



December 22, 2014 Meeting Book



Meeting Agenda
December 22, 2014

1. Call to Order and Establishment of Quorum
2. Consideration of Minutes, Meeting of November 24, 2014
3. Report of Executive Director
4. Rulemaking
 - a. Emergency and Proposed Rulemaking: Jockey Injury Compensation Fund Plan and Assessment
 - b. SGC-49-13-00011-P: Per Se Regulatory Standardbred Thresholds for Equine Drugs (Adoption)
 - c. SGC-49-13-00015-P: Per Se Regulatory Standardbred Threshold and Restricted Time Period for Flunixin (Adoption)
 - d. SGC-49-13-00018-P: Per Se Regulatory Standardbred Threshold and Restricted Time Period for DMSO (Adoption)
 - e. SGC-49-13-00017-P: Restricted Time Period for Standardbred Firocoxib Use (Adoption)
 - f. SGC-49-13-00009-RP: Restricted Time Periods for Clenbuterol Use on Standardbred Racehorses (Adoption)
 - g. SGC-37-14-00005-P: Restrictions on the Use of Clenbuterol in Standardbred Racing (Adoption)
 - h. SGC-37-14-00007-P: Reporting of Standardbred Corticosteroid Joint Injections to the Commission (Adoption)
 - i. SGC-49-13-00014-P: Use of the Corticosteroid Methylprednisolone Acetate (*e.g.*, Depo Medrol) in Standardbred Racing (Adoption)
 - j. SGC-49-13-00012-P: Per Se Regulatory Standardbred Threshold and Restricted Time Period for Betamethasone and Triamcinolone Acetonide (Adoption)
 - k. SGC-49-13-00013-P: Per Se Regulatory Standardbred Threshold and Restricted Time Period for Dexamethasone and Prednisolone (Adoption)
 - l. SGC-49-13-00010-P: Per Se Regulatory Standardbred Threshold Limited to 24 Drugs, Special Corticosteroid Rules (Adoption)

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

5. Adjudications

- a. In the Matter of Charlie Amaro FL 55-2014
- b. In the Matter of Charlie Amaro FL 67-2014
- c. In the Matter of Jose Baez
- d. In the Matter of Disqualification of Always for You (Luis Gutierrez)
- e. In the Matter of Disqualification of Kisses and Kicks (David P. McNeight, Jr.)
- f. In the Matter of Pedro Rodriguez

6. New/Old Business

7. Scheduling of Next Meeting

8. Adjournment

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**NEW YORK STATE
GAMING COMMISSION MEETING**

MINUTES

MEETING of NOVEMBER 24, 2014

NEW YORK, NEW YORK

A meeting of the N.Y.S. Gaming Commission was conducted in New York, New York.

1. Call to Order

The meeting was called to order at 1:05 p.m. by Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance were Chairman Mark Gearan, and Commissioners John Crotty, Peter Moschetti, John Poklemba, Barry Sample and Todd Snyder.

2. Consideration of the Minutes from September 30, 2014

The Commission considered previously circulated draft minutes of the meeting conducted on September 30, 2014. The minutes were accepted as circulated.

3. Report of Executive Director

Executive Director Robert Williams provided an update on the commercial casino development process and the recent proceedings of the Harry M. Zweig Memorial Fund for Equine Research.

4. Rulemaking

a. SGC-28-14-00006-EP, Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)

Chairman Gearan asked Mr. Williams to introduce for consideration the re-proposal of an emergency rule prescribing the forms for the Request for Application to Develop and Operate a Gaming Facility and related license application forms. Mr. Williams explained that the emergency rule was first adopted on March 31, 2014, to date no public comments had been received and the text of the rules had not changed

since the initial emergency adoption. He noted that the present emergency rule would expire on December 21, 2014.

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

Chairman Gearan asked Mr. Williams to explain items 4-b through 4-g, which all related to thoroughbred racing. Mr. Williams explained that these rules were proposed originally in November 2013 and that certain ones were re-proposed, with a few revisions, in March 2014. In addition, Mr. Williams stated the Commission held a public hearing to seek additional input in January 2014. He noted that as a result of the hearing, the Commission was in a position to make findings of fact in regard to certain rulemaking proposals.

- b. **SGC-49-13-0020-RP, Per Se Thoroughbred Regulatory Thresholds for Equine Drugs (Adoption)**
- c. **SGC-49-12-00019-P, Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Thoroughbred Racing (Adoption)**
- d. **SGC-49-13-00021-P, Restricted Time Period for Systemic Administrations of Corticosteroids to Thoroughbred Horses (Adoption)**
- e. **SGC-49-13-00022-P, Restricted Time Period After IV Administrations of Flunixin to Thoroughbred Horses (Adoption)**
- g. **SGC-37-14-00006-P Limits Betamethasone, Methylprednisolone and Triamcinolone to Only Joint Injections in Thoroughbred Racehorses (Adoption)**

Chairman Gearan asked for a Motion to Adopt the five rules:

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

Following adoption of the five rules and in consideration of practitioner notice concerns raised by State Equine Medical Director

Scott Palmer, Chairman Gearan asked for a motion to make the rulemaking effective on January 1, 2015.

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

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

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

f. **SGC-49-13-00023-P, Restricted Time Period for Administrations of Unspecified Corticosteroids to Thoroughbred Horses (Withdraw)**

Chairman Gearan asked for a Motion to withdraw a previously proposed rule regarding a Restricted Time Period for Administrations of Unspecified Corticosteroids to Thoroughbred Horses, having been mooted by present meeting rule adoptions.

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

h. **Proposed Rulemaking: Grounds for Suspension and Revocation of Lottery License, 9 NYCRR § 5001.19**

Mr. Williams introduced for consideration a proposed draft regulation refining the current rule that sets forth grounds for the suspension and revocation of a lottery license.

In response to a question from Commissioner Poklemba, Commission General Counsel Edmund Burns confirmed that a decision to revoke an agent's license would be within the scope of the Commission's delegation to staff and that in the event of a challenge to such revocation, the Commissioners would have an opportunity to adjudicate the action.

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

5. Adjudications

a. In the Matter of Aaron Byron

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it unanimously sustained the Hearing Officer's Report and Recommendations, making one correction to a finding of fact.

b. In the Matter of William Creech

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it unanimously sustained the Hearing Officer's Report and Recommendations.

c. In the Matter of Barry Held

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it unanimously sustained the Hearing Officer's Report and Recommendations.

d. In the Matter of Jack Rice

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it unanimously sustained the Hearing Officer's Report and Recommendations, making one technical correction.

6. New Business/Old Business

a. New Business

No action on new business was taken.

b. Old Business

No action on old business was taken.

7. Scheduling of Next Meeting

It was determined the next meeting would be on December 22, 2014.

8. Adjournment

The meeting was adjourned at 1:37 p.m.

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MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: December 19, 2014

Re: Adoption of Rules for Controlled Therapeutic Medications in Standardbred Racing
(9 NYCRR §§ 4120.2, 4120.3)

For the Commission's consideration are the adoption of the controlled therapeutic medications rules for standardbred horses that the Commission proposed on November 4, 2013 and revised and supplemented on March 12, 2014. This is a summary of such standardbred proposals:

9 NYCRR §	Subject, adopt (or other action)	N.Y. Dept. of State ID No.
4120.3(a, b), 4120.2(n)	16 per se thresholds; renumbering	SGC-49-13-00011-P
4120.3(a)(8), 4120.2(d, e)	Flunixin, with threshold	SGC-49-13-00015-P
4120.3(a)(6), 4120.2(a, e)	DMSO, with threshold	SGC-49-13-00018-P
4120.2(h)	Firocoxib, restricted time	SGC-49-13-00017-P
4120.2(g)(5), 4120.2(k)	Clenbuterol, restricted time	SGC-49-13-00009-RP
4120.2(l)	Clenbuterol, use restrictions	SGC-37-14-00005-P
4120.4(b)	corticosteroid joint injection, report	SGC-37-14-00007-P
4120.3(a), 4120.2(e, m)	Methylprednisolone, with threshold	SGC-49-13-00014-P
4120.3(a), 4120.2(e)	joint corticosteroids (withdraw)	SGC-49-13-00012-P
4120.3(a), 4120.2(e, f)	systemic corticosteroids (withdraw)	SGC-49-13-00013-P
4120.3(c), 4120.2	detection thresholds (withdraw)	SGC-49-13-00010-P

The rules that the Commission proposed on November 4, 2013 were accompanied by a duly noticed Public Hearing that the Commission held on January 21, 2014. As a result, the Commission may make Fact Findings in regard to such rulemaking proposals. Such Fact Findings, if made, will be official findings of the Commission in its rulemaking proceedings and will constitute resolved facts for all adjudicatory proceedings before the Commission. A copy of proposed Fact Findings is attached.

