MEETING AGENDA
JANUARY 23, 2017

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

2. CONSIDERATION OF MINUTES, MEETING OF DECEMBER 13, 2016

3. REPORT OF EXECUTIVE DIRECTOR

4. RULEMAKING

   A. ADOPTION: SGC-45-16-00002-P PERMIT JOCKEYS TO WEAR TRADE LOGOS AND OWN NAME ON JOCKEY CLOTHING

   B. ADOPTION: SGC-47-16-00002-P BONDING OF VIDEO LOTTERY AGENTS TO PREVENT POTENTIAL LOSS OF STATE REVENUE EARNED FROM VIDEO LOTTERY GAMING ("VLG")

   C. ADOPTION: SGC-47-16-00017-P EXPANDS THE CONFLICT OF INTEREST RESTRICTIONS ON RACING SECRETARIES AND THEIR ASSISTANTS AND SUBSTITUTES

   D. PROPOSED THOROUGHBRED RULEMAKING: EXERCISE-INDUCED PULMONARY HEMORRHAGE (EIPH)

   E. PROPOSED THOROUGHBRED RULEMAKING: MINIMUM PENALTY ENHANCEMENT

   F. PROPOSED THOROUGHBRED RULEMAKING: OUT OF COMPETITION TESTING

   G. PROPOSED THOROUGHBRED RULEMAKING: PROHIBITED SUBSTANCE

   H. PROPOSED THOROUGHBRED RULEMAKING: TRAINER MEDICATION LOG

5. ADJUDICATIONS

   A. IN THE MATTER OF MIKE A. GONZALEZ

6. OLD BUSINESS/NEW BUSINESS

7. SCHEDULING OF NEXT MEETING

8. ADJOURNMENT

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NEW YORK STATE
GAMING COMMISSION

MINUTES

MEETING of DECEMBER 13, 2016

NEW YORK, NEW YORK

A meeting of the Commission was conducted in New York, New York. A video-conference location was also maintained in Schenectady, New York

1. Call to Order

Executive Director Robert Williams called the meeting to order at 2:06 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance in New York were Commissioners John Crotty, Peter Moschetti, John Poklemba and Todd Snyder. Commissioner Sample attended in Schenectady. Bi-lateral audio and visual communications were maintained between locations. Commissioner Snyder was unanimously elected as presiding officer for the meeting.

2. Consideration of the Minutes from November 1, 2016

The Commission considered previously circulated draft minutes of the meeting conducted on November 1, 2016. Commissioner Poklemba suggested an amendment. The minutes were then accepted as amended.

3. Report of the Executive Director

Executive Director Williams provided a brief report on the opening of Tioga Downs Casino, the development status of the remaining three casino facility projects and the Harry F. Zweig Memorial Fund for Equine Research at the Cornell University College of Veterinary Medicine.

4. Rulemaking

a. ADOPTION: SGC-37-16-00007-P, Require Thoroughbred Horse Trainers to Complete Four Hours of Continuing Education Each Year

The Commission considered adoption of regulations regarding Thoroughbred Continuing Trainer Education.

ON A MOTION BY: Commissioner Sample
APPROVED: 5-0

b. ADOPTION: SGC-38-16-00004-P, Definition of the "Wire" at the Finish of a Harness Race

The Commission considered adoption of regulations regarding a technical revision to the Standardbred racing rules definition of the term "wire," which denotes the finish line of the race.

ON A MOTION BY: Commissioner Moschetti
APPROVED: 5-0

c. ADOPTION: SGC-42-16-00002-P, Casino Alcoholic Beverage Licenses

The Commission considered adoption of regulations regarding alcoholic beverages for casinos.

ON A MOTION BY: Commissioner Sample
APPROVED: 5-0

d. ADOPTION: SGC-42-16-00003-P, Prescribing Methods of Notice to Applicants, Registrants, and Licensees and Restrictions on Employee Wagering

The Commission considered adoption of regulations regarding additions to the general section of casino gaming regulations, specifically the method of notice to be provided to an applicant, registrant or licensee in regard to the release of certain information or data and identification of those gaming facility employees subject to the prohibitions on employee wagering.

ON A MOTION BY: Commissioner Moschetti
APPROVED: 5-0

e. ADOPTION: SGC-42-16-00004-P, Standards for Electronic Table Game Systems

The Commission considered adoption of regulations regarding standards for electronic table game systems.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

f. PROPOSAL: Thoroughbred Show Wagering

The Commission considered proposal of regulations to revise Thoroughbred pari-mutuel wagering show wager rules.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

g. PROPOSAL: Thoroughbred Pick-Five and Pick-Six Wagering

The Commission considered proposal of regulations to revise Thoroughbred pari-mutuel wagering pick-five and pick-six wager rules in regard to the display of certain wagering information and wager combinations.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

5. Adjudications

a. In the Matter of WHITESTONE AUTO CENTER INC.

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 5-0 vote, to accept the Hearing Officer's recommendation that Whitestone's license be revoked and that the period from the date of suspension to the Commission's decision be a suspension of the license.

6. New Business/Old Business

a. Old Business

No old business was offered for discussion.

b. New Business

No new business was offered for discussion.

7. Scheduling of Next Meeting

No specific date for the next Commission meeting was set.

8. Adjournment

The meeting was adjourned at 2:44 p.m.

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NEW YORK STATE OF OPPORTUNITY. Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: January 17, 2017

Re: Adoption of Proposed Rulemaking for Advertising on Jockeys (9 NYCRR § 4041.6)

For the Commission's consideration is the adoption of proposed revisions to the rules concerning advertising and promotional materials on jockeys in Thoroughbred racing. Generally, a jockey may wear advertising and promotional material only with permission of the stewards. The proposal would eliminate the permission requirement for logos of the Jockey's Guild and the Permanently Disabled Jockey's Fund, so long as such logos do not each exceed 10 square inches, and allow jockeys to display their names on pants and the rear of the helmet (with certain restrictions), thereby giving these athletes increased recognition.

The text of the proposed rule was published in the *State Register* on November 9, 2016, a copy of which is attached. The public comment period expired on December 27, 2016. No comments were received.

[redacted].

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

8. Alternatives: The Department circulated a draft of this proposal to the Life Insurance Council of New York ("LICONY") and National Association of Insurance and Financial Advisors – New York State ("NAIFA"), which represent the affected insurers and insurance agents. The Department received no written comments from either of the associations. However, LICONY, NAIFA, and life insurers have actively advocated that the Department raise the limits and thus fully support this amendment because they believe that it would provide much needed incentives for new agents.

The Department believes that there are no other viable alternatives to accomplish the objective of this amendment, to increase the life insurance agent training allowance limits to adjust for inflation. Furthermore, Insurance Law section 4228(e)(3)(G) sets forth the method to adjust the limits for inflation, which is to amend the limits by regulation.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: The amendment, if adopted, will be effective immediately. Since this proposal lessens the restrictions on paying agent training allowance subsidies, the promulgation of this amendment will not adversely impact any training allowance program now in effect.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurers authorized to do business in New York State, none of which fall within the definition of "small business" as defined in section 102(8) of the State Administrative Procedure Act. The Department has reviewed filed reports on examination and annual statements of authorized life insurers and found that none of them fall within the definition of a "small business", because there are none that are both independently owned and have less than one hundred employees. Furthermore no life insurance agent affected by this rule who meets the definition of a "small business" will undergo any additional reporting, recordkeeping or other compliance requirements. Any such reporting, recordkeeping or other compliance requirements are borne by the insurer who makes the training allowance payments. The only effect on the agent is to receive an increased level of training allowance payments.

2. Local governments: The amendment does not impose any impacts, including any adverse impacts, or any reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurance companies and insurance agents covered by the rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment does not change the reporting, recordkeeping and other compliance requirements that have been in effect since the adoption of 11 NYCRR 12 (Insurance Regulation 50) in September 2007.

3. Costs: The proposed amendment increases the amount of training allowance subsidies an insurer authorized to do business in New York State may pay. Costs to a life insurer may increase moderately, if the insurer opts to increase the training allowance subsidy. However, an insurer that now pays subsidies under the lower limits contained in Insurance Regulation 50 or Insurance Law sections 4228(e)(3)(C) through (E) does not have to increase its training allowance and does not have to make any new filing with the Department of Financial Services ("Department"). Thus, an insurer that does not wish to increase training allowance subsidies will not experience any cost increase.

The Department does not anticipate any increased cost impact on it by this amendment, and the amendment may reduce Department costs to the extent that it reduces the number of filings made under Insurance Law section 4228(e)(3)(H), requiring an insurer to seek approval from the Superintendent in order to obtain a deviation from the current limits.

While there is a possibility that costs to insureds may increase, it is anticipated that any increase will be offset by lower per policy administrative costs. The higher permitted training allowances should allow insurers to hire more able agents and sell more policies, which should result in the decline of per policy administrative costs. The expectation is that this decline in administrative costs will outweigh the increase in costs due to the higher training allowance payments.

4. Minimizing adverse impact: This amendment uniformly affects insurers and insurance agents that are located in both rural and non-rural areas of New York State. The rulemaking should not impose any adverse impact on rural areas.

5. Rural area participation: Prior to proposing this amendment, the Department had conversations with the National Association of Insurance and Financial Advisors – New York State ("NAIFA") and the Life Insurance Council of New York ("LICONY"), which represent affected insurers and insurance agents, some of which are located in rural areas. The Department circulated a draft of this proposal to both associations and received no written comments from them. However, LICONY, NAIFA, and life insurers have actively advocated that the Department raise the limits and thus fully support this amendment because they believe that it would provide much needed incentives to attract new agents. Also, public and private interests in rural areas will have an additional opportunity to participate in the rulemaking process once the proposed rule is published in the State Register and posted on the Department's website.

