

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

Exclusion from Monthly Gross Income for Purposes of Determining Child Care Assistance Eligibility

I.D. No. CFS-37-14-00002-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 section 404.5(b)(6)(xiii) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 410-w(7)

Subject: Exclusion from monthly gross income for purposes of determining child care assistance eligibility.

Purpose: To implement exclusion from monthly gross income for purposes of determining child care assistance eligibility.

Text of proposed rule: 18 NYCRR Part 404 Section 404.5(b)(6)(xiii) is amended to read as follows:

(xiii) earnings of a *dependent* child under [14]18 years of age who is not legally responsible for the child or children for which child care assistance is sought (no inquiry shall be made);

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.

Consensus Rule Making Determination

The New York State Office of Children and Family Services (“Office”) would like to adopt a proposed rule on a consensus basis in accordance with Section 202 of the State Administrative Procedure Act. It is the Office’s determination that no person is likely to object to the proposed rule as written because it conforms the existing rule found at 18 NYCRR § 404.5(b)(6)(xiii) to the non-discretionary statutory provision of Social Services Law § 410-w(7). The current rule excludes the income of a dependent child under the age of 14 for the purpose of determining financial eligibility for child care assistance. The proposed rule would conform the current rule to the non-discretionary statutory provision of Social Services Law § 410-w(7), which requires the exclusion of the income of a dependent child under the age of 18 for the purpose of determining financial eligibility for child care assistance.

Job Impact Statement

Section 201-a of the State Administrative Procedure Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State. Prior to the proposed change in regulation social services districts were required to exclude earnings of a child under 14 years of age, in determining financial eligibility for child care services. The proposed regulatory change would exclude earned income of a dependent child under the age of 18, who is not legally responsible for the child or children for whom child care assistance is sought, when determining eligibility of a household for a child care subsidy. The New York State Office of Children and Family Services believes that this change will not cause the loss of jobs in child care programs.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Criminal History Review

I.D. No. CFS-37-14-00004-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 section 413.4(e) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 390-b(3)(a)(i)

Subject: Criminal history review.

Purpose: To correct a Social Services Law citation found under 18 NYCRR section 413.4(e).

Text of proposed rule: 18 NYCRR Part 413 Section 413.4(e) is amended to read as follows:

(e) After reviewing a criminal history record of an individual who is subject to a criminal history record check pursuant to this section, the Office and the licensee or registrant shall take the following actions:

(1) Applicant to be a licensee or registrant of a child care program.

(i) where the criminal history record of an applicant to be a licensee or registrant of a child care facility or program reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of section 390-b of the Social Services Law, the Office shall deny the application unless the Office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the facility or program;

(ii) where the criminal history record of an applicant to be a licensee or registrant of a child care facility or program reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of section 390-b of the Social Services Law, the Office

may, consistent with Article 23-A of the Correction Law, deny the application; and

(iii) where the criminal history record of an applicant to be a licensee or registrant of a child care facility or program reveals a charge for any crime, the Office shall hold the application in abeyance until the charge is finally resolved;

(2) Applicant to be an Employee or Caregiver, Volunteer.

(i) where the criminal history record of an applicant to be an employee, caregiver or volunteer for any child care facility or program reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of section 390-b of the Social Services Law, the Office shall direct the licensee or registrant to deny the application unless the Office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the facility or program;

(ii) where the criminal history record of an applicant to be an employee, caregiver or volunteer for any child care facility or program reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of section 390-b of the Social Services Law, the Office may, consistent with Article 23-A of the Correction Law, direct the licensee or registrant to deny the application; and

(iii) where the criminal history record of an applicant to be an employee, caregiver or volunteer for any child care facility or program reveals a charge for any crime, the Office shall hold the application in abeyance until the charge is finally resolved;

(3) Adult household members of applicants for licensure of registration of family and group family day care homes.