Standardbred industry participants and representatives testified and provided written materials at the Commission's Public Hearing. Testimony was received from F. Phillip Langley, President, United States Trotting Association ("USTA"); Joseph A. Faraldo, President, Standardbred Owners Association of New York ("SOANY"); Thomas Tobin, D.V.M., Ph.D, University of Kentucky, Gluck Equine Research Center; Kenneth H. McKeever, Ph.D, Professor, Rutgers University, Department of Animal Sciences; and practicing equine veterinarians Vincent DiCicco, D.V.M., Janet A. Durso, D.V.M. and Peter M. Kanter, D.V.M., Ph.D. In addition, Dionne Benson, D.V.M., Executive Director, Racing Medication and Testing Consortium ("RMTC") testified. These witnesses, and Tom Charters, President and CEO, The Hambletonian Society, Inc., and Richard Sams, Ph.D, Scientific Consultant, RMTC, submitted written materials for inclusion in the record of the Commission's Public Hearing. No other public comments were

received from standardbred industry participants and representatives during public comment periods. SOANY sent the Commission a news release on October 7, 2014, praising the Commission for making “harness appropriate” clenbuterol rule revisions, as published in the *State Register* on September 17, 2014.

The Commission separated its standardbred Controlled Therapeutic Medication rulemaking into 10 separate proposals in November 2013. The limit-of-detection (“LOD”) threshold for “unapproved” drugs, for example, was separately proposed by the Commission. The purpose of multiple proposals was to permit the Commission to change, postpone or withdraw some proposals—particularly the LOD, clenbuterol and corticosteroid proposals that were opposed by the USTA—while proceeding with others. The USTA had resigned in protest from the RMTC because it disagreed with the national clenbuterol and corticosteroid proposals. The Commission revised its clenbuterol rulemaking proposals in March 2014 to account for the weekly racing schedule of standardbred horses.

Dr. Scott Palmer, the Commission’s equine medical director, and Commission staff have considered the proposals carefully and believe they are ready for consideration for adoption or other final action. This memorandum summarizes each of the proposals and attaches the text of the proposed final rules along with the proposed Commission findings of fact.

Per Se Regulatory Standardbred Thresholds for Equine Drugs (SGC-49-13-00011-P)

The Commission proposed *per se* threshold rules for 16 drugs to complement the Commission’s restricted time period rules. The restricted time period rules provide a simple instruction for trainers to follow concerning when to stop the administration of various drugs before a horse’s next race. The *per se* threshold rules are intended to ensure that drugs will not be used in a manner that could endanger a horse and drivers or manipulate the outcome of pari-mutuel horse races.

The adoption of these thresholds will simplify the administrative adjudication of New York equine rule violations by making it an automatic rule violation to exceed a Section 4120.3 threshold. The adoption of these thresholds nationally also makes it easier for trainers to race in New York and elsewhere. Although trainers who participate in other states are expressly not assured that the use of the 16 drugs at their own recommended withdrawal times will prevent the occurrence of a positive post-race test, trainers may rely on our time restrictions, when following accepted veterinary practices (*e.g.*, clinical doses), to ensure their compliance with these thresholds in all states.

There are thresholds for other drugs (DMSO, flunixin, methylprednisolone) that are separately proposed by the Commission. The ones that are adopted will be included in alphabetical order in Section 4043.3, as noted in the attached texts of the rule proposals. This proposal also renumbers the “catch-all” restriction of all unspecified drugs from 4120.2(h) to 4120.2(n), to stay at the end of Section 4120.2.

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Flunixin (SGC-49-13-00015-P)

There was no opposition to this proposal, including its *per se* threshold, by the regulated industry. The proposed national threshold will promote greater uniformity among racing jurisdictions. The proposal also amends the Commission’s restricted time period for flunixin to 48 hours before a horse’s next race. Currently, intravenous (“IV”) flunixin is permitted until 24 hours, and other administrations of flunixin are permitted until 48 hours, before a horse’s next race. The threshold would become Section 4043.3(a)(8).

The adoption of the 48-hour restricted time period would restore the Commission's historic limitation of pre-racing horses with nonsteroidal anti-inflammatory drugs ("NSAIDs") for 48 hours before a horse's race. During the time of such 48-hour restriction, from 1971 to 2005, there were no complaints by trainers and veterinarians and few positives. Because flunixin was permitted closer to racing in 2005, the Commission has detected 80 flunixin rule violations, more than any other drug. Some trainers have confused the route of administration limitation and used oral paste, which has a longer clearance time. Flunixin is often obtained from a compounding pharmacy, which can provide in a preparation a less accurate and reliable drug concentration than a pharmaceutical company. Flunixin is not the most efficient or predictable NSAID, either, and permitting its use closer to racing has caused an artificial increase in the use of flunixin rather than other NSAIDs. Another problem in horse racing has been the "stacking" of NSAIDs, meaning an administration of multiple NSAIDs for their synergistic effects. Restoring the Commission's traditional 48-hour restricted time period for all NSAIDs would prohibit this practice within 48 hours before a horse's next race. A 48-hour restricted time period also ensures that a person who complies with the restricted time period will not incur a threshold violation with a clinical dose. This assurance is not provided, in the expert opinion based on available research data of our scientific consultant, Dr. George A. Maylin, by the national organizations' withdrawal guideline of only 32 hours. Dr. Maylin expects that there will be inadvertent threshold violations for those trainers who follow this withdrawal guideline rather than a restricted time period of 48 hours.

A restricted time period of 48 hours does not permit any NSAID administration the day before a horse race that enhances the ability of the Commission to regulate drug use in the stables. The Commission would also introduce complexity and confusion with a 32-hour restricted time period, rather than our standard multiple of 24 hours (*e.g.*, 24, 48, 72, 96 hours) before race day. Previously, the national organizations had been recommending a 24-hour withdrawal guideline; these organizations did not realize their mistake until April 2014. Importantly, a restricted time period of 48 hours will also minimize how much a pre-race flunixin administration could interfere with an examining veterinarian's detection of lameness in the hours immediately preceding a race. This pre-race examination is important to provide another layer of protection assuring that an unfit horse will not be started in a race.

Per Se Regulatory Standardbred Threshold and Restricted Time Period for DMSO (SGC-49-13-00018-P)

There was no opposition to this proposal, including its *per se* threshold, by the regulated industry. The proposed national threshold will promote greater uniformity among racing jurisdictions. The proposal also amends the Commission's restricted time period for dimethyl sulfoxide ("DMSO") to 48 hours before a horse's next race. Currently, topical DMSO is permitted any time and other administrations of DMSO are permitted until one week before a race. The proposed national threshold is consistent with an administration of DMSO at least 48 hours before a horse's next race. The threshold would become Section 4043.3(a)(6).

The net effect of the proposed rule will be to help ensure, in conjunction with New York's restricted time periods, 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 therapeutic and capable of being regulated by known thresholds.

Restricted Time Period for Standardbred Firocoxib Use (SGC-49-13-00017-P)

There was no opposition by the regulated industry to this proposal of a longer restricted time period. The proposed rule will prohibit the administration of firocoxib within 14 days before a horse's next race. Currently, the administration of firocoxib, a NSAID with an unusually slow clearance time, is permitted until one week before a race, under the "catch-all" restriction of all unspecified drugs in Section 4120.2(h) (which is being renumbered). The separately proposed national threshold is consistent with an administration of firocoxib at least 14 days before a horse's next race. This subdivision would become 4120.2(h).

Restricted Time Periods for Clenbuterol Use on Standardbred Racehorses (SGC-49-13-00009-RP)

The Commission proposed a revision to Section 4120.2(g)(5) and the addition of a new subdivision (k) to Section 4120.2 prohibiting the use of clenbuterol on standardbred horses for 14 days before racing a horse returning from a lay-off from racing of 30 days or more. This restriction is because a standardbred horse not racing for 30 days or more could be treated with clenbuterol to generate muscle growth; such a horse also has to participate in a qualifying race before it may race again. A standardbred horse that is racing regularly does not have this opportunity to generate such muscle growth while complying with the Commission's current restriction against administering clenbuterol within 96 hours before racing. The proposed restricted time period of 14 days before racing, when the horse has been substantially laid off from racing, will minimize the misuse of clenbuterol, permit its use to treat respiratory disorders in horses that race regularly (e.g., weekly), and be simple to understand for trainers and owners.

The revised proposal will permit the appropriate use of clenbuterol to treat bronchial disorders of standardbred horses without unnecessarily forcing a treated horse to miss racing opportunities, while protecting the sport from the misuse of the drug for its anabolic-like effects. The rule also discourages continual overuse of clenbuterol, which research demonstrates causes a serious risk to the health of a horse. SOANY publicly supports this revised rulemaking because a blanket restriction of 14 days before racing (as adopted for thoroughbred racing) would unnecessarily force standardbred horsepersons to miss racing opportunities in order to treat routine respiratory disorders.

