-competition collection of samples.

(1) The commission may at a reasonable time on any date take a blood, urine or other biologic sample from a horse that is on a nomination list or [(a) Any horse on the grounds of a racetrack under the jurisdiction of the commission or stabled off track grounds is subject to testing without advance notice for blood doping, gene doping, protein and peptide-based drugs, including toxins and venoms, and other drugs and substances while] under the care or control of a trainer or owner *who is* licensed by the commission*, in order to enhance the ability of the commission laboratory to detect or confirm the impermissible administration of a drug or other substance to the horse.*

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

[(b) Horses to be tested shall be selected at the discretion of the State judges or any commission representative.]

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

(4) If a selected horse is not involved in activities related to racing in New York, then the trainer or owner may represent this to the commission and the commission will not sample the horse. If the trainer makes such a representation and the managing owner has previously provided the commission with a means for the commission to give immediate telephonic notification to the managing owner that the trainer made such a representation, then the commission shall transmit such notification to the managing owner and the eligibility of the horse shall be preserved if the managing owner is able to make the horse available for immediate sampling. [Horses to be tested shall be selected from among those anticipated to compete at New York tracks within 180 days of the date of testing or demand for testing.]

(b) Sampling procedure.

(1) Samples shall be taken under the supervision and direction of a person who is employed or designated by the commission and is qualified to safeguard the health and safety of the horse. A veterinarian shall collect all blood samples.

(2) The person who takes samples for the commission shall provide identification and disclose the purpose of the sampling to the trainer or designated attendant of the horse.

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

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

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

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

(7) A commission judge or executive official [(c) The State judges or any commission representative] may require any horse of a licensed trainer or owner to be brought *promptly* to a *race*track under the jurisdiction of the commission for out-of-competition testing when*:*

(i) the commission has reasonable grounds to believe that the horse might have been impermissibly administered a drug or other substance;

(ii) the commission has no other practical means to collect such samples without reducing the ability of the commission laboratory to detect or confirm the impermissible administration of a drug or other substance to a horse; and

(iii) the horse is stabled out-of-state *but* [at a site located] within a radius not greater than 100 miles from *such* [a] New York State racetrack.

The trainer is responsible to have the horse or horses available at the designated time and location.

[(d) A commission veterinarian or any licensed veterinarian authorized by the State judges or any commission representative may at any time take a urine or blood sample from a horse for out-of-competition testing.]

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

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

(c) [(e)] Prohibited substances. [are:]

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

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

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

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

(iv) The substances described in this Paragraph are prohibited regardless of any of the provisions of section 4120.2 of this Part.

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

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

[(f) The presence of any substance at any time described in paragraphs (1), (2) or (3) of subdivision (e) of this section is a violation of this section for which the horse may be declared ineligible to participate until the horse has tested negative for the identified substance, and for which the trainer shall be responsible pursuant to section 4120.4 of this Part.]

[(g) The trainer, owner, and/or their designees and any licensed or franchised racing corporation shall cooperate with the commission and the commission's representatives and designees by:]

[(1) assisting in the immediate location and identification of the horse selected for out-of-competition testing;]

[(2) providing a stall or safe location to collect the samples;]

[(3) assisting in properly procuring the samples; and]

[(4) obeying any instruction necessary to accomplish the provisions of this section.]

[The failure or refusal to cooperate in the above by any franchisee, licensee or other person shall subject the franchisee, licensee or person to penalties, including license suspension or revocation, the imposition of a fine and exclusion from tracks or facilities subject to the jurisdiction of the commission.]