(i) where the criminal history record of any person age 18 or over residing in the family or group family day care home reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of section 390-b of the Social Services Law, the Office shall deny the application unless the Office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the home or program. If the Office so determines, the Office shall direct the licensee or registrant that the person not be permitted to have any contact with children receiving day care or impose any other reasonable condition necessary to protect the health, safety or welfare of the children in care;

(ii) where the criminal history record of any person age 18 or over residing in a family or group family day care home reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of Section 390-b of the Social Services Law, the Office may, consistent with Article 23-A of the Correction Law, deny the application or direct the licensee or registrant that the person not be permitted to have any contact with children receiving day care or impose any other reasonable condition necessary to protect the health, safety or welfare of the children in care; and

(iii) where the criminal history record of any person age 18 or over residing in the family or group family day care home reveals a charge for any crime, the Office shall hold the application in abeyance until the charge is finally resolved.

(4) Current Licensee or Registrants.

(i) where the criminal history record of a current licensee or registrant of a child care facility or program reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of section 390-b of the Social Services Law, the Office shall conduct a safety assessment of the program, and take all appropriate steps to protect the health and safety of the children in the program. The Office shall deny, limit, suspend, revoke, reject or terminate the license or registration based on such a conviction unless the Office determines, in its discretion, that the continued operation of the center, home or program will not in any way jeopardize the health, safety or welfare of the children in care;

(ii) where the criminal history record of a current licensee or registrant of a child care facility or program reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of section 390-b of the Social Services Law, the Office shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The Office may deny, limit, suspend, revoke, reject or terminate the license or registration based on such a conviction consistent with Article 23-A of the Correction Law; and

(iii) where the criminal history record of a current licensee or registrant of a child care facility or program reveals a charge for any crime, the Office shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The Office may suspend the license or registration based on such a charge where necessary to protect the health and safety of children in the facility or program. The licensee or registrant must cooperate with the Office and comply with the direction or directions of the Office to protect the health and safety of the children in care.

(5) Current Employees, Caregivers, Volunteers and Adult household members.

(i) where the criminal history record of a current employee, caregiver, or volunteer for any child care facility or program, or any person age 18 or over residing in a family or group family day care home, reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of Section 390-b of the Social Services Law, the Office shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The Office shall direct the licensee or registrant to terminate the employee caregiver, or volunteer based on such a conviction, and the licensee or registrant shall comply with such direction, unless the Office determines, in its discretion, that the continued presence of the employee, caregiver, or volunteer in the center or program will not in any way jeopardize the health, safety or welfare of the children in the facility or program. If the Office determines, in its discretion, that the continued presence of a person age 18 or over residing in a family or group family day care home will not in any way jeopardize the health, safety or welfare of the children in the home, the Office either shall direct the licensee or registrant not to permit the person to have any contact with children receiving child care, or impose any other reasonable condition necessary to protect the health, safety or welfare of the children in care;

(ii) where the criminal history record of a current employee, caregiver or volunteer for any child care facility or program, or any person age 18 or over residing in a family or group family day care home, reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of *subdivision (3)* of section 390-b of the Social Services Law, the Office shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The Office may direct the licensee or registrant to terminate the employee, caregiver or volunteer based on such a conviction, and the licensee or registrant shall comply with such direction, consistent with Article 23-A of the Correction Law. The Office may direct the licensee or registrant that a person age 18 or over residing in a family or group family day care home not be permitted to have any contact with children receiving child care or impose any other reasonable condition necessary to protect the health, safety or welfare of children; and

(iii) where the criminal history record of a current employee, caregiver or volunteer for facility or program, or any person age 18 or over residing in a family or group family day care home, reveals a charge for any crime, the Office shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The licensee or registrant must cooperate with the Office, and comply with the direction or directions of the Office to protect the health and safety of the children in care.

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.

Consensus Rule Making Determination

The New York State Office of Children and Family Services (“Office”) would like to propose a consensus rule for adoption in accordance with Section 202 of the State Administrative Procedure Act. It is the Office’s determination that no person is likely to object to adopting the proposed rule on a consensus basis, because the proposed rule is to correct a technical error, and is otherwise non-controversial. If adopted, the proposed rule will result in correctly identifying a Social Services Law citation in the regulation found at 18 NYCRR § 413.4(e). Currently, there is a “3” missing in what should have been cited as Social Services Law § 390-b(3)(a)(i).