Job Impact Statement

The amendment to Insurance Regulation 50 should either have a positive or no impact on jobs and employment opportunities, including self-employment opportunities, in New York State. This amendment allows life insurers to increase limits on training allowance subsidies. As a result, employment as a life insurance agent may become more desirable, which may lead to more people taking the agent licensing examination, a greater number of license applications being filed, the hiring of new agents, and greater enrollment in required continuing education classes, all of which may require the hiring of additional employees or create new employment opportunities to provide more of those services.

New York State Gaming Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Permit Jockeys to Wear Trade Logos and Own Name on Jockey Clothing

I.D. No. SGC-45-16-00002-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 4041.6 of Title 9 NYCRR.

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

Subject: Permit jockeys to wear trade logos and own name on jockey clothing.

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

Text of proposed rule: Section 4041.6 of 9 NYCRR would be amended as follows:

§ 4041.6. Wearing of advertising or promotional material.

(a) A jockey may not wear any clothing other than the usual helmet, silks, pants, boots and gloves nor display on such clothing any material other than:

(1) a logo of the Jockeys' Guild that does not exceed 10 square inches;

(2) a logo of the Permanently Disabled Jockeys Fund that does not exceed 10 square inches; and

(3) authorized advertising or promotional material [without] *worn with* permission of the stewards.

(b) Advertising or promotional material may be worn by a jockey provided such jockey has filed with the stewards and the race track in a form furnished by the commission at least 24 hours before the applicable race, a description of the advertising or promotional material to be worn with the name of the brands and sponsors and referring to a written authorization by the managing owner of the horse to be ridden which authorization is also filed.

(c) Notwithstanding the foregoing when a corporation, company or any other entity sponsors a race or raceday at the track, the track may prohibit such advertising or promotional material from being worn that represents a competitor of such sponsoring corporation, company or other entity. In this regard the track shall notify the stewards of such prohibition at least two hours before the first race of the day, and the jockey upon arrival in the jockeys' enclosure.

(d) A jockey may display the jockey's name on the pants and the rear of the helmet, only if the name:

(1) is the jockey's legal name;

(2) appears on any combination of the outside of the right thigh, the

outside of the left thigh, the rear of the pants between the waistline and the base of the spine or the rear of the helmet;

(3) does not exceed 32 square inches on the outside of each thigh, 10 square inches on the rear of the pants and six square inches on the rear of the helmet; and

(4) appears in black lettering.

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

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

3. Needs and benefits: This rule making is needed to permit the limited use of certain advertising materials on the clothing of jockeys.

The current rules provide that jockeys may not wear any advertising or promotional material without the permission of the stewards. As a result, jockeys are required to obtain permission to wear the standard logos of their trade and to display their own names in a limited fashion on their clothing. It would be more sensible to permit such to be displayed without requiring stewards' permission.

The proposal would amend 9 NYCRR § 4041.6(a) to allow a jockey to wear the logos of the Jockeys' Guild and the Permanently Disabled Jockeys Fund, provided that each logo does not exceed 10 square inches in size.

The proposal would add a new subdivision (d) to 9 NYCRR § 4041.6 to allow a jockey to display his or her legal name on the pants and helmet of the jockey. The name must be in black lettering and be limited in location and size. The permissible locations would be the outer thighs, the rear waist area, and the back of helmet. The size limitations would be 32, 10 and six square inches, respectively, for each display of the jockey's name.

The proposal reflects the input and support of Jockeys' Guild, Inc., a trade organization that represents jockeys who compete in New York horse racing.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. The jockey will not be required to wear the additional materials that are permitted on the jockey's clothing.

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

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

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

6. Paperwork: There will be no additional paperwork.

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

8. Alternatives: The Commission considered requiring the Stewards to grant their permission for these displays. This was rejected as inefficient and unnecessary.

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

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

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

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

The proposed amendment permits jockeys to wear their trade organization logos (the Jockeys' Guild and the Permanently Disabled Jockeys Fund) and their own legal names on their clothing without having to gain the permission of the race stewards. The logos and names must be limited in size or location. The amendments will make the wearing of such neutral displays more efficient than under the current rule that requires a jockey obtain advance permission from the stewards.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Anti-Stacking of NSAIDs and Diclofenac Made a 48 Hour NSAID

I.D. No. SGC-45-16-00004-P

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

Proposed Action: Amendment of sections 4043.2(e) and 4120.2(e) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

Subject: Anti-stacking of NSAIDs and diclofenac made a 48 hour NSAID.

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

Text of proposed rule: Subdivision (e) of section 4043.2 of 9 NYCRR would be amended as follows:

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

* * *

(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) *no more than one of* the following nonsteroidal anti-inflammatory drugs ([NSAID's] *NSAIDs*): [Phenylbutazone (e.g., Butazolidin)] *diclofenac,* [Flunixin] *flunixin* (e.g., Banamine), *ketoprofen (e.g., Orudis),* meclofenamic acid (*e.g.,* Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] *and phenylbutazone (e.g., Butazolidin)*;

* * *

Subdivision (e) of section 4120.2 of 9 NYCRR would be amended as follows:

§ 4120.2. Restricted use of drugs, medication and other substances.

* * *

(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*, except for any formulation of methylprednisolone,* non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadatropin, glucocorticoids, except in joint injections as restricted in subdivision (i) of this section;

* * *

(14) *no more than one of the* following nonsteroidal anti-inflammatory drugs ([NSAID's] *NSAIDs*): [Phenylbutazone (e.g., Butazolidin)] *diclofenac*, [Flunixin] *flunixin* (e.g., Banamine), *ketoprofen (e.g., Orudis),* meclofenamic acid (*e.g.,* Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] *and phenylbutazone (e.g., Butazolidin)*;

* * *

(18) sulfonamide drugs (e.g., Sulfa; [and]

(19) . . . [.]*; and*

* * *

[(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.]

* * *

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

NEW YORK STATE OF OPPORTUNITY. Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: January 17, 2017

Re: Adoption of Proposed Rulemaking for Bonding of Video Lottery Agents (9 NYCRR § 5103.5)

For the Commission's consideration is the adoption of an amendment to the regulation governing bonding requirements for video lottery gaming agents. The text of the proposed rule was published in the *State Register* on November 23, 2016, a copy of which is attached.

Since the commencement of video lottery gaming, agents have been required to provide a bond that corresponded with no less than a defined percentage of five days of estimated average daily net win. The percentage used for the last decade has been 65, set to mirror the State's statutory revenue retention from the facilities (that is, net win minus the 35 percent agent and vendor retention).

Since establishment of that initial percentage, laws have modified agent and vendor retention. In general, the agent and vendor retention is no longer 35 percent; the State retention is no longer 65 percent. The agent and vendor retention and the State retention now vary at each video gaming facility. Amendment of the existing rule will allow the flexibility to require bond coverage from each video gaming facility that is commensurate with the State retention percentage at such facility.

While the existing rule allows Commission staff to grant waivers of the 65 percent requirement for good cause, amendment of the rule would make the bonding requirement consistent with the original intent: to secure five days of the State's share of net win at a facility.

The public comment period expired on January 9, 2017. No comments were received.

[redacted].

cc: Robert Williams, Executive Director
Chris Palmer, Deputy Director, Division of Gaming
Frank Roddy, Chief Financial Officer

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Bonding of Video Lottery Agents to Prevent Potential Loss of State Revenue Earned from Video Lottery Gaming ("VLG")

I.D. No. SGC-47-16-00002-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 5103.5 of Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604(b) and 1617-a; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Bonding of video lottery agents to prevent potential loss of State revenue earned from video lottery gaming (''VLG'').

Purpose: To revise the manner in which the bond amount required from each VLG agent is determined, reflecting current vendor fees.

Text of proposed rule: Section 5103.5 of 9 NYCRR would be amended as follows:

§ 5103.5. Bonding of video lottery gaming agents.

(a) The commission shall require [a] *each video lottery gaming agent to provide to the commission a* bond or other surety agreement, including [but not limited to] *without limitation* a letter of credit, issued by a surety company or banking institution authorized to transact business in the State and approved by the [State Insurance] Department [or Banking Department] *of Financial Services* as to solvency and responsibility, [from any licensed video lottery gaming agent] in such amount as the commission may determine, so as to avoid monetary loss to the State because of the video lottery gaming agent's activities or those of a third party. [Such] *For each video lottery gaming agent, the commission shall set the minimum amount of such* bond or other surety agreement*, which amount* shall [at a minimum cover 65 percent of] *be not less than* the total of five days of estimated average daily net win [per the respective] *at such* video lottery gaming *agent's* facility*, as the commission may determine as appropriate, less an amount equal to the vendor's fee for such video lottery gaming agent set forth in Tax Law section 1612(b)(1)(ii).*

[The figure for estimated net win will be established by the commission for each video lottery gaming facility and may be adjusted from time to time thereafter by the commission.] The bond or other surety agreement shall name as beneficiaries the commission and the State.

(b) The commission may seek additional *bond,* surety or *other* guarantee of financial security consistent with the purposes of these regulations or video lottery gaming law, as *the commission* may [be deemed] *deem* appropriate.

(c) The failure of the video lottery gaming agent to post such bond or surety agreement in the amount required by the commission shall be [deemed] a violation of *the requirements of* such video gaming agent's license.

