

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
- E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Child Protective Services, Including Family Assessment Response I.D. No. CFS-49-13-00001-P

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

Proposed Action: Amendment of Parts 404, 428 and 432 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 427-a(1), (2), 421(4) and (5)

Subject: Child protective services, including family assessment response.

Purpose: Implement family assessment response and requirements for CPS training and qualifications, and update CPS regulations.

Substance of proposed rule (Full text is posted at the following State website:<http://ocfs.ny.gov>): These regulations implement Chapter 452 of the Laws of 2007, Chapter 45 of the Laws of 2011, and Chapter 377 of the Laws of 2011 by adding a new section 432.13 that authorizes social services districts to establish Family Assessment Response programs in which they are able to provide a differential response for reports of alleged child abuse and maltreatment; establish rules for the provision of this differential response, and establish rules regarding access to records for family assessment response cases. These regulations also amend 18 NYCRR, where necessary, to bring existing regulations into compliance with the Social Services Law authorizing family assessment response. In addition, these regulations amend or repeal existing regulations to bring them into compliance with current law and practice, including repealing regulations

because of expired legislation, amending language to reflect the use of an electronic database - CONNECTIONS - as the primary means of record-keeping and transferring information between local districts to the Statewide Central Register of Child Abuse and Maltreatment (SCR), changing the nomenclature for identifying State agencies whose names have changed, and changing references regarding the sharing of confidential child protective services information to conform with Chapter 501 of the Laws of 2012. The regulations also implement Chapter 525 of the Laws of 2006, which amends the qualifications for child protective service supervisors, requires such supervisors to satisfactorily complete a course in the fundamentals of child protection developed by the Office of Children and Family Services (OCFS), and requires annual in-service training for all child protective workers.

The following is a summary of specific changes made to subchapter C of Chapter II of Title 18:

Section 404.1 is amended to permit providing services in a family assessment response without an application.

Part 428 is amended to require entering progress notes into the case record for cases addressed with family assessment response, paralleling the requirement to enter progress notes for child protective service investigations.

Section 432.1 is amended to update agency names, change terminology from “day services program” to “school-age child care program,” add family assessment response as a category of rehabilitative service, and to add family assessment response as one of the activities considered to be protective services for children. Also, some existing definitions are amended, both to comply with the implementation of family assessment response and to update some definitions, and new definitions are added regarding family assessment response. Amended definitions are:

- Caseload
- Legally sealed unfounded report (changed to legally sealed report, to include all family assessment response reports.

New definitions are:

- Family assessment response
- Family assessment response track
- Investigative track
- Family Led Assessment Guide (FLAG)
- Wraparound funding
- OCFS (changes terminology of “the department” and “the Office” to OCFS throughout the section)

• State Central Register (changes several forms of reference to the Statewide Central Register of Child Abuse and Maltreatment to this terminology throughout the section)

• CONNECTIONS (establishes the use of this name for the electronic data base used for several child welfare services.)

Subdivisions 432.2(b)-(d) are amended to:

- assign sole responsibility for family assessment response to the child protective service;
- require that a family assessment response be initiated within 24 hours of receipt of a report, as is required for an investigation;
- require that, when searching a family’s prior history of abuse or maltreatment, searches of legally sealed reports also include reports for family assessment response;
- delete references to child protective investigations being conducted by a society for the prevention of cruelty to children;
- change references to a “local register” to reflect that the entry of information into CONNECTIONS meets the statutory requirements to maintain a local register;
- limit certain requirements regarding the performance of risk assessments to cases assigned to the investigative track
- delete a list of specific elements that must be considered in performing risk assessments, substituting a statement that risk assessments must be performed as specified by OCFS
- include family assessment response in a paragraph regarding intra- and inter-agency agreements

Subparagraph 432.2(e)(5)(ii) is amended to implement Chapter 525 of the Laws of 2006 regarding training and qualifications of child protective service staff. To comply with sections 421(4) and (5) of the Social Services Law, the amended regulations require that all child protective services workers complete at least six hours of OCFS-approved in-service training every year, starting in the second year of their employment. They require supervisors of protective services, within three months of employment as a supervisor, to complete an OCFS-approved course in the fundamentals of supervising and managing child protective practice, to complete child protective services core training if they have not already done so, and to participate in annual in-service training specifically focused on child protective supervisors. Social services districts must document the training. The regulations additionally establish minimum qualifications for child protective supervisory staff, requiring a baccalaureate or equivalent degree and a minimum of two years of experience in child welfare services.

Subparagraphs 432.2(e)(5)(iv-vii) are repealed, removing regulations regarding enhanced reimbursement pursuant to section 153-g(1)(b) of the Social Services Law, reflecting that there is no longer enhanced reimbursement.

Paragraph 432.2(e)(6) is amended to remove language specifying the amount and manner of payment of the fee when an applicant for employment requests a search of the records of the Statewide Central register of Child Abuse and Maltreatment, replacing it with language allowing OCFS to specify the amount and manner of payment.

Subparagraph 432.2(f)(2)(vii) is amended to limit the provision of records to law enforcement and the district attorney to those records associated with cases assigned to the investigative track, to comply with section 427-a of the Social Services Law.

Subparagraph 432.2(f)(3)(ii) is amended by removing from the list of agencies that can receive information from legally sealed unfounded reports references to the Commission on Quality of Care and the Department of Mental Hygiene and adding the Justice Center for the Protection of People with Special Needs.

Subdivision 432.2(f) is further amended to exclude reports assigned to the family assessment response track from existing requirements to provide notifications of the existence of a report and of the determination of an investigation.

A new subparagraph 432.2(f)(3)(xxx) is added, stipulating that records for cases assigned to family assessment response are legally sealed and specifying the circumstances in which information from those records can be made available and to whom they can be made available.

Section 432.3 is amended to reflect that entering information into CONNECTIONS is the primary method of communications between the child protective service and the SCR. The requirement for child protective services to provide requested records to the SCR within 20 working days is changed to 20 calendar days. A new requirement, reflecting current practice, is added to submit 24 hour and 30 day fatality reports following a child fatality.

Section 432.12 is amended to exclude family assessment response reports from existing requirements regarding the information to be provided to a mandated reporter who requests the findings of an investigation of a report made by the mandated reporter and establishes standards for the provision of information when requested by a mandated reporter for reports that have been assigned to the family assessment report track.

A new section 432.13 is added to Part 432 to provide standards for the implementation of a family assessment response program in a manner that, to the extent possible, is guided by the values of the family assessment response approach. The major provisions of the implementing regulations are as follows:

Subdivision 432.13(a) provides a general description of family assessment response. It describes the responsibilities involved in conducting a family assessment response and stipulates that reports assigned to family assessment response are not subject to the requirements of a child protective service described elsewhere in the regulations, except as specified in those regulations and in sections 422, 426, and 427-a of the Social Services Law.

Subdivision 432.13(b) requires that OCFS approve the application of any social services district wishing to implement family assessment response before it can implement the program. OCFS may revoke its approval if the district does not comply with requirements established by law, these regulations or by OCFS, but only after having consulted with the district to assist them resolve compliance issues. Such district may submit a new application, after resolving the compliance issues. The decision to apply to implement family assessment response is voluntary and optional; a district with a family assessment response program may terminate its program at any time. Such a district may re-apply at any time.

This subdivision requires a district to determine the scope and size of its family assessment response program, to determine the criteria it will use

to screen which reports are eligible for the family assessment track, and to develop a written protocol that will guide its practices for determining the most appropriate assignment of reports.

Subdivision 432.13(c) specifies procedures and activities that must be conducted or are recommended before confirming the assignment of a report to the family assessment response track. These include intake procedures and initial track assignment, followed by notification to and provision of information about family assessment response to the family, completion of an initial safety assessment, in which children must be found to be safe in their homes, review of records, and the agreement by the family to assign the report to family assessment response and to cooperate in the response. It describes the procedures for changing from family assessment response to an investigation once the assignment has been confirmed.

Subdivision 432.13(d) establishes procedures for the completion of the initial safety assessment, including the requirement that it be initiated within 24 hours and completed within seven days. Ongoing assessment of safety is required throughout the family assessment response.

Subdivision 432.13(e) specifies how to conduct a family assessment response. It describes activities to be performed as part of a family assessment response, including providing specific information to families eligible to participate in a family assessment response, practicing family engagement, completing a Family Led Assessment Guide, providing ongoing risk assessment, focusing on solutions to the family's needs, offering needed services, providing wraparound goods and services, and notifying the family when its case is closed. These rules also establish standards for when a family assessment response case should be closed, and require bi-weekly casework contacts and specific documentation when a case remains open longer than 90 days.

This subdivision establishes minimum standards for documenting reports assigned to the family assessment response track. It also specifies circumstances that would require a child protective service to end the provision of a family assessment response and initiate an investigation, and establish the procedures for doing that.

Subdivision 432.13(f) establishes rules for the administration and organization of family assessment response programs. It establishes minimum staffing requirements, including minimum education and training requirements. Staff must be trained in child protective services. They must complete training in family assessment response, as determined by OCFS.

This subdivision requires local districts applying to commence or expand implementation of family assessment response to plan for their organization, staffing, and case assignment process and, where any workers may be assigned to both family assessment responses and investigations, plan measures to maintain the integrity of both approaches. Upon the request of OCFS, districts must provide these plans in written format.

This subdivision requires local districts to comply with any requirements for quality assurance that are established by OCFS.

This subdivision establishes that a local district may, with the approval of OCFS, contract with community-based organizations for the provision of certain activities conducted as part of a family assessment response, and specifies certain features that must be part of any such contract.

Subdivision 432.13(g) specifies that family assessment response records are legally sealed and describes the circumstances under which information from those records can be accessed and by whom as well as the restrictions on re-disclosure of such information, in order to comply with Chapter 377 of the Laws of 2011.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

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

I. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out its powers and duties under the SSL.

Section 34(3)(f) of the SSL requires the OCFS Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 427-a(1) of the SSL authorizes social services districts, upon approval from OCFS, to establish programs that implement a differential response to reports of child abuse and maltreatment. Section 427-a(2) of the SSL states that the criteria for a social services district to participate in differential response (called family assessment response) will be determined by OCFS. Section 427-a requires that the criteria used by a social services district for determining which cases to place in a family assessment response track be developed in conjunction with OCFS.

Section 421(4) of the SSL, as amended by Chapter 525 of the Laws of 2006 requires OCFS, after consultation with local departments of social

services, to promulgate regulations relating to qualifications for newly hired child protective services supervisors that meet at least minimum standards established in Chapter 525. Section 421(5) of the SSL directs OCFS to implement training programs for people employed in child protective services and to set training requirements for all people hired by a child protective service. Chapter 525 of the Laws of 2006 amended Section 421(5) to add new training requirements for child protective services supervisors and new annual in-service training requirements for both child protective services supervisors and caseworkers.

Chapter 501 of the Laws of 2012 changes certain provisions of Section 490 of the SSL that contain procedures and responsibilities of taking and addressing certain reports alleging child abuse or maltreatment.

2. Legislative objectives:

Chapter 452 of the Laws of 2007 created family assessment response as a temporary program in which social services districts, other than New York City, were authorized to apply to OCFS to provide a differential response to reports of child abuse and maltreatment. Chapter 45 of the Laws of 2011 made the program permanent and expanded eligibility to New York City. Chapter 377 of the Laws of 2011 establishes standards regarding the confidentiality of FAR records. The proposed regulations are necessary to further the objectives of the Legislature by establishing new rules necessary to implement these laws.

The proposed regulations also amend existing regulations, as necessary, to: 1) conform with the legislation authorizing family assessment response, 2) include family assessment response as a permissible activity of a child protective service, 3) specify instances in which existing regulations that apply to investigatory responses will also apply to family assessment response, and 4) exclude family assessment response from certain existing requirements where they conflict with the statutory requirements found in Sections 422, 426, and 427-a of the SSL.

The proposed regulations implement Chapter 525 of the Laws of 2006, which requires OCFS to promulgate staff qualifications and set training requirements for employees of child protective services programs that are in compliance with that Chapter. They also make changes to comply with the provisions of Chapter 501 of the Laws of 2012 regarding the role of the Justice Center for the Protection of People with Special Needs.

The proposed regulations also remove obsolete rules for programs that no longer exist and update terminology, such as changes of the names of various agencies, including OCFS.

3. Needs and benefits:

The availability of family assessment response provides an alternative option to a social services district for addressing the underlying needs of families who become involved in the child welfare system as a result of a report of alleged child abuse or maltreatment. It provides child protective services units with greater flexibility to tailor responses to reports of alleged child maltreatment to the specific needs of each family. In a family assessment response approach there is no determination of blame for possible maltreatment, which can enhance the ability of child protective service workers to gain the trust of families they are working with and focus on the arrangement of goods and services necessary to help stabilize the family and enhance the safety of children. Families that become involved in the child welfare system, who may feel threatened and respond negatively to a traditional child protective investigation they view as trying to find them "guilty" of abusing or mistreating their children, can be offered an alternative in which they are treated as partners in a quest to reduce risk to their children. Because this approach is new to many social services districts in the state and is very different from that used in an investigative approach to reports of child abuse and maltreatment, the proposed regulations are necessary to provide guidance to social services districts.

The proposed regulations are also needed to amend current regulations to include family assessment response as a child protective service. The amended rules indicate, as needed, where existing rules apply to family assessment response and where they apply only to reports assigned to the investigative track.