(d) Penalties

(1)[(h)] A[ny] horse [which is not made available for testing as directed, including the failure to grant access on a timely basis, shall in the absence of acceptable mitigating circumstances,] *found to be in violation of this rule shall* be ineligible to participate in racing *until it is certain that the horse is no longer affected by the prohibited substance and for not less than 180* [for one hundred twenty] days*, after which the horse must qualify in a workout satisfactory to the judges and test negative for doping agents and drugs. The minimum fixed period of ineligibility for a horse in violation of this rule shall be reduced from 180 to 30 days if the trainer had never violated this rule or similar rules in other jurisdictions and had, for any violations of Part 4120 or similar rules in other jurisdictions, fewer than 180 days in lifetime suspensions or revocations and fewer than two suspensions or revocations of 15 days or more in the preceding 24 months*.

(2) A person who is found responsible for a violation of paragraph (1) of subdivision (c) of this section shall, in [(i) In] the absence of extraordinary mitigating circumstances, *incur* a minimum penalty of a 10-year suspension *in addition to any other penalties authorized in this Article.* [will be assessed for any violation set forth in subdivision (f).]

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1), (19), 122, and 902(1). 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. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Commission to promulgate any rules and regulations necessary to implement such equine drug testing program and to impose substantial administrative penalties for racing a drugged horse.

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

3. Needs and benefits: This rule making proposes amendments to the Commission's harness racing out-of-competition testing ("OCT") rule to clarify the existing rule, incorporate enforcement protocols of the Commission, and make it more uniform with the Commission's OCT rule for thoroughbred racing. The proposal would also reorganize the existing rule into new subdivisions.

The Commission's OCT program requires New York licensed owners and trainers to allow their racehorses to be sampled on request. The primary reason for OCT is to detect the administration of doping agents that unnaturally change the physiology of the horse, can be administered many weeks or even months before racing in New York, powerfully affect the speed of horses as they are about race, are not required to provide veterinary care, and cannot be detected in samples collected from a racehorse on race day. Out-of-competition testing also makes it possible to detect "drug cocktails." A drug cocktail is the administration of various drugs in sub-clinical doses, thus creating laboratory results in race-day samples that are consistent with being administered too long before race day to affect the race but which are efficacious because of drug interactions. Such purposes for OCT are set forth in paragraph (a)(1) of the rule.

Out-of-competition testing is needed because the Commission does not require that the racehorses be stabled on the grounds of the New York racetracks. Rather, the owners and trainers who are in the business of racing their horses in New York harness races may do so no matter where they stable and train their harness horses or engage in other horse racing activities in preparation for racing in New York. The only requirement for such owners and trainers is that they must have an occupational license granted to them by the Commission. Such persons are engaged in New York racing activities when their racehorses are not yet entered to race, as this generally occurs only a few days before race day, and regardless of where their racehorses are located.

The existing OCT testing rule provides that the Commission will not select racehorses for testing that are not anticipated to race in New York for 180 days. Paragraphs (a)(1) and (a)(4) of the rule clarify that this means the Commission may select any horse that is under the care or control of a New York licensed owner or trainer, but that such licensees may excuse from sampling a racehorse that is not involved in activities related to racing in New York. Pursuant to new paragraph (a)(3) of the rule, such horse would then not be permitted to race in New York for at least 180 days. An innocent owner or trainer would have no reason to object to sampling. This period of exclusion serves to deter guilty parties from misrepresenting their intentions, solely to evade sampling, by imposing a substantial period of ineligibility before such horse may race in New York. New paragraph (a)(4) also provides a safeguard for a racehorse owner whose trainer refuses to permit a sampling. The Commission would attempt to reach the owner by telephone, if it has the contact information, so the owner could countermand the trainer and cause the horse to be sampled.