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601 and 1617-a, and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604(b) reads, "The [lottery] division may require a bond from any licensed agent, in an amount to be determined by the [lottery] division." Tax Law Section 1617-a authorizes the licensing of Video Lottery Gaming ("VLG") at certain racetracks in the State of New York. Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. Legislative objectives: To revise the manner in which the Commission determines the amount of the bond that is required from each video lottery agent to prevent potential loss of State revenue earned from video lottery gaming ("VLG"). The existing rule requires all video lottery agents to provide a bond that corresponds with no less than a defined percentage of five days of estimated average daily net win for each facility, which was intended to mirror the State's net proceeds from VLG at each facility. However, the defined percentage was established when the vendor fees retained by video lottery agents were uniform, and vendor fees have fluctuated since the inception of VLG when the regulation governing bonding was promulgated. Revision of the existing rule will provide the Commission with flexibility to require bond coverage from each VLG agent that is consistent with the State retention percentage at the agent's facility and the original intent of the regulation: to secure five days of the State's share of net win at each facility.

3. Needs and benefits: Since the commencement of VLG, agents have been required to provide a bond that corresponded with no less than a defined percentage of five days of estimated average daily net win. The percentage used for the last decade has been 65, set to mirror the State's statutory revenue retention from the facilities (that is, net win minus the 35 percent agent and vendor retention).

Following establishment of that initial percentage, laws have modified the vendor fee retained by each agent as compensation for operating a video lottery facility on the State's behalf. In general, the agent and vendor retention is no longer 35 percent; the State retention is no longer 65 percent. The agent and vendor retention and the State retention now vary at each video gaming facility. Amendment of the existing rule will allow the flexibility to require bond coverage from each video gaming facility that is commensurate with the State retention percentage at such facility. The cost of securing a bond in the amount determined by the Commission pursuant to the proposed rule will be significantly less than the cost that is prescribed by the existing regulation.

While the existing rule allows Commission staff to grant waivers of the 65 percent requirement for good cause, amendment of the rule would make the bonding requirement consistent with the original intent: to secure five days of the State's share of net win at a facility. Commission and video lottery agent staff would be spared the administrative burden involved in completing the waiver process required by § 5100.3 of the Commission's regulations.

Non-substantive and stylistic corrections to the text of the rule are also proposed. A reference to the State Insurance Department or Banking Department would be changed to the Department of Financial Services.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: No additional costs to video lottery agents are anticipated. The cost of securing a bond in the amount determined by the Commission pursuant to the proposed rule will be significantly less than is prescribed by the existing regulation.

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

c. Sources of cost evaluations: The Commission evaluated the impact of the new rule with input from video lottery agents.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: Requests for relief from the 65 percent bond requirement as prescribed in 9 NYCRR § 5100.3 will no longer be necessary. Video lottery agents will no longer need to submit a request for relief from the 65 percent bond amount regulatory requirement. Therefore, paperwork requirements would decrease.

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

8. Alternatives: The Commission considered taking no regulatory action. However, the Commission determined that flexibility to require bond coverage from each VLG agent that is consistent with the State retention percentage at the agent's facility is preferable to keeping a regulation that is inconsistent with its original intent: to secure five days of the State's share of net win at each facility.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance schedule: The proposal will not impact daily operation of video lottery gaming in a significant manner.

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 because it will have no adverse effect on small businesses, local governments, rural areas or jobs.

The proposed rulemaking would revise the manner in which the Gaming Commission determines the amount of the bond that is required from each video lottery agent to prevent potential loss of State revenue earned from video lottery gaming ("VLG"). The revised rule will provide the Commission with flexibility to require bond coverage from each VLG agent that is consistent with the State retention percentage at the agent's facility and the original intent of the regulation: to secure five days of the State's share of net win at each facility. This rulemaking will not result in significant technological changes. The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district. No local government activity is involved. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The proposed amendments will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rulemaking.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Expands the Conflict of Interest Restrictions on Racing Secretaries and Their Assistants and Substitutes

I.D. No. SGC-47-16-00017-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 4105.17; and repeal of section 4116.3 of Title 9 NYCRR.

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

Subject: Expands the conflict of interest restrictions on racing secretaries and their assistants and substitutes.

Purpose: To ensure the integrity of harness racing.

Text of proposed rule: Section 4116.3 of 9 NYCRR would be repealed.

A new section 4105.17 would be added to 9 NYCRR, as follows:

§ 4105.17. Restriction on activities of officials.

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

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

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

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

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

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, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law 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 rule making is necessary to enhance the real and perceived integrity of New York racing by prohibiting certain practices that could compromise, or appear to compromise, the writing of races at New York standardbred pari-mutuel racetracks.

The rule making will add a new section 4105.17 to 9 NYCRR, expanding the conflict-of-interest restrictions on racing secretaries, assistant racing secretaries and anyone who performs their duties at a New York racetrack.

The current rule (section 4116.3) prohibits, during a racetrack's racing season, such officials from being licensed by the Commission as owners, trainers or drivers. There are, however, potential conflicts of interest that may arise when such officials participate in pari-mutuel standardbred races, even out of season or out of state. The other owners, trainers, and drivers against whom they would compete might be affected by subsequent decisions made by such officials in the performance of their duties. The appearance of such conflicts of interest can damage the perception of integrity upon which betting handle depends in New York. It can create dissatisfaction among horsepersons who feel that they were treated unfairly in retaliation for the conflicts that inevitably arise in such competitions. Participation in such competition can also result in actual conflicts of interest for such officials. This proposal will strengthen the current rule by broadly prohibiting such competition and by empowering the Commission to forbid any apparent conflicts of interest that may arise.

Finally, this rule making will move such restrictions from Part 4116 (Drivers) to Part 4105 (Officials at Race Meetings), based on the broadening of such restrictions.

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 local governments 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.

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

6. Paperwork: There are no changes in paperwork requirements. The proposed amendments will restrict certain activities that involve conflicts of interest.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives: The Commission considered and rejected an alternative requirement that the enhanced restriction be limited to when such officials want to drive at other race meetings. The competition among drivers is more immediate and dangerous than that among trainers and owners. The Commission rejected this approach, however, because conflicts among trainers and owners might also have an effect on such officials, and the Commission does not want to allow such conflicts or perceived conflicts to arise. 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 restriction of the officials who are responsible for writing races at New York pari-mutuel harness racetracks, i.e., racing secretaries and their assistants or substitutes, not to participate in competitive horseracing at other racetracks, potentially against the same horsepersons who depend on such officials' unbiased writing of races, and not to have any other apparent conflict of interest that may undermine their performance of such duties. This rule will not have an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities.

NEW YORK STATE OF OPPORTUNITY. Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: January 17, 2017

Re: Adoption of Proposed Rulemaking for Harness Official Conflict of Interest (9 NYCRR § 4116.3)

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

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

The text of the proposed rule was published in the *State Register* on November 23, 2016, a copy of which is attached. The public comment period expired on January 9, 2017. One comment was received, from Buffalo Raceway. Buffalo Raceway supports the proposal, but suggests that it should not be broadened to include roles at the track other than the racing secretary or assistant secretary without the opportunity for a hearing on a potential conflict ruling in regard to those other roles. Staff notes that the proposed rule recodifies the current rule that prohibits officers, directors and executives at a track from driving at that track and broadens restrictions on the racing secretary and assistant racing secretary, but the rule does not apply to the roles about which Buffalo Raceway expressed concern (*e.g.,* track maintenance crew, starting gate driver, paddock maintenance personnel, track print shop manager, etc.)

[redacted].

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

required for this rulemaking because it will have no adverse effect on small businesses, local governments, rural areas or jobs.

The proposed rulemaking would revise the manner in which the Gaming Commission determines the amount of the bond that is required from each video lottery agent to prevent potential loss of State revenue earned from video lottery gaming ("VLG"). The revised rule will provide the Commission with flexibility to require bond coverage from each VLG agent that is consistent with the State retention percentage at the agent's facility and the original intent of the regulation: to secure five days of the State's share of net win at each facility. This rulemaking will not result in significant technological changes. The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district. No local government activity is involved. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The proposed amendments will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rulemaking.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Expands the Conflict of Interest Restrictions on Racing Secretaries and Their Assistants and Substitutes

I.D. No. SGC-47-16-00017-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 4105.17; and repeal of section 4116.3 of Title 9 NYCRR.

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

Subject: Expands the conflict of interest restrictions on racing secretaries and their assistants and substitutes.

Purpose: To ensure the integrity of harness racing.

Text of proposed rule: Section 4116.3 of 9 NYCRR would be repealed.

A new section 4105.17 would be added to 9 NYCRR, as follows:

§ 4105.17. Restriction on activities of officials.

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

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

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

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

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

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, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law 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 rule making is necessary to enhance the real and perceived integrity of New York racing by prohibiting certain practices that could compromise, or appear to compromise, the writing of races at New York standardbred pari-mutuel racetracks.

The rule making will add a new section 4105.17 to 9 NYCRR, expanding the conflict-of-interest restrictions on racing secretaries, assistant racing secretaries and anyone who performs their duties at a New York racetrack.

The current rule (section 4116.3) prohibits, during a racetrack's racing season, such officials from being licensed by the Commission as owners, trainers or drivers. There are, however, potential conflicts of interest that may arise when such officials participate in pari-mutuel standardbred races, even out of season or out of state. The other owners, trainers, and drivers against whom they would compete might be affected by subsequent decisions made by such officials in the performance of their duties. The appearance of such conflicts of interest can damage the perception of integrity upon which betting handle depends in New York. It can create dissatisfaction among horsepersons who feel that they were treated unfairly in retaliation for the conflicts that inevitably arise in such competitions. Participation in such competition can also result in actual conflicts of interest for such officials. This proposal will strengthen the current rule by broadly prohibiting such competition and by empowering the Commission to forbid any apparent conflicts of interest that may arise.