Restrictions on the Use of Clenbuterol in Standardbred Racing (SGC-37-14-00005-P)

In March 2014, the Commission proposed the addition of a new subdivision to Section 4120.4 requiring that clenbuterol be administered only for the treatment of respiratory disorders and under the general supervision of a veterinarian. Clenbuterol is a bronchodilator that is Federal Drug Administration-approved for use in horses and widely used for a few days after a standardbred horse's weekly pari-mutuel horse race. Treating veterinarians typically dispense clenbuterol to the horse's trainer with instructions to administer the drug to the horse orally. The drug can be misused for anabolic effects that can be created when a horse does not race often. This misuse reportedly arose in thoroughbred racing, where a horse's more widely-spaced racing schedule allows for the sustained regimens of clenbuterol administrations that are necessary to create such an anabolic effect. This subdivision would become 4120.2(l).

The proposal requires a veterinarian to limit the use of this drug only to treating bronchial disorders and restricts the dispensation of the drug by veterinarians to trainers by requiring that every administration must occur under the general supervision of a veterinarian. While a veterinarian may still dispense the

drug, such dispensations must be preceded by a veterinary physical examination of each horse and comply with a veterinarian's specific instructions for the use of the drug.

This proposal will require a veterinarian to supervise the administration of clenbuterol and prohibit the use of this drug for a longer time period than is needed to treat a bronchial disorder. This proposal has been publicly praised by SOANY. The adoption of these new requirements will further help to prevent the overuse of clenbuterol in standardbred racing.

Reporting of Standardbred Corticosteroid Joint Injections to the Commission (SGC-37-14-00007-P)

In March 2014, the Commission also proposed an amendment to the Trainer's Responsibility rule, 9 NYCRR § 4120.4, requiring that a trainer report any equine corticosteroid injections to the Commission within 48 hours of treatment. This proposal also authorizes trainers to delegate such reporting responsibility to the treating veterinarians, who have the information (*e.g.*, joint, drug) necessary to make such reports.

The reporting of corticosteroid joint injections will enable the veterinarians who perform pre-race examinations of standardbred horses at the racetracks to make a better evaluation of the condition of the horse, including identifying patterns of redundant treatments that have the potential to misrepresent the true clinical condition of a horse. These pre-race examinations are intended to prevent sore or lame horses from racing, enhancing the integrity of the races and the safety of the equine and human participants.

This reporting will also permit the Commission to study corticosteroid joint injection practices to learn which joints are treated, the age distribution of horses that receive such treatments, any relationship between such treatments and injuries or chronic joint disabilities, and the frequency of repetitious joint treatments. Sore joints are a common ailment suffered by standardbred racehorses, although such horses are much less likely than a thoroughbred horse to experience any catastrophic injury while racing. The veterinary literature suggests that other modalities might better treat such conditions and that corticosteroid joint injections might contribute to further degeneration of sore joints under certain circumstances, although many trainers and veterinarians believe that corticosteroid joint injections provide needed relief. This reporting will help the Commission to assess these issues.

This amendment also provides the Commission and racing secretaries with notice when horses are ineligible to enter upcoming race because of a recent corticosteroid joint injection and creates a database of information that may assist in the care and treatment of standardbred horses.

This Proposal Would Limit the Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Standardbred Racing (SGC-49-13-00014-P).

The Commission's separate proposal for the corticosteroid methylprednisolone includes a *per se* regulatory threshold and a corresponding change to our restrictions on its use. This threshold has been proposed nationally and would become Section 4043.2(a)(15).

The Commission's use restrictions for each drug are designed to provide the horseperson with an assurance that a horse will not incur a positive laboratory finding following an administration of the drug in a regimen that is consistent with accepted veterinary practice, *e.g.*, the administration of a clinical dose. The new threshold for methylprednisolone requires, in order for the use restriction for such drug to provide such an assurance, that the administration of any formulation of methylprednisolone causes the horse to be

ineligible to race until the horse tests below the threshold and is released to race by the stewards. A clinical dose of this drug may result in a positive test for more than 50 days after some joint injections, yet a small clinical dose in a different joint may result in a concentration in the horse's plasma below the threshold value within seven days. As a result, a single restricted time period may be unreasonable for this drug. The Commission also lacks sufficient scientific data to formulate a reasonably precise restricted time period that can protect regulated parties in all circumstances; there are too many unknown variables to adopt a specific time period for this drug. Rather than prohibit the use of this drug, whose use might be the best therapeutic option in some circumstances, the proposed use restriction, that the horse must test negative and be released to race by the stewards, will limit the use of this drug to such circumstances and will provide the Commission and regulated parties with a use restriction that is reasonable to apply. This subdivision would become 4120.2(m). The previous restricted time period would be deleted from subdivision 4120.2(e).

Standardbred representatives expressed their opposition, at the Commission's public hearing on January 21, 2014, to the adoption of corticosteroid thresholds and use restrictions that would result in the inability to treat horses with corticosteroids in the standard one-week interval between races. They noted that the incidence of catastrophic breakdowns of standardbred horses is very low and incidents that might be attributable to corticosteroid abuse are *de minimus*. Unlike thoroughbred horseracing, a standardbred horse races at a relative slower speed, evenly distributes the load of exercise on two feet on the ground at the same time rather than one and does not carry the weight of a jockey on its back. A standardbred horse judiciously treated with corticosteroid joint injections for mild arthritis related to the physical stress of extensive training and racing is generally able to retire without significant clinical signs of lameness or soreness that would require ongoing treatment. When used in a conscientious manner in conjunction with controlled exercise, such treatments may serve to protect a horse because the horse will otherwise favor the untreated (sore) leg and place too much weight on its healthy limbs.

While these considerations mitigate the concern of catastrophic injuries to standardbred horses, Commission staff shares the belief of RMTTC that "needless degeneration of joints aided by injudicious use of corticosteroids is a long-term concern with these corticosteroids." The drug methylprednisolone is of particular concern in terms of potential degenerative effect on articular cartilage from long-term use. The drug persists for an unusually long period of time and has been found to be detrimental to normal cartilage metabolism in controlled experimental studies. When methylprednisolone is administered systemically, it will penetrate the joint capsules and also contribute to potential joint degeneration. There are several other corticosteroids that are widely used for joint injections (and systemically) that are not as long-lasting or potentially damaging to a horse's joints.

The adoption of the proposed national threshold for methylprednisolone and our proposed use restriction is appropriate to curtail the widespread use of this drug, allowing its use in circumstances when a trainer and veterinarian find its efficacy is sufficiently valuable to off-set a period of race ineligibility, while imposing no similar restrictions on the use of other common corticosteroids (*e.g.*, joint therapy with betamethasone or triamcinolone acetonide, systemic use of dexamethasone or prednisolone) that present a much lower risk of joint degeneration.

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Betamethasone and Triamcinolone Acetonide (SGC-49-13-00012-P);

For the reasons set forth above, Commission staff recommends that this proposal be withdrawn. An existing rule, 9 NYCRR § 4120.2(i), of the Commission already restricts corticosteroid joint injections from being administered within five days of racing. This restriction is consistent with the veterinary practices that occur in some states that have adopted these national thresholds but have no restricted time periods, where their horsepersons are free to risk post-race positives by “titrating” their drug regimens to fall below the threshold while administering such corticosteroids inside of RMTC’s seven-day withdrawal guideline, for example, as close as until five days before a horse’s next race.

If the Commission adopts the proposed requirement that standardbred trainers report all corticosteroid joint injections to the Commission (SGC-37-14-00007-P), then Commission staff intends to evaluate such uses and identify any adverse health consequences that might unexpectedly be associated with such allegedly benign treatment modalities.

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Dexamethasone and Prednisolone (SGC-49-13-00013-P);

For the reasons set forth above, Commission staff recommends that this proposal be withdrawn. An existing rule of the Commission, 9 NYCRR § 4120.2(e)(9), already restricts systemic (non-joint) corticosteroid administrations within 48 hours of racing. This restriction is consistent with the veterinary practices that occur in some states that have adopted these national thresholds but have no restricted time periods and RMTC’s informal withdrawal guidelines range from 48 to 72 hours before a horse’s next race.

If the Commission adopts the proposed requirement that standardbred trainers report all corticosteroid joint injections to the Commission (SGC-37-14-00007-P), then Commission staff intends to evaluate such uses and identify any adverse health consequences that might unexpectedly be associated with such allegedly benign treatment modalities.