Subdivisions (a) and (b) of the rule have been revised to set forth or clarify a number of the Commission's existing OCT protocols and procedures that ensure that OCT does not unreasonably burden owners and trainers. Paragraph (b)(2) provides that persons collecting samples will present their credentials and disclose the purpose of the sampling. Paragraph (b)(4) states that the owner and trainer may request permission to bring an off-track horse to a licensed racetrack for its sample to be taken. Paragraph (b)(5) states that when an owner or trainer allows a horse to be sampled at an off-track location, this does not constitute consent to a search of the premises. Paragraph (a)(1) states that samples shall be collected at a reasonable time, which is obviously necessary if the Commission is going to obtain the assistance of the racehorse's caretaker to locate and identify the horse, provide a safe location, and witness the sampling. When a horse is located out-of-state, paragraph (b)(6) states that the Commission will have samples collected by a designee or the state racing commission in that jurisdiction. In the rare instances when another racing commission or a designee of the Commission cannot readily collect a sample from an out-of-state racehorse, new paragraph (a)(7) authorizes the Commission to require that the horse be shipped (no more than 100 miles) to a New York racetrack for sampling. The amendment explicitly states the Commission policy to order this only if there is reasonable cause to believe such racehorse might have been doped. Although the delay in waiting for a racehorse to arrive in New York is disadvantageous for the Commission, this authority will continue to help prevent out-of-state racehorses from being insulated from OCT.

If a horse is made available on track, then new paragraph (b)(9) will allow the person who takes samples to require that the racehorse be brought to a central area, the test barn. This minimizes the burden on racetracks, which are required to facilitate the sampling process, when the Commission is unable to deploy its inspectors and veterinarians throughout the racetrack.

The amendments to subdivision (c) will improve the description of substances that are prohibited. The general prohibition of peptide- or protein-based substances is limited, in paragraph (c)(1)(iii), to those that produce analgesia or enhance a horse's performance beyond its natural abilities. This removes an apparent conflict with certain provisions in other Commission rules. In paragraph (c)(1)(i) of the rule, the prohibition of blood doping agents is broadened to include any substances that can abnormally oxygenate bodily tissues. Paragraph (c)(1)(ii) expressly permits the use of gene-doping therapies for treating disabled racehorses when it cannot produce analgesia or enhance a horse's performance beyond its natural abilities. Such therapies may be used off-track without advance permission, and under paragraph (c)(3), any substance that an owner, trainer, or veterinarian is concerned might be prohibited by section 4120.17(c) can be used at any location by first getting the written permission of the Commission (e.g., presiding judge).

Paragraph (d)(1) sets forth the period of the ineligibility of a racehorse after testing positive for prohibited substances. There will be a fixed period of ineligibility, which depends in part on the trainer's record for equine drugging, and a period of ineligibility equivalent to a substance's withdrawal period.

Finally, new subdivision (e) allows a buyer who has learned after the purchase that the racehorse was ineligible to race 10 days to void the sale.

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, and the cost of making a horse available for sampling may be reduced in some instances. The new rule gives the owner or trainer the option to ask for permission to produce the horse at a nearby racetrack, including one located in the horse's home state, and sets forth the limited circumstances in which the Commission would direct a person to bring a horse, stabled out-of-state but within 100 miles of a New York racetrack, to such racetrack for sampling.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. The new rule will potentially reduce administrative costs by encouraging horsepersons to bring their horses to a licensed racetrack's test barn for sampling. The cost of samples taken by sister states from out-of-state horses will remain constant, as the owner or trainer will make the horse available during normal training or racing hours when staff is available to collect samples, and the cost of collections by one state will be offset by collections obtained for it by its sister state. The cost to comply for a horseperson to transport a horse to New York from a nearby state could be reduced, although the Commission has never required such transport because of the general availability of out-of-state surrogates that collect samples much more promptly for the Commission. Both states will be able to use a single laboratory test to enforce their own state rules, which will cost less than the normal practice of each state conducting its own laboratory tests. The samples require separate shipping whether collected in or out of state.

There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission relied on its experience in collecting samples for collaborating states and on the studies and/or advice provided by the Director of the New York State Drug Testing and Research Program, Dr. George A. Maylin.

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

6. Paperwork: There will be no additional paperwork. The Commission will utilize the existing documents for its chain-of-custody protocol and memorandums of understanding with other state racing commissions, as well as administrative adjudication to determine whether a violation has occurred and what sanctions may be appropriate.