Job Impact Statement

Section 201-a of the State Administrative Procedure Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State. The regulatory change being proposed by the New York State Office of Children and Family Services (“Office”) will result in correctly identifying a Social Services Law citation. In the current regulation found at 18 NYCRR § 413.4(e) a “3” is missing in what should have been cited as Social Services Law § 390-b(3)(a)(i). The Office is confident that implementing a regulatory change to correct this citation to the Social Services Law will not cause the loss of jobs in child care programs.

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-37-14-00001-E

Filing No. 756

Filing Date: 2014-08-27

Effective Date: 2014-08-25

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

Action taken: Addition of Part 418 and Supervisory Procedures MB109 and 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

Excluding persons servicing loans made under the Power New York Act from the mortgage loan servicer rules is necessary to facilitate the immediate implementation of such loan program so that the anticipated energy efficiency benefits can be realized without delay.

Subject: Registration and Financial Responsibility Requirements for Mortgage Loan Servicers.

Purpose: The rule implements provisions of the Subprime Lending Reform Law (Ch. 472, Laws of 2008) amending Article 12-D of the Banking Law to require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). Part 418 sets forth application, exemption and approval procedures for registration as a mortgage loan servicer (MLS) and financial responsibility requirements for applicants, registrants and exempted persons. Supervisory Procedure MB 109 sets forth the details of the application procedure. Supervisory Procedure MB 110 sets forth the procedure for approval of a change of control of a registered MLS.

Substance of emergency rule: Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including "Mortgage Loan", "Mortgage Loan Servicer", "Third Party Servicer" and "Exempted Person".

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a "change of control" of a

servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies its registration can be reinstated. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies). The financial responsibility requirements include a required net worth (as defined in the section) of at least \$250,000 plus 1/4 % of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least \$250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of \$300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding \$4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depository institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent of Financial Ser-

vices (formerly the Superintendent of Banks) must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 24, 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.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the "Subprime Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. (Note that under Section 89 of Part A of Chapter 62 of the Laws of 2011, the functions and powers of the banking board have been transferred to the Superintendent.)

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative objectives.

The Subprime Law is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

The regulations implement the first component of the mortgage servicing statute – the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

The Department has separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

3. Needs and benefits.

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loan servicers.

Previously, the Department of Financial Services (formerly the Banking Department) regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided

poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance.

While minimum standards for the business conduct of servicers is the subject of another emergency regulation which has been promulgated by the Department. (3 NYCRR Part 419) Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing mortgage loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are divided into two parts. The Department had separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419)

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

Under Section 418.2, a person servicing loans made under the Power New York Act of 2011 will not thereby be considered to be engaging in the business of servicing mortgage loans. Consequently, a person would not be subject to the rules applicable to MLSs by reason of servicing such loans.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is \$3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this state.

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 potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process is virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly

complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer – collecting consumers' money and acting as agents for mortgagees in foreclosure transactions – the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance schedule.

The emergency regulations will become effective on September 17, 2012. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers were given until October 15, 2011 to file an application for registration.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law") Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

Job Impact Statement

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

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

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

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Restrictions on the Use of Clenbuterol in Standardbred Racing

I.D. No. SGC-37-14-00005-P

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

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

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

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

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

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

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

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

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

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

4. Costs:

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

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

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

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

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

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

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

This proposal only authorizes the Commission to engage in its own enforcement action when there is an unsupervised or excessive administration of the prescription drug clenbuterol. Such regulation will serve to enhance the integrity of racing and the health and safety of racehorses, and the medication will continue to be permitted for its beneficial effects. This rule will not impose an adverse economic impact on reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. SGC-37-14-00006-P

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

Proposed Action: Amendment of section 4043.2(i)(2) of Title 9 NYCRR.

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

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

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

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

3. Needs and benefits: This rulemaking is necessary to make it possible for the Commission to regulate corticosteroid joint injections effectively with laboratory thresholds that are violated only when a thoroughbred horse races too soon after receiving such a treatment.

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

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

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

4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting of Standardbred Corticosteroid Joint Injections to the Commission

I.D. No. SGC-37-14-00007-P

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

Proposed Action: Amendment of section 4120.4 of Title 9 NYCRR.