An additional benefit of the proposed regulations is that they provide increased flexibility for OCFS to make changes in certain child protective procedures as circumstances warrant. For example, they remove the specification of the elements that must be included in a risk assessment profile, which will allow OCFS to make changes in the risk assessment profile in the future, if warranted; they also remove the regulatory restriction on the means of payment for searches of the statewide register of child abuse and maltreatment, which will permit the possible future use of credit card payments or other payment methods. The proposed regulations also remove rules for enhanced funding for child protective services, which no longer exists, and change terminology and procedures to reflect changed circumstances, such as the conversion from reliance on paper records to the use of electronic communication of information.

The proposed regulations will also benefit New York's children and families by establishing qualifications and training requirements for child protective services supervisors and caseworkers that will assist them in

carrying out their duties with a higher level of expertise. Current regulations, requiring a child protective service supervisor to have either a baccalaureate degree or one year of relevant experience in child welfare services, are inadequate and no longer meet statutory requirements established by Chapter 525 of the Laws of 2006. The proposed regulations increase the minimum qualifications, so that newly hired child protective service supervisors will have the knowledge and tools necessary to succeed in their responsibilities to protect the safety of children.

The proposed regulations also implement statutory changes that require in-service training for child protective services caseworkers and supervisors, which will help them in addressing the important and complex problems they encounter in their daily work. The regulations also implement the statutory requirement for most current and all newly hired child protective services supervisors to successfully complete a course regarding the effective supervision of child protective casework, which will help them develop the skills and knowledge necessary to effectively direct case management and to coach and monitor caseworkers.

The proposed regulations address the new role of the Justice Center for the Protection of People with Special Needs, which will enhance the protection of vulnerable persons in New York.

4. Costs:

All changes included in these proposed regulations are already fully implemented in existing practice by OCFS and local social services districts. These practices are currently supported by existing funding levels. As a result, it is anticipated that these proposed regulations will carry no additional state or local fiscal impact.

5. Local government mandates:

The proposed regulations for the implementation of family assessment response will apply only to those counties that voluntarily choose to implement that approach and are approved by OCFS. Those districts that choose to implement a family assessment response approach will be required to adhere to procedures and work activities that are commensurate with, although in some respects different than, those that are currently required for addressing reports of alleged child abuse or maltreatment with an investigation.

The proposed regulations include the requirements for the training of child protective services staff that were established by the enactment of Chapter 525 of the Laws of 2006. Child protective services staff are required to attend at least six hours of in-service training annually. All new and most current child protective services supervisors are required to attend a one-time training, if they have not already done so. This has already been implemented; the training spans one to two weeks, depending on the supervisor's previous training. In addition, in accordance with the results of a survey of local districts, the regulations require new child protective services supervisory staff to have, at a minimum, a baccalaureate degree and two years of relevant work experience in child welfare services. Currently, almost all local districts have established qualifications as rigorous as these new standards; a few districts may have to change their minimum qualifications to meet these standards.

6. Paperwork:

No new paperwork is required by the proposed regulations other than keeping a record of the additional training classes attended by child protective services caseworkers and supervisors.

7. Duplication:

The proposed regulations do not duplicate any existing federal or state requirements.

8. Alternatives:

With respect to the proposed regulations for the implementation of family assessment response, there were no significant alternatives to be considered because the regulations are necessary to provide rules and guidance to implement the requirements created by law in Sections 422, 426, and 427-a of the Social Services Law. The proposed regulations are based on the experiences of OCFS, the 28 social services districts that had implemented family assessment response at the time that these regulations have been submitted, and the experiences of other states that have implemented dual response programs in the last several years. Many of the procedures required in the proposed regulations parallel those required for an investigative response to reports of suspected child abuse and maltreatment, but conform to the alternative approach established in SSL Section 427-a.

With respect to the proposed regulations for the training of child protective services supervisors and caseworkers, new training requirements are promulgated by Chapter 525 of the Laws of 2006 amending sections 421(4) and (5) of the SSL; therefore no alternatives could be considered.

With respect to the proposed regulations for the minimum qualifications for child protective services supervisors, these standards were chosen after conducting a survey of social services districts across New York State and are consistent with the recommendations made by all districts that responded, except one, and reflect current practice in most districts. The alternative of using the statutory minimum standard was determined

to be insufficient, in light of the recommendations made by the social services districts.

9. Federal standards:

There are no federal standards regarding the issues addressed in the proposed regulations.

10. Compliance schedule:

All regulations will go into effect immediately.

Local districts that have already implemented family assessment response have been adhering to the procedures described in the proposed regulations, in accordance with the current legislation or OCFS policy. Proposed changes regarding training of child protective staff were implemented after the associated legislation was passed in 2006; OCFS already provides the required training.

Regulatory Flexibility Analysis

1. Effect of rule:

The 58 social services districts (districts) of New York State will be affected by the proposed regulations. Only those social services districts that choose to implement family assessment response will be affected by the new section 432.13 of the proposed regulations, which promulgates rules and guidelines for family assessment response. The decision about whether to implement family assessment response is voluntary on the part of each social services district, and a district that has opted to implement family assessment response may at any time decide to cease implementing that approach. The regulations, in accordance with Section 427-a of the SSL, offer social services districts that choose to implement family assessment response the option of contracting with community based businesses to conduct some, but not all, of their family assessment response activities, with the approval of OCFS. A few social services districts currently contract with small businesses to perform some of their family assessment response activities; others may choose to do so in the future.

The new Section 432.13 of the proposed regulations, which provides rules and guidelines to assist districts to effectively implement family assessment response, requires districts that choose to implement this alternative response to reorganize their child protective service units, develop written protocols, provide time for formal and informal training in family assessment response, and meet with community stakeholders to inform them about family assessment response. The regulations require those districts, when receiving a report alleging child abuse or maltreatment which they assign to a family assessment response, to engage in actions that parallel those of traditional child protective investigations but, in some aspects, differ from the procedures for investigations. The regulations require initial safety assessments and ongoing assessments of safety and risk, documentation of work, intensive contact with client families, assisting families to obtain, to the extent practicable, goods and services they believe will stabilize the family thereby reducing future risk for children, and ongoing assessment of the effectiveness of their procedures.

The amended regulations in section 432.2(e)(5) bring current rules into compliance with Chapter 525 of the Laws of 2006. The proposed rules increase the minimum qualifications for all newly hired child protective services supervisors, which may have a minimal impact on the future ability of districts to hire child protective services supervisors; however, most jurisdictions have locally-imposed minimum qualifications for child protective supervisors that are equal to or more rigorous than those in the proposed regulations.

Other proposed rule changes will have no effect on current practices or requirements for local governments.

The proposed regulations will have no impact on small businesses other than those community-based businesses that voluntarily contract to perform any of the family assessment response activities that social services districts are permitted to contract out; such businesses must adhere to these regulations. Staff in such organizations who will work in family assessment response and do not have training in child protective services must obtain such training as well as training in family assessment response. All such training is provided by and paid for by OCFS.

2. Compliance requirements:

Social services districts that choose to implement family assessment response programs will be required to adhere to the requirements found in the new section 432.13 of the proposed regulations, which implements SSL Sections 422, 426, and 427-a. The proposed family assessment response regulations generally parallel the requirements that apply to traditional child protective services investigations of reports alleging abuse and maltreatment, but differ from existing requirements, as necessary, in order to provide an alternative response to reports of alleged child abuse and maltreatment. The proposed regulations require those districts using the family assessment response to develop criteria for assigning reports to family assessment response and a protocol for applying the criteria. The regulations require them to submit an application/plan to OCFS for its approval; districts that submit such an application will have to devote time and staff to planning and writing. Participating social services districts may need to reorganize their child protective service units to accommodate

one or more units that will provide family assessment response. Staff who will be engaged in family assessment response must obtain a few days of additional training. Similar to the procedures that occur when a child protective service addresses a report alleging child abuse or maltreatment with an investigation, participating districts must ensure that their child protective service conducts an initial safety assessment, provides information to the family about the report of child abuse or maltreatment in which they are named and about family assessment response, and complies with reporting procedures, which are slightly different for family assessment response than they are for traditional child protective investigations.

To comply with Chapter 525 of the Laws of 2006, the proposed regulations contain new requirements regarding training and qualifications that apply to all child protective services. The new rules require all child protective services staff, including supervisors and caseworkers, to attend six hours of in-service training annually. Current child protective services supervisors who have not already done so and all newly hired child protective services supervisors will be required to attend a one-time training of one to two weeks specifically tailored for such supervisors. Newly hired child protective services supervisors will be required to have a baccalaureate degree and a minimum of two years of relevant work experience in child welfare services.

3. Professional services:

The proposed regulations do not create the need for any additional professional services to be provided by small business or local governments. No additional staff will be required.

4. Compliance costs:

All changes included in these proposed regulations are already fully implemented in existing practice by OCFS and local social services districts. These practices are currently supported by existing funding levels. As a result, it is anticipated that these proposed regulations will carry no additional state or local fiscal impact.

5. Economic and technological feasibility:

The proposed regulations will not impose any additional economic or technological burdens on local governments or small businesses.

6. Minimizing adverse impact:

OCFS provides ongoing technical assistance and all training required to implement family assessment response. OCFS conducts regular agency-wide monthly telephone conference meetings with social services district family assessment response staff, designates regional office staff who are available to provide technical assistance to each participating local district, and ensures that central and regional office staff are accessible to answer any questions or address any issues about family assessment response that may arise. OCFS provides numerous resource materials to assist districts in implementing family assessment response and provides periodic coaching and quality review sessions to support the family assessment response work of social services districts. In order to reduce the local districts' costs for time and travel, all required family assessment response training is paid for by OCFS and is provided online, on-site, or to the extent practicable, in close proximity to wherever the staff receiving the training is located. OCFS is implementing a major restructuring of CONNECTIONS, its electronic record-keeping system for child welfare, which will facilitate record keeping for family assessment response, and will provide all necessary associated training when those changes are put into effect. OCFS maintains internal and external family assessment response web pages that are easily accessible to child welfare staff to provide information about family assessment response; they allow child protective staff to access sample documents, tools, and a variety of information to assist in the implementation of family assessment response. OCFS periodically organizes statewide symposiums on family assessment response that social services districts are invited to participate in.

OCFS provides the training that meets the statutory and regulatory requirements for the training that all child protective supervisors must successfully complete, and also provides many training classes that can be used to fulfill the requirement for all child protective services workers and supervisors to complete six hours of annual in-service training. OCFS pays for travel costs associated with its training whenever local district staff must travel significant distances to obtain the training. OCFS has also increased the availability of online training in order to make training accessible to districts while minimizing the time and transportation costs necessary for training employees.

7. Small business and local government participation:

OCFS has consulted extensively with local social services districts about the proposed regulations. OCFS staff meets regularly with the staff of social services districts that are implementing or considering implementing family assessment response to discuss all aspects of their practice, and the agency maintains an ongoing dialogue with local districts to discuss any issues, questions or concerns that may arise regarding this alternative approach. In the past several months, OCFS has provided all counties with drafts of the proposed regulations and provided each district with an opportunity to submit questions and comments and participate in an in-depth

discussion of the proposed regulations. As a result of those discussions, OCFS has taken the local districts concerns into consideration and made several revisions to the proposed regulations.

Following the enactment of Chapter 525 in 2006, OCFS consulted with all local district child protective services in the state regarding the section of the proposed regulations describing the minimum qualifications for supervisors in child protective services. The proposed regulations reflect the consensus of opinion of those local districts that expressed an opinion.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed regulations will apply to all social services districts in the state, including those that are in rural areas. Regarding the new section 18 NYCRR 432.13 in the proposed regulations, the decision about whether to implement a family assessment response program is voluntary on the part of each county; therefore, the total number of rural counties that will be affected by those sections of the proposed regulations providing rules for family assessment response is unknown.

Section 432.13 of the proposed regulations promulgates rules and guidelines to assist districts to effectively implement family assessment response. These regulations require districts that choose to implement this alternative response to reorganize their child protective service units, develop written protocols, provide time for formal and informal training, and meet with community stakeholders. The regulations also require actions that parallel those of traditional child protective investigations but, in some aspects, differ from the investigation procedures. The proposed regulations require initial safety assessments and ongoing assessments of safety and risk, documentation of work, intensive contact with client families, as needed, and ongoing assessment of the effectiveness of family assessment response procedures.

The amended regulations in section 432.2(e)(5), which raise the qualifications for all newly hired child protective services supervisors, may have a minimal impact on the future ability of districts, including those in rural areas, to hire child protective services supervisors; however, most jurisdictions, including in rural areas, have locally-imposed minimum qualifications for child protective supervisors that are equal to or more rigorous than those in the proposed regulations. Other changes in this section bring current rules regarding training requirements for child protective service workers into compliance with existing statutory requirements and will not affect rural areas.