7. Duplication: None.

8. Alternatives. The Commission considered as an alternative a requirement that the trainer of a horse must be notified by certified mail and respond to such notice before any selected horse could be sampled by the Commission. This alternative was rejected because it would involve significant delay and could readily be manipulated by a guilty party to delay or even preclude any attempt by the Commission to collect a timely sample from a racehorse. The Commission also considered a suggestion by a representative of a horseperson's group that the Commission require all off-track stables in New York to be licensed and subject to inspection by the Commission. This alternative was rejected because the administrative costs would be prohibitive and the alternative was far more intrusive than necessary to address the concerns that underlie the out-of-competition program.

9. Federal standards: None.

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

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

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

The proposed amendments serve to narrow and simplify the Commission's existing out-of-competition equine drug testing rule for harness racing by codifying the protections afforded to horse owners and trainers and clarifying both the definition of prohibited substances and the rights of owners and trainers whose horses have been selected for sampling. These amendments do not expand the scope of the existing regulatory framework, but merely revise ministerial aspects within the existing out-of-competition rule. This rule will not impose an adverse economic impact on reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. Due to the straightforward nature of the rulemaking, there is no need for the development of a small business regulation guide to assist in compliance. These provisions are clear as to what equine drugs are impermissible, when they are impermissible, how the Commission's program will be implemented, and what is necessary to comply with the rule.

New York Gaming Facility Location Board

EMERGENCY RULE MAKING

Rules Pertaining to Gaming Facility Request for Application and Related Fees and Related Hearings

I.D. No. GFB-15-14-00010-E

Filing No. 266

Filing Date: 2014-03-31

Effective Date: 2014-03-31

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

Action taken: Addition of Parts 600 and 601 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(4), (9) and 1319

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The New York State Gaming Facility Location Board (the "Board") has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Board, which was established by the New York State Gaming Commission, will issue a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in Upstate New York. The immediate adoption of these rules is necessary to prescribe required fee information for applicants considering whether or not to submit an application in response to the RFA and to enable the Board to have hearing procedures in place before any potential public hearing occurs. Standard rule making procedures would prevent the Board from commencing the fulfillment of its statutory duties.

Subject: Rules pertaining to gaming facility request for application and related fees and related hearings.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Text of emergency rule: Subtitle R of Title 9, Executive, of the NYCRR is amended to name such Subtitle "Gaming Facility Location Board" and add new Parts 600 and 601 as follows:

PART 600
PUBLIC HEARINGS

§ 600.1. Public Hearings.

(a) If the New York Gaming Facility Location Board conducts a public hearing, it shall cause the New York Stare Gaming Commission to post a notice of such hearing on the Gaming Commission's website a reasonable period of time before such meeting.

(b) Any member of the New York Gaming Facility Location Board may preside over a public hearing as chair of the meeting. The conduct of the meeting shall be in the sole and absolute discretion of the chair, who may decide whom to recognize to speak and limit the time allowed to any speaker and the number of speakers. The chair of the meeting may receive written testimony in the discretion of the chair.

PART 601
GAMING FACILITY LICENSE FEES

§ 601.1. Gaming Facility License Fees.

(a) The license fee for a gaming facility license issued by the Gaming Commission pursuant to subdivision 4 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be as follows, unless a gaming facility licensee has agreed to pay an amount in excess of the fees listed below:

(1) in Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:

(i) $70,000,000 for a gaming facility in Dutchess and Orange Counties;

(ii) $50,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan and Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and

(iii) $35,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan and Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.

(2) $50,000,000 in Zone Two, Region Two (Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law;

(3) in Zone Two, Region Five (Counties of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14)), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:

(i) $35,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties;

(ii) $50,000,000 for a gaming facility in Wayne or Seneca Counties; and

(iii) $20,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga and Tompkins Counties, if a license is awarded for a gaming facility located in Wayne or Seneca Counties.

(b) A gaming facility licensee shall pay the required license fee by electronic fund transfer according to directions issued by the Gaming Commission.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 28, 2014.