Per Se Regulatory Standardbred Threshold Limited to 24 Drugs, Special Corticosteroid Rules (SGC-49-13-00010-P)

The Commission proposed a strict prohibition of the presence of any detectable amount of “unapproved” drugs in race day samples, including every corticosteroid not specifically addressed in the Commission’s rules, before the national proponents of the 24-drug thresholds abandoned their national support for a limit-of-detection threshold for all such drugs. A limit-of-detection threshold for such “unapproved” other drugs is no longer viable in New York because of the severe competitive disadvantage this rule would cause for New York racetracks and resident horsepersons. It is recommended that this proposal be withdrawn.

Conclusion

[REDACTED]

[REDACTED]

Copies of the notices of proposed rulemaking as published in the New York *State Register* are attached.

attachments

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

PROPOSED STANDARDBRED RULEMAKING

Per Se Thresholds:

Proposed Rulemaking, “Per Se Regulatory Standardbred Thresholds for Equine Drugs” (I.D. No. SGC-49-13-00011-P), published in the December 4, 2013 State Register at pp. 20-21:

Section 4120.3 (“Other prohibitions”) would be renumbered Section 4120.18.

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

A new Section 4120.3 would be added to read as follows [note that subparagraphs (6), (8) and (15) are reserved for listing of drugs in related proposals, below]:

§ 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 a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

(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;

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

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

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

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

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

(13) Mepivacaine:

(i) hydroxymepivacaine in plasma;

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

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

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

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

(19) 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.

Restoring 48-hour Restricted Time Period for All Flunixin Administrations:

Proposed Rulemaking, “Per Se Regulatory Standardbred Threshold and Restricted Time Period for Flunixin” (I.D. No. SGC-49-13-00015-P), published in the December 4, 2013 State Register at pp. 25-26:

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 a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

(8) Flunixin: 20 ng/ml in plasma;

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

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.

Proposed Rulemaking, “Per Se Regulatory Standardbred Threshold and Restricted Time Period for DMSO” (I.D. No. SGC-49-13-00018-P), published in the December 4, 2013 State Register at pp. 28-29:

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 a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

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

Paragraph 1 of subdivision (a) of Section 4120.2 would be amended to read 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] that may contain antibiotics but do not contain benzocaine, DMSO, steroids or other drugs; and

A new paragraph 20 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:

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

Restricted Time Period for Firocoxib:

Proposed Rulemaking, “*Restricted Time Period for Standardbred Firocoxib Use*” (I.D. No. SGC-49-13-00017-P), published in the December 4, 2013 *State Register* pp. 27-28:

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

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

Restricted Time Period for Clenbuterol:

Revised Proposed Rulemaking, “Restricted Time Periods for Clenbuterol Use on Standardbred Race-horses” (I.D. No. SGC-49-13-00009-RP), published in the September 17, 2014 State Register at pp. 9-10:

Subdivision (g) of Section 4120.2 of 9 NYCRR 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, except as provided in subdivision (k) of this section;

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

(k) If a horse has been required to qualify when not showing a current performance within 30 days or more and has not yet raced after qualifying, then such horse may not race for at least 14 days following an administration of clenbuterol.

Note: The Initial Proposed Rulemaking (I.D. No. SGC-49-13-00009-P), was published in the December 4, 2013 State Register at pp. 17-19.

Veterinary Supervision and Limited Use of Clenbuterol:

Proposed Rulemaking, “Restrictions on the Use of Clenbuterol in Standardbred Racing” (I.D. No. SGC-37-14-00005-P), published in the September 17, 2014 *State Register* at pp. 6-7:

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

(l) Clenbuterol shall be administered only under the general supervision of a treating veterinarian and in a manner not exceeding its use for treating respiratory disorders.

Report Corticosteroid Joint Injections:

Proposed Rulemaking, “*Reporting of Standardbred Corticosteroid Joint Injections to the Commission,*” (I.D. No. SGC-37-14-00007-P), published in the September 17, 2014 *State Register* at pp. 8-9:

A new subdivision (b) would be added to section 4120.4 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 commission, by the trainer to the commission 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 purposes of assisting with pre-race veterinary examinations.

Proposed Rulemaking, “*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):

Paragraph (15) would be added to subdivision (a) of the proposed new section 4120.3 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 a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

(15) 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;

(21) notwithstanding paragraph (9) of this subdivision, the corticosteroid methylprednisolone (e.g., Depo Medrol) is not a substance that is 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.

A new subdivision (m) would be added to section 4120.2 as follows:

(m) A horse may not race after an administration of any formulation of methylprednisolone (e.g., Depo Medrol) unless such horse subsequently tests below the threshold set forth in section 4120.3 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 is released to race by the Presiding Judge.

ZERO TOLERANCE PROPOSAL (WITHDRAW)

Proposed Rulemaking, “Per Se Regulatory Standardbred Threshold Limited to 24 Drugs, Special Corticosteroid Rules” (I.D. No. SGC-49-13-00010-P), published in the December 4, 2013 *State Register* pp. 19-20:

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.

OTHER CORTICOSTEROID PROPOSALS (WITHDRAW)

Proposed Rulemaking, “Per Se Regulatory Standardbred Threshold and Restricted Time Period for Betamethasone and Triamcinolone Acetonide” (I.D. No. SGC-49-13-00012-P), as revised by the Commission on March 12, 2014:

Paragraphs (18) and (19) would be added to subdivision (a) of the proposed new section 4120.3 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 a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

- (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 administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.

Proposed Rulemaking, “Per Se Regulatory Standardbred Threshold and Restricted Time Period for Dexamethasone and Prednisolone” (I.D. No. SGC-49-13-00013-P), as revised by the Commission on March 12, 2014:

Paragraphs (20) and (21) would be added to subdivision (a) of the proposed new section 4120.3 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 a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

(20) Dexamethasone: 5 pg/ml in plasma;

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

Draft Commission Findings

The Commission makes the following rulemaking fact findings with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to “Per Se Regulatory Standardbred Thresholds for Equine Drugs” (SGC-49-13-00011-P).

Agency Finding A:

A horse will not incur a positive laboratory finding in excess of the following thresholds, following an administration of the drug in which the drug regimen is consistent with accepted veterinary practice, *e.g.*, the administration of a clinical dose, provided that the drug is not administered within the Commission’s restricted time periods (including as adopted on December 22, 2014):

1. Acepromazine [96 hours]: 10 ng/ml HEPS in urine
2. Butorphanol [96 hours]: 300 ng/ml of total butorphanol in urine or 2 ng/ml of free butorphanol in plasma
3. Dantrolene [72 hours]: 100 pg/ml of 5-hydroxydantrolene in plasma
4. Detomidine [96 hours]: 1 ng/ml of any metabolite of detomidine in urine or any detomidine in plasma
5. Diclofenac [48 hours]: 5 ng/ml in plasma
7. Firocoxib [14 days]: 20 ng/ml in plasma
9. Furosemide [4 – 4.5 hours]: 100 ng/ml in plasma and a specific gravity of urine less than 1.010
10. Glycopyrrolate [96 hours]: 3 pg/ml in plasma
11. Ketoprofen [48 hours]: 10 ng/ml in plasma
12. Lidocaine [96 hours]: 20 pg/ml of total 3-hydroxylidocaine in plasma
13. Mepivacaine [96 hours]: 10 ng/ml of total hydroxymepivacaine in urine or any hydroxymepivacaine in plasma
14. Methocarbamol [72 hours]: 1 ng/ml in plasma
16. Omeprazole [24 hours]: 1 ng/ml of omeprazole sulfide in urine
17. Phenylbutazone [48 hours]: 2 mcg/ml in plasma; Procaine penicillin: 25 ng/ml of procaine in plasma
18. Procaine penicillin [7 days]: 25 ng/ml of procaine in plasma
19. Xylazine [96 hours]: 10 pg/ml of total xylazine and its metabolites in plasma.

Agency Finding B:

If there is a positive laboratory finding in excess of a foregoing threshold, then the administration of such drug had the potential to affect the race performance of such horse.

Agency Finding C:

If there is a positive laboratory finding in excess of a foregoing threshold, assuming an administration of the drug in which the drug regimen is consistent with accepted veterinary practice, then a violation of the Commission's restricted time period for such drug occurred.

The Commission makes the following further rulemaking fact findings with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to “Per Se Regulatory Standardbred Threshold and Restricted Time Period for Flunixin” (I.D. No. SGC-49-13-00015-P).

Agency Finding D:

A horse will not incur a positive laboratory finding in excess of the following threshold, following an administration of flunixin in which the drug regimen is consistent with accepted veterinary practice, *e.g.*, the administration of a clinical dose, provided that the drug is not administered within the Commission’s restricted time periods (including as adopted on December 22, 2014):

8. Flunixin [48 hours]: 20 ng/ml in plasma

Agency Finding E:

If there is a positive laboratory finding in excess of the foregoing threshold, then the administration of flunixin had the potential to affect the race performance of such horse.