Other proposed rule changes that update child protective services regulations will have no effect on current practices or requirements in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

Only those social services districts that voluntarily choose to implement family assessment response programs will be required to comply with the procedures in the regulations found in the new Section 432.13. The proposed requirements for family assessment response generally parallel the requirements that apply to traditional child protective services investigations of reports alleging abuse and maltreatment, but differ from existing requirements in several respects so as to provide for an alternative response to reports of alleged abuse and maltreatment, as describe in sections 422, 426, and 427-a of the SSL. The proposed regulations require districts that choose to use family assessment response to develop criteria for assigning reports to family assessment response and a protocol for applying the criteria. These districts must submit an application/plan to OCFS for its approval, which requires them to devote staff and time for planning. Participating social services districts must reorganize their child protective service units to accommodate one or more units that will provide family assessment response. These districts must also provide staff time for formal and informal training in family assessment response. When a local district offers family assessment response, it will be required to provide information to the family about the report of child abuse or maltreatment in which they are named, paralleling information currently provided to families in CPS investigations, and also about family assessment response. The proposed regulations do not contain additional reporting requirements for family assessment response, but the reporting procedures are slightly different than those used in traditional child protective investigations.

To comply with an amendment to Section 421(5) of the Social Services Law enacted in Chapter 525 of the Laws of 2006, the proposed regulations require all child protective services staff, including supervisors and caseworkers, to attend six hours of in-service training annually. As also required by Chapter 525, current child protective services supervisors who have not already done so and all newly hired supervisors are required to attend a one-time training, of one to two weeks, designed for these supervisors. OCFS provides training that fulfills these requirements, but the local district is responsible for any travel expenses incurred. In addition, the proposed regulations establish new qualification standards, as per Chapter 525 of the Laws of 2006, for newly hired child protective services

supervisors. They will be required to have a baccalaureate degree and a minimum of two years of relevant work experience in child welfare services.

Other proposed changes in the regulations are technical in nature and require no new requirements or changes in current practices.

These regulations add no requirements for additional professional services in rural areas.

3. Costs:

All changes included in these proposed regulations are already fully implemented in existing practice by OCFS and local social services districts. These practices are currently supported by existing funding levels. As a result, it is anticipated that these proposed regulations will carry no additional state or local fiscal impact.

4. Minimizing adverse impact:

The proposed regulations are not expected to result in any adverse impacts on rural areas. The implementation of family assessment response by any rural county is optional and voluntary. Rural social services districts that implement family assessment response will have increased flexibility in how they address reports alleging child maltreatment; districts will be able to tailor their response to the individual circumstances of each family, providing the response that is most likely to help the family, provide safety for their children, and minimize the likelihood of future reports of alleged abuse or maltreatment for those families.

It is possible, but not likely, that the increase in qualifications for child protective services supervisors promulgated in these regulations could make it slightly more difficult to find qualified individuals for these positions in rural areas, but children in those areas will benefit from the new requirement. Most rural areas already use standards equal to or more rigorous than those in the proposed regulations. The provisions in the proposed regulations requiring increased training for child protective services workers and supervisors are consistent with and reflect existing law; they should improve the overall quality of casework practice and increase the support that caseworkers receive from their supervisors.

All training required by these regulations is paid for by OCFS and is provided online, on-site, or as close as possible to the agency whose staff is receiving the training, in an effort to reduce travel by staff in rural counties.

5. Rural area participation:

All county departments of social services, including those in all rural areas, were consulted regarding the proposed rules for implementing family assessment response, the changes in qualifications for child protective supervisors, and all other changes proposed. OCFS twice provided drafts of the proposed regulations to all social services districts for their review, and revised the proposed regulations after each review in response to comments received. OCFS also surveyed every social services district regarding their own minimum qualifications for persons hired as child protective services supervisors and what they believed should be the new minimum qualifications statewide.

Job Impact Statement

A full job impact statement has not been prepared for the proposed regulations. The proposed regulations would not result in the loss of any jobs and the regulations will not have a substantially adverse impact on jobs or employment opportunities.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Common Core Learning Standards (CCLS)

I.D. No. EDU-49-13-00006-EP

Filing No. 1129

Filing Date: 2013-11-19

Effective Date: 2013-11-19

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

Proposed Action: Amendment of sections 100.5 and 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to address miscellaneous Common Core Transition issues by providing for transition to the Common Core English Language Arts and mathematics examinations in the following areas: (1) students with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit; by providing at the local school district's discretion an additional opportunity, at the January 2014 examination administration, for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core); and to reflect the change in name of the performance level descriptors.

Because the Board of Regents meets at scheduled intervals, and generally does not meet in the month of August, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the February 10-11, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be February 26, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare to ensure that school districts and students are given sufficient notice to prepare for and timely implement in the 2013-2014 school year the requirements for transitioning to the Common Core English Language Arts and in mathematics examinations in the following areas: (1) students with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit; and to provide at the local school district's discretion an additional opportunity, at the January 2014 examination administration, for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core); and to reflect the change in name of the performance level descriptors.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the February 10-11, 2014 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: New York State Common Core Learning Standards (CCLS).

Purpose: To provide for transition to the Common Core English Language Arts (ELA) and mathematics examinations in the following areas: (1) students with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit; provide an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration; and update the names of the performance level descriptors for school accountability purposes.

Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.regents.nysed.gov/meetings/2013Meetings/november2013/1113p12a3.pdf>): The Commissioner of Education proposes to amend sections 100.5(g) and 100.18(b) of the Commissioner's Regulations. The following is a summary of the substantive provisions of the proposed rule.

Commissioner's Regulations Part 100.5(g) – Diploma Requirements

The proposed amendment makes provisions for the new Regents Examinations in English Language Arts (ELA) and mathematics aligned to the Common Core to meet various diploma requirements. In each section below, the Common Core ELA and Mathematics Regents Examinations have been included as assessments allowable to meet diploma requirements. The proposed amendment also amends § 100.5(g)(1)(ii) to provide at the local school district's discretion an additional opportunity, at the January 2014 examination administration, for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English (2005) in addition to the Regents Examination in English Language Arts (Common Core). The regulation currently provides for this opportunity only during the June and August 2014 administrations.

100.5(g)(1)(i) and (ii) - Students with disabilities

The proposed amendment establishes English and Mathematics requirements for students with disabilities to obtain a local diploma, as follows:

English requirements - 100.5(g)(1)(i):

- students with disabilities who first enter grade nine prior to September 2011 and who fail the Regents comprehensive examination in English,

may meet the English requirements for a local diploma by passing the Regents competency test in reading and the Regents competency test in writing or their equivalents;

- students with disabilities who first enter grade nine in September 2005 and thereafter may also meet the English requirements for a local diploma by passing the Regents comprehensive examination in English with a score of 55-64 or by earning a score within a comparable range, as approved by the Board of Regents, on the Regents Examination in English Language Arts (Common Core).

Mathematics requirements - 100.5(g)(1)(ii):

- Students with disabilities who first enter grade nine in or after September 1997 and prior to September 2011 and who fail a Regents examination in mathematics may meet the mathematics requirements for a local diploma by passing the Regents competency test in mathematics or its equivalent.

- Students with disabilities who first enter grade nine in September 2005 and thereafter may meet the mathematics requirements for a local diploma by passing a Regents examination in mathematics with a score of 55-64 or such other minimum passing score as approved by the Board of Regents on a commencement level Regents examination in mathematics that measures the Common Core Learning Standards.

100.5(g)(2) - Regents diploma with advanced designation

Beginning with the 2011-12 school year and thereafter, to earn a Regents diploma with an advanced designation, students must pass two or three commencement level Regents examinations in mathematics through one of the following combinations:

- Two examination combination. A student must pass (1) Mathematics A and Mathematics B, or (2) Mathematics A and Algebra 2/Trigonometry, or (3) Mathematics B and Integrated Algebra;

- Three examination combination. A student must pass (1) Mathematics A or Integrated Algebra or Algebra I (Common Core); and (2) Geometry or Geometry (Common Core); and (3) Mathematics B or Algebra 2/Trigonometry or Algebra II (Common Core).

100.5(g)(3) - Credit by examination

A student may earn a maximum of 6 1/2 units of credit for either a Regents or local diploma without completing units of study for such units of credit, if: (1) based on the student's past academic performance, the superintendent of a school district or the chief administrative officer of a registered nonpublic high school, or his or her designee, determines that the student will benefit academically by exercising this alternative; (2) the student achieves a score of at least 85, or its equivalent as determined by the commissioner, on a State-developed or State-approved assessment; (3) the student passes an oral examination or successfully completes a special project to demonstrate proficiency, in such knowledge, skills and abilities normally developed in the course of but not measured by the relevant Regents examination or State-approved examination if used, as determined by the principal; and (4) the student attends school, or received substantially equivalent instruction elsewhere until the age of 16.

- A student who earns a score of at least 85, or a comparable score as approved by the Regents, on a Regents examination in mathematics and meets the requirements in (1), (3) and (4) above shall receive one unit of credit.

- A student who first entered grade nine prior to September 2013 and who earns a score of at least 85 on the Regents comprehensive examination in English or a comparable score, as approved by the Board of Regents, on the Regents Examination in English Language Arts (Common Core) and meets the requirements in (1), (3) and (4) above shall receive one unit of credit. A student who first entered grade nine in September 2013 or thereafter and who earns a score of at least 85, or a comparable score as approved by the Board of Regents, on the Regents Examination in English Language Arts (Common Core) and meets the requirements in (1), (3) and (4) above shall receive one unit of credit.

100.5(g)(4) - Transfer credit

- Students who enter a registered high school for the first time in grade 11 in the 2002-2003 school year and thereafter, other than those students who have received home instruction or who have been enrolled in a registered or non-registered public or nonpublic high school, in order to receive a high school diploma must pass the Regents Comprehensive Examination in English or the Regents Examination in English Language Arts (Common Core), a Regents examination in mathematics, a Regents examination in United States history and government, and a Regents examination in science, or approved alternatives.

- Students who enter a registered high school for the first time in grade 12 in the 2004-2005 school year and thereafter, other than those students who have received home instruction or who have been enrolled in a registered or non-registered public or nonpublic high school, in order to receive a high school diploma must pass the Regents comprehensive examination in English or the Regents Examination in English Language Arts (Common Core), a Regents examination in mathematics, a Regents examination in United States history and government, or approved alternatives.

100.5(g)(1)(i)(b) - Additional opportunity for Students enrolled in Common Core ELA to meet diploma requirements by passing the Regents Comprehensive Examination in ELA (2005)

- For the January 2014, June 2014 and August 2014 administrations only, students enrolled in English Language Arts (Common Core) courses may, at the discretion of the applicable school district, take the Regents Comprehensive Examination in English (2005) in addition to the Regents Examination in English Language Arts (Common Core), and may meet such English requirement by passing either examination.

Commissioner's Regulation section 100.18(b) – ESEA Accountability System

In addition to the above proposed revisions, the proposed amendment also amends § 100.18(b) of the Commissioner's Regulation to reflect the change in name of the performance level descriptors (PLDs) as follows:

- Level 1: Change from "below standards" to "well below proficient"
- Level 2: Change from "meets basic standards" to "below proficient"
- Level 3: Change from "meets proficiency standards" to "proficient"
- Level 4: Change from "exceeds in standards" to "excels in standards"

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 16, 2014.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Ken Wagner, Deputy Commissioner, Office of Curriculum, Assessment and Educational Technology, EBA Room 875, 89 Washington Ave., Albany, NY 12234, (518) 474-5915, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the State Education Department (SED), with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges SED with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out laws regarding education and the functions and duties conferred on SED by law.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes SED to alter the subjects of required instruction.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

The Regents adopted the Common Core State Standards (CCSS) for English Language Arts & Literacy (ELA) and Mathematics at its July 2010 meeting and incorporated New York-specific additions, creating the New York State Common Core Learning Standards (CCLS) at its January 2011 meeting. At the July 2013 meeting the Board of Regents adopted by emergency action, effective July 30, 2013, a new Commissioner's Regula-

tion § 100.5(g) to allow students to meet diploma requirements by passing Regents Examinations in English Language Arts and mathematics that are aligned to the New York State P-12 Common Core Learning Standards (see New York State Register, August 14, 2013; EDU-33-13-00022-EP). § 100.5(g) was permanently adopted at the October 2013 Regents meeting (New York State Register, November 6, 2013; EDU-33-13-00022-A). In order to address issues arising from that adoption, and allow students to continue to meet the requirements for all diploma types, (local, Regents and Regents with Advanced Designation) further revisions to the Commissioner's Regulations are necessary as the new Common Core Regents examinations are being phased-in and the Regents Examinations aligned to the 2005 Core are phased-out. These technical amendments do not result in any substantive policy changes, but rather serve only to reconcile existing regulations with newly adopted Common Core assessment regulations.

The proposed amendment provides for transition to the Common Core English Language Arts (ELA) and mathematics examinations in the following areas: (1) students with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at the local school district's discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration. The proposed amendment currently provides for this opportunity only during the June and August 2014 administrations. Finally, the proposed amendment updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA).

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations, and does not impose any costs on the State, school districts, charter schools or the State Education Department. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at the local school district's discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA).

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations, and does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at the local school district's discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA).

6. PAPERWORK:

The rule does not impose any specific recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The rule does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the rule and none were considered. The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at local discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the Janu-

ary 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA).

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations, and does not impose any additional compliance requirements or costs on school districts or charter schools. It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement requirements for transitioning to the New York State Common Core English Language Arts (ELA) and mathematics examinations. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations, and does not impose any additional compliance requirements on local governments. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at local discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA).

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations, and does not impose any costs on school districts or charter schools. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at local discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA).