Finally, this rule making will move such restrictions from Part 4116 (Drivers) to Part 4105 (Officials at Race Meetings), based on the broadening of such restrictions.

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 local governments 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.

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

6. Paperwork: There are no changes in paperwork requirements. The proposed amendments will restrict certain activities that involve conflicts of interest.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives: The Commission considered and rejected an alternative requirement that the enhanced restriction be limited to when such officials want to drive at other race meetings. The competition among drivers is more immediate and dangerous than that among trainers and owners. The Commission rejected this approach, however, because conflicts among trainers and owners might also have an effect on such officials, and the Commission does not want to allow such conflicts or perceived conflicts to arise. 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 restriction of the officials who are responsible for writing races at New York pari-mutuel harness racetracks, i.e., racing secretaries and their assistants or substitutes, not to participate in competitive horseracing at other racetracks, potentially against the same horsepersons who depend on such officials' unbiased writing of races, and not to have any other apparent conflict of interest that may undermine their performance of such duties. This rule will not have an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities.

Buckley, Kristen (GAMING)

From: James Mango <jmango@buffaloraceway.com>
Sent: Tuesday, November 15, 2016 11:00 AM
To: Buckley, Kristen (GAMING)
Cc: 'Wnyhha (wnyhha1@aol.com)'
Subject: Proposed Harness Official Restrictions

Kristen Buckley

Buffalo Raceway has no issue with this proposed regulation regarding a racing secretary or assistant racing secretary from being licensed as an owner, trainer or driver. It would definitely create a "perceived conflict of interest". My question is – does this new rule apply to other job duties on the racetrack? A small harness track that conducts racing three days per week needs to ask its employees to engage in various functions. The days of "specialization" are over, and the losses incurred by conducting live racing are increasing exponentially. For example: a valued member of our track maintenance crew is also a trainer. He was also trained to be a "backup" starting gate driver; and our principle starting gate driver is our racing secretary. To my knowledge, neither employee has never been questioned regarding his integrity, and has worked diligently with the commission's official starter, Todd Reese. Our assistant racing secretary works as a groom at night in the paddock, and also operates our track kitchen. Our stable area maintenance employee works as a groom for one of our principle trainers. Our person who cleans the paddock has worked as a trainer. Our print shop manager works in the race office evening hours, and assists in taking entries in the morning. Our horsemen's bookkeeper works racing hours charting races.

By nature of the sport, a small track needs to employ people and families who live this live style and have experience in harness racing. Before a decision is made regarding a "conflict of interest", I propose that the rule allow for a "hearing" regarding the matter with the horsemen's representative, track manager, and Commission representative, before a decision regarding a conflict is made by the Commission. It would at a minimum allow the racetrack to present a case before the governing board. I am fearful that accusations could be made about an employee that were not true, or exaggerated, causing a good employee who serves a valuable purpose at a racetrack to lose employment and income.

We do not have the resources to employee "backup" for every job on the racetrack without using existing employees. Perhaps, the Commission has no intentions of applying this rule outside of the race office participating in an actual race as a driver, trainer or owner, or I am not interpreting it correctly, but I can visualize a scenario where it gets applied in many other parts of the track operations. Please do not make this rule become something that may become unpractical in its application.

Thank you, kindly.

Jim Mango

NEW YORK STATE OF OPPORTUNITY. Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: January 19, 2017

Re: Proposed Rulemaking for Exercise-Induced Pulmonary Hemorrhage (EIPH) in Thoroughbred Racing (9 NYCRR § 4043.2(b))

For Commission consideration is a proposed rule that would strengthen regulations related to exercise-induced pulmonary hemorrhage (EIPH) in thoroughbred racing. The proposal stems from rule recommendations in the Asmussen Report and subsequent informal pre-proposal industry input.

As the Asmussen Report details, there is an emerging scientific consensus that repeated episodes of serious EIPH can be debilitating to a horse. This proposal requires trainers to maintain a record of serious EIPH episodes, which are defined with the universally used one-to-four grading system, and epistaxis (visible bleeding from the nostrils). Records created pursuant to the amended rule would be required to be maintained by trainers for four years, unless given to a subsequent trainer or owner or reported to the Commission. The Commission would establish a reporting system to collect such information from trainers. For convenience of reporting, a trainer would be permitted to delegate this reporting duty to the treating veterinarian.

In general, the most salient portions of the rule proposal requires that a horse that has experienced a serious EIPH episode must be subjected to another endoscopic examination following the horse's next race or workout and requires trainers to provide such information to subsequent owners (or their agents or trainers) within 48 hours of a request for the information, unless the Commission has collected and provided the information itself. The proposal would also codify the standard practice of excluding a horse that experiences epistaxis for specific minimum time periods.

Two industry written pre-proposal comments were received: one from The New York Racing Association, Inc. (NYRA) and the other from the New York Thoroughbred Horsemen's Association, Inc. (NYTHA).

NYRA recommended the Commission adhere to national exclusion periods following episaxis. NYRA also raised concern that trainers may fail to adhere to the rule due to self-interest. Commission staff review found a range of time exclusions among

several racing states. The proposal aligns with the ARCI model rule. NYRA suggested that should the rule be adopted, the Commission should pursue an Equine Steroid Administration Log program (ESAL)-like reporting system. The Commission agrees with establishment of an ESAL-like reporting system.

NYTHA's comment also requested that epistaxis-based exclusion periods follow the ARCI model rule. NYTHA also raised concern in regard to enforcement of any reporting requirement, suggesting that horses shipping into New York would be difficult to patrol. NYTHA suggested the Commission work with ARCI and the Racing Medication and Testing Consortium to establish a national protocol and rule. Commission staff believes the Commission should proceed with this proposal while encouraging other states to follow suit. Note that the Commission pioneered corticosteroid joint administration reporting, which has since been replicated in other jurisdictions.

[redacted].

attachment

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

A new subdivision (c) would be added to 9 NYCRR § 4043.2 and the current subdivision (c) would be re-classified as subdivision (d), as follows:

(b) *Eligibility for the administration of furosemide*.

(1) The administration of furosemide is permissible to a horse that has qualified for such use by any of the following means:

(i) the horse has bled visibly during a race or a workout, as determined by the association veterinarian; or

(ii) the horse has bled during a race or workout, as determined by an attending veterinarian based upon such veterinarian's clinical assessment of the horse, which may or may not include an endoscopic examination after the race or workout; or

(iii) the horse has been qualified by the State veterinarian or a veterinarian employed by the racetrack for the administration of furosemide in another racing jurisdiction; or

(iv) the horse has raced on furosemide in such horse's last race in a jurisdiction with rules substantially similar to New York State.

(2) If it is determined that a horse has qualified pursuant to paragraph (1) of this subdivision, and the owner or trainer elects to make the horse eligible for the administration of furosemide, the horse shall be placed on a list, to be maintained by the association veterinarian, of horses that have bled and shall not be permitted to race for the following periods of time:

(i) 1st time—10 days after such episode of bleeding;

(ii) 2nd time—30 days after such episode of bleeding;

(iii) 3rd time—90 days after such episode of bleeding; and

(iv) 4th time—one year after such episode of bleeding. Such list shall be made available to the public for inspection.

(3) Eligibility to race on furosemide. For a horse to be eligible to race on furosemide, the trainer of that horse must file satisfactory documentation of eligibility pursuant to this rule with the association veterinarian on or before time of entry.

(4) Removal from the furosemide list. A horse that has been eligible for the administration of furosemide may be removed from the list, upon authorization from the stewards.

(5) Reinstatement to furosemide list. After removal from the furosemide list, a horse may be reinstated for the administration of furosemide if the horse again meets the requirements set forth in paragraph (1) of this subdivision and such horse shall not

be permitted to race for the applicable time period set forth in subparagraphs (i) through (iv) of paragraph (2) of this subdivision.

(6) Administration of furosemide. For the purposes of this subdivision, furosemide shall be administered only in the following manner:

A single intravenous (IV) injection of no less than 150 milligrams 3cc and no more than 500 milligrams (10cc) on the grounds of a licensed or franchised racing association or corporation during the time period from four to four and one-half hours before the scheduled post time of the race in which the horse is to compete.

(7) Ineligibility to start. Any horse that is eligible for the administration of furosemide must be present on the grounds of the racing association or corporation no less than four hours prior to scheduled post time of the race in which the horse is scheduled to compete. A horse that is not present at least four hours prior to post time or that has not received the administration of furosemide pursuant to this subdivision shall be ineligible to start.

(c) *Exercise Induced Pulmonary Hemorrhage (EIPH)*.

(1) Ineligibility to race after epistaxis. A horse that has demonstrated external evidence or bled visibly from its nostrils (epistaxis) because of pulmonary hemorrhage shall be placed on the Steward's list of horses that are ineligible to race. The horse may not race until cleared to race by a veterinarian designated by the commission and for the following minimum period of time after such bleeding:

(i) 1st epistaxis—15 days;

(ii) 2nd epistaxis—30 days;

(iii) 3rd epistaxis—90 days, and if the third time was within 365 days, then exclusion for a minimum of 180 days;

(iv) 4th epistaxis—one year, and if the fourth time was within 365 days, then permanent exclusion from racing.

(2) Recording episodes of EIPH. Trainers shall maintain accurate records of every EIPH episode that is serious, meaning epistaxis or grade four as described in subparagraph (iv) of paragraph (4) of this subdivision, whether observed as visible bleeding or by endoscopic examination. The trainer may delegate this responsibility to the treating veterinarian, who shall make such records when so designated. Such records shall be retained for a minimum of four years unless reported to the commission in a form and manner approved by the commission or provided to the next trainer of the horse. Each succeeding trainer of the horse shall retain any such record of an EIPH episode that occurred in the previous four years.