Agency Finding F:

If there is a positive laboratory finding in excess of a foregoing threshold, assuming an administration of flunixin in which the drug regimen is consistent with accepted veterinary practice, then a violation of the Commission’s restricted time period for such drug occurred.

Agency Finding G:

The Commission finds that it is necessary and proper to repeal the previous permission to inject a standardbred horse with flunixin until 24 hours before its next race and to restore our historic restricted time period of administration by any means until 48 hours before a horse’s next race. For 34 years, from 1971 to 2005, the latter was the restricted time period in New York and there were no complaints and few positives. The shorter restricted time period has resulted in a large number of rule violations and is inappropriate because of a number of factors, *e.g.*, (1) flunixin is often obtained from a compounding pharmacy which cannot provide an accurate and reliable concentration of the drug as well as a pharmaceutical company and the Commission does not want regulated parties who comply with its restricted time periods to incur a threshold violation; (2) many regulated persons (*e.g.*, trainers) have incurred a drug positive after having confused the limited route of administration (IV only) permitted since 2005 and given flunixin as an oral paste that has a longer clearance and detection time of the drug; (3) a 48-hour restricted time period for all permitted nonsteroidal anti-inflammatory drugs (“NSAID”) eliminates the artificial incentive for a regulated party to choose flunixin for treating a horse close to its next race when there are other permitted NSAIDs that are more efficient and predictable (a longer half-life); (4) a 48-hour restricted time period for all NSAIDs prevents administrations of multiple NSAIDs (“stacking”) for a period of 48 hours before a horse’s next race; (5) a restricted time period of 48 hours does not permit any NSAID administrations the day before a horse races and this enhances the ability of the Commission to regulate drug use in the stables; (6) the Commission expects, based on the available research data, that regulated parties would have inadvertent positives were the Commission to adopt a restricted time period for flunixin of 32 hours; (7) the Commission would introduce complexity and confusion with a 32-hour restricted time period rather than our standard multiples of 24 hours (*e.g.*, 24, 48, 72, 96 hours) before race day; (8) a 48-hour restricted time period ensures that a person who complies with the restricted time period will not incur a drug positive with a clinical dose, the assurance described in *Agency Finding D*; (9) a restricted time period of

48 hours minimizes how much a pre-race flunixin administration can interfere with an examining veterinarian's detection of lameness in the hours immediately preceding a race.

The Commission makes the following further rulemaking fact findings with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to “Per Se Regulatory Standardbred Threshold and Restricted Time Period for DMSO” (SGC-49-13-00018-P)

Agency Finding H:

A horse will not incur a positive laboratory finding in excess of the following threshold, following an administration of dimethyl sulfoxide (“DMSO”) in which the drug regimen is consistent with accepted veterinary practice, *e.g.*, the administration of a clinical dose, provided that the drug is not administered within the Commission’s restricted time periods (including as adopted on December 22, 2014):

6. DMSO [48 hours]: 10 mcg/ml in plasma

Agency Finding I:

If there is a positive laboratory finding in excess of the foregoing threshold, then the administration of DMSO had the potential to affect the race performance of such horse.

Agency Finding J:

If there is a positive laboratory finding in excess of a foregoing threshold, assuming an administration of DMSO in which the drug regimen is consistent with accepted veterinary practice, then a violation of the Commission’s restricted time period for such drug occurred.

The Commission makes the following further rulemaking fact finding with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to “Restricted Time Periods for Clenbuterol Use on Standardbred Racehorses” (SGC-49-13-00009-RP).

Agency Finding K:

Clenbuterol is a bronchodilator that is Federal Drug Administration-approved for use in horses and is widely used for a few days after a standardbred horse’s weekly pari-mutuel horse race. Clenbuterol can be misused, however, in a manner that has an anabolic effect and creates serious possible health risks for a horse. While the Commission’s existing 96-hour restricted time period limits such misuse of this beneficial drug in regularly racing standardbred horses, a standardbred horse has not raced for 30 or more days has had an opportunity for a misuse clenbuterol with anabolic effects. Current research indicates that such an anabolic effect requires six consecutive days of treatment and will dissipate within 14 days. As a result, a 14-day restricted time period for horses that have not raced for 30 or more days (and re-qualify, as they must) is appropriate. The restriction of clenbuterol for 14 days before a standardbred horse’s next race when a horse is returning from a substantial layoff, when combined with a requirement that the drug may be used only for treating respiratory disorders and under a veterinarian’s supervision, will effectively preclude the abuse of clenbuterol without unduly interfering with its beneficial use.

The Commission makes the following further rulemaking fact findings with regard to the Controlled Therapeutic Medication rule proposals that were the subject of a formal Public Hearing, duly noticed and held by the Commission on January 21, 2014, with regard to “This Proposal Would Limit the Use of the Corticosteroid Methylprednisolone Acetate (e.g., Depo Medrol) in Standardbred Racing” (SGC-49-13-00014-P).

Agency Finding L:

Methylprednisolone is a corticosteroid that the Commission finds requires the strictest regulation because of various factors, *e.g.*, (1) the drug can be particularly harmful to the long term health of treated joints and tissues, (2) the drug has the potential to affect race performance for an unusually long period of time, (3) the drug will persist in the bodily system of a horse for an unusually long period of time, particularly if some of the drug is injected outside of the joint capsule. Methylprednisolone is a particularly harmful corticosteroid in terms of potential degenerative effect from long-term use, and the needless degeneration of joints aided by injudicious use of methylprednisolone is a serious equine health and safety concern. There are several other corticosteroids that widely used for treating race horses that are not as long-lasting or potentially degenerative, *e.g.*, joint therapy with betamethasone or triamcinolone acetonide, systemic use of dexamethasone or prednisolone, and present a much lower risk of joint degeneration. Even when administered systemically, methylprednisolone can circulate into joint capsules and contribute to potential joint degeneration. The adoption of the proposed threshold and use restriction for methylprednisolone is appropriate to curtail the widespread use of this drug, allowing its use in circumstances when a trainer and veterinarian find its efficacy is sufficiently valuable to offset a period of race ineligibility.

Agency Finding M:

The following threshold for methylprednisolone is reasonable because it is consistent with proscribing the administration of even a small clinical dose in a single joint within seven days before a horse’s next race and prevents the clinical use of this particular corticosteroid in a regularly (weekly) racing standardbred horse. The Commission lacks sufficient scientific data to create a threshold for methylprednisolone that is violated only by an administration within such time period because of various factors, *e.g.*, (1) multiple joints are often treated; (2) certain joints are interconnected; (3) various size doses are consistent with accepted veterinary practice; (4) other substances may be included with a corticosteroid in a joint injection. The most reasonable threshold for standardbred racing for methylprednisolone is a threshold that at least proscribes the efficacious use of clinical doses of the drug within seven days of racing.

15. Methylprednisolone: 100 pg/ml in plasma

Agency Finding N:

The Commission’s use restrictions for each drug are designed to provide the horseperson with an assurance that a horse will not incur a positive laboratory finding following an administration of the drug in a regimen that is consistent with accepted veterinary practice, *e.g.*, the administration of a clinical dose. The new threshold for methylprednisolone requires, in order for the use restriction for such drug to provide such an assurance, that the administration of any formulation of methylprednisolone results in the horse being ineligible to race until the horse tests below the threshold and is released to race by the stewards. A clinical dose of this drug may result in a positive test for more than 50 days after some joint injections, yet a small clinical dose in a different joint may result in a concentration in the horse’s plasma below the threshold value within seven days. As a result, a single restricted time period may be unreasonable for this drug. The Commission also lacks sufficient scientific data to formulate a reasonably precise restricted time period that can protect regulated parties in all circumstances;

there are too many unknown variables to adopt a specific time period for this drug. The use of this drug is particularly harmful to the potential long-term health of a horse, and the prohibition of the use of this drug is one reasonable alternative. Rather than prohibit all together the use of this drug, whose use might be the best therapeutic option in some circumstances, a use restriction that the horse must test negative and be released to race by the stewards will limit the use of this drug to such circumstances and will provide the Commission and regulated parties with a use restriction that is reasonable to apply.

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of \$3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimis business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Compliance Requirements: Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than \$4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs: The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be \$3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts: The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-

line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations.

Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation: Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan Servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Restrictions on the Use of Clenbuterol in Standardbred Racing

I.D. No. SGC-37-14-00005-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(p) to Title 9 NYCRR.

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

Subject: Restrictions on the use of clenbuterol in standardbred racing.

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

Text of proposed rule: A new subdivision (p) would be added to section 4120.2 of 9 NYCRR, as follows:

(p) *Clenbuterol shall be administered only under the general supervision of a treating veterinarian and in a manner not exceeding its use for treating respiratory disorders.*

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1), 104(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 enhance the integrity and safety of standardbred pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to restrict the administration of clenbuterol to the treatment of respiratory disorders in standardbred horses.