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations, and does not impose any additional compliance requirements or costs on school districts or charter schools. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at local discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core

ELA examination at the January 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA). Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or charter schools from coverage by the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the rule have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy providing for a transition to the New York State Common Core Learning Standards (CCLS) adopted at the January 2011 Regents meeting. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 695 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) and mathematics examinations, and does not impose any additional reporting, recordkeeping or other compliance requirements on entities in rural areas. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at local discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA). The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations, and does not impose any costs on the State, school districts, charter schools or the State Education Department. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at local discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA).

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA and mathematics examinations, and does not impose any additional compliance requirements or costs on school districts or charter schools in rural areas. The proposed amendment merely adds the Common Core ELA and mathematics examinations as assessments allowable to meet diploma requirements in the following areas: (1) student with disabilities local diplomas; (2) Regents diploma with

advanced designation; (3) credit by examination; and (4) transfer credit. The proposed amendment also provides, at local discretion, an additional opportunity for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2014 test administration, and updates the names of the performance level descriptors for accountability purposes under the Elementary and Secondary Education Act (ESEA). Because the Regents policy upon which the proposed amendment is based applies to all school districts and BOCES in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy providing for a transition to the New York State Common Core Learning Standards (CCLS) adopted at the January 2011 Regents meeting. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to implement requirements for transitioning to the New York State Common Core Learning Standards (CCLS). The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Administration of Meningococcal Disease Vaccinations by Pharmacists

I.D. No. EDU-37-13-00002-A

Filing No. 1127

Filing Date: 2013-11-19

Effective Date: 2013-12-04

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

Action taken: Amendment of section 63.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6527(7)(c), 6802(22) and 6909(7)(c); and L. 2013, ch. 274

Subject: Administration of meningococcal disease vaccinations by pharmacists.

Purpose: To implement chapter 274 of the Laws of 2013 to authorize qualified pharmacists to administer meningococcal disease vaccinations.

Text or summary was published in the September 11, 2013 issue of the Register, I.D. No. EDU-37-13-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Definition of Date of Issuance of Certificates and Expiration of Certain Permanent Certificates from Expired Provisionals

I.D. No. EDU-37-13-00003-A

Filing No. 1128

Filing Date: 2013-11-19

Effective Date: 2013-12-04

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

Action taken: Amendment of sections 80-1.2(b), 80-1.6 and 80-2.1(a)(2)(i) and (ii) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), 3001(2), 3006(1)(b) and 3009(1)

Subject: Definition of date of issuance of Certificates and Expiration of Certain Permanent Certificates from Expired Provisionals.

Purpose: To amend the definition of effective date of a certificate to allow persons to be employed in their certificate area on the date their certificate is issued, rather than the February 1 or September 1 following the issuance date of their certificates.

Text or summary was published in the September 11, 2013 issue of the Register, I.D. No. EDU-37-13-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Committees on Preschool Special Education (CPSE)

I.D. No. EDU-37-13-00004-A

Filing No. 1130

Filing Date: 2013-11-19

Effective Date: 2013-12-04

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

Action taken: Amendment of sections 200.3 and 200.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), 4402(1)(b), 4403(3) and 4410(13); and L. 2013, ch. 213

Subject: Committees on Preschool Special Education (CPSE).

Purpose: To conform Commissioner's Regulations to L. 2013, ch. 213, relating to the additional parent member on a CPSE.

Text or summary was published in the September 11, 2013 issue of the Register, I.D. No. EDU-37-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on September 11, 2013, the State Education Department received the following comments on the proposed amendment.

1. COMMENT:

Supportive of proposal as current requirement goes beyond federal regulation, does not match committee on special education (CSE) requirements, and will provide administrative relief in area of preschool special education. Proposal is consistent with recent change in law, parallels modification adopted for the CSE, and will not compromise the delivery of services to young children with disabilities. Similar change impacting CSE has been effective.

Agree that parent member should not be required unless requested by the parent. Proposal preserves parents' ability to have an additional parent member in attendance at a CPSE meeting, while recognizing the difficulties of requiring that such member attend every meeting. Parents will continue to receive notification of their right to have an additional parent member in attendance at a CPSE meeting. Proposal strikes a common sense balance and provides modicum of additional mandate relief to school districts.

A number of comments that supported the proposal indicated that consistently finding parent members has been virtually impossible as parents interested in serving in this role are either employed during the day or home raising their children. The parent member has become nonessential in the classification and IEP development process. Parent members provide the same information at each meeting about their own experience, whether or not it is pertinent to the child being discussed, and often do not have much to add or comment on at the meeting. Many parents decline the presence of a parent member, preferring discussions about their child be private and not involve community members, especially in small, rural districts. Parent members have not felt they were needed, as parents prefer to ask district staff or evaluation team their questions. Parents are often confused as to the role of the parent member. Some parents question the parent member's motivation for participating in meetings because he/she is provided by the district. It is helpful for the additional parent member to have specialized knowledge or experience with similar circumstances. Having 72 hours prior to the request improves chances of locating person who could effectively fill this role, especially if requested on a limited basis. Proposal will alleviate pressure on districts to provide an additional parent member for every meeting. Parents who wish to have an additional parent can easily request one and still have them in attendance.

DEPARTMENT RESPONSE:

Comments are generally supportive in nature. The role of the additional parent member on the committee is to bring another perspective as a parent of a child with a disability to the discussions and decision-making process and to help parents understand and participate in meetings, not to share his/her own experience. SED funds a professional development workshop for additional parent members to assist them in understanding the role and requirements of the additional parent member and the special education process. Districts are responsible for ensuring that parents are informed of the role of additional parent member on the committee.

2. COMMENT:

CPSE meetings are an emotionally difficult time and parents can feel overwhelmed with the process. The parent member can greatly aid and provide support to parents. Parent member serves key role at CPSE meeting. Parents appreciate having another parent there who has been through the process. Having an experienced person at the meeting can help the parent understand what is happening and what to do. Meetings are legal and binding and the parent member is crucial when important decisions are being made about a child's education and future. Having parent member at meetings as an extra set of ears, note taker or impartial parent is necessary for parents new to the CPSE process. It helps the parent feel more comfortable to have someone at meetings who has walked in their shoes.

DEPARTMENT RESPONSE:

SED agrees that another parent of a student with a disability in attendance at a CPSE meeting can be beneficial to the parents and to the process and decision making. Parents who wish to have a parent member have the right to request, in writing, 72 hours prior to the meeting, the attendance of an additional parent member at their child's CPSE meeting.

3. COMMENT:

Some opposed the proposed amendment indicating that few districts make the effort to get a parent member and do not have a full committee any way. Parents have not been made aware of their right to have a parent member in attendance or that they can choose to decline a parent member. Parents are often not aware of the role of the parent member and their presence at meetings is not clearly explained. Issue is not that parents do not want a parent advocate but that districts do not want to go through the process of recruiting and training parents willing to help. Giving 72 hours' notice does not give parent enough time and it will be difficult to get a parent member with that short of notice.

DEPARTMENT RESPONSE:

The proposed amendment conforms to Chapter 213 of the Laws of 2013, which provides that the additional parent member must be a member if requested in writing at least 72 hours prior to a meeting. Districts must provide parents with the State-mandated meeting notice before any meeting of the CPSE that informs them of their right to request the attendance of the additional parent member at their child's CPSE meeting and explains the role of the additional parent member. By including the role of the parent member in the meeting notice, more parents will have clarity on the parent member's role. School districts must maintain a list of sufficient numbers of additional parent members and when establishing the schedule of CPSE meetings, should anticipate the need for additional parent members to be available for the meeting in the event their participation is requested by the parent so that these arrangements may be made in a timely manner. The 72 hour notice requirement is consistent with the time period for requests for the parent member's participation on the CSE and for a request that a school physician participate in a CSE meeting.

4. COMMENT:

Support proposal but feel that parents also need ongoing education of NYS regulations and rights of parent, child and school. With correct information comes better advocacy, collaboration and student success starting with CPSE services throughout school age and adult life.

DEPARTMENT RESPONSE:

We agree that parents' need to be aware of their rights and their child's rights. A variety of technical assistance resources and guidance materials are available for parents through SED for this purpose, including but not limited to 13 Special Education Parent Centers funded by SED; the State's publication "A Parent's Guide to Special Education," or a locally district developed guide, which must be provided to parents upon a student's initial referral for special education; the State's mandated Procedural Safeguards Notice, which must be provided to parents at least once a year, informing them of their legal rights under federal and State laws to be informed about and involved in the special education process; and Prior Written Notice, which must include resources for parents to contact for help in understanding the special education process.

Department of Financial Services

EMERGENCY RULE MAKING

License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators

I.D. No. DFS-49-13-00003-E

Filing No. 1121

Filing Date: 2013-11-15

Effective Date: 2013-11-17

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

Action taken: Addition of Part 420 and Supervisory Procedure MB 107; and repeal of Supervisory Procedure MB 108 of Title 3 NYCRR.

Statutory authority: Banking Law, arts. 12-D and 12-E

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

Specific reasons underlying the finding of necessity: Article 12-E of the Banking Law provides for the regulation of mortgage loan originators (MLOs). Article 12-E was recently amended in order to conform the regulation of MLOs in New York to new federal legislation (Title V of the Housing and Economic Recovery Act of 2008, known as the "SAFE Act").

The SAFE Act authorized the federal Department of Housing and Urban Development ("HUD") to assume the regulation of MLOs in any state that did not enact acceptable implementing legislation by August 1, 2009. In response, the Legislature enacted revised Article 12-E.

The emergency rulemaking revises the existing MLO regulations, which implement the prior version of Article 12-E, to conform to the changes in the statute.

Under the new legislation, MLOs, including those already engaged in the business of originating mortgage loans, must complete new education, testing and bonding requirements prior to licensure. Meeting these requirements will likely entail significant time and effort on the part of individuals subject to the revised law and regulations.

Emergency adoption of the revised regulations is necessary in order to afford such individuals sufficient advance notice of the new substantive

rules and licensing procedures for MLOs that they will have an adequate opportunity to comply with the new licensing requirements and in order to protect against federal preemption of the regulation of MLOs in New York.

Subject: License, financial responsibility, education and test requirements for mortgage loan originators.

Purpose: To require that individuals engaging in mortgage loan origination activities must be licensed by the Superintendent of Financial Services.

Substance of emergency rule: Section 420.1 summarizes the scope and application of Part 420. It notes that all individuals unless exempt must be licensed under Article 12-E to engage in mortgage loan originator (“MLO”) activities. It also sets forth the basic authority of the Superintendent to revoke or suspend a license.

Section 420.2 sets out the exemptions available to individuals from the general license requirements. Specifically, the proposed regulation includes a number of exemptions, including exemptions for individuals who work for banking institutions as mortgage loan originators and individuals who arrange mortgage loans for family members. Also, individuals who work for mortgage loan servicers and negotiate loan modifications are only subject to the license requirement if required by HUD. The Superintendent is authorized to approve other exemptions for good cause.

Section 420.3 contains a number of definitions of terms that are used in Part 420. These include definitions for “mortgage loan originator,” “originating entity,” “residential mortgage loan” and “loan processor or underwriter”.

Section 420.4 describes the applications procedures for applying for a license as an MLO. It also provides important transitional rules for individuals already engaging in mortgage loan origination activities pursuant to the authority of the prior version of Article 12-E or, in the case of individuals engaged in the origination of manufactured homes, not previously subject to regulation by the Department of Financial Services (formerly the Banking Department).

Section 420.5 describes the circumstances in which originating entities may employ or contract with MLOs to engage in mortgage loan origination activities during the application process.

Section 420.6 sets forth the steps the Superintendent of Financial Services (formerly the Superintendent of Banks) must take upon determining to approve or disapprove an application for an MLO license.

Section 420.7 describes the circumstances when an MLO license is inactive and how an MLO may maintain his or her license during such periods.

Section 420.8 sets forth the circumstances when an MLO license may be suspended or terminated. Specifically, the proposed regulation provides that an MLO license shall terminate if the annual license renewal fee has not been paid or the requisite number of continuing education credits have not been taken. The Superintendent also may issue an order suspending an MLO license if the licensee does not file required reports or maintain a bond. The license of an MLO that has been suspended pursuant to this authority shall automatically terminate by operation of law after 90 days unless the licensee has cured all deficiencies within this time period.

Section 420.9 sets forth the process for the annual renewal of an MLO license.

Section 420.10 sets forth the process by which an MLO may surrender his or her license.

Section 420.11 sets forth the pre-licensing educational requirements applicable to applicants seeking an MLO license. Twenty hours of educational courses are required, including courses related to federal law and state law issues.

Section 420.12 sets out the requirement that pre-licensing education and continuing education courses and education course providers must be approved by the Nationwide Mortgage Licensing System and Registry (the “NMLS”). This represents a change from the prior law pursuant to which the Superintendent issued such approvals.

Section 420.13 sets forth the pre-licensing testing requirements for applicants for an MLO license. It also sets out the test location requirements and the minimum passing grades to obtain a license.

Section 420.14 sets out the continuing education requirements applicable to MLOs seeking to renew their licenses.

Section 420.15 sets out the new requirements that MLOs have a surety bonds in place as a condition to being licensed under Article 12-E. It also sets out the minimum amounts of such bonds.

Section 420.16 requires the Superintendent to make reports to the NMLS annually regarding violations by, and enforcement actions against, MLOs. It also provides a mechanism for MLOs to challenge the content of such reports.

Section 420.17 sets forth the process for calculating and collecting fees applicable to MLO licensing.