(3) Disclosure to subsequent owners. Previous serious EIPH episodes shall be disclosed to the next owner or trainer of a horse within 48 hours of a request for such information, unless the commission has provided such information to the next owner or trainer of the horse.

(4) Required endoscopic examinations. A horse that experiences a serious EIPH episode must have, at the conclusion of the horse's next workout or race, an endoscopic examination performed by a qualified veterinarian, who shall make a record of findings and rate the degree of pulmonary hemorrhage on the scale set forth in this paragraph, with a zero for no blood:

(i) one (1/4)—a trace or thin line of blood on the floor of the trachea;

(ii) two (2/4)—a wide stripe of blood on the floor of the trachea or multiple streams of blood covering less than 1/3 of the trachea;

(iii) three (3/4)—multiple distinct streams of blood covering more than 1/3 of the trachea;

(iv) four (4/4)—multiple streams of blood covering 90 percent or more of the trachea with pooling at the thoracic inlet; or

(v) epistaxis—blood is evident in a nostril of the horse.

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

(1) antibiotics,

(2) sulfa-expectorants (*e.g.*, sulfa-methoxypyridazine)

(3) tetanus antitoxin,

(4) electrolytes, vitamins, and other food supplements and body nutrients not containing perocaine or other drugs,

(5) Omeprazole;

(6) Cimetidine;

(7) Ranatidine;

(8) Sucralfate.

They may not be administered by any means within 24 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 24 hours.

(4) Required endoscopic examinations. A horse that experiences a serious EIPH episode must have, at the conclusion of the horse's next workout or race, an endoscopic examination performed by a qualified veterinarian, who shall make a record of findings and rate the degree of pulmonary hemorrhage on the scale set forth in this paragraph, with a zero for no blood:

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(iv) four (4/4)—multiple streams of blood covering 90 percent or more of the trachea with pooling at the thoracic inlet; or

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

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(2) sulfa-expectorants (*e.g.*, sulfa-methoxypyridazine)

(3) tetanus antitoxin,

(4) electrolytes, vitamins, and other food supplements and body nutrients not containing perocaine or other drugs,

(5) Omeprazole;

(6) Cimetidine;

(7) Ranatidine;

(8) Sucralfate.

They may not be administered by any means within 24 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 24 hours.

NEW YORK STATE OF OPPORTUNITY. Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: January 19, 2017

Re: Proposed Amendments to Minimum Penalty Enhancement Rules in Thoroughbred Racing (9 NYCRR, Part 4045)

For Commission consideration is a proposal to revise the Thoroughbred racing rules on minimum penalty enhancement. These rules, adopted by the Commission in February 2016, were 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. The proposed amendment is intended to conform New York's rules to changes in the national model rules recently adopted by the Association of Racing Commissioners International, Inc. (ARCI).

As you may recall, the Racing Medication and Testing Consortium (RMTC) developed the initial proposal, which was adopted by the ARCI as a national model rule. Several states have not adopted the model rule due to perceived harshness.

As a result of these concerns, RMTC revised its proposal to exempt points for minor-medication (penalty class D) violations, mitigate the harshness of the system (fewer points, lesser duration and smaller mandatory penalties) and introduce a range of penalties that grant some discretion to racing commissions. The ARCI Board of Directors adopted these changes into an amended model rule this past December 2016. The changes have received widespread support.

Several racing jurisdictions, including New York and New Jersey, traditionally impose more serious equine drug penalties than some others. New York's MMV rules include explicit provisions that allow the imposition of more serious penalties than the model MMV rule pursuant to New York's evaluation of prior violations. The New York rule would not allow the MMV penalty enhancement when our penalty for a precipitating rule violation includes a comparable consideration of such prior violations.

The proposed revisions will appropriately focus the MMV system on those who consistently violate serious medication and anti-doping rules and assist in developing national consistency in regard to punishment.

[redacted]

attachment

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

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] 13.0 (revised December [2014] 2016) 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] the equine drug rule violations as set forth in this section.

(b) The commission shall assign six points, which shall accumulate [permanently] 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 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] two-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] one points, which shall accumulate with points resulting from other violations committed within a [two-year] one-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.] When more than one violation described in subdivision (d) of this section is committed within a 365-day period, the commission shall assign an additional penalty of one-half point for each previous violation (*e.g.*, a second such violation within a 365-day period incurs an

additional one-half point and a third such violation incurs an additional one point), in addition to the points assessed pursuant to subdivision (d) of this section.

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

[(f)] (g) 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)] (h) 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. No points shall be assessed for more than one non-steroidal anti-inflammatory drug (NSAID) when there has been only an NSAID stacking violation.

(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. If such an assessment of lesser points had been made by the jurisdiction in which a predicate equine drug violation occurred, or such jurisdiction had assigned lesser (even zero) points due to environmental contamination, then the commission shall assign such lesser points for the violation.

(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] an 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] five 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] 5 to 5.5 points as a result of equine drug rule violations, a suspension of [30] 15 days;

(2) if the licensee has accumulated 6 to 8.5 points as a result of equine drug rule violations, a suspension of [60] 30 days;

(3) if the licensee has accumulated 9 to 10.5 points as a result of equine drug rule violations, a suspension of [180] 90 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] 180 days.

(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. The Director may also impose a suspension before there has been a final adjudication of one or more of the predicate equine drug violations, when points assessed for matters that have been finally adjudicated suffice to impose a suspension pursuant to this Part; and the balance of any suspension shall be imposed upon additional final adjudications.

(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.

NEW YORK STATE OF OPPORTUNITY. Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: January 19, 2017

Re: Proposed Amendments to the Thoroughbred Out-of-Competition Testing Rule (9 NYCRR § 4012.5)

For Commission consideration are proposed revisions to the Thoroughbred out-of-competition sample collection ("OCT") rule, intended to conform our existing rule to the national model rule of the Association of Racing Commissioners International, Inc. ("ARCI") that was amended this past December.

In general, the OCT rule protects race integrity by making it possible to collect samples from horses that are engaged in horse racing but are not entered to race or on the grounds of a licensed racetrack. Such samples allow the Commission to detect the administration to race horses of drugs in violation of Commission rules, particularly potent doping agents that increase red blood cells, mask pain or increase a horse's ability to race beyond its natural limits. The amended ARCI model rule was drafted by the Racing Medication and Testing Consortium ("RMTC") and revised by staff from leading jurisdictions. The amended model rule, which received widespread industry support, authorizes an effective collection program that protects the constitutional rights of horse owners and trainers when a regulatory jurisdiction seeks to collect OCT samples.

Recall that in January 2015, the Commission authorized a proposal to amend the Thoroughbred OCT rule to match updates undertaken to the Commission's Standardbred OCT rule. Before the Commission's proposal was published in the State Register, a national effort to revise the ARCI Model Rule was undertaken. As such, the proposed rules were not published, in anticipation of the model rule amendment. The Commission's 2015 proposed amendments, together with recommendations from many other sources, are contained within the new ARCI Model Rule.

A copy of the proposed text is attached.

[redacted].

attachment

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

Section 4012.5 of 9 NYCRR would be repealed and replaced, as follows:

§ 4012.5. Out-of-competition testing.

(a) *Out-of-competition testing authorized*. The commission may at a reasonable time on any date take blood, urine or other biologic samples (*e.g.*, hair) from a horse to enhance the ability of the commission to enforce the commission's equine drug and anti-doping rules (*e.g.*, the prohibitions of section 4043.8 of this Article). The commission shall own such samples. This rule authorizes only the collection and testing of samples and does not independently make impermissible the administration to or presence in any horse of any drug or other substance. A race-day prohibition or restriction of a substance by a commission rule is not applicable to an out-of-competition test unless there is an attempt to race the horse in a manner that violates such rule.

(b) *Horses eligible to be tested*. Any horse that has been engaging in activities related to competing in pari-mutuel horse racing in New York may be tested. This includes without limitation any horses that are training outside the jurisdiction to participate in racing in New York and all horses that are training in New York, but excludes weanlings, yearlings and horses no longer engaged in horse racing (*e.g.*, retired broodmares).

(1) A horse is presumed eligible for out-of-competition testing if such horse:

(i) is on the grounds at a racetrack or training center under the jurisdiction of the commission;

(ii) is under the care or control of a trainer licensed by the commission;

(iii) is owned by an owner licensed by the commission;

(iv) is entered or nominated to race at a premises licensed by the commission;

(v) has raced within the previous 12 months at a premises licensed by the commission; or

(vi) is nominated to a program based on racing in New York, including without limitation breeders' awards, the thoroughbred breeding and development fund and thoroughbred stakes races.

(2) Such presumptions are conclusive in the absence of evidence that a horse is not engaged in activities related to competing in horse racing in New York State.

(c) *Selection of horses to be tested*.

(1) Horses shall be selected for sampling by a commission veterinarian, executive director, director of horse racing and pari-mutuel wagering, equine medical director or steward, or a designee of any of the foregoing.

(2) Horses may be selected to be tested at random, for cause or as otherwise determined in the discretion of the commission.

(3) Collectors shall for suspicionless collections of samples abide by a plan that has been approved by a supervisor not in the field and that identifies specific horses or provides neutral and objective criteria to follow in the field to determine which horses to sample. Such a supervisor may consider input from persons in the field during the operation of the plan and select additional horses to be sampled.

(d) *Cooperation with the commission*

(1) Licensees of the commission are required to cooperate and comply fully with the provisions of this rule.

(2) Persons who apply for and are granted a trainer or owner license shall be deemed to have given their consent for access at such premises as their horse may be found for the purpose of commission representatives collecting out-of-competition samples. Licensees shall take any steps necessary to authorize access by commission representatives at such premises.