This proposal would add a new subdivision (p) to Section 4120.4 of 9 NYCRR, requiring that clenbuterol be administered only as prescribed by a veterinarian for the treatment of respiratory disorders. Clenbuterol is a bronchodilator and expectorant that is FDA-approved for treating bronchial disorders in racehorses. Treating veterinarians often dispense clenbuterol to the horse's trainer, with instructions to administer the drug to the horse orally on a daily basis. A typical treatment regimen may be for two to 14 days, which is what the manufacturer recommends.

There have been reports of continuous daily clenbuterol administrations, however, to achieve an anabolic-like repartitioning effect, meaning that body fat is replaced by muscle mass. These reports in New York have been about thoroughbred racing, for which the Commission has undertaken and proposed remedial measures, but the drug could have a similar effect on standardbred horses. This anabolic-like effect has the potential to increase race performance, although such overuse can cause side effects that damage the health and racing ability of a race horse and continuous use of clenbuterol reduces its beneficial effects for bronchodilation and mucous clearance.

Regardless of the precise effect such misuse of clenbuterol might have on a horse's race performance, the manipulation of a horse's racing ability with drugs is a matter of primary regulatory concern. Horse racing is sustained by pari-mutuel wagering, and the use of drugs to manipulate race performance has a negative effect on competitors, fan interest, public support, and the amount wagered by the betting public.

This proposal will require a veterinarian to supervise generally the administration of any clenbuterol that is dispensed. This means that the use of such clenbuterol, i.e., oral administrations under the direction of the horse's trainer, may occur only as instructed by the veterinarian. In addition, the clenbuterol cannot be given for longer than is needed to treat a bronchial disorder. A veterinarian bears similar responsibilities when dispensing any prescription drug, such as clenbuterol. This rule will permit the Commission to provide further enforcement in the pari-mutuel racing industry.

There is no existing rule of the Commission that directly regulates treatment regimens for clenbuterol. The adoption of these requirements will help to prevent the overuse of clenbuterol in standardbred racing.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would 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. 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.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

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

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers or their designated treating veterinarians will be required to make entries on the Commission's free online reporting system.

7. Duplication: None.

8. Alternatives: The Commission considered and rejected an alternative requirement that a standardbred racehorse cannot race within 14 days of any clenbuterol treatment. Such a rule would deprive the horses of beneficial treatments when actively racing, and market forces (weekly racing) and the Commission's existing 96-hour restricted time period are discouraging the overuse of clenbuterol. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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

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

This proposal only authorizes the Commission to engage in its own enforcement action when there is an unsupervised or excessive administration of the prescription drug clenbuterol. Such regulation will serve to enhance the integrity of racing and the health and safety of racehorses, and the medication will continue to be permitted for its beneficial effects. 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. No local government activities are involved.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Limits Betamethasone, Methylprednisolone and Triamcinolone to Only Joint Injections in Thoroughbred Racehorses

I.D. No. SGC-37-14-00006-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)(2) of Title 9 NYCRR.

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

Subject: Limits betamethasone, methylprednisolone and triamcinolone to only joint injections in thoroughbred racehorses.

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

Text of proposed rule: Section 4043.2 of 9 NYCRR would be amended as follows:

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

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

(2) for at least seven days following a joint injection of any corticosteroid; and the following corticosteroids may be administered only by means of a joint injection: betamethasone, any formulation of methylprednisolone and any formulation of triamcinolone;

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law 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 make it possible for the Commission to regulate corticosteroid joint injections effectively with laboratory thresholds that are violated only when a thoroughbred horse races too soon after receiving such a treatment.

The Commission has proposed adopting national regulatory thresholds for three corticosteroids, betamethasone and various formulations of methylprednisolone or triamcinolone, that are used to alleviate joint soreness by means of joint injection. Such thresholds are based on the concentration of these drugs at seven days after the horses are given a joint injection of such drugs, which is considered enough time to allow a treating or examining veterinarian to determine whether a thoroughbred horse has recovered from a joint ailment before it may race again. Other research has shown, however, that such thresholds are exceeded for a much longer period of time when these drugs are given to a horse by other means, such as intramuscular injection ("IM") or orally, and it is not possible to determine from laboratory test results which route of administration has been used. Methylprednisolone acetate given by an IM administration, for example, has been found in a horse's blood at a concentration exceeding its proposed threshold for longer than 95 days, rather than for only seven days.

This proposal would limit the use of these three corticosteroids to only joint injections. This will ensure that a threshold violation in blood samples taken from a horse on race day is the result of an improper joint injection within seven days of the horse's race, and protect horsepersons from inadvertently incurring an equine drug positive by having given these drugs to a horse by means other than a joint injection.

There are other corticosteroids that are more commonly administered to treat a racehorse by means other than joint injection, and they do not persist in a horse's bodily system for more than 72 hours. As a result, this proposal will not have an adverse effect on treating to a horse with corticosteroids by means other than a joint injection.

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 Racing Medication and Testing Consortium and the Association of Racing Commissioners, International, Inc. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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

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

This proposal concerns the restricted administration of certain drugs to thoroughbred racehorses. These medications, three corticosteroids frequently used for equine corticosteroid joint injections, will be limited to such means of administration by this proposal, to protect horsepersons from inadvertent violations of proposed new regulatory thresholds for such drugs that are based on administrations solely by joint injections, and to ensure that any violations of such thresholds reliably indicate an

administration of such drugs by joint injection within the applicable restricted time period before the horse races. Such regulations serve to enhance the health and safety of racehorses on race day. These medications will continue to be permitted for joint injections, and other corticosteroids that are more commonly administered by other means than by joint injection will continue to be permitted for such uses. This rule will not have an adverse economic impact on reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting of Standardbred Corticosteroid Joint Injections to the Commission

I.D. No. SGC-37-14-00007-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 4120.4 of Title 9 NYCRR.

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

Subject: Reporting of standardbred corticosteroid joint injections to the Commission.

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

Text of proposed rule: A new subdivision (b) would be added to section 4120.4 of 9 NYCRR, as follows:

§ 4120.4. Trainer's responsibility.

(a) A trainer shall be responsible at all times for the condition of all horses trained by him or her. No trainer shall start or permit a horse in his or her custody, care or control to be started if such trainer knows, or might have known cause to believe, that the horse has received any drug or other restricted substance that could result in a positive test. The trainer shall be held responsible for any positive test unless such trainer can show by substantial evidence that neither such trainer nor any employee nor agent was responsible for the administration of the drug or other restricted substance. Every trainer must guard each horse trained by him or her in such manner and for such period of time prior to racing the horse so as to prevent any person whether or not employed by or connected with the owner or trainer from administering any drug or other restricted substance to such horse contrary to this Part.

(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 commission, by the trainer to the commission 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 purposes of assisting with pre-race veterinary examinations.

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1), 104(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 enhance the integrity and safety of standardbred pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking to amend Commission Rule 4120.4 is necessary to monitor the administration of corticosteroid joint injections to standardbred horses.

This proposal would amend Section 4120.4 of 9 NYCRR, which is the Trainer's Responsibility rule, to require that a trainer report any equine corticosteroid joint injections to the Commission within 48 hours of treatment. The proposal further authorizes trainers to delegate such reporting responsibility to the treating veterinarians, who have the information (e.g., dose, drug) necessary to make such reports.

The reporting of corticosteroid joint injections will enable the veterinarians who perform pre-race examinations of standardbred horses at the racetracks to make a better evaluations of the condition of the horse, including by identifying a pattern of redundant treatments that have the potential to misrepresent the true clinical condition of a horse. These pre-race examinations are intended to prevent sore or lame horses from racing, to enhance the integrity of the races and the safety of the equine and human participants.

This reporting will permit the Commission to review the corticosteroid joint injection data to learn which joints are treated, the age distribution of horses that receive such treatments, any relationship between such treatments and injuries or chronic joint disabilities, and the frequency of repetitive joint treatments. Sore joints are a common ailment suffered by standardbred racehorses. The veterinary literature suggests that other modalities might better treat such conditions and that corticosteroid joint injections might contribute to further degeneration of sore joints under certain circumstances.

This amendment would also provide the Commission with timely notice of any potential ailments, notify the racing secretaries when horses are ineligible to enter upcoming races because of a recent corticosteroid joint injection, and ensure that documentation is available if a horse's fitness comes into question.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs of compliance by regulated parties will be minimal. The Commission has developed a free online reporting system for this data, already in use for thoroughbred racehorses, whose trainers and veterinarians have reported such information on a timely basis at minimal cost since December 26, 2012.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The Commission can readily use its thoroughbred corticosteroid reporting system for standardbred horsepersons.

There will be no costs to local government because the New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel horse 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 collecting such information from thoroughbred horsepersons.