Text of rule and any required statements and analyses may be obtained from: Heather McArn, New York State Gaming Commission, 1 Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: sitingrules@gaming.ny.gov

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but

Item 5b.

Andrew M. Cuomo
Governor

NYS GAMING COMMISSION

Edmund C. Burns
General Counsel

MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: June 19, 2014

Re: Proposed Rulemaking: Use of Cellular Telephones in the Paddock
9 NYCRR § 4104.14

The Commission authorized a rule permitting the use of cellular telephones or other electronic communication devices in a designated area of a harness racing paddock or receiving barn, effective for one year from August 21, 2013. The need for trainers to be able to communicate from the paddock is unique to harness racing because trainers or their assistants are required to spend at least one hour in the paddock prior to post time. The current rule followed a similar one-year experiment that had expired February 15, 2013. The current rule's one-year duration had been proposed by the former Racing and Wagering Board, which did not wish to bind the yet-effective Commission with a permanent rule.

In adopting the rule last August, the Commissioners expressed a desire to understand how New York's experience was progressing and how other jurisdictions treated the issue.

In furtherance of this request, Brian Barry, Commission Director of Racing Officials, surveyed the presiding judges at the State's harness track and reports that none of the tracks experienced any problem with the rule. The judges reported that there were signs instructing horsemen to use only designated areas, usually either drivers' lounges or track kitchens, for cellular telephone calls. The judges also reported to Mr. Barry that the designated areas are policed by Commission staff and track security and that when a horseman is observed using a telephone in the paddock in an undesignated area, the caller is directed to the designated area and, almost always, complies. In the past year, only two fines have been issued for failure to comply. Mr. Barry opines that the rule has been effective.

Staff researched how other jurisdictions treat this issue, finding that rules in other jurisdictions are generally consistent with ours. Pennsylvania, for instance, allows cellphone use in a harness paddock so long as such use is not in view of the public. Delaware allows use in the paddock, but not while riding or walking a horse. Ohio does not permit cell phone use in the paddock. The rules of the United States Trotting Association do not prohibit cell phone use in the paddock.

The text of a proposed rulemaking is attached.

[redacted]

attachment

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

§ 4104.14. Use of cellular telephones and electronic communication devices.

The use of cellular telephones or any other electronic communication device, including devices that are capable of sending or receiving text messages or e-mails, by any person while in the paddock or receiving barn is restricted to use in an area designated by the Paddock Judge.

(a) Notwithstanding the provisions of Rule 4104.11, a sign shall be posted prominently at the entrance of the paddock or receiving barn stating that the use of a cellular telephone or an electronic communication device by any person while in the paddock is restricted to an area designated by the Paddock Judge, and identified by a sign that reads "Designated Cell Telephone Area."

(b) Nothing contained in this rule shall diminish the right of any track to adopt or implement more restrictive procedures concerning the use of cellular telephones and other electronic devices.

[(c)This section shall continue for one year after the date that it goes into effect.]

mum debt collection standards and allow for states to expand upon these requirements. Further, the federal rule inadequately addresses the abusive and deceptive debt collection practices this rule is intended to alleviate.

10. Compliance schedule: Sections 2(b), and 4(a) of this rule will take effect 180 days after adoption. Otherwise this Part will be effective immediately upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule: This rule sets standards for debt collection practices in New York, including necessary disclosures to consumers and requirements to verify a debt when an alleged debtor disputes the validity or amount of the debt. Many debt collectors operate in New York, but the Department does not have an exact number of debt collectors or their size. The New York State Collectors Association, a trade group of New York debt collectors, claims 147 members, but it is not known how many are "small businesses," as defined in section 102(8) of the State Administrative Procedure Act. This rule has no anticipated affect on local governments.