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

(e) *General procedure for collecting samples*.

(1) Samples shall be taken under the supervision and direction of a person who is employed or designated by the commission. All blood samples shall be collected by a veterinarian licensed in the jurisdiction where the sample is collected or by a veterinary technician who is acting under appropriate supervision of the veterinarian.

(2) Upon request of a representative of the commission, the trainer, owner or the specified designee of the trainer or owner shall provide the location of their horses eligible for out-of-competition testing.

(3) The commission need not provide advance notice before arriving at any location to collect samples, whether such location is controlled by a commission licensee or not.

(4) The trainer, owner or the specified designee of the trainer or owner shall cooperate with the person who takes samples for the commission, which cooperation shall include, without limitation:

(i) assisting in the immediate location and identification of the horse;

(ii) making the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples;

(iii) providing a stall or other safe location to collect the samples;

(iv) assisting the person who is collecting samples in properly procuring the samples; and

(v) witnessing the taking of samples, including sealing of sample collection containers.

(5) The management and employees of a licensed racetrack or training facility at which a horse may be located shall cooperate fully with a person who is authorized to take samples. The person who collects samples for the commission may require that the collection be done at a specified location on such premises.

(6) The commission, if requested and in its sole discretion, may permit the trainer, owner or the specified designee of the trainer or owner to present a horse that is located in New York State, but not at a racetrack or training center licensed by the commission, to be sampled at a time and location designated by the commission.

(f) *Procedure for collecting samples from horses located outside New York State*.

(1) The commission may arrange for the sampling of an out-of-state horse by the racing commission or other designated person in the jurisdiction where the horse is located. Such racing commission or other designated person shall follow the relevant provisions of this rule, including paragraph (1) of subdivision (e) of this section.

(2) The test results shall be made available for regulatory use to each jurisdiction that has participated in the process of collecting any out-of-competition sample, subject to any restrictions on public disclosure of test results that apply to the commission that selected the horse for sampling.

(3) The commission, if requested and in its sole discretion, may permit the trainer or owner instead to transport the horse into New York State for sampling at a time and place designated by the commission.

(g) *Additional procedures*

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

(2) A written protocol for the collection of samples shall be made generally available.

(3) An owner or trainer does not consent to a search of the premises by making a horse that is not located at a licensed racetrack available for sampling.

(4) If the trainer or other custodian of a selected horse refuses or declines to make the horse available for sampling and the managing owner has previously provided the commission with a means for the commission to give immediate notification to the managing owner in such situation, then the commission shall attempt to notify the managing owner and the eligibility of the horse shall be preserved if the managing owner is able to make the horse available for immediate sampling. The commission is not required to make repeated attempts to notify the managing owner.

(5) The chain-of-custody record for the sample shall be maintained and made available to the trainer, owner or the designee of the trainer or owner when an adjudicatory proceeding results from an out-of-competition test.

(h) *Analysis of collected samples*.

(1) The commission may have out-of-competition samples tested to produce information that may enhance the ability of the commission to enforce the commission's equine drug and anti-doping rules.

(2) The rules and procedures for post-race testing shall apply to out-of-competition testing.

(3) The commission may use any remaining sample for research and investigation.

(i) *Penalties for non-cooperation*.

(1) Willful failure to make a horse available for sampling or other willfully deceptive acts or interference in the sampling process shall carry a minimum penalty of a one-year license suspension and be referred to the commission for further action.

(2) A selected horse that is not made available for out-of-competition sampling shall be placed on the Steward's List. The horse shall remain on the Steward's List for a minimum of 180 days unless the owner can establish extraordinary mitigating circumstances.

(3) A selected horse that is presumed eligible for out-of-competition testing shall be placed on the Steward's list and be ineligible to race in New York State for 180 days if the horse is not sampled upon the trainer, owner or the designee of the trainer or owner asserting that the horse is not engaged in activities related to competing in horse racing in New York State. This restriction shall not apply if the trainer, owner or the designee of the trainer or owner instead permits voluntarily an immediate collection of such samples from the horse, which shall not constitute a waiver of asserting that the commission lacks jurisdiction over the horse.

NEW YORK STATE OF OPPORTUNITY. Gaming Commission

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

To: Commissioners

From: Edmund C. Burns

Date: January 19, 2017

Re: Proposed Rulemaking for Prohibited Substances in Thoroughbred Racing (9 NYCRR §§ 4043.12 and 4043.16)

For Commission consideration are proposed rules to prohibit in Thoroughbred horse racing the substances that the World Anti-Doping Agency prohibits at all times unless an athlete has a restricted therapeutic use (RTU) exemption, based on RTUs that are appropriate for horse racing; to require that no drug may be administered to a horse engaged in horse racing activities unless recommended by an attending veterinarian; and to prohibit the experimental use of performance altering substances on racehorses.

These rule amendments would implement several of the rulemaking proposals recommended in the Asmussen Report that Commission staff issued in November 2015. Two pre-proposal industry comments were received; one from The New York Racing Association, Inc. and the other from the New York Thoroughbred Horseman's Association, Inc. NYRA expressed support for the intent of the proposal, but raised general concern with possible vagueness and suggested the Commission develop a rule proposal that enjoys national, uniform support. NYTHA suggested a similar cooperative commitment to integrity and welfare, but sought discussion regarding manners of regulating certain substances. NYTHA, too, suggested the Commission develop a rule proposal that enjoys national, uniform support.

In December, the Association of Racing Commissioners International (ARCI) adopted this proposal as a model rule after receiving input and support from leading Thoroughbred organizations such as the American Association of Equine Veterinarians, the National Horseman's Benevolent and Protective Association, Inc., the Racing Medication and Testing Consortium (which drafted the ARCI Prohibited List and RTUs), The Jockey Club and the Thoroughbred Horsemen's Association.

Asmussen Report recommendations contained in the national model rule are as follows:

- No drug would be permitted to be administered to any racehorse except as recommended by an attending veterinarian. This requirement would be enhanced by specific requirements for a professional treating relationship between the attending veterinarian and the horse. The rule would explicitly make the trainer responsible for compliance with this requirement. The rule would give veterinarians greater control and would have the effect of discouraging trainers from buying drugs and administering them to horses without veterinary oversight;

- No drug, excluding nutritional supplements, would be permitted to be used that is not already a generally accepted veterinary practice, unless an attending veterinarian has a written, evidence-based treatment plan indicating, among other things, that no alternatives exist. This would be the broadest prohibition the Commission has sought against using drugs experimentally for the sole purpose of enhancing (or depressing) race performance (i.e., the experimentation on horses with untested drugs);

- A broad prohibition of hormone modulators and metabolic modulators; and

- Thyroxine use would be limited to specific diagnoses for an individual horse with an estimated last date of administration and with no dispensation of large containers of thyroxine (containers limited to a single horse).

The text of the proposed rule is attached.

[redacted].

attachment

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

Subdivision (a) of section 4043.12 of 9 NYCRR would be repealed, and section 4043.12 would be amended as follows:

§ 4043.12. Prohibited substances and methods.

(a) The substances and methods listed in the ARCI prohibited list are prohibited, may not be used at any place or time and may not be possessed on the premises of any racing or training facility under the jurisdiction of the commission except as a restricted therapeutic use. *ARCI prohibited list* means the "Prohibited List" annexed to Model Rule ARCI-011-015 Version 7.0 (approved December 9, 2016) of the Association of Racing Commissioners International, Inc., which is hereby incorporated by reference.

(b) *Restricted therapeutic use*. A limited number of medications and methods listed in the ARCI Prohibited List shall be exempted when the administration occurs in compliance with the ARCI required conditions for restricted therapeutic use. *ARCI required conditions for restricted therapeutic use* means the "Required Conditions for Restricted Therapeutic Use" annexed to Model Rule ARCI-011-015 Version 7.0 (approved December 9, 2016) of the Association of Racing Commissioners International, Inc., which is hereby incorporated by reference, whose columns shall mean:

(1) *Report When Sampled* means the administration of the substance must be reported to the commission when the horse is next sampled, if the horse is sampled within 24 hours after the administration;

(2) *Pre-File Treatment Plan* means that if the commission where the horse is located requires the filing of treatment plans, then a treatment plan for the substance must be filed by the time of administration in a manner approved by such commission;

(3) *Written Approval from Commission* means the commission has granted written approval of a written treatment plan before the administration of the substance, including as may be required by the column's footnotes;

(4) *Emergency Use (report)* means the substance had to be administered due to an acute emergency involving the life or health of the horse, provided the emergency use is reported to the commission as soon as practicable after the treatment occurs;

(5) *Prescribed by Veterinarian* means the substance has been prescribed by an attending veterinarian in a manner consistent with the standards and procedures described in section 4043.16 of this Article and recorded in a manner consistent with the requirements of section 4012.4 of this Article;

(6) *Report Treatment* means the treatment must be reported to the commission by the trainer at the time of administration to provide the commission with information for the veterinarian's list. The trainer may delegate this responsibility to the treating veterinarian, who shall make the report when so designated; and

(7) *Other Limitations* means additional requirements that apply, such as a substance may be used in only fillies or mares or a horse that is administered a substance shall be reported immediately to the commission and placed on the veterinarian's list for a specific minimum period of time.

(c) No person shall at any time administer any other doping agent to a horse except pursuant to a valid therapeutic, evidence-based treatment plan.