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

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers or their designated treating veterinarians will be required to make entries on the Commission's free online reporting system.

7. Duplication: None.

8. Alternatives: These rule amendments are based on the success of this reporting requirement for thoroughbred racing. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal. The proposed amendment requires the trainer of a standardbred racehorse, or the treating veterinarian if designated by the trainer, to report equine corticosteroid joint injections to the Commission. Under current rules, the records of such treatments are required to be maintained by the treating veterinarian and must be disclosed to the Commission on demand. This proposal standardizes such reporting, which will be implemented through a free online reporting system for such information that is currently used to collect such data from thoroughbred horsepersons by the Commission. The rule does not impose any significant technological changes on the industry for the reasons set forth above. The routine collection of this data will provide more information about the successful treatment of sore joints in racehorses, and as such will have a positive effect on horseracing, the care and treatment of racehorses, and the revenue generated through pari-mutuel

wagering and breeding in New York State. This will not adversely impact rural areas or jobs or local governments.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Restricted Time Periods for Clenbuterol Use on Standardbred Racehorses

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

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

Proposed Action: Amendment of sections 4120.2(g)(5) and 4120.3(a); and addition of section 4120.2(k) to Title 9 NYCRR.

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

Subject: Restricted time periods for clenbuterol use on standardbred racehorses.

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

Text of revised rule: The revised rule making would delete the proposed new paragraph (17) of subdivision (a) of Section 4120.3:

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.]

The rule making would revise the proposed amendment to subdivision (g) of Section 4120.2, 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, except as provided in subdivision (k) of this section;]]

The rule making would revise the proposed new subdivision (k) of Section 4120.2, as follows:

(k) *If a horse has been required to qualify when not showing a current performance within 30 days or more and has not yet raced after qualifying, then such [A] horse may not race for at least 14 days following an administration of clenbuterol.*

Revised rule compared with proposed rule: Substantial revisions were made in sections 4120.2(g)(5), (k) and 4120.3(a)(17).

Text of revised proposed rule and any required statements and analyses may be obtained from Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, NY 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: 30 days after publication of this notice.

Revised 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 revised rule making is necessary to create

reasonable restrictions for standardbred horse racing that will control and minimize the administration to the horses of the drug clenbuterol for its improper anabolic-like effects, while still permitting the common use of clenbuterol for its FDA-approved purpose of treating a horse's bronchial disorders.

The Commission had proposed a rule that would establish a restricted time period of 14 days before a horse could race after an administration of clenbuterol and a corresponding 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"). Clenbuterol is an FDA-approved drug for veterinary treatment of respiratory ailments, a common affliction of race horses confined to stalls. Clenbuterol became an abused drug, however, that was being continuously administered to thoroughbred horses in New York because of its anabolic steroid properties, which have the potential to affect race horse health and performance. This misuse of clenbuterol prompted thoroughbred industry representatives to propose a 14-day ban to reverse such effect of the drug before racing, which the Commission adopted in December 2012, and laboratory threshold that is the subject of a separate Commission rule proposal. Since this rule was proposed, however, significant concerns have arisen concerning the creation of a 14-day ban for standardbred racing in which horses are generally raced on a weekly basis. A 14-day ban would require a horseperson using clenbuterol properly on a standardbred horse for the treatment of a respiratory disorder to miss several racing opportunities, a problem that is not typical for thoroughbred racing in New York. These concerns were shared with the Commission at a public rule-making hearing held by the Commission and attended by practicing standardbred veterinarians and various horseperson organization representatives, including the standardbred horseperson's national organization, the United States Trotting Association, Inc. In addition, the frequency of racing in standardbred racing minimizes the abuse of clenbuterol in standardbred racing, because the drug must be administered continuously for a longer period of time than one week to produce muscle growth, according to existing research. The revisions to Section 4120.2(g)(5) and the addition of a new subdivision (k) of section 4120.2 will prohibit the use of clenbuterol on standardbred horses for 14 days before racing only when the horse is returning from a lay-off from racing for 30 days or more. This criterion was selected because a standardbred horse that does not race for 30 days or more could be treated with clenbuterol to generate muscle growth but is generally required to participate in a qualifying race before the horse may race again. This gives the horseperson clear notice of when the 14-day ban will be applied to a horse, while still allowing standardbred horses that regularly race to benefit from appropriate short-term uses of clenbuterol to treat respiratory disorders. The permissible short-term use of clenbuterol is governed by the Commission's current restriction against administering any clenbuterol for 96 hours before a horse may race. This revised rule strikes proposed Section 4120.3(a)(17) in order to eliminate the proposed Per Se threshold for clenbuterol for standardbred racing because such a threshold is too strict for a 96-hour restricted time period.

The primary purpose of this revision is to permit the appropriate use of clenbuterol to treat bronchial disorders of standardbred horses without unnecessarily forcing a treated horse to miss racing opportunities, while protecting the sport from any misuse of the drug for its anabolic-like effects. This rule making is also important to discourage any continual overuse of the drug clenbuterol, which research demonstrates causes a serious risk to the health of a horse. It should be noted that the Commission has also proposed, in a separate standardbred rule making, that a veterinarian must generally supervise every clenbuterol administration and further restricts its use to the treatment of only respiratory disorders.

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. There will be no costs to local government 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 revised proposal limits the use of clenbuterol to 14 days before a horse's next race only when the horse is returning to racing after a lay-off of 30 days or more, thus requiring trainers to treat a horse's respiratory ailments with a different medication only when such treatment alternatives will not interfere with the horse's racing schedule. Based on its experience regulating standardbred racing, the Commission does not believe the rule making will result in significant costs.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel standardbred 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 the comments received at the hearing. 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 this revised rule is adopted.

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

This rulemaking proposal does not necessitate a revision to the previously published analyses and statement and does not have an adverse affect on small businesses, local governments, jobs, or rural areas.

Assessment of Public Comment

Public comments were received from numerous sources in the standardbred horseracing industry in opposition to the proposed ban against racing a horse within 14 days of any administration of clenbuterol. They commented that this ban would prevent a horse from racing on the industry-standard weekly basis when properly treated with clenbuterol for a respiratory disorder, which is the approved and widely practiced use of this drug in standardbred racing. The Commission has responded to these comments by limiting the proposed 14-day ban to horses that have to qualify following a lay-off of 30 days or more. The revisions to the rule recognize that regularly racing horses do not have sufficient time between races, particularly because the Commission already bans any use of the drug for 96 hours before a horse's next race, to gain the muscle building effects of clenbuterol. Any respiratory disorders that arise while returning from a long lay-off can be reasonably treated by alternative methods of treatment.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Per Se Thoroughbred Regulatory Thresholds for Equine Drugs

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

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

Proposed Action: Renumbering of section 4043.3 to section 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 Per Se thresholds for 24 common medications.

Text of revised rule: Section 4043.3 ("Other prohibitions") of 9 NYCRR would be renumbered section 4043.13.

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 in excess of a threshold listed below. The test result of such laboratory shall include an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance.

(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;

- (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 acetate. The drugs with specified thresholds encompass 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 enhance 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 RMTTC 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 administered 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 administered 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 substance that is 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.

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 standardbred 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]phenylbutazone (e.g., Butazolidin); *diclofenac*; [F]flunixin (e.g., Banamine); meclofenamic acid (e.g., Arquel); naproxen (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 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 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



MEMORANDUM

To: All Commissioners

From: Edmund C. Burns

Date: December 17, 2014

Re: Proposal of Minimum Penalty Enhancement Rule in Thoroughbred Racing
(9 NYCRR Part 4045, §§ 4045.1 to 4045.7)

For Commission consideration are proposed new rules that would require specific minimum penalties for multiple medication violations. This concept of this proposal is recommended nationally by the Association of Racing Commissioners International, Inc. (“ARCI”).

The new rules are designed to ensure that every state imposes a mandatory minimum penalty whenever a horseperson, typically the trainer, reaches a certain level of multiple equine drug violations. At the heart of the proposal is the assignment of a specific number of points for each type of drug violation, along with a minimum mandatory license suspension based on the accumulation of such points within specified time periods. The proposal is similar in concept to a suspension by the Department of Motor Vehicles of a driver’s license when a motorist accumulates a total of 11 points in moving violations within 18 months.

A drug that has a very high potential to affect race performance and no reason to be found in a race horse (not therapeutic), for example, would be assigned the most points. Points would remain on a person’s license history for a period of time determined by the seriousness of the drug as well. Based on how many points have accumulated, including for the New York equine drug violation that causes the agency to take this action, a licensee would be subjected to a minimum mandatory penalty enhancement of 30, 60, 180 or 365 days.