2. Compliance requirements: Section 2 of the rule requires additional information to be provided to the consumer at the start of any collection effort. However, under federal law, an initial disclosure must already be mailed, and the rule would only expand upon this mailing, requiring no new paperwork. Section 3 similarly only requires information be provided on a document when a collection effort is made after the expiration of the statute of limitations, and adds no new paperwork. Section 4 requires information be provided when a debt is disputed. Currently state and federal law require documents be provided for certain disputes, but the content of the documents to be provided is undefined. This Section would provide clarity for what documentation is required, not necessarily more documentation. Section 4 does expand, beyond the current law, which disputes qualify for verification, which could require additional paperwork. Section 5 requires debt collectors provide written confirmation of any settlement agreement. Section 6 may reduce paperwork for debt collectors since this section allows, in certain cases, for debt collectors to communicate with consumers by electronic mail.

3. Professional services: Small businesses to which this regulation applies will not need any additional services beyond the staff currently needed for their business. The debt collection business model will remain unchanged; debt collectors will only need to perform their functions in a more consumer friendly, deliberate manner.

4. Compliance costs: This rule should have minimal initial and annual costs to regulated businesses. Debt collectors will continue to attempt to collect from consumers in the same manner. The disclosures required should have a negligible effect on compliance costs. There may be some cost to maintaining documentation proving the validity of a debt and providing this to consumers if there is a dispute. The Department does not have an estimate of the cost of this documentation, however, debt collectors operating in New York City already must maintain most of this information. The costs may be higher for debt collectors who purchase the debts in comparison to debt collectors hired to collect debts on behalf of another.

5. Economic and technological feasibility: Small businesses to which this regulation may apply will not incur an economic or technological impact as a result of this rule. Debt collectors must already maintain information evidencing a debt, and must provide alleged debtors with written disclosures under state and federal laws. This rule merely sets standards for what information and disclosures must be provided to consumers, but debt collectors should not have any problems with meeting the economic and technological requirements of these rules.

6. Minimizing adverse impact: This rule applies equally to all debt collectors, regardless of their size. The rule does not impose any adverse or disparate impact on small businesses. This rule does not affect local governments.

7. Small business and local government participation: Small businesses and local governments will have an opportunity to participate in the rule making process when the rule is published in the State Register.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Debt collectors to which this regulation applies do business in every county of New York State, including rural areas defined in section 102(10) of the State Administrative Procedure Act. This regulation will apply to all debt collectors operating in New York, including those located in rural areas.

2. Reporting, recordkeeping, and other compliance requirements; and professional services: The rule imposes the same reporting, recordkeeping, and other compliance requirements for all debt collectors, in rural and non-rural areas. Section 2 of the rule requires additional information to be provided to the consumer at the start of any collection effort. However, under federal law, an initial disclosure must already be mailed, and this would only expand upon this mailing, requiring no new paperwork. Section 3 similarly only requires information be provided on a document when a collection effort is made after the expiration of the statute of limitations, and adds no new paperwork. Section 4 requires information be provided when a debt is disputed. Currently state and federal law require documents be provided for certain disputes, but the content of the documents to be provided is undefined. This Section would provide clarity for what documentation is required, not necessarily more documentation. Section 4 does expand, beyond the current law, which disputes qualify for verification, which could require additional paperwork. Section 5 requires that debt collectors provide written confirmation of any settlement agreement. Section 6 may reduce paperwork for debt collectors since this section allows, in certain cases, for debt collectors to communicate with consumers by electronic mail.

3. Costs: There are no expected costs of compliance that would vary between debt collectors in rural and non-rural areas. A full assessment of the costs of this rule is not clear since the costs will vary depending on the structure of the debt collector, including the kinds of debts typically collected and whether the debt collector purchases debts to collect or collects debts owed to another. For debt collectors operating throughout the state, this rule should have a limited cost, since these rules are similar to the requirements set by the New York City Department of Consumer Affairs on debt collectors operating in the city. Costs should also be minimized since the disclosure rules primarily expand on the information provided in disclosures already required by state and federal fair debt collection practices acts, and would not require many more mailings. Costs to the Department will be minimal since the Department already accepts consumer complaints regarding debt collection. The only new costs to the Department would arise from any investigations to enforce the rule.