Sections 420.18 and 420.19 set forth the various duties of MLOs and

originating entities. Section 420.20 also describes conduct prohibited for MLOs and loan originators.

Finally, Section 420.21 describes the administrative action and penalties that the Superintendent may take against an MLO for violations of law or regulation.

Summary of Revised Supervisory Procedure MB 107

Section 107.1 contains definitions of defined terms used in the Supervisory Procedure. Importantly, it defines the National Mortgage Licensing System (NMLS), the web-based system with which the Superintendent has entered into a written contract to process applications for initial licensing and applications for annual license renewal for MLOs.

Section 107.2 contains general information about applications for initial licensing and annual license renewal as an MLO. It states that a sample of the application form (which must be completed online) may be found on the Department’s website and includes the address where certain information required in connection with the application for licensing must be mailed.

Section 107.3 describes the parts of an application for initial licensing. The application includes (1) the application form, (2) fingerprint cards, (3) the fees, (4) applicant’s credit report, (5) an affidavit subscribed under penalty of perjury in the form prescribed by the Superintendent, and (6) any other information that may be required by the Superintendent. It also describes the procedure when the Superintendent determines that the information provided by the application is not complete.

Section 107.4 describes the required submissions for annual license renewal of an MLO.

Section 107.5 covers inactive status.

Section 107.6 provides information on places where applicants may obtain additional instructions and assistance on the Department’s website, by email, by mail, and by telephone.

Supervisory Procedure MB 108 is hereby repealed.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 12, 2014.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority.

Revised Article 12-E of the Banking Law became effective on July 11, 2009 when Governor Paterson signed into law Chapter 123 of the Laws of 2009. The revised version of Article 12-E is modeled on the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the “SAFE Act”) pertaining to the regulation of mortgage loan originators. Hence, the licensing and regulation of mortgage loan regulators in New York now closely tracks the federal standard.

Current Part 420 of the Superintendent’s Regulations, implementing the prior version of Article 12-E, was adopted on an emergency basis in December of 2008. Since the new version of Article 12-E is already effective, it is necessary to revise Part 420 and adopt the revised version on an emergency basis. An earlier draft of this regulation was published on the Department’s website on August 27, 2009. To date, the Department has received two sets of comments, and these have been incorporated into the current version of the revised regulation as appropriate.

New Section 599-a of the Banking Law sets forth the legislative purpose of new Article 12-E. It notes that the new Article is intended to enhance consumer protection, reduce fraud and ensure the public welfare. It also notes that the new regulatory scheme is to be consistent with the SAFE Act.

Section 599-b sets forth the definitions used in the new Article. Defined terms include: mortgage loan originator (“MLO”); mortgage loan processor -- an individual who may not need to be licensed; residential mortgage loans -- loans for which an MLO must be licensed; residential real property; and the Nationwide Mortgage Licensing System and Registry (the “NMLS”).

Section 599-c sets forth the requirements for being licensed as an MLO, the effective date for licensing and exemptions from the licensing requirements. Exemptions include ones for individuals who work for insured financial institutions, licensed attorneys who negotiate the terms of a loan for a client as an ancillary to the attorney’s representation of the client, and, unless required to be licensed by the U.S. Department of Housing and Urban Development (“HUD”), certain individuals employed by a mortgage loan servicer.

Section 599-d sets out the process for obtaining an MLO license. It also sets out the Department’s authority for imposing fees, the authority of the NMLS to collect such fees, the ability of the Superintendent of Financial

Services (formerly the Superintendent of Banks) to modify the requirements of Article 12-E in order to ensure compliance with the SAFE Act, the requirement that filings be made electronically and required background information from all applicants.

Section 599-e sets forth the findings that the Superintendent must make before a license is issued. These include a finding that the applicant not have any felony convictions within seven years or any fraud convictions at any time, that the applicant demonstrate acceptable character and fitness, educational and testing criteria and a bonding requirement. An MLO also must be affiliated with an originating entity -- a licensed mortgage banker or registered mortgage broker (or other licensed entity in the case of individuals originating manufactured homes) -- or working for mortgage loan servicers.

Section 599-f sets out the pre-licensing education requirements, and Section 599-g sets forth the pre-licensing testing requirements. Section 599-h imposes a reporting requirement on entities employing MLOs. Such entities must make annual filings through the NMLS.

Section 599-i sets forth the annual license renewal requirements for MLOs. In addition to continuing to satisfy the initial requirements for licensing, MLOs must satisfy annual continuing educational requirements and must have paid all fees. Failure to meet these requirements shall result in the automatic termination of an MLO's license. The statute also provides for a licensee going into inactive status, provided the individual continues to pay all applicable fees and to take required education courses.

Section 599-j sets forth the continuing education requirements for MLOs, and Section 599-k sets forth the requirements for a surety bond. Section 599-l requires the Superintendent to report through the NMLS at least annually on all violations of Article 12-E and all enforcement actions. MLOs may challenge the information contained in such reports. Section 599-m sets forth the records and reports that originating entities must maintain or make on MLOs employed by, or working for, such entities. This section also requires the Superintendent to maintain on the internet a list of all MLOs licensed by the Department and requires reporting to the Department by MLOs.

Section 599-n sets forth the enforcement authority of the Superintendent. In addition to "for good cause" suspension authority, the Superintendent may revoke a license for stated reasons (after a hearing), and the Superintendent may suspend a license if a required surety bond is allowed to lapse or thirty days after a required report is not filed. This section also sets out the requirements for surrendering a license and the implications of any surrender, revocation, termination or suspension of a license.

Section 599-o sets forth the authority of the Superintendent to adopt rules and regulations implementing Article 12-E, including the authority to adopt expedited review and licensing procedures for individuals previously authorized under the prior version of Article 12-E to act as MLOs. It also authorizes the Superintendent to investigate licensees and the entities with which they are associated.

Section 599-p requires that the unique identifier of every originator be clearly shown on certain documents. Section 599-q provides certain confidentiality protections for information provided to the Superintendent by an MLO, notwithstanding the sharing of such information with other regulatory bodies.

2. Legislative objectives.

As noted, new Article 12-E was intended to conform New York Law to federal law and to enhance the regulation of MLOs operating in this state. These objectives have taken on increased urgency with the problems evidenced in the mortgage banking industry over the past few years.

The regulations implement this statute. New Part 420 differs from the prior version in a number of respects. The following is a summary of the major changes from the previous regulation:

1) The definition of a mortgage loan originator is broadened to include any individual who takes a mortgage application or offers or negotiates the terms of the mortgage with a consumer.

2) Individuals who originate loans on manufactured homes will be subject to the regulation for the first time.

3) If licensing of individuals who work for mortgage loan servicers and who engage in loan modification activities is required by the U.S. Department of Housing and Urban Development, such individuals may be subject to the licensing requirements of the new law and to the new regulation.

4) Individuals who have applied for "authorization" under the prior version of Article 12-E and Part 420 have a simplified process for becoming licensed and may continue to originate loans until they are licensed under the revised regulation or their applications are denied.

5) Individuals with a felony conviction within the last seven years or a felony conviction for fraud at any time are now prohibited from being licensed as MLOs in New York State.

6) Individuals must satisfy new pre-license education and testing requirements. There also are new bonding requirements and continuing education requirements.

7) A license automatically terminates if the licensee does not pay his or her annual license renewal fee or take the requisite amount of continuing education credits. The authority of the Superintendent to suspend an individual for good cause also has been clarified.

When Part 420 was originally adopted on an emergency basis, the Superintendent also adopted Supervisory Procedures MB 107 and MB 108. Supervisory Procedure MB 107 deals with applications to become an MLO. It has been updated in line with the revisions to Article 12-E and Part 420.

Supervisory Procedure MB 108, relating to the approval of education providers and courses, was originally adopted because the prior version of Article 12-E required the Superintendent to approve both courses and providers. This activity has been transferred to the NMLS under new Article 12-E. Accordingly, Supervisory Procedure MB 108 is being rescinded.

3. Needs and benefits.

The SAFE Act is intended to impose a nationwide standard for MLO regulation; new Article 12-E constitutes New York's effort to adopt a regulatory regime consistent with this uniform standard. This regulation is needed to implement revised Article 12-E and is necessary to address problems that have surfaced over the last several years in the mortgage industry.

As has now been recognized at the federal level in the SAFE Act, increased oversight of mortgage loan originators is necessary to curb disreputable and deceptive businesses practices by MLOs. Individuals engaging in abusive practices have avoided detection by moving from company to company and in some instances, from state to state. The licensing of MLOs will greatly assist the Department in its efforts to oversee the mortgage industry and protect consumers. The regulation will enable the Department to identify, track and hold accountable those individuals who engage in abusive practices, and ensure continuing education for all MLOs that are licensed by the Department.

These regulatory requirements will improve accountability among mortgage industry professionals, protect and promote the integrity of the mortgage industry, and improve the quality of service, thereby helping to restore consumer confidence.

If New York did not adopt the new federal standards for MLO regulation or failed to implement its requirements, the SAFE Act requires that HUD assume the licensing of MLOs in New York State. This would result in ceding an important responsibility and element of state sovereignty to the federal government.

4. Costs.

MLOs are already experiencing increased costs as a result of the fees and continuing education requirements associated with the prior version of Article 12-E. These costs will continue under the new law and regulations.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry are set by that body.

The ability by the Department to regulate MLOs is expected to substantially decrease losses to consumers and the mortgage industry, as well as to assist in decreasing the number of foreclosures in the State and the associated direct and indirect costs of such foreclosures. It is expected also to reduce consumer complaints regarding MLO conduct.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local government mandates.

None.

6. Paperwork.

An application process has been established for MLOs electronically through the NMLS. Over time, the application process is expected to become virtually paperless; accordingly, while a limited number of documents, including fingerprints where necessary, currently have to be submitted to the Department in paper form, these requirements should diminish with the passage of time.

The specific procedures that are to be followed in order to apply for licensing as a mortgage loan originator are detailed in revised Supervisory Procedure MB 107.

7. Duplication.

The revised regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to license and regulate MLOs in a manner consistent with the SAFE Act. As noted above, the alternative would be to cede this responsibility to the federal government. By enacting revised Article 12-E, the Legislature has indicated its desire to retain this responsibility at the state level.

9. Federal standards.

Currently, mortgage loan originators are required under the SAFE Act to be licensed under requirements nearly identical to those set forth in new Article 12-E.

10. Compliance schedule.

New Article 12-E became effective on July 11, 2009.

A transitional period is provided for mortgage loan originators who, as of July 11, 2009, were authorized to act as MLOs or had filed applications to be so authorized. Such MLOs may continue to engage in MLO activities, provided they submit any additional, updated information required by the Superintendent. The transitional period runs until January 1, 2011, in the case of authorized persons, and until July 31, 2010, in the case of applicants (unless their applications are denied or withdrawn as of an earlier date). Applicants are required to complete their applications considerably in advance of these dates under the regulations in order to allow the Department to complete their processing.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The revised regulation will not have any impact on local governments. However, many of the originating entities who employ or are affiliated with mortgage loan originators are mortgage bankers or mortgage brokers who are considered small businesses. In excess of 2,700 of these businesses are licensed or registered by the Department of Financial Services (formerly the Banking Department).

2. Compliance Requirements:

The revised regulation reflects the changes made in revised Article 12-E of the Banking Law. The small businesses that MLOs are employed by or affiliated with will be required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for actual or alleged violations, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. In addition to these requirements, originating entities will be required to assign MLOs to registered locations and to ensure that an MLO's unique identifier is recorded on each mortgage application he or she originates.

3. Professional Services:

None.

4. Compliance Costs:

As under the existing Part 420, some mortgage entities may choose to pay for costs associated with initial licensing and annual license renewal for their MLOs and with continuing education requirements, but are not required to do so. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education are expected to be minimal.

5. Economic and Technological Feasibility:

The rule-making should impose no adverse economic or technological burden on small businesses that MLOs are employed by or affiliated with.

6. Minimizing Adverse Impacts:

The industry, and specifically small businesses who are licensed and registered mortgage businesses, supported passage of the previous Banking Law Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulations. In addition, these businesses were involved in a policy dialogue with the Department during rule development. In order to minimize any potential adverse economic impact of the rulemaking, outreach was conducted with associations representing the industries that would be affected thereby (mortgage bankers, and mortgage brokers).

The revised regulation implements changes in Article 12-E of the Banking Law. An earlier draft of the revised regulation was published on the Department's website on August 27, 2009. Changes incorporating the comments have been made in the regulation where appropriate.

7. Small Business and Local Government Participation:

See response to Item 6 above.

Rural Area Flexibility Analysis

Types and Estimated Numbers: The New York State Department of Financial Services (formerly the Banking Department) licenses over 1,045 mortgage bankers and brokers, of which over 761 are located in the state. It has received 19,000 applications from MLOs under the present regulations and anticipates receiving approximately 500 initial licensing applications from individuals who seek to enter and/or re-enter the market as the economy stabilizes. Many of these entities and MLOs will be operating in rural areas of New York State and would be impacted by the regulation.