ARCI proposed the concept of these rules nationally because of a perceived problem, in other racing jurisdictions, of stewards routinely failing to give appropriate weight to prior equine drug violations when fashioning a penalty for a new equine drug violation. New York has not had this issue, but these rules will serve a prophylactic purpose in New York. Our rule proposal explicitly permits our stewards, for a person’s latest equine drug violation, to continue to enhance the penalty based on the person’s prior violations, but allows our official who assesses the mandatory enhancement to ensure that the person is not punished twice.

The ARCI rule proposal is supported widely by other non-governmental entities besides ARCI, including The New York Racing Association, Inc. (“NYRA”), The Jockey Club and the New York Thoroughbred Horsemen’s Association. During the pre-proposal informal industry comment period, The Jockey Club (with suggestions) and NYRA indicated their support of this proposal.

Staff incorporated one of three suggestions of The Jockey Club, to be sure to incorporate by reference the most recent table of ARCI Penalty Guidelines (December 2014). Another suggestion was to

PROPOSED THROUGHbred RULEMAKING

A new Part 4045, §§ 4045.1 to 4045.7, would be added to 9 NYCRR, to read as follows:

Part 4045. Minimum Penalty Enhancement.

§ 4045.1. Definitions.

The following terms, when used in this Part, have the following meanings:

(a) *ARCI Penalty Guidelines* means the penalty guidelines published in “Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule,” Version 8.0 (revised December 2014) of the Association of Racing Commissioners International, Inc., which are hereby incorporated by reference.

(b) *Equine drug rule* means any law, rule, regulation or order that restricts the administration to, or presence in, a racehorse of a drug or other substance in New York or another racing jurisdiction.

(c) *Final adjudication* means a ruling or order of a racing commission that is not currently subject to an administrative or judicial stay, and if such ruling or order is subjected subsequently to a stay, then the ruling or order existing after any such stay ends.

(d) *Precipitating equine drug rule violation* means an equine drug rule violation committed in New York that causes or may cause, depending on the final adjudication of a ruling or order of a racing commission, the penalties of this section to apply.

(e) *Racing commission* means the agency regulating horse racing in a jurisdiction that has horse racing and pari-mutuel wagering.

§ 4045.2. General.

The commission shall suspend the occupational licenses of a habitual or persistent violator of equine drug rules as an additional penalty when there is a precipitating equine drug rule violation. This suspension shall constitute the bare minimum overall penalty enhancement that arises from a previous violation or violations of equine drug rules, wherever committed, and the commission shall continue to apply its own much broader and stricter standards when determining the appropriate penalty for the precipitating and other equine drug rule violations.

§ 4045.3. Points.

(a) When a precipitating equine drug rule violation occurs, the commission shall examine the equine drug rule violation history of the violator and assign a point value to other equine drug rule violations as set forth in this section.

(b) The commission shall assign six points, which shall accumulate permanently, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class A in the ARCI Penalty Guidelines; or

(2) is not classified in the ARCI Penalty Guidelines, but has a very high potential to affect race performance and no generally accepted veterinary use in racing horses,

subject to any adjustments that apply as set forth in this section.

(c) The commission shall assign four points, which shall accumulate with points resulting from other violations committed within a three-year period, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class B in the ARCI Penalty Guidelines; or

(2) is not classified in the ARCI Penalty Guidelines, but has a high potential to affect race performance and

(i) has a high potential for abuse; or

(ii) has no generally accepted veterinary use in racing horses,

subject to any adjustments that apply as set forth in this section.

(d) The commission shall assign two points, which shall accumulate with points resulting from other violations committed within a two-year period, for a violation involving a drug or other substance that is classified as Penalty Class C in the ARCI Penalty Guidelines, subject to any adjustments that apply as set forth in this section.

(e) The commission shall assign one point, which shall accumulate with points resulting from other violations committed within a one-year period, for a violation involving a drug or other substance that

(1) is classified as Penalty Class D in the ARCI Penalty Guidelines; or

(2) does not fall within any other subdivision of this section,

subject to any adjustments that apply as set forth in this section.

(f) No points shall be assigned for a violation involving a drug or other substance that has no effect on the physiology of a racing horse except to improve nutrition or to treat or prevent infections or parasite infestations.

(g) No points shall be assigned for any violations that occurred before January 1, 2014.

(h) The point values set forth in subdivisions (c), (d) and (e) of this section are reduced by one-half for any drug or other substance that is listed in section 4043.3 of this Subchapter.

(i) If a violation involves more than one drug or substance, then the commission shall assign to such violation not less than the highest point value of any one of the drugs or substances and shall assign additional points for each drug or substance that could have the effect of substantially altering the nature or effect of such drugs or other substances on the horse.

(j) If multiple violations involving one drug or substance are committed before a licensee is notified of a positive laboratory test, then the commission may assign lesser points for the violations, although not less than the points for a single violation, when the responsible parties are able to show that the multiple violations occurred as the result of an honest and unavoidable mistake.

(k) The commission shall assign point values as of the date of a violation.

(l) Points assigned for an equine drug rule violation are not removed from a licensee's record when they serve as a basis to suspend a license. Points continue to accumulate for the time periods that are set forth in subdivisions (c), (d) and (e) of this section.

§ 4045.4. Administrative action.

The commission shall take the following administrative action after a final adjudication of the commission establishes that a licensee has committed a precipitating equine drug rule violation in New York:

(a) The commission shall calculate the points applicable to such licensee to determine whether to take any further administrative action pursuant to this Part.

(1) A licensee may be mailed a letter advising such licensee of the status of the equine drug violation record of such licensee and any possible future action that may be taken in the event of such licensee's accumulation of additional points.

(2) Although point values shall be assigned as of the date of each violation, the commission shall not initiate a suspension pursuant to this Part until after the final adjudication of each equine drug rule violation for which points are assigned pursuant to this Part.

(3) When a precipitating equine drug rule violation results in the licensee having accumulated three or more points based on final adjudications of equine drug rule violations, the commission shall find that a licensee is a habitual or persistent equine drug rule violator.

(b) The Director of the Division of Horse Racing and Pari-Mutuel Wagering shall suspend the occupational licenses of a habitual or persistent equine drug rule violator, at a minimum, as follows:

(1) if the licensee has accumulated 3 to 5.5 points as a result of equine drug rule violations, a suspension of 30 days;

(2) if the licensee has accumulated 6 to 8.5 points as a result of equine drug rule violations, a suspension of 60 days;

(3) if the licensee has accumulated 9 to 10.5 points as a result of equine drug rule violations, a suspension of 180 days; and

(4) if the licensee has accumulated 11 or more points as a result of equine drug rule violations, a suspension of one year.

(c) Such license suspensions shall in no way affect any administration action taken under any other provision of this Subchapter, including the imposition of a penalty for the precipitating or other equine drug rule violation in New York.

(d) The Director of the Division of Horse Racing and Pari-Mutuel Wagering, on behalf of the commission, may proportionately reduce such suspension, however, when convinced by clear and convincing evidence that the commission had already enhanced, based on one or more of the predicate equine drug rule violations, the penalty imposed on the licensee for the precipitating equine drug rule violation.

(e) The State Steward may, when authorized by the Director of the Division of Horse Racing and Pari-Mutuel Wagering, add the habitual or persistent equine drug rule violator suspension when issuing a ruling upon a precipitating equine drug rule violation.

§ 4045.5. Start of suspension.

A habitual or persistent equine drug rule violator suspension shall not take effect until the commission has notified the licensee in writing of the suspension and

(a) the licensee waives in writing the right to an adjudicatory hearing;

(b) the licensee does not, within 10 days, make a written application for an adjudicatory hearing before the commission; or

(c) an administrative stay for the adjudicatory hearing has expired and no further stay has been granted to the licensee.

§ 4045.6. Adjudicatory hearing.

(a) A habitual or persistent equine drug rule violator may, within 10 days of service upon such violator of a notice of a suspension imposed by this Part, file a written application for an adjudicatory hearing before the commission. A request that is not filed within 10 days shall be null and void and the licensee shall have waived any right to an adjudicatory hearing.

(b) If a licensee requests an adjudicatory hearing for a suspension imposed pursuant to this Part, the commission shall issue an administrative stay of the habitual or persistent equine drug rule violator suspension. Such stay shall be for 45 days from the date of service on the licensee of the notice of the suspension. The licensee may request, on motion with reasonable notice to the secretary of the commission, filed in writing, an extension of such stay for good cause shown that the licensee has not been able to participate in an evidentiary hearing within such period of time. The director of the Division of Horse Racing and Pari-Mutuel Wagering shall decide such motion on behalf of the commission, and the decision of such director shall be final. Upon the completion of the evidentiary hearing, another administrative stay of the suspension shall be issued until such time as the commissioners have taken final agency action.

(c) The adjudicatory hearing shall be conducted pursuant to Part 4550 of this Chapter.