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

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

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

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

§ 4120.4. Trainer's responsibility.

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

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

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

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

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

Regulatory Impact Statement

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

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

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

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

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

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

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

4. Costs:

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

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

There will be no costs to local government because the New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel horse racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission relied on its experience collecting such information from thoroughbred horsepersons.

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

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

7. Duplication: None.

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

9. Federal standards: None.

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

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

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

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

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Restricted Time Periods for Clenbuterol Use on Standardbred Racehorses

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

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

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

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

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

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

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

4120.3. *Equine drug thresholds; per se*

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

[(17) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma.]

The rule making would revise the proposed amendment to subdivision (g) of Section 4120.2, as follows:

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

[[(5) clenbuterol, except as provided in subdivision (k) of this section;]]

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

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

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

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

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

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

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

3. Needs and benefits: This revised rule making is necessary to create

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

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

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

4. Costs:

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

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local government because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The revised proposal limits the use of clenbuterol to 14 days before a horse's next race only when the horse is returning to racing after a lay-off of 30 days or more, thus requiring trainers to treat a horse's respiratory ailments with a different medication only when such treatment alternatives will not interfere with the horse's racing schedule. Based on its experience regulating standardbred racing, the Commission does not believe the rule making will result in significant costs.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives: This rule amendment is based upon the finding and recommendations of the RMTC and the ARCI and the comments received at the hearing. No other alternatives were considered.

9. Federal standards: None.

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

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

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

Assessment of Public Comment

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

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Per Se Thoroughbred Regulatory Thresholds for Equine Drugs

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

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

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

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

Subject: Per Se thoroughbred regulatory thresholds for equine drugs.

Purpose: To enhance the integrity and safety of thoroughbred horse racing by adopting Per Se thresholds for 24 common medications.

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

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

Section 4043.3. Equine drug thresholds; per se

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

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

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

(3) Butorphanol:

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

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

(4) Clenbuterol:

(i) 140 pg/ml in urine; or

(ii) any clenbuterol in plasma;

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

(6) Detomidine:

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

(ii) any detomidine in plasma;

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

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

(9) DMSO: 10 mcg/ml in plasma;

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

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

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

- (13) Glycopyrrrolate: 3 pg/ml in plasma;
 (14) Ketoprofen: 10 ng/ml in plasma;
 (15) Lidocaine: 20 pg/ml of total 3-hydroxylicocaine 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 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.

Revised rule compared with proposed rule: Substantial revisions were made in section 4043.3(a) and (b).

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

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

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

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

3. Needs and benefits: This revised rule making is necessary to make it an automatic ("Per Se") rule violation in New York to exceed a set of national regulatory laboratory thresholds for 24 drugs that are among the most commonly used to provide veterinary care close to race day.

Section 4043.3(a) of the proposed rule would establish as Per Se rule violations in New York the regulatory laboratory thresholds 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.

Subdivision (a) has been revised to state explicitly that a violation occurs when a thoroughbred threshold is exceeded and to improve the technical description of test uncertainty for quantified laboratory test results.

The revised rule omits a previously proposed subdivision (b). The original concept of RMTC and ARCI included a limit-of-detection threshold for all other, "unapproved" drugs (the "LOD-threshold"), which reduces a lengthy list to just 24 medications that are allowed to treat illness and injury of any racing horse close to race day. RMTC instructed that "approved" intra-articular corticosteroids, for example, "are the only [ones] that can be present in race-day samples" in February 2013. NYTHA's attorney in March 2013 stated, "The presence of ... any other medication or drug in a sample collected from a horse will be strictly prohibited" and "You can't find any other sport that allows just 24 drugs." An RMTC official approved the wording of New York's LOD-threshold proposal in March 2013. ARCI wrote that all other substances "will be considered 'prohibited,' meaning they should not be present in a post-race sample at any level [except for suggested limits for endogenous substances and environmental contaminants]" in April 2013. The New York draft proposal was shared as a reference document with other ARCI member states in July 2013. The Commission proposed the LOD-threshold in November

2013, then such national leaders independently "backed away" from recommending a "level of detection" policy and now encourage all racing commissions to continue their separate policies with regard to "unapproved" drugs.