Compliance Requirements: Mortgage loan originators in rural areas must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks) to engage in the business of mortgage loan origination. The application process established by the regulations requires

an MLO to apply for a license electronically and to submit additional background information to the Mortgage Banking unit of the Department. This additional information consists of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

Costs: Some mortgage businesses in rural areas may choose to pay the increased costs associated with the continuing education requirements and the fees associated with licensing and annual renewal of their MLOs, but are not required to do so. The regulation sets forth the manner in which the background investigation fee, the initial license processing fee and the annual renewal fee are established. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out its regulatory responsibilities. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education courses are expected to be minimal. The cost of continuing education is estimated to be approximately \$500 every two years. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

Minimizing Adverse Impacts: The industry supported passage of the prior Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry was involved in a dialogue with the Department during rule development.

The revised regulations implement revised Article 12-E of the Banking Law, which in turn closely tracks the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act"). Hence, the licensing and regulation of mortgage loan originators in New York now closely tracks the federal standard. If New York did not adopt this standard, the SAFE Act requires that the federal Department of Housing and Urban Development assume the licensing of MLOs in New York State.

Rural Area Participation: Representatives of various entities, including mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas, participated in outreach meetings that were conducted during the process of drafting the prior Article 12-E and the implementing regulations. As noted above, the revised statute and regulations closely track the provisions of the federal SAFE Act.

Job Impact Statement

Revised Article 12-E of the Banking Law, effective on July 11, 2009, replaces the prior version of Article 12-E with respect to the licensing and regulation of mortgage loan servicers. This regulation sets forth the application, exemption and approval procedures for licensing registration as a Mortgage Loan Originator (MLO), as well as financial responsibility requirements for individuals engaging in MLO activities. The regulation also provides transition rules for individuals who engaged in MLO activities under the prior version of the article to become licensed under the new statute.

The requirement to comply with the regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. This is because individuals were already subject to regulation under the prior version of Article 12-E of the Banking Law. New Article 12-E and Part 420 are intended to conform the regulation of MLOs to the requirements of federal law. Absent action by New York to conform this regulation to federal requirements, federal law authorized the Department of Housing and Urban Affairs to take control of the regulation of MLOs in New York State.

As with their predecessors, the new statute and regulations require the use of the internet-based National Mortgage Licensing System and Registry (NMLS), developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for MLO registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory licensing requirement rather than the provisions of the regulations.

Supervisory Procedure 108 relates to the approval by the Superintendent of Financial Services (formerly the Superintendent of Banks) of educational courses and course providers for MLOs. Under revised Article 12-E, this function has been transferred to the NMLS. Moreover, educational requirements have been increased under the new law and regulation by the Superintendent.

EMERGENCY RULE MAKING

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-49-13-00004-E

Filing No. 1122

Filing Date: 2013-11-18

Effective Date: 2013-11-18

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

Action taken: Amendment of Part 216 (Regulation 64) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2601

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, some homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Moreover, there are insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Fair and prompt settlement of claims is critical for homeowners, a number of whom have been displaced from their homes or are living in unsafe conditions, and for small businesses, a number of which have yet to return to full operation and to recover their losses caused by the storm.

Given the nature and extent of the damage, an alternative avenue to mediate the claims would help protect the public and ensure its safety and welfare.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the public health, public safety, and general welfare.

Subject: Unfair Claims Settlement Practices and Claim Cost Control Measures.

Purpose: To create a mediation program to facilitate the negotiation of certain insurance claims arising between 10/26/12 - 11/15/12.

Text of emergency rule: 216.13 Mediation.

(a) This section shall apply to any claim for loss or damage, other than claims made under flood policies issued under the national flood insurance program, occurring from October 26, 2012 through November 15, 2012, in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:

(1) loss of or damage to real property; or

(2) loss of or damage to personal property, other than damage to a motor vehicle.

(b)(1) Except as provided in paragraph (2) of this subdivision, an

insurer shall send the notice required by paragraph (3) of this subdivision to a claimant, or the claimant's authorized representative:

(i) at the time the insurer denies a claim in whole or in part;

(ii) within 10 business days of the date that the insurer receives notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is \$1,000 or more; or

(iii) within two business days when the insurer has not offered to settle within 45 days after it has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant.

(2) If, prior to the effective date of this section: the insurer denied a claim in whole or in part; or a claimant disputed a settlement offer, or more than 45 days elapsed after the insurer received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant, and in either case the claim still remains unresolved as of the effective date of this section, then the insurer shall provide the notice required by paragraph (3) of this subdivision within ten business days from the effective date of this section.

(3) The notice specified in paragraphs (1) and (2) of this subdivision shall inform the claimant of the claimant's right to request mediation and shall provide instructions on how the claimant may request mediation, including the name, address, phone number, and fax number of an organization designated by the superintendent to provide a mediator to mediate claims pursuant to this section. The notice shall also provide the insurer's address and phone number for requesting additional information.

(c) If the claimant submits a request for mediation to the insurer, the insurer shall forward the request to the designated organization within three business days of receiving the request.

(d) The insurer shall pay the designated organization's fee for the mediation to the designated organization within five days of the insurer receiving a bill from the designated organization.

(e)(1) The mediation shall be conducted in accordance with procedures established by the designated organization and approved by the superintendent.

(2) A mediation may be conducted by face-to-face meeting of the parties, videoconference, or telephone conference, as determined by the designated organization in consultation with the parties.

(3) A mediation may address any disputed issues for a claim to which this section applies, except that a mediation shall not address and the insurer shall not be required to attend a mediation for:

(i) a dispute in property valuation that has been submitted to an appraisal process or a claim that is the subject of a civil action filed by the insured against the insurer, unless the insurer and the insured agree otherwise;

(ii) any claim that the insurer has reason to believe is a fraudulent transaction or for which the insurer has knowledge that a fraudulent insurance transaction has taken place; or

(iii) any type of dispute that the designated organization has excepted from its mediation process in accordance with the organization's procedures approved by the superintendent.

(f)(1) The insurer must participate in good faith in all mediations scheduled by the designated organization, which shall at a minimum include compliance with paragraphs (2), (3), and (4) of this subdivision.

(2) The insurer shall send a representative to the mediation who is knowledgeable with respect to the particular claim; and who has authority to make a binding claims decision on behalf of the insurer and to issue payment on behalf of the insurer. The insurer's representative must bring a copy of the policy and the entire claims file, including all relevant documentation and correspondence with the claimant.

(3) An insurer's representatives shall not continuously disrupt the process, become unduly argumentative or adversarial or otherwise inhibit the negotiations.

(4) An insurer that does not alter its original decision on the claim is not, on that basis alone, failing to act in good faith if it provides a reasonable explanation for its action.

(g) An insured's right to request mediation pursuant to this section shall not affect any other right the insured may have to redress the dispute, including remedies specified in the insurance policy, such as an insured's right to request an appraisal, the right to litigate the dispute in the courts if no agreement is reached, or any right provided by law.

(h)(1) No organization shall be designated by the superintendent unless it agrees that:

(i) the superintendent shall oversee the operational procedures of the designated organization with respect to administration of the mediation program, and shall have access to all systems, databases, and records related to the mediation program; and

(ii) the organization shall make reports to the superintendent in whatever form and as often as the superintendent prescribes.

(2) No organization shall be designated unless its procedures, approved by the superintendent, require that:

(i) the parties agree in writing prior to the mediation that statements made during the mediation are confidential and will not be admitted into evidence in any civil litigation concerning the claim, except with respect to any proceeding or investigation of insurance fraud;

(ii) a settlement agreement reached in a mediation shall be transcribed into a written agreement, on a form approved by the superintendent, that is signed by a representative of the insurer with the authority to do so and by the claimant; and

(iii) a settlement agreement prepared during a mediation shall include a provision affording the claimant a right to rescind the agreement within three business days from the date of the settlement, provided that the insured has not cashed or deposited any check or draft disbursed to the claimant for the disputed matters as a result of the agreement reached in the mediation.

(3) No organization shall be designated unless its procedures, approved by the superintendent, provide that:

(i) the mediator may terminate a mediation session if the mediator determines that either the insurer's representative or the claimant is not participating in the mediation in good faith, or if even after good faith efforts, a settlement can not be reached;

(ii) the designated organization may schedule additional mediation sessions if it believes the sessions may result in a settlement;

(iii) the designated organization may require the insurer to send a different representative to a rescheduled mediation session if the representative has not participated in good faith, the fee for which shall be paid by the insurer; and

(iv) the designated organization may reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the organization's fee for the mediation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 15, 2014.

Text of rule and any required statements and analyses may be obtained from: Brenda Gibbs, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 408-3451, email: brenda.gibbs@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 2601 of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent in the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices, sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair claims settlement practices, and imposes penalties if an insurer engages in these acts. Such practices include "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear" and "compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them."

2. Legislative objectives: As noted in the Department's statement in support for the bill that added the predecessor section to § 2601, Section 40-d, to the Insurance Law in 1970 (Chapter 296 of the Laws of 1970), an insurance company's obligation to deal fairly with claimants and policyholders in the settlement of claims – indeed, its simple obligation to pay claims at all – was solely a matter of private contract law. That left the Department unable to aid consumers and relegated them solely to the courts. There was a wide variety in insurers' claims practices. Insurance Law § 2601 reflects the Legislature's concerns with insurance claims practices of insurers. In enacting that section, the Legislature authorized the Superintendent to monitor and regulate insurance claims practices.

3. Needs and benefits: On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had

not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, a number of homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Many small businesses have suffered losses of income that threaten their survival. Fair and prompt settlement of claims is critical for homeowners, many of whom who have been displaced from their homes or who are living in unsafe conditions, and for small businesses, to enable them to return to full operation and to recover their losses caused by the storm. Furthermore, many small businesses provide essential services to and a significant source of employment in the communities in which they are located.

Moreover, there are many insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Therefore, this rule creates a mediation program to facilitate the negotiation of certain insurance claims arising in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, between October 26, 2012 and November 15, 2012. An insured may request mediation for a claim for loss or damage to personal or real property (1) that the insurer has denied, (2) for which the insured disputes the insurer's settlement offer if the difference between what the insured seeks and the insurer offers is more than \$1,000, or (3) that has not been settled within 45 days after the insurer received all the information the insurer needs to decide the claim. The amendment does not provide for mediation of claims for damage to motor vehicles.

Participation in the mediation program by insureds is voluntary. Participation by insurers in the mediation program is mandatory, except that an insurer is not required to participate in a mediation for any claim involving a dispute in property valuation that has been submitted to an appraisal process or that has become the subject of civil litigation, unless the insurer and insured agree otherwise. An insurer also is not required to mediate any claim for which the insurer has reason to believe or knowledge that a fraudulent insurance transaction has taken place.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers should also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Department considered making this rule applicable to the entire state. However, since the major concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storm. In addition, the Department could have made the rule apply to all claims, even those that had been settled before the effective date of the rule. However, after meeting with industry trade groups and hearing their concerns, the Department modified the rule to make clear that, for claims that had already been made as of the rule's effective date, only those that were denied or unresolved as of the rule's effective date are covered by the rule. The Department also changed the rule so that it applies only to disputes where the parties's positions are \$1,000 or more apart.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements. The regulation does not apply to claims made under policies issued under the national flood insurance program.

10. Compliance schedule: Insurers will be required to comply with this rule upon the Superintendent's filing the rule with the Secretary of State.

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 insurers authorized to do business in New York State, none of which fall within the definition of a "small business" as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business" because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: "Rural areas", as used in State Administrative Procedure Act ("SAPA") § 102(10), means counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of 200,000 or greater population, "rural areas" means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein. While insurers affected by this rule may be headquartered in rural areas, the rule itself only applies within the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange. None of these counties is a rural area, and the Department of Financial Services ("Department") does not believe that there are any towns within any of those counties that would be considered to be rural areas within the SAPA definition.

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule would not impose any additional reporting or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by requiring insurers to participate in mediation sessions when an insured with a claim subject to the rule requests mediation of his or her claim.

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers may also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

4. Minimizing adverse impact: The Department considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Because the public health, safety, or general welfare has been endangered, establishment of differing compliance or reporting requirements or timetables based upon whether or not the damage occurred in a rural area is not appropriate. However, the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus the impact of the rule on rural areas is minimized, since none of those counties are rural areas.

5. Rural area participation: Public and private interests in rural areas have had a continual opportunity to participate in the rule making process since the first publication of the emergency measure in the State Register on March 13, 2013, which was published again in the State Register on September 11, 2013. The emergency measure also has been posted on the Department's website continually since March 13, 2013.

Job Impact Statement

The Department of Financial Services does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities. This rule provides insureds with open or denied claims for loss or damage to personal and real property, except damage to automobiles, arising in New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange counties between October 26, 2012 and November 15, 2012, with an option to participate in a mediation program to facilitate the negotiation of their claims with their insurers.

NOTICE OF ADOPTION

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. DFS-09-13-00003-A

Filing No. 1125

Filing Date: 2013-11-18

Effective Date: 2013-12-04

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

Action taken: Amendment of Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-(c)(12) and 4408-a; and L. 2002, ch. 599 and L. 2008, ch. 311

Subject: Financial Statement Filings and Accounting Practices and Procedures.

Purpose: To update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2012.

Text or summary was published in the February 27, 2013 issue of the Register, I.D. No. DFS-09-13-00003-P.