4. Minimizing adverse impact: The requirements of this rule will apply equally to all debt collectors, whether they are located in rural or non-rural areas.

5. Rural area participation: This notice is intended to provide entities in rural and non-rural areas with the opportunity to participate in the rule making process. Interested parties will have the opportunity to comment on the proposed rule for 45 days following publication in the State Register.

Job Impact Statement

1. Nature of impact: This rule sets standards for debt collection practices in New York, including necessary disclosures to consumers and requirements to verify a debt when an alleged debtor disputes the validity or amount of the debt. This rule should not have an impact on jobs and employment opportunities in New York. Debt collectors will need to comply with the rule, but this should not have a negative impact on how many employees are needed to collect debts in New York.

2. Categories and numbers affected: The debt collection industry employs many New York residents, however, this rule should not affect the numbers of jobs or employment opportunities.

3. Regions of adverse impact: This rule regulates debt collectors operating in New York, no matter where the company is located. There should be no disproportionate impact on any region.

4. Minimizing adverse impact: There should be no adverse impact on existing jobs or employment opportunities, so the Department has not needed to take into account minimizing any impact on jobs.

New York State Gaming Commission

NOTICE OF ADOPTION

Use of Cellular Telephones in the Paddock

I.D. No. RWB-08-13-00004-A
Filing No. 816
Filing Date: 2013-08-06
Effective Date: 2013-08-21

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

Action taken: Addition of section 4104.14 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(1), 104(1), (19) and 301(1)

Subject: Use of cellular telephones in the paddock.

Purpose: To allow cellular telephones and other electronic communication devices in designated areas of a harness race track paddock.

Text or summary was published in the February 20, 2013 issue of the Register, I.D. No. RWB-08-13-00004-P.

Final rule as compared with last published rule: No changes.

Text of 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 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Ability of a New Owner of a Claimed Horse to Void the Claim

I.D. No. RWB-08-13-00005-A

Filing No. 818

Filing Date: 2013-08-06

Effective Date: 2013-08-21

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

Action taken: Amendment of section 4038.5 of Title 9 NYCRR.

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

Subject: Ability of a new owner of a claimed horse to void the claim.

Purpose: To remove the incentive to horse owners to race substandard horses in a claiming race.

Text or summary was published in the February 20, 2013 issue of the Register, I.D. No. RWB-08-13-00005-P.

Final rule as compared with last published rule: No changes.

Text of 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 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds

I.D. No. RWB-08-13-00006-A

Filing No. 817

Filing Date: 2013-08-06

Effective Date: 2013-08-21

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

Action taken: Amendment of sections 4043.2(e)(9), (g)(5)-(16), (i) and 4043.4(b) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(1), 104(1), (19) and 902(1)

Subject: Implementation of substantive changes and procedures pertaining to equine drugs and reporting requirements for thoroughbreds.

Purpose: To protect the health and safety of thoroughbred race horses, jockeys, and exercise riders.

Text of final rule: Subdivision (g) of section 4043.2 of 9 NYCRR is amended as follows:

4043.2 Restricted use of drugs, medication and other substances.

(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:

(1) acepromazine;
(2) albuterol;
(3) atropine;
(4) butorphanol;
[(5) clenbuterol;]
[(6)]*(5)* detomidine;
[(7)]*(6)* glycopyrrolate;
[(8)]*(7)* guaifenesin;
[(9)]*(8)* hydroxyzine;
[(10)]*(9)* isoxsuprine;
[(11)]*(10)* lidocaine;
[(12)]*(11)* mepivicaine;
[(13)]*(12)* pentoxifylline;
[(14)]*(13)* phenytoin;
[(15)]*(14)* pyrilamine;
[(16)]*(15)* xylazine.

[They may not] *None of these substances* may be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. 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 [96 hours] *96-hour period*.