New York is known for equine drug rules that are among the strictest in the nation to restrict the use of legal (including "unapproved") drugs on horses and to require trainers to disclose what treatments their horses have received. These restrictions reduce the field size of New York racing, sometimes substantially, such as when horsepersons are unable to plan far enough ahead to discontinue some of the drug regimens that their home states permit. New York's restrictions nevertheless serve the salutary purpose of enhancing the health and safety of horses and jockeys, and the integrity of New York racing. Were the Commission to adopt a much stricter, LOD-threshold, without the support of other racing jurisdictions or national leaders, however, it may severely reduce the horses that ship in to race in New York, cause racehorses to compete in less protective jurisdictions, and ultimately result in net damage to racehorses and New York racing. As a result, the Commission has revised its original proposal to eliminate its proposed subdivision (b), the LOD-threshold.

The remaining proposed thresholds for 24 drugs will 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 endanger a horse or jockey or affect race performance will be present in the horse during a pari-mutuel race. The rule will make it an automatic or "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 before a horse's next race. Between them, the two rules will provide clear standards governing when and how various drugs or other substances can be administered to race horses.

The new rule will provide an advantage for horsepersons helping to make impermissible concentrations of 24 common drugs in a horse on race day more uniform among all the racing jurisdictions. Most racing commissions, including the neighboring mid-Atlantic states and Massachusetts, have publicly pledged to adopt these thresholds. 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 home 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 more 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 and for the health and safety of the horses and jockeys.

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 or direct evidence (e.g., veterinary records) of the time of administration to demonstrate that an administration occurred within a 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 and help protect the health and safety of thoroughbred race horses and their exercise riders and jockeys with uniform Per Se thresholds for 24 common equine drugs, and will encourage the entry into New York races of more horses that are stabled out-of-state.

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.

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.

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

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

Assessment of Public Comment

One public comment was received in response to the publication of the proposed rule-making in the December 4, 2013 State Register. A member of the public wrote in support of any legitimate attempt to curtail an alleged widespread abuse of medication in horse racing. The Commission agrees with this suggestion and its revised proposal will result in greater ease of enforcement of agency rules that restrict the use of equine drugs in a manner that promotes the participation of racehorses in New York and enhances the health and safety of horses and jockeys.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emergency Medical Services

I.D. No. HLT-37-14-00003-P

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

Proposed Action: Amendment of Part 800 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3002

Subject: Emergency Medical Services.

Purpose: To clarify terminology, eliminate vagueness, address legal statutes/crimes and incorp. modern professional, ethical and moral standards.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): This proposal amends Sections 800.3, 800.6, 800.8, 800.9, 800.15 and 800.16 of Part 800 (Emergency Medical Services) of Title 10 of the Official Code of Rules and Regulations of the State of New York (10 NYCRR) particularly as they relate to certification, recertification and continuing medical education recertification requirements, required conduct of every person certified under Part 800 and the suspension or revocation of certification.

Section 800.3 of 10 NYCRR contains all the definitions that apply to Part 800 (Emergency Medical Services). Definitions amended in this proposal are "emergency medical technician", "primary territory", "course sponsor", and "learning contract". New definitions added are "continuous practice", "criminal offense", "incompetence", "negligence", "non-criminal offense", "patient abandonment", "patient abuse", "patient contact", "regulatory violation", "scope of practice", "state approved protocols", and "treatment".

Section 800.6 of 10 NYCRR sets forth the Initial Certification Requirements and has been revised to remove the emergency medical technician-defibrillation (EMT-D) category as a level for which certification is available. This section is also revised to strengthen the language regarding criminal offenses and incorporates references to the new Section 800.3 definitions as offenses that applicants must not have been convicted of in order to qualify for initial certification.