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

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

Revised Job Impact Statement

The Department does not believe that this rule will have any impact on jobs and employment opportunities, including self-employment opportunities. The amendment merely adopts the most recent edition published by the National Association of Insurance Commissioners ("NAIC") of the Accounting Practices and Procedures Manual As of March 2012 ("2012 Accounting Manual"), replacing the rule's current reference to the Accounting Practices and Procedures Manual As of March 2011. All states require insurers to comply with the 2012 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers' corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Special Risk Insurance

I.D. No. DFS-49-13-00002-P

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

Proposed Action: This is a consensus rule making to amend Part 16 (Regulation 86) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 307, 308 and art. 63

Subject: Special Risk Insurance.

Purpose: To comport with chapter 75 of the Laws of 2013 upon which Regulation 86 is based and correct minor errors in the current rule.

Text of proposed rule: Section 16.4 is amended to read as follows:

Section 16.4 Policy forms[, certificate of insurance] and other standards.
(a) Every binder, policy, contract, rider and endorsement issued pursuant to section 6301 of the Insurance Law on special risks located or resident in New York State shall comply with minimum standard policy provisions of the Insurance Law and this Title.

(b) For a coverage coded as a class 3 risk pursuant to Section 16.12 of this Part, the insurer shall electronically file with the superintendent[, in a form and manner acceptable to the superintendent:

- (1) Within one business day of binding the insurance coverage, a certificate of insurance evidencing the existence and terms of the policy;
- (2) Within 30 days from the inception date of the policy:
 - (i) the certificate of insurance specified in Section 16.4(b)(1) of this part; and
 - (ii) the following information:
 - (a) The identity of the insured and a statement that the insured meets the minimum commercial risk premium and financial condition standards for a "large commercial insured" pursuant to Section 6303(b) of the Insurance Law;
 - (b) Major type of insurance;
 - (c) Rate services organization classification (such as Insurance Service Organization classification), if applicable, or, if not applicable, a description of the class to be written;
 - (d) Risk manager name, employer and contact information, including mailing address, phone number and email address, and a statement that the insurer has verified that the risk manager who assisted in the negotiation and purchase of the policy on behalf of the insured meets the qualifications required by section 6303(b)(2) of the Insurance Law; and
 - (e) The New York producer license number, if the risk manager is required to be a New York licensed producer; and
- (3) with respect to] a policy form that has not been previously filed with the superintendent[, the policy form.]. *The insurer shall file the policy form in a form and manner acceptable to the superintendent*, within three business days after first delivery of a policy using the form, but no later than 60 calendar days after the inception date of the policy.

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

- (2) The request for an exemption shall:
 - (i) Identify the time period for which the insurer is requesting the exemption; and
 - (ii) Specify whether the insurer is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.

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

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

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

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

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

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

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

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

Consensus Rule Making Determination

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

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

Because the amendment merely conforms section 16.4 with the revisions made to Insurance Law section 6303(a)(3) by Chapter 75 of the

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

Job Impact Statement

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

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

New York State Gaming Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Clenbuterol

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

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

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

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

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

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

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

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

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

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

4120.3. *Equine drug thresholds; per se*

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

* * *

- (17) Clenbuterol:
 - (i) 140 pg/ml in urine; or
 - (ii) any clenbuterol in plasma.

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

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

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

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

* * *

[(5) clenbuterol;]

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

The proposed rule would add clenbuterol to the accepted medications whose detection would be permitted in race-day samples, albeit with a

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

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

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

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

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

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

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

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

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

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

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

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

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

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

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

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

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

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

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

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

4120.3. Equine drug thresholds; per se

* * *

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

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

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

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities.

Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

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

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

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

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

4. Costs:

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

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Thresholds for Equine Drugs

I.D. No. SGC-49-13-00011-P

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

Proposed Action: Amendment of section 4120.2; renumbering of section 4120.3 to 4120.18; and addition of new section 4120.3 to Title 9 NYCRR.

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

Subject: Per Se regulatory standardbred thresholds for equine drugs.

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

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

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

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

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

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

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

4120.3. Equine drug thresholds; per se

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

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

(2) Butorphanol:

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

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

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

(4) Detomidine:

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

(ii) any detomidine in plasma;

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

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

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

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

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

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

(11) Mepivacaine:

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

(ii) any hydroxymepivacaine in plasma;

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

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

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

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

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

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use on standardbred horses close to race day of 16 specified medications by regulating their use by the adoption of Per Se regulatory laboratory thresholds. All trainers will be able to comply with these proposed thresholds. No competitors will be able to use these restricted substances in violation of the same thresholds. The thresholds will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because they are being proposed as a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt each of these thresholds by

January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

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

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

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

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

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

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

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

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

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

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

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

4120.3. Equine drug thresholds; per se

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

* * *

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

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

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

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

* * *

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

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

This rulemaking proposal will not have an adverse affect on small businesses, local governments, jobs, or rural areas. The proposal limits the use

on standardbred horses close to race day of the drugs betamethasone and triamcinolone acetonide by regulating their use by the adoption of Per Se regulatory laboratory thresholds. All trainers will be able to comply with the proposed thresholds. No competitors will be able to use these restricted substances in violation of the same thresholds. The thresholds will make it less expensive to prepare a horse to race in multiple jurisdictions, and inadvertent drug positives will be less common, because it is being proposed as part of a national set of thresholds in other states. The mid-Atlantic states and Massachusetts have publicly pledged to adopt these thresholds by January 2014, and the thresholds are favored by the other American racing jurisdictions, which all voted for these thresholds as a model rule. A trainer will be able to obtain veterinary care by reference to the rules of the host state without being concerned about whether this will prevent the horse from racing in a nearby jurisdiction.

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

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

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

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

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

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

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

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

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

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

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

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

4120.3. Equine drug thresholds; per se

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

* * *

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

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

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

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

* * *

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

* * *

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

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

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

* * *

(9) dexamethasone.

(10) prednisolone.

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

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

I.D. No. SGC-49-13-00014-P

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

Proposed Action: Amendment of section 4120.2(e)(9); and addition of sections 4120.2(e)(25), (l) and 4120.3(a)(22) to Title 9 NYCRR.

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

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

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

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

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

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

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

4120.3. Equine drug thresholds; per se

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

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

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

for as long as 99 days. The long period of time during which an administration of this drug might cause a violation of the proposed threshold was confirmed by the Commission when it conducted an extensive study of the veterinary records of over 75 horses whose tests results were in excess of the proposed threshold in the first half of 2013. The most reasonable restriction that could provide assurance to standardbred horsepersons that compliance would protect them from violation of the proposed thresholds is one that would require the horse to test negative before racing again. Accordingly, the new rule would require that any horse treated with this corticosteroid, methylprednisolone acetate (e.g., Depo Medrol), has to be tested at the expense of the trainer below the proposed threshold and then released by the presiding judge before the horse may race again. As a result, for those horsepersons who choose not to use the less restricted and equally available alternative corticosteroids (betamethasone, dexamethasone, prednisolone, and triamcinolone acetate), the Commission provides a means to return the horse to racing that is consistent with the proposed thresholds and with the overall purpose of reducing the use of this relatively harmful corticosteroid.

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

4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for Flunixin

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

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

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

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

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

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

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

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

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

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

4120.3. *Additional Equine drug thresholds; per se*

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

* * *

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

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

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

(1) flunixin.] (*Reserved*)

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

None of these substances may be administered within 48 hours of the scheduled post time of the race in which the horse is to compete[, except that flunixin may be used in accordance with the specific authorization set forth in subdivision (d) of this section]. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 48 hours.

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of

the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

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

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

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

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

4. Costs:

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

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

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

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

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

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

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

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

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

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

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

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

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

I.D. No. SGC-49-13-00016-P

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

Proposed Action: Amendment of section 4120.2(e)(14); addition of section 4120.2(e)(20), (22), (f)(11); and repeal of section 4120.2(f)(2), (4) and (g)(6) of Title 9 NYCRR.

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

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

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

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

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

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

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

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

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

(20) *dantrolene*;

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

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

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

(1) antihistamines;
(2) dantrolene]

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

(11) *detomidine*.

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

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

[(6) detomidine;]

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is to assure horsepersons that the Commission's restricted time periods are consistent with the separately proposed national regulatory laboratory thresholds for these equine drugs that have been recommended by the RMTC and the Association of Racing Commissioners, International, Inc. No other alternatives were considered.

9. Federal standards: None.

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Standardbred Firocoxib Use

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

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

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

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

Subject: Restricted time period for standardbred firocoxib use.

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

3. Needs and benefits: This rulemaking is necessary to limit the administration to race horses of the drug firocoxib, a non-steroidal anti-inflammatory drug with an unusually long duration of action, and to ensure that horsepersons who use this drug will not unwittingly violate the national regulatory laboratory threshold for this drug that the Commission has separately proposed.

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

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

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

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

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

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

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Regulatory Standardbred Threshold and Restricted Time Period for DMSO

I.D. No. SGC-49-13-00018-P

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

Proposed Action: Amendment of section 4120.2(a)(1); and addition of sections 4120.2(e)(21) and 4120.3(a)(23) to Title 9 NYCRR.

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

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

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

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

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

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

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

4120.3. Equine drug thresholds; per se

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

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

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

4120.2 Restricted use of drugs, medication and other substances.

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

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

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

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

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

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) is released to race by the stewards.

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104(1), (19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Per Se Thoroughbred Regulatory Thresholds for Equine Drugs

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

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

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

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

Subject: Per Se thoroughbred regulatory thresholds for equine drugs.

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

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

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

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

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

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

Section 4043.3. Equine drug thresholds; per se

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

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

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

(3) Butorphanol:

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

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

(4) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma;

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

(6) Detomidine:

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

(ii) any detomidine in plasma;

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

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

(9) DMSO: 10 mcg/ml in plasma;

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

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

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

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

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

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

(16) Mepivacaine:

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

(ii) any hydroxymepivacaine in plasma;

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

(18) Methylprednisolone: 100 pg/ml in plasma;

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

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

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

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

(23) Triamcinolone acetonide: 100 pg/ml in plasma; and

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

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

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

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

The new rule will provide an advantage for horsepersons because the permissible concentrations of drugs in a horse on race day will become more uniform among the racing jurisdictions. All of the racing commissions in the neighboring mid-Atlantic states and Massachusetts, for example, have publicly pledged to adopt these thresholds by January 2014. The rule will therefore simplify the veterinary treatment issues faced by trainers who are licensed to race in more than one jurisdiction, many of whom train their horses and obtain veterinary care in reference primarily to their host state's rules. The adoption of more uniform equine drug rules

will make it easier for an out-of-state trainer to decide to race a horse in New York when abiding by the equine drug rules of the other jurisdiction. Horsepersons who are confident that they will not commit an unintended violation of New York's equine drug rules are more likely to enter their horses to race in New York, which will improve the depth and quality of the fields in New York races. The new rule will, therefore, make it easier for trainers and owners who race in multiple states to comply with the New York equine drug rules and to race in New York, while affording protection to the betting public against the manipulation of a horse's race performance with drugs and other substances.

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

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

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

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

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Systemic Administrations of Corticosteroids to Thoroughbred Horses

I.D. No. SGC-49-13-00021-P

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

Proposed Action: Amendment of section 4043.2(i) of Title 9 NYCRR.

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104(1), (19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

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

9. Federal standards: None.

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

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

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

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Restricted Time Period After IV Administrations of Flunixin to Thoroughbred Horses

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

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

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

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

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

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

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

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

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

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

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

(1) flunixin.] (*Reserved*)

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

None of these substances may be administered within 48 hours of the scheduled post time of the race in which the horse is to compete[, except that flunixin may be used in accordance with the specific authorization set forth in subdivision (d) of this section]. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 48 hours.

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and

Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

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

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

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

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

4. Costs:

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

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

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

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

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

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

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

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

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Restricted Time Period for Administrations of Unspecified Corticosteroids to Thoroughbred Horses

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

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

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

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

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

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

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

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

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

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

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

- (1) such administration occurs at least seven days before such race;
- (2) the trainer of the horse discloses, in writing, such administration to the stewards before race day; and
- (3) the administration of such corticosteroid cannot be detected by

laboratory tests, conducted by or for the commission, in a race-day urine or blood sample.

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1, 19), and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

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

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

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

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

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

4. Costs:

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

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

Proposed revised wording is:

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

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

COSTS:

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

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

Costs to Local and State Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Definition of Pediatric Severe Sepsis Update

I.D. No. HLT-49-13-00005-P

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

Proposed Action: Amendment of section 405.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Definition of Pediatric Severe Sepsis Update.

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

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

405.4 Medical staff.

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

* * *

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

* * *

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

There is no additional paperwork associated with this change in wording.

Duplication:

These regulations do not duplicate any State or Federal rules and assure consistency with established and clinically accepted definitions in use throughout the Nation.

Alternative Approaches:

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

Federal Requirements:

Currently there are no federal requirements regarding the adoption of sepsis protocols or for reporting adherence to protocols or risk adjusted mortality.

Compliance Schedule:

These regulations will take effect upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to Section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or other governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

Pursuant to the State Administrative Procedure Act (SAPA) section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Approval of Fillmore's Request to Increase Annual Revenues

I.D. No. PSC-08-13-00015-A

Filing Date: 2013-11-18

Effective Date: 2013-11-18

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

Action taken: On 11/14/13, the PSC adopted an order authorizing Fillmore Gas Company, Inc. to increase its annual gas revenues by \$219,584 or 17.4%.

Statutory authority: Public Service Law, section 66(12)

Subject: Approval of Fillmore's request to increase annual revenues.

Purpose: To allow Fillmore to increase annual revenues.