(1) *Other doping agent* means a substance that is not described in subdivision (a) of this section or the ARCI Prohibited List, has a pharmacologic potential to alter materially the performance of a horse, had no generally accepted medical use in the horse when treated, and is:

(i) capable at any time of causing an action or effect, or both, within one or more of the blood, cardiovascular, digestive, endocrine, immune, musculoskeletal, nervous, reproductive, respiratory, or urinary mammalian body systems; including without limitation endocrine secretions and their synthetic counterparts, masking agents, oxygen carriers and agents that directly or indirectly affect or manipulate gene expression; but

(ii) not a substance that is considered to have no effect on the physiology of a horse except to improve nutrition or treat or prevent infections or parasite infestations.

(2) The commission may publish advisory warnings that certain substances or administrations may constitute a violation of this section.

(3) *Therapeutic, evidence-based treatment plan* means a planned course of treatment written and prescribed by an attending veterinarian before the horse is treated that:

(i) describes the medical need of the horse for the treatment, the evidence-based scientific or clinical justification for using the doping agent and a determination that recognized therapeutic alternates do not exist; and

(ii) complies with section 4043.16 of this Part, meets the standards of veterinary practice in the jurisdiction and is developed in good faith to treat a medical need of the horse.

(4) Such plans shall not authorize the possession of a doping agent on the premises of a racing or training facility under the jurisdiction of the commission.

(5) If the other doping agent is a protein- or peptide-based agent or drug that may produce analgesia or enhance the performance of a horse beyond such horse's natural ability, then the administration of such substance to such horse and the possession of such substance on the premises of a licensed racetrack also shall be

(i) limited to a time, place and manner specifically permitted in writing by the commission before the administration of such substance;

(ii) for a recognized therapeutic use;

(iii) and subject to such appropriate limitations as the commission may place on the return of the horse to running races.

(d) *Consistency with other restrictions*.

(1) The prohibited doping agents, substances and methods described in this section are prohibited regardless of any other sections, including 4043.2 and 4043.3, of this Part.

(2) The use of a prohibited doping agent, substance or method under conditions permitted by this section must also comply with other applicable rules of the commission, including, without limitation, sections 4043.2, 4043.3, 4043.6, 4043.15 and 4043.16 of this Part.

[(b)] (e) *Penalties*.

(1) A horse found to be in violation of this [rule] section shall be ineligible to [race] participate in racing until it is certain that the horse is no longer affected by the prohibited substance or method and for not less than 180 days, after which the horse must qualify in a workout satisfactory to the [judges] stewards and test negative for prohibited or impermissible drugs or other substances. The minimum fixed period of ineligibility for a horse in violation of this [rule] section shall be reduced from 180 to 30 days if the trainer had never violated this rule or similar rules in other jurisdictions and had, for any violations of Part 4043 or similar rules in other jurisdictions, fewer than 180 days in lifetime suspensions or revocations and fewer than two suspensions or revocations of 15 days or more in the preceding 24 months.

(2) A person who is found responsible for a prohibited substance or method in violation of [paragraph (a)(1) of] this section shall, in the absence of extraordinary mitigating circumstances, incur a minimum penalty of license revocation in addition to any other penalties authorized in this [Title] Article.

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

A new section 4043.16 would be added to part 4043 of 9 NYCRR, as follows:

§ 4043.16. No drug administrations without appropriate veterinary approval.

The limitations set forth in this section apply to drug treatments of horses engaged in activities, including training, related to competing in pari-mutuel racing in New York. This includes, without limitation, any horses that are training outside the jurisdiction to participate in racing in New York and all horses that are training in the jurisdiction.

(a) No drug may be administered except in the context of a valid veterinarian-client-patient relationship between an attending veterinarian, the horse owner (who may be represented by the trainer or other agent) and the horse. The owner is not required by this subdivision to follow the veterinarian's instructions, but no drug may be administered without a veterinarian having examined the horse and provided the treatment recommendation. Such relationship requires the following:

(1) the veterinarian, with the consent of the owner, has accepted responsibility for making medical judgments about the health of the horse;

(2) the veterinarian has sufficient knowledge of the horse to make a preliminary diagnosis of the medical condition of the horse;

(3) the veterinarian has performed an examination of the horse and is acquainted with the keeping and care of the horse;

(4) the veterinarian is available to evaluate and oversee treatment outcomes, or has made appropriate arrangements for continuing care and treatment;

(5) the relationship is maintained by veterinary visits as needed, and

(6) the veterinary judgments of the veterinarian are independent and are not dictated by the trainer or owner of the horse.

(b) No prescription drug may be administered except as prescribed by an attending veterinarian.

(c) The trainer and veterinarian are both responsible to ensure compliance with these limitations on drug treatments of horses, except that the medical judgment to recommend a drug treatment or to prescribe a drug is the responsibility of the veterinarian and the decision to proceed with a drug treatment that has been so recommended is the responsibility of the horse owner (who may be represented by the trainer or other agent).

ARCI "Prohibited List" and "Required Conditions for Restricted Therapeutic Use"

Annexes to Model Rule ARCI-011-015 Version 7.0 (approved December 9, 2016)

PROHIBITED LIST

PROHIBITED SUBSTANCES

All substances in the categories below shall be strictly prohibited unless otherwise provided in accordance with ARCI-011-015 [9 NYCRR § 4043.12]. Any reference to substances in this section does not alter the requirements for testing concentrations in race day samples.

Nothing in this list shall alter the requirements of post-race testing.

S0. NON-APPROVED SUBSTANCES

Any pharmacologic substance that is not approved by any governmental regulatory health authority for human or veterinary use within the jurisdiction is prohibited. This prohibition includes drugs under pre-clinical or clinical development, discontinued drugs, and designer drugs (a synthetic analog of a drug that has been altered in a manner that may reduce its detection); but does not include vitamins, herbs and supplements for nutritional purposes that do not contain any other prohibited substance, or the administration of a substance with the prior approval of the commission in a clinical trial for which an FDA or similar exemption has been obtained.

S1. ANABOLIC AGENTS

Anabolic agents are prohibited.

1. Anabolic Androgenic Steroids (AAS)

1.1. Exogenous AAS, including:

1-androstenediol (5α-androst-1-ene-3β,17β-diol); 1-androstenedione (5α-androst-1-ene-3,17-dione); bolandiol (estr-4-ene-3β,17β-diol); bolasterone; boldenone; boldione (androsta-1,4-diene-3,17-dione); calusterone; clostebol; danazol ([1,2]oxazolo[4',5':2,3]pregna-4-en-20-yn-17α-ol);dehydrochlormethyltestosterone (4-chloro-17β-hydroxy-17α-methylandrosta- 1,4-dien-3-one); desoxymethyltestosterone (17α-methyl-5α-androst-2-en- 17β-ol); drostanolone; ethylestrenol (19-norpregna-4-en-17α-ol); fluoxymesterone; formebolone; furazabol (17α-methyl[1,2,5]oxadiazolo[3',4':2,3]-5α-androstan-17β-ol); gestrinone; 4-

hydroxytestosterone (4,17β-dihydroxyandrost-4-en-3-one); mestanolone; mesterolone; metandienone (17β-hydroxy-17α-methylandrosta-1,4-dien-3-one); metenolone; methandriol; methasterone (17β-hydroxy-2α,17α-dimethyl-5α-androstan-3-one); methyldienolone (17β-hydroxy-17α-methylestra-4,9-dien-3-one); methyl-1-testosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one); methylnortestosterone (17β-hydroxy-17α-methylestr-4-en-3-one); methyltestosterone; metribolone (methyltrienolone, 17β- hydroxy-17α-methylestra-4,9,11-trien-3-one); mibolerone; nandrolone; 19-norandrostenedione (estr-4-ene-3,17-dione); norboletone; norclostebol; norethandrolone; oxabolone; oxandrolone; oxymesterone; oxymetholone; prostanozol (17β-[(tetrahydropyran-2-yl)oxy]-1'H-pyrazolo[3,4:2,3]-5α- androstane); quinbolone; stanozolol; stenbolone; 1-testosterone (17β- hydroxy-5α-androst-1-en-3-one); tetrahydrogestrinone (17-hydroxy-18a- homo-19-nor-17α-pregna-4,9,11-trien-3-one); trenbolone (17β-hydroxyestr- 4,9,11-trien-3-one); and other substances with a similar chemical structure or similar biological effect(s).

1.2. Endogenous AAS or their synthetic esters when administered exogenously:

androstenediol (androst-5-ene-3β,17β-diol); androstenedione (androst-4-ene-3,17-dione); dihydrotestosterone (17β-hydroxy-5α-androstan-3-one); prasterone (dehydroepiandrosterone, DHEA, 3β-hydroxyandrost-5-en-17-one); testosterone;

and their metabolites and isomers, including but not limited to:

5α-androstane-3α,17α-diol; 5α-androstane-3α,17β-diol; 5α-androstane-3β,17α-diol; 5α-androstane-3β,17β-diol; 5β-androstane-3 α, 17β-diol, androst-4-ene-3α,17α-diol; androst-4-ene-3α,17β-diol; androst-4-ene-3β,17α-diol; androst-5-ene-3α,17α-diol; androst-5-ene-3α,17β-diol; androst-5-ene-3β,17α-diol; 4-androstenediol (androst-4-ene-3β,17β-diol); 5-androstenedione (androst-5- ene-3,17-dione); androsterone (3 β-hydroxy-5 α – androstan-17-one); epi-dihydrotestosterone; epitestosterone; etiocholanolone; 7α-hydroxy-DHEA ; 7β-hydroxy-DHEA; 7-keto-DHEA;19-norandrosterone; 19-noretiocholanolone.

2. <u>Other Anabolic Agents, including but not limited to:</u>

Clenbuterol, selective androgen receptor modulators (SARMs e.g., andarine and ostarine), ractopamine, tibolone, zeranol, zilpaterol.