Section 800.8 of 10 NYCRR outlines the Recertification requirements for applicants. This section adds that an applicant must enroll in a recertification course provided by an approved course sponsor as set forth in Section 800.20 (Course Sponsors) and complete the requirements for recertification at the level at which recertification is sought. Also added is that, within one year after passing the practical skills examination, the applicant must pass the State written certification examination for the level at which the certification is sought except at the certified instructor coordinator level and certified lab instructor level. Similar to the Section 800.6 provisions it strengthens the language regarding criminal offenses and incorporates references to the new Section 800.3 definitions as offenses that applicants must not have been convicted of in order to qualify for recertification.

Section 800.9 of 10 NYCRR contains the Continuing Medical Education Recertification provisions previously titled Continuing Education. This section authorizes candidates who have demonstrated competence in applicable behavioral and performance objectives, and who have demonstrated completion of appropriate continuing medical education may be entitled to have their certification renewed without being required to successfully complete a state practical skills and written examination. It then sets forth the parameters for recertification using continuing medical education and once again strengthens the language regarding criminal offenses and incorporates references to the new Section 800.3 definitions as offenses that applicants must not have been convicted of in order to qualify for continuing medical education recertification.

Section 800.15 of 10 NYCRR outlines the Required Conduct for every person certified at any level pursuant to Part 800 of 10 NYCRR or Article 30 of the Public Health Law, adhering to currently acceptable prehospital practice standards, maintenance of confidentiality at all times with certain exceptions, and compliance with the terms of a Medical Order of Life Sustaining Treatment (MOLST) form or a non-hospital Do Not Resuscitate (DNR) form, or a patient's DNR bracelet or necklace with certain exceptions.

Section 800.16 of 10 NYCRR sets forth the Suspension or Revocation of Certification provisions. This section expands the criteria for which a suspension or revocation of certification will apply incorporating the new definitions contained in Section 800.3 and failure to meet the requirements contained in Sections 800.6, 800.8, 800.9 and 800.15.

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: regsqa@health.ny.gov

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Article 30 (Emergency Medical Services), Section 3002. Section 3002 sets forth the provisions creating the New York State Emergency Medical Services Council and specifies that it shall have the power, by an affirmative vote of a majority of those present, subject to approval by the Commissioner, to enact, and from time to time, amend and repeal, rules and regulations establishing minimum standards for ambulance services, ambulance service certification, advanced life support first response services, the provision of prehospital emergency medical care, public education, the development of a statewide emergency medical services system, the provision of ambulance services outside of the primary territory specified in the ambulance services' certificate and the training, examination, and certification of certified first responders, emergency medical technicians, and advanced emergency medical technicians; provided, however that such minimum standards must be consistent with the staffing standards established by the staffing standards, ambulance services and advanced life support first response services provisions outlined in PHL Section 3005-a.

Legislative Objectives:

The purpose of PHL Article 30 is to promote the public health, safety and welfare by providing certification for pre-hospital care providers and all advanced life support first response and ambulance services.

Needs and Benefits:

The Department's Bureau of Emergency Medical Services (BEMS) is charged with enforcement of 10 NYCRR Part 800 (State Emergency Medical Services Code). When the NYS EMS system was founded, the original PHL Article 30 and Title 10 New York Codes Rules and Regulations (NYCRR) Part 800 provisions addressed the provision of emergency medical services at the time; incorporating the practices, standards, ethics, morals, crimes and punishments of the day. In the early 1990's, PHL Article 30 and 10 NYCRR Part 800 underwent major revisions so as to reflect changes that had occurred over the previous 20 years in EMS and health care and society as a whole. Moreover, these significant changes were enacted so as the Department could maintain the standard of an essential public health service (EMS) provided in the most responsible manner.

Now again, another 20 years later, the Department is faced with trying to apply outdated rules to a modern system. It is impractical and difficult for the Department to try to update what was long ago determined an essential public health service under rules that no longer apply, as well as try to apply rules from two decades ago to situations that did not exist two decades ago.

Of greatest concern is that the current rules make it difficult for the Department to adequately regulate an essential public health service, and for the Commissioner to adequately protect the health and welfare of

patients of that service. Just as the Commissioner relies on clear and specific regulations and standards to monitor and discipline physicians in the course of protecting the public, so too must the Commissioner have clear and specific regulations to monitor and discipline EMS providers in order to protect the public.