Paragraph 9 of Subdivision (e) of section 4043.2 of 9 NYCRR is amended as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadatropin[, glucocorticoids])[, except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part];

Subdivision (i) of section 4043.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse [which has had a joint aspirated (in conjunction with a steroid injection)] may not race for [at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race] *the following periods of time:*

(1) for at least five days following a systemic administration of a corticosteroid;

(2) for at least seven days following a joint injection of a corticosteroid; and

(3) for at least 14 days following an administration of clenbuterol.

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

New Subdivision (b) is added to section 4043.4 of 9 NYCRR to read as follows:

(b) Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the Board, by the trainer to the Board within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 4043.2(g).

Text of 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 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

Revised Regulatory Impact Statement

The Gaming Commission made two stylistic changes to subdivision (g) of section 4043.2 of Title 9 of NYCRR, in comparison to the Notice of Proposed Rulemaking which published the proposed amended text in the February 20, 2013 State Register. Both changes only improve the writing style of the rule.

These nonsubstantive changes do not make any change in the meaning or effect of this rule. Such changes do not necessitate a revised Regulatory Impact Statement.

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

As is evident by the nature of this rulemaking and the nonsubstantive changes that were adopted to subdivision (g) of section 4043.2, in comparison to the previously published rule, this will not have an adverse affect on jobs or rural areas. This proposal concerns the restricted administration of certain drugs to thoroughbred race horses, the testing procedures to ensure compliance with those restrictions, and reporting of the administration of certain drugs. These medications – corticosteroids and clenbuterol – are currently permitted and will continue to be permitted but under different administration schedules. These schedules will have no impact on jobs or rural areas. This amendment is intended 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 will not adversely impact rural

Item 5c.

Andrew M. Cuomo
Governor

NYS GAMING COMMISSION

Edmund C. Burns
General Counsel

MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: June 19, 2014

Re: Proposed Rulemaking: Harness Officials Conflict of Interest
9 NYCRR § 4116.3

For Commission consideration is a proposed amendment to its standardbred rules to strengthen conflict-of-interest provisions. A current rule prohibits a track racing secretary or assistant secretary from being licensed as an owner, trainer or driver "during the racing season." There are, however, potential conflicts of interest if a racing secretary or assistant racing secretary were allowed to race or drive a horse, even if such racing occurs out of the State, because working for or competing against an owner whose horses may appear at a New York track could be perceived to compromise the objective performance of such official's New York duties. This proposal aims to strengthen current rules by broadening the prohibitions against activities in which such officials may engage.

The proposal also makes a procedural alteration, moving the current conflict-of-interest rule from Part 4116, which governs drivers, to Part 4105, which governs officials of race meetings.

The text of the proposed amendments is attached.

[redacted]

attachment

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

§ 4105.17. Restriction on activities of officials.

(a) No officer, director or executive of a track, or a spouse of an officer, director, or executive of a track, shall drive a horse at such track except at limited pari-mutuel meetings or in nonbetting races, nor may a horse in which such person has any beneficial interest be entered in any overnight event at said track.

(b) No licensed racing secretary, assistant racing secretary or any person performing the duties of racing secretary or assistant racing secretary

(1) shall be licensed as an owner, trainer or driver;

(2) own, train or drive a horse anywhere in any race in which pari-mutuel wagering occurs or in any race for which a purse is offered or awarded; or

(3) engage in any other horse racing activity that, in the judgment of the Commission, would create an actual or perceived conflict of interest with his or her duties in New York or otherwise would not be in the best interests of horse racing.

[§ 4116.3. Officials may not drive or enter horses.

(a) No officer, director or executive, or spouse thereof, of a track shall drive a horse at such track except at limited pari-mutuel meetings or in nonbetting races; nor may a horse be entered in which such person has any beneficial interest in any overnight event at said track.

(b) No licensed racing secretary or assistant racing secretary or any licensee performing the duties in such classifications may be licensed as an owner, trainer or driver during the racing season.]