Substance of final rule: The Commission, on November 14, 2013, adopted an order authorizing Fillmore Gas Company, Inc. to increase its annual revenues by \$219,584 or 17.4%, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-G-0039SA1)

NOTICE OF ADOPTION

Allow Verizon to Eliminate the Requirement for Quarterly Updates to the UCRCC

I.D. No. PSC-10-13-00009-A

Filing Date: 2013-11-14

Effective Date: 2013-11-14

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

Action taken: On 11/14/13, the PSC adopted an order approving a petition filed by Verizon New York Inc. (Verizon) to change the procedure used to establish the Unbundled CLEC Reciprocal Compensation Charge (UCRCC).

Statutory authority: Public Service Law, section 92(2)

Subject: Allow Verizon to eliminate the requirement for quarterly updates to the UCRCC.

Purpose: To allow Verizon to eliminate the requirement for quarterly updates to the UCRCC.

Substance of final rule: The Commission, on November 14, 2013, adopted an order approving the petition of Verizon New York Inc. (Verizon) to set the per minute-of-use Unbundled CLEC Reciprocal Compensation Charge, or Unbundled TC Reciprocal Compensation Charge, as follows: October 31, 2013 through June 30, 2014 - \$0.0012569; July 1, 2014 through June 30, 2015 - \$0.0012359; July 1, 2015 through December 31, 2015 - \$0.0012150.

In addition, Verizon is authorized to discontinue the quarterly reporting and updating of the per minute-of-use Unbundled CLEC Reciprocal Compensation Charge, or Unbundled TC Reciprocal Compensation Charge, and the associated rate and traffic count in its PSC No. 10 Network Elements tariff, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-C-0064SA1)

NOTICE OF ADOPTION

Approval of a Uniform Policy of Minimum Utility Practices That Would be Applicable as a Result of Prolonged Outages

I.D. No. PSC-15-13-00015-A

Filing Date: 2013-11-18

Effective Date: 2013-11-18

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

Action taken: On 11/14/13, the PSC adopted an order establishing policies setting forth outage credit and other consumer protection policies relating to prolonged outages of electric or natural gas services.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Approval of a uniform policy of minimum utility practices that would be applicable as a result of prolonged outages.

Purpose: To approve a uniform policy of minimum utility practices that would be applicable as a result of prolonged outages.

Substance of final rule: The Commission, on November 14, 2013, adopted an order establishing policies, developing a consistent statewide policy covering customer outage credits and other consumer protection policies as they relate to prolonged electric or natural gas service outages, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25

cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-M-0061SA1)

NOTICE OF ADOPTION

Approve NYPA's Request Allowing Customers to Combine Low-Cost Supply Allocations with Their Delivery Discounts

I.D. No. PSC-15-13-00016-A

Filing Date: 2013-11-15

Effective Date: 2013-11-15

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

Action taken: On 11/14/13, the PSC approved New York Power Authority's (NYPA) proposal to allow customers to combine their awarded Preservation Power, Replacement Power or Expansion Power low-cost supply allocation with their Zone or Excelsior Jobs delivery discount.

Statutory authority: Public Service Law, sections 4(1), 65 and 66

Subject: Approve NYPA's request allowing customers to combine low-cost supply allocations with their delivery discounts.

Purpose: To approve NYPA's request allowing customers to combine low-cost supply allocations with their delivery discounts.

Substance of final rule: The Commission, on November 14, 2013, approved New York Power Authority's request to allow customers to combine low-cost supply allocations with reduced cost delivery service associated with such programs as the Empire Zone or Excelsior Jobs programs on the same load, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-E-0109SA1)

NOTICE OF ADOPTION

Approving, with Modifications, ConEd's Tariff Filing to Establish an Area Growth Program

I.D. No. PSC-17-13-00009-A

Filing Date: 2013-11-14

Effective Date: 2013-11-14

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

Action taken: On 11/14/13, the PSC approved, with modifications, a tariff filing by Consolidated Edison Company of New York, Inc. (ConEd) to establish a New York City Clean Heat Area Growth Program (Area Growth Program).

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Approving, with modifications, ConEd's tariff filing to establish an Area Growth Program.

Purpose: To approve, with modifications, ConEd's tariff filing to establish an Area Growth Program.

Substance of final rule: The Commission, on November 14, 2013, approved, with modifications, a tariff filing by Consolidated Edison Company of New York, Inc. to establish a New York City Clean Heat Area Growth Program within its gas tariff schedule, PSC No. 9, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service

Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-G-0156SA1)

NOTICE OF ADOPTION

Approve NYWA's Transfer of an Easement to the U.S. Navy to Construct a Water Treatment Facility

I.D. No. PSC-21-13-00007-A

Filing Date: 2013-11-15

Effective Date: 2013-11-15

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

Action taken: On 11/14/13, the PSC approved New York American Water Company, Inc.'s (NYAW) petition to grant an easement to the U.S. Navy for the construction of a permanent water treatment plant at NYAW's Seaman's Neck Road Facility.

Statutory authority: Public Service Law, sections 4(1) and 89-h

Subject: Approve NYWA's transfer of an easement to the U.S. Navy to construct a water treatment facility.

Purpose: To approve NYWA's transfer of an easement to the U.S. Navy to construct a water treatment facility.

Substance of final rule: The Commission, on November 14, 2013, approved New York American Water Company, Inc.'s petition to transfer a property easement to the United States Department of the Navy, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-W-0194SA1)

NOTICE OF ADOPTION

Approve Reopening the Record for the Re-Examination of RG&E's Article VII Application

I.D. No. PSC-24-13-00008-A

Filing Date: 2013-11-15

Effective Date: 2013-11-15

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

Action taken: On 11/14/13, the PSC approved an order for the waiver of one provision of 16 NYCRR regarding reopening the record concerning Rochester Gas and Electric Corporation's (RG&E) Article VII application.

Statutory authority: Public Service Law, section 4 and art. VII

Subject: Approve reopening the record for the re-examination of RG&E's Article VII application.

Purpose: To approve reopening the record for the re-examination of RG&E's Article VII application.

Substance of final rule: The Commission, on November 14, 2013, approved the reopening of the record for the re-examination of the location of Substation 255 and the route of circuits 40, 940 and 941 for alternatives for one particular segment of this project, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service

Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (11-T-0534SA2)

NOTICE OF ADOPTION

Approval of Inergy's Participation in Debt Obligations of no More Than \$3.0 Billion on a Consolidated Basis

I.D. No. PSC-25-13-00010-A

Filing Date: 2013-11-19

Effective Date: 2013-11-19

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

Action taken: On 11/14/13, the PSC adopted an order approving a petition filed by Inergy Pipeline East LLC (Inergy) of its participation in debt obligations of no more than \$3.0 billion on a consolidated basis with affiliates.

Statutory authority: Public Service Law, sections 5(1)(b) and 69

Subject: Approval of Inergy's participation in debt obligations of no more than \$3.0 billion on a consolidated basis.

Purpose: To approve Inergy's participation in debt obligations of no more than \$3.0 billion on a consolidated basis.

Substance of final rule: The Commission, on November 14, 2013, adopted an order approving the petition of Inergy Pipeline East, LLC for its participation in debt obligations of no more than \$3.0 billion on a consolidated basis with affiliates, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-G-0210SA1)

NOTICE OF ADOPTION

To Institute a Process for the Sharing of Critical Equipment

I.D. No. PSC-26-13-00007-A

Filing Date: 2013-11-19

Effective Date: 2013-11-19

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

Action taken: On 11/14/13, the PSC adopted an order instituting a process for the sharing of critical equipment.

Statutory authority: Public Service Law, section 66

Subject: To institute a process for the sharing of critical equipment.

Purpose: To institute a process for the sharing of critical equipment.

Substance of final rule: The Commission, on November 14, 2013, adopted an order instituting a process for the sharing of critical equipment, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-M-0047SA1)

NOTICE OF ADOPTION

Authorizing St. Lawrence to Issue Up to \$15 Million in Long-Term Debt Securities

I.D. No. PSC-31-13-00007-A

Filing Date: 2013-11-19

Effective Date: 2013-11-19

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

Action taken: On 11/14/13, the PSC adopted an order approving St. Lawrence Gas Company, Inc.'s (St. Lawrence) petition authorizing the issuance up to \$15 million in long-term debt securities.

Statutory authority: Public Service Law, section 69

Subject: Authorizing St. Lawrence to issue up to \$15 million in long-term debt securities.

Purpose: To authorize St. Lawrence to issue up to \$15 million in long-term debt securities.

Substance of final rule: The Commission, on November 14, 2013, adopted an order approving St. Lawrence Gas Company, Inc.'s petition for authorization of issuance of long-term debt securities up to \$15 million, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-G-0299SA1)

NOTICE OF ADOPTION

Denying, in Part, a Waiver of Certain Application Filing Requirements

I.D. No. PSC-31-13-00009-A

Filing Date: 2013-11-18

Effective Date: 2013-11-18

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

Action taken: On 11/14/13, the PSC adopted an order denying, in part, the waiver requests made by West Point Partners LLC of certain application filing requirements.

Statutory authority: Public Service Law, sections 4 and 122

Subject: Denying, in part, a waiver of certain application filing requirements.

Purpose: To deny, in part, a waiver of certain application filing requirements.

Substance of final rule: The Commission, on November 14, 2013, adopted an order, denying, in part, the waiver requests made by West Point Partners LLC of certain application filing requirements to construct and operate an electric transmission line pursuant to a Certificate of Environmental Compatibility and Public Need under Public Service Law Article VII, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-T-0292SA1)

NOTICE OF ADOPTION**Approval of the Extension of a Contract for the Sale of Capacity and Energy from NYSEG to Nucor**

I.D. No. PSC-36-13-00006-A

Filing Date: 2013-11-19

Effective Date: 2013-11-19

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

Action taken: On 11/14/13, the PSC adopted an order approving a petition filed by Nucor Steel Auburn, Inc. (Nucor) and New York State Electric & Gas Corporation (NYSEG) to extend a contract for the sale of electric capacity and energy from NYSEG to Nucor.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), (2), (3), 66(1), (5), (9), (10), (12) and (12-b)

Subject: Approval of the extension of a contract for the sale of capacity and energy from NYSEG to Nucor.

Purpose: To approve the extension of a contract for the sale of capacity and energy from NYSEG to Nucor.

Substance of final rule: The Commission, on November 14, 2013, adopted an order approving a petition filed by Nucor Steel Auburn, Inc. (Nucor) and New York State Electric & Gas Corporation (NYSEG) to extend, to December 31, 2020, a contract for the sale of electric capacity and energy from NYSEG to Nucor, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-E-0353SA1)

NOTICE OF ADOPTION**Authorizing KeySpan's Tariff Filing to Become Effective on December 6, 2013**

I.D. No. PSC-37-13-00009-A

Filing Date: 2013-11-14

Effective Date: 2013-11-14

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

Action taken: On 11/14/13, the PSC approved a tariff filing by KeySpan Gas East Corporation (KeySpan) to become effective on a permanent basis on December 6, 2013.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Authorizing KeySpan's tariff filing to become effective on December 6, 2013.

Purpose: To authorize KeySpan's tariff filing to become effective on December 6, 2013.

Substance of final rule: The Commission, on November 14, 2013, approved a tariff filing by KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I. to convert its Balanced Billing Plan from the Current Customer Accounting System to a Customer Service System in PSC No 1 – Gas to go into effect on December 6, 2013.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no.

or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-G-0383SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Underground Distribution Provisions**

I.D. No. PSC-49-13-00007-P

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

Proposed Action: The Commission is considering a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to add clarifying language to the underground residential distribution provisions in its electric tariff schedule P.S.C. No. 220 — Electricity.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Underground Distribution Provisions.

Purpose: To clarify the process to be used to reimburse developers who choose to perform certain trench work.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (the Company) to add clarifying language to the underground residential distribution provisions as to the process to be used going forward to reimburse developers who choose to perform certain trench work. The Company also intends to revise its URD Statement to reflect a per foot rate for developers that elect to perform trench work. The filing has an effective date of March 1, 2014.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-E-0516SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Authorization to Transfer All of Crystal Water Supply Company, Inc. Stocks to Essel Infra West Inc.**

I.D. No. PSC-49-13-00008-P

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

Proposed Action: The Commission is considering whether to approve or reject in whole or in part, a joint petition filed by Crystal Water Supply Company, Inc. and Essel Infra West Inc. to transfer all of Crystal Water Supply Company, Inc. stocks to Essel Infra West Inc.

Statutory authority: Public Service Law, sections 89-c(1), (10) and 89-h

Subject: Authorization to transfer all of Crystal Water Supply Company, Inc. stocks to Essel Infra West Inc.

Purpose: To allow Crystal Water Supply Company, Inc. to transfer all of its issued and outstanding stocks to Essel Infra West Inc.

Substance of proposed rule: On November 8, 2013, Crystal Water Supply Company, Inc. (Crystal or the company) and Essel Infra West Inc. filed a joint petition requesting Commission approval to transfer all of Crystal's issued and outstanding stocks to Essel Infra West Inc.

Crystal provides unmetered water service to 150 residential customers at the Hidden Ridge Development and to the Kutsher's Country Club located in the Town of Thompson, Sullivan County. Public fire protection service is not provided. The Commission may approve or reject, in whole or in part, or modify the petitioners' request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-W-0507SP1)