This proposal would enhance the Department's ability to monitor and review the candidates for EMS certification and recertification. Given that the atmosphere in which these providers work and the trust instilled in them, it is important that the Department be able to ensure the veracity of these individuals to the best of its ability for the safety and well being of the patients and the general public. The proposed regulatory changes will not have any detrimental effect on the EMS agencies in New York State, and in fact it will help these agencies ensure that they are staffed with quality providers.

Section 800.3 contains the definitions used throughout Part 800. Section 800.6 outlines initial certification requirements, and Sections 800.8 and 800.9 outline recertification requirements and continuing medical education recertification requirements respectively. Section 800.15 specifies the required conduct of every person certified under Part 800 and Section 800.16 sets forth the suspension or revocation of certification provisions. These provisions must be updated and replaced with regulatory language that encompasses the various categories of EMS providers and their authorized scope of practice; clarifies terminology and other provisions; identifies inappropriate conduct by EMS providers which constitutes criminal or other statutory and regulatory violations; enhances enforcement of regulatory compliance and discipline of violators; as well as incorporates modern professional standards.

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

Costs to the regulated parties (EMS providers) will be none; unless the Department finds cause to take action against an EMS provider under the provisions of Sections 800.15 and/or 800.16, at which time (depending on the severity of the case) the EMS provider may be administratively sanctioned including monetary fines, probation, and/or suspension or loss of certification.

Cost to State and Local Government:

Costs to the general public, state and local government will be none. These regulations are directed at the individual EMS provider, not the EMS agency for which the provider works. In that, even if the EMS agency is part of a local municipal government, Department actions taken with respect to Sections 800.15 and or 800.16 will still be upon the individual EMS provider and not the municipality.

Cost to the Department of Health:

Costs to the Department of Health will be none. As stated above these regulations are directed to the individual EMS provider. Department actions taken with respect to Sections 800.15 and or 800.16 will still be upon the individual EMS provider. The Department will not incur any additional costs.

Local Government Mandates:

None. These provisions do not add any additional mandates to local governments.

Paperwork:

No additional new paperwork will be required.

Duplication:

This measure does not duplicate, overlap or conflict with an State or federal statute or rule.

Alternative Approaches:

There are no other viable alternative approaches. Current provisions are outdated and must be updated to reflect appropriate EMS standards and practice.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. This proposal is intended to update outdated Part 800 provisions with language appropriate and applicable to the modern EMS system of today.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not included in accordance with Section 202-b of the State Administrative Procedure Act (SAPA). This regulation does not impose an adverse economic impact, nor reporting, recordkeeping or other compliance requirements on small businesses or local governments. This rule pertains only to individual persons who are certified by the Department to provide pre-hospital emergency care and treatment to sick or injured persons. Small businesses and local governments cannot violate this rule, and therefore cannot be subject to penalties associated with a violation of this rule.

Cure Period:

A cure period was not included in this rule. This regulation is directed at the individual EMS provider, and not the EMS agency for which the provider works. This proposal would provide standards of conduct, oversight, and disciplinary sanctions for EMS providers. Violations of such standards would pose a threat to public health, safety and well-being of the patients served. A cure period would not be appropriate under these circumstances.

Rural Area Flexibility Analysis

The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Signage on School Buses Equipped with Wheelchairs

I.D. No. MTV-37-14-00010-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 section 46.11 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(20)(b)(2)

Subject: Signage on school buses equipped with wheelchairs.

Purpose: To conform signage on school buses related to persons with disabilities with the signage mandated by the Secretary of State.

Text of proposed rule: Subdivision (d) and the last unnumbered paragraph of section 46.11 are amended to read as follows:

(d) On or after November 22, 2014, any new signage relating to accessibility that is installed or replaced on a school bus, which is equipped with a lift to facilitate the transportation of children with disabilities shall display the logo designated by the secretary of state pursuant to section one hundred one of the Executive Law.