<u>S2. PEPTIDE HORMONES, GROWTH FACTORS AND RELATED SUBSTANCES</u>

The following substances, and other substances with similar chemical structure or similar biological effect(s), are prohibited:

1. Erythropoietin-Receptor agonists:

    1.1 Erythropoiesis-Stimulating Agents (ESAs) including, e.g., darbepoetin (dEPO); erythropoietins (EPO); EPO-Fc; EPO-mimetic peptides (EMP), e.g., CNTO 530 and peginesatide; and methoxypolyethylene glycol-epoetin beta (CERA); and

    1.2 Non-erythropoietic EPO-Receptor agonists, e.g., ARA-290, asialo EPO and carbamylated EPO;

2. Hypoxia-inducible factor (HIF) stabilizers, e.g., cobalt (when found in excess of regulatory authority limits) and roxadustat (FG-4592); and HIF activators, (e.g., argon, xenon);

3. Chorionic Gonadotropin (CG) and Luteinizing Hormone (LH) and their releasing factors, in males;

4. Corticotrophins and their releasing factors;

5. Growth Hormone (GH) and its releasing factors including Growth Hormone Releasing Hormone (GHRH) and its analogues, e.g., CJC-1295, sermorelin and tesamorelin; Growth Hormone Secretagogues (GHS), e.g., ghrelin and ghrelin mimetics, e.g., anamorelin and ipamorelin; and GH-Releasing Peptides (GHRPs), e.g., alexamorelin, GHRP-6, hexarelin and pralmorelin (GHRP-2);

6. Venoms and toxins including but not limited to venoms and toxins from sources such as snails, snakes, frogs, and bees as well as their synthetic analogues such as ziconotide.

7. In addition, the following growth factors are prohibited:

    Fibroblast Growth Factors (FGFs), Hepatocyte Growth Factor (HGF), Insulin-like Growth Factor-1 (IGF-1) and its analogues, Mechano Growth Factors (MGFs), Platelet-Derived Growth Factor (PDGF), Vascular-Endothelial Growth Factor (VEGF) and any other growth factor affecting muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fiber type switching.

S3. BETA-2 AGONISTS

All beta-2 agonists, including all optical isomers (i.e. *d*- and *l*-) where relevant, are prohibited.

S4. HORMONE AND METABOLIC MODULATORS

The following are prohibited:

1. Aromatase inhibitors, including but not limited to: aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, testolactone;

2. Selective estrogen receptor modulators (SERMs), including but not limited to: raloxifene, tamoxifen, toremifene;

3. Other anti-estrogenic substances, including but not limited to: clomiphene, cyclofenil, fulvestrant;

4. Agents modifying myostatin function(s), including but not limited to: myostatin inhibitors;

5. Metabolic modulators:

    5.1. Activators of the AMP-activated protein kinase (AMPK), *e.g.,* AICAR, and Peroxisome Proliferator Activated Receptor δ (PPARδ) agonists (e.g., GW 1516);

    5.2 Insulins;

    5.3 Trimetazidine; and

    5.4. Thyroxine and thyroid modulators/hormones, including but not limited to those containing T4 (tetraiodothyronine/thyroxine),T3 (triiodothyronine), or combinations thereof.

S5. DIURETICS AND OTHER MASKING AGENTS

The following diuretics and masking agents are prohibited, as are other substances with similar chemical structure or similar biological effect(s): acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, desmorpressin, etacrynic acid, indapamide, metolazone, plasma expanders (e.g. glycerol; intravenous administration of albumin, dextran, hydroxyethyl starch and mannitol), probenecid, spironolactone, thiazides (e.g. bendroflumethiazide, chlorothiazide, hydrochlorothiazide), torsemide, triamterene, and vasopressin receptor antagonists or vaptans (e.g., tolvaptan).

Furosemide and trichlormethiazide may be administered only in a manner permitted by other rules of the commission.

PROHIBITED METHODS

M1. MANIPULATION OF BLOOD AND BLOOD COMPONENTS

The following are prohibited:

1. The administration or reintroduction of any quantity of autologous, allogenic (homologous) or heterologous blood or red blood cell products of any origin into the circulatory system.

2. Artificially enhancing the uptake, transport or delivery of oxygen, including, but not limited to, perfluorochemicals, efaproxiral (RSR13) and modified hemoglobin products (e.g. hemoglobin-based blood substitutes, microencapsulated hemoglobin products), excluding supplemental oxygen.

3. Any form of intravascular manipulation of the blood or blood components by physical or chemical means.

M2. CHEMICAL AND PHYSICAL MANIPULATION

Tampering, or attempting to tamper, in order to alter the integrity and validity of samples collected by the commission, is prohibited. These methods include but are not limited to urine substitution or adulteration (e.g., proteases).

M3. GENE DOPING

The following, with the potential to enhance sport performance, are prohibited:

1. The transfer of polymers of nucleic acids or nucleic acid analogues.

2. The use of normal or genetically modified hematopoietic cells.

Prohibited Substance	Required Conditions for Restricted Therapeutic Use						
	Report When Sampled	Pre-File Treatment Plan	Written Approval from Commission	Emergency Use (report)	Prescribed by Veterinarian	Report Treatment	Other Limitations
adrenocorticotropic hormone (ACTH)		x			x		
albuterol					x		
altrenogest					x		fillies/mares only
autologous conditioned plasma (IRAP)	x				x		
blood replacements	x			x	x		
boldenone		x			x	x	6 month Vet List
clenbuterol		x			x		
chorionic gonadotropin		x	x-1		x	x	60 day Vet List
furosemide	x				x		
luteinizing hormone		x	x-1		x	x	60 day Vet List
mesenchymal stem cells	x				x	x	
nandrolone		x			x	x	6 month Vet List
nucleic polymer transfers		x	x		x	x	
platelet rich plasma (PRP)	x				x		
stanozolol		x			x	x	6 month Vet List
S0 (not FDA-approved)			x-2		x		
testosterone		x			x	x	6 month Vet List
thyroxine (T4)		x	x-3		x		
trichlormethiazide	x				x		
other diuretics	x			x	x		

x-1: The approved treatment plan must show a specific treatment of a specific individual horse for an undescended testicle condition.

x-2: The approved treatment plan must show: (A) the substance has a generally accepted veterinary use; (B) the treatment provides a significant health benefit for the horse; (C) there is no reasonable therapeutic alternative; and (D) the use of the substance is highly unlikely to produce any additional enhancement of performance beyond what might be anticipated by a return to the horse's normal state of health, not exceeding the level of performance of the horse prior to the onset of the horse's medical condition.

x-3: The approved treatment plan must show: (A) the thyroxine is prescibed to a specific individual horse for a specific period of time; (B) the diagnosis and basis for prescribing such drug, the dosage, and the estimated last administration date ; and (C) that any container of such drug on licensed premises shall be labeled with the foregoing information and contain no more thyroxine than for the treatment of the specific individual horse, as prescribed.

NEW YORK STATE OF OPPORTUNITY. Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
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To: Commissioners

From: Edmund C. Burns

Date: January 19, 2017

Re: Proposed Rulemaking for Trainer Medication Log in Thoroughbred Racing (9 NYCRR § 4043.4(c))

For Commission consideration is a proposed rule that requires Thoroughbred trainers to keep a record of medications administered by the trainer after having been dispensed by veterinarians. Veterinary records available at barns generally contain no record of administration. This proposal exempts anti-ulcer medications commonly added to feed and other non-injectable drugs rated harmless (class 5) by the Association of Racing Commissioners International, Inc. (ARCI). The proposal would also allow the Commission to require trainers to keep such records in a particular form and to make such records available for inspection for a period of six months.

A trainer's medication log was one of several proposals recommended by Governor Andrew M. Cuomo's Task Force on Racehorse Health and Safety (2012) and by the Asmussen Report (2015).

Two comments were received during the pre-proposal phase, one from The New York Racing Association, Inc. (NYRA) and the other from the New York Thoroughbred Horseman's Association, Inc. (NYTHA). NYRA raised concern with the rule as being impractical, suggesting that few trainers would adhere to the requirement. NYRA suggested the Commission develop a rule proposal that enjoys national, uniform support. NYTHA suggested no concern with the record-keeping requirements, provided that the proposal did not interfere with the administration of non-injectable substances a trainer might need to administer in emergency situations when veterinarians are not available.

Staff notes that an ARCI committee of representatives from leading racing jurisdictions examined a draft trainer's medication log rule and unanimously recommended the concept. The ARCI Model Rules Committee, however, tabled a draft of the rule this past December in order to consider restrictions on the rule's reach (exempting class 5 drugs), clarify the rule's scope (drugs administered by the trainer after dispensation by a veterinarian, unless the trainer verifies the veterinarian recorded the drug administration regime) and ensure there is a practical time requirement based

on current medical issues and racing regulator investigations (must keep the records for six months). This proposal includes modifications addressing each of those concerns.

The text of the proposed rule follows:

§ 4043.4. Trainer's responsibility.

* * *

(c) Trainers shall maintain an accurate record of every administration of a drug, except a drug that is classified by the Association of Racing Commissioners International, Inc. as a class 5 substance and is not injected, that is implemented by the trainer and is not recorded in detail in practicing veterinary records. This includes without limitation drugs that a veterinarian has dispensed for administration by or at the direction of the trainer and does not include drugs administered directly by the veterinarian or administrations the trainer verifies are recorded in detail in veterinary records. Such trainer's records shall detail the name of the horse, the drug, the dose, the route of administration and the date and time (*e.g.,* morning, breakfast) of administration and shall be kept in a form approved by the commission and shall be available for inspection by the commission for a minimum of six months.

[redacted].

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