The symbol or signage may be a decal or a sign or may be painted on the bus.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

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

Chapter 190 of the Laws of 2014, effective November 22, 2014, requires the Secretary of State to provide that wherever the current universal access of a figure in a wheelchair appears, such symbol shall instead depict a logo with a dynamic character leaning forward with a sense of movement. This law also amends section 375(20)(b)(2) of the Vehicle and Traffic Law to require the Commissioner of Motor Vehicles to promulgate a regulation requiring that any new signage replaced or installed on a school bus equipped with a wheelchair to conform to the new universal symbol designated by the Secretary of State.

The purpose of this rule is provide that on or after November 22, 2014, any new signage relating to accessibility that is installed or replaced on a school bus, which is equipped with a lift to facilitate the transportation of children with disabilities shall display the logo designated by the secretary of state pursuant to section one hundred one of the Executive Law. This shall have not have a negative impact on motor carriers because it applies only to new signage installed or replaced on a school bus; the carrier will not have to revise existing signage to conform to the regulatory requirement.

Since this proposed rule simply conforms Part 46.11 to a statutory mandate, a consensus rule is appropriate.

Job Impact Statement

A JIS is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulation of a Retired 47.7 MW Electric Generation Facility Located in Binghamton, NY Following Its Return to Service

I.D. No. PSC-37-14-00008-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 a petition filed by Binghamton BOP LLC requesting an order that its retired 47.7 MW generation facility, located in the City of Binghamton, NY, will be regulated lightly upon its return to service.

Statutory authority: Public Service Law, sections 2(2-a), (13), 5(1)(b), 64-69, 69-a, 70, 71, 72, 72-a, 105-114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Regulation of a retired 47.7 MW electric generation facility located in Binghamton, NY following its return to service.

Purpose: To consider regulation of a retired 47.7 MW generation facility located in Binghamton, NY following its return to service.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Binghamton BOP LLC on August 22, 2014, requesting relief associated with its application for the issuance of a Certificate of Public Convenience and Necessity, pursuant to Public Service Law § 68, to operate and maintain the petitioner's electric generation facility, the currently-retired 47.7 MW Binghamton Cogeneration Plant located in the City of Binghamton, New York, upon its proposed return to service. The petitioner requests an order providing that the petitioner's facility will be regulated under a lightened regulatory regime consistent with that imposed on other competitive wholesale generators following the return to service. The petitioner also requests a determination that the petitioner is not required to prepare an Environmental Impact Statement. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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.

(14-E-0372SP1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Removing Word "Handicapped" from Accessibility Signs, and Changing Symbol Currently Depicting Static Person and Wheelchair

I.D. No. DOS-37-14-00009-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 add Part 300 to Title 19 NYCRR.

Statutory authority: Executive Law, section 101

Subject: Removing word "handicapped" from accessibility signs, and changing symbol currently depicting static person and wheelchair.

Purpose: To implement Executive Law, section 101, removing certain wording from, and providing new symbol for, "accessibility" signs.

Text of proposed rule: A new Part 300 is added to read as follows: See Appendix in the back of this issue.

Text of proposed rule and any required statements and analyses may be obtained from: David Treacy, NYS Department of State, One Commerce Plaza, Albany, NY 12231, (518) 474-6740, email: David.Treacy@dos.ny.gov

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

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

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

Consensus Rule Making Determination

Part 300 would be added to Title 19 of the NYCRR to implement the requirements of Executive Law, section 101(1), added by Chapter 190 of the Laws of 2014. Section 101 directs the Secretary of State to promulgate regulations necessary to remove the word "handicapped" wherever it appears on signs or other means of communication, and change the current accessibility symbol from one that depicts a static figure and wheelchair to one that depicts a dynamic character with a sense of movement. This new Part includes an image of the new universal symbol of access.

The Department has considered the proposed addition of Part 300 and has determined that this rule making is a consensus rule making based on the expectation that no person is likely to object to its adoption because it merely implements or conforms to non-discretionary statutory provisions, which are set forth in Executive Law, section 101.

Job Impact Statement

A Job Impact Statement is not required for the regulation because it is clear from the nature and purpose of the regulation that it would not eliminate employment positions or opportunities and therefore would have no adverse impact on jobs or employment opportunities in New York State. It is evident from the subject matter of the regulation that it could only have a positive impact or no impact on jobs or employment opportunities.