

# RULE REVIEW

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## Racing and Wagering Board

### Five Year Review of Existing Regulations

Pursuant to section 207 of the State Administrative Procedure Act, notice is hereby provided of rules adopted by the New York State Racing and Wagering Board for the calendar years 2005 and 2000. Public comments on the continuation or modification of these rules are invited and those received by August 1, 2010, will be considered. Please forward comments to the Secretary of the New York State Racing and Wagering Board, 1 Broadway Center, Suite 600, Schenectady, New York 12305-2553 or by electronic mail at [info@racing.state.ny.us](mailto:info@racing.state.ny.us).

The following contains a brief description of each rule, including the statutory authority therefore, and a statement setting forth the justification for the need for each rule and its continuation without further modification.

#### 2005

RWB-40-04-00004-A: Video Lottery Gaming Occupational Licensing. Pari-Mutuel Thoroughbred Racing Rules and Regulations and Pari-Mutuel Harness Racing Rules and Regulations. Amendments made to 9 NYCRR sections 4002.1 and 4101.24. Statutory authority is Tax Law, section 1617-a(a), and Racing, Pari-Mutuel Wagering, and Breeding Law, section 101. This amendment established a new category of New York State Racing and Wagering Board license. The rule provides that the Board shall deem an individual licensed as a video lottery gaming employee upon written notification from the Division of Lottery that said individual will be issued a video lottery gaming license pursuant to Part 2836 of Title 21 of the New York Code of Rules and Regulations if licensed by the board. This rule is necessary to enable the Division of the Lottery to carry out its responsibilities with respect to Chapter 383 of the Laws of 2001, as amended by Chapters 85 of the Laws of 2002 and 62 of the Laws of 2003. These laws require that racetrack employees involved in the operation of video lottery gaming are licensed by the Board. This amendment is necessary to give force and effect to the law, to ensure that racetrack employees involved in the operation of video lottery gaming are licensed by the Board and it should be continued without modification.

RWB-48-04-00011-A: Programming and Naming of Jockeys Entered to Ride Thoroughbred Horses. Amendment to 9 NYCRR section 4025.33. The statutory authority is Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 218 (formerly 212). This amendment repealed a previous rule that a backup rider be named to ride the second call horse where a jockey is programmed to ride more than one horse in a race. Since the repeal of the previous obsolete rule, the racing secretary's offices for the respective thoroughbred tracks have been able to ensure proper jockey assignments with adequate notice to the betting public. If a jockey is listed on two horses after post positions are assigned, the race secretary will contact the jockey's agent to determine which horse the jockey will ride. The racing secretary will then check the "Also Eligible" list of unassigned jockeys to ride the horse not selected by the original jockey. This amendment eliminated an outdated and obsolete administrative requirement that the backup jockey be listed in the printed program. The back-up jockey

assignment can be publicized using electronic means, similar to announcements for late scratches. The new rule alleviated the burden on trainers, jockeys' agents, the racing secretary and the stewards. The new rule works well and should be continued without modification.

RWB-09-05-00001: Drug Testing Horses for Reserpine, Fluphenazine, Erythropoietin and Darbepoietin. Pari-Mutuel Thoroughbred Racing Rules and Regulations. Amendment of sections 4043.6, 4043.7, 4038.18, 4120.10, 4120.11, 4109.7 and 4113.3 of Title 9 NYCRR. Statutory authority is Racing, Pari-Mutuel Wagering, and Breeding Law, sections 101, 301 and 902. These amendments provide an effective mechanism to detect and deter the use of potent tranquilizers reserpine and fluphenazine, and the use of Erythropoietin (EPO) and Darbepoietin, synthetic versions of a naturally-occurring hormone which stimulates the bone marrow to make more red blood cells. This rule also provides for the exclusion from racing of those horses that are the subject of a positive test until there is a subsequent negative test. This rule is necessary to provide an effective mechanism to detect and deter the abuse of controlled substances with the intention of gaining an advantage in horse racing. These rules are necessary to assure the public's confidence and continue the high degree of integrity in racing at pari-mutuel betting tracks. The undeterred use these drugs and substances undermines the public confidence in the integrity of racing with corresponding loss of wagering handle. The abuse of such regulated drugs and substances poses a threat to the health of the horse and the safety of both the equine and human participants. This rule should be continued without modification.

RWB-10-05-00003-A: Definition of Bingo "Occasion". Bingo Rules and Regulations. Amendment of 9 NYCRR 5800.1(q). Statutory authority is Executive Law, article 19-B, section 435. This rule is necessary to establish a minimum number of games offered during a single bingo occasion, which is 10 games when an organization is conducting more than one bingo occasion. The rule is necessary to preserve certain traditional social elements of bingo, and allows for ample time for inspection and supervision by inspectors. This rule is necessary to provide clear guidance to licensed bingo organizations, players, inspectors, and municipal clerks who issue bingo licenses. The rule should be continued without modification.

RWB-20-05-00021-A: Refund of Pick Six and refunds Where "No Contest" is Declared. Pari-Mutuel Thoroughbred Racing Rules and Regulations. Statutory authority is Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 235 (formerly 227), 236 (formerly 228) and 238 (formerly 229). Amendments were made to 9 NYCRR section 4011.23, subdivisions (b), (c), (d), (h), (i), (l) and (m). This rule allows for the refund of the Pick Six wager when there are three or less races contested for the Pick Six contest. If one of the six races is moved from the turf to the dirt, the race would be considered a "no contest." This rule also changes the amount of Pick Six "take-outs" to conform with statute [RPMWBL sections 236 and 238 (formerly 228 and 229)], which was amended in May 2003. This amendment also allows tracks to publish betting information regarding possible winning pools when the last leg of the Pick Six remains. This turf/dirt change amendment is necessary because such a substantive change has a material affect on the potential outcome of the Pick Six leg, and

allowing for a “no-contest” declaration benefits the betting public when such material affect was not contemplated when they placed their original Pick Six wager. The “take-out” amendment is necessary to conform with statute and give force and effect to the law. The amendment regarding track operators sharing Pick Six pool information regarding possible winners of the Pick Six will provide transparency and promote interest in the Pick Six. This rule should be continued without modification.

RWB-10-05-00004-A: Public Inspection of Records. Repeal section 5400.1(i) of 9 NYCRR and renumber sections 5400.1(j) through 5400.1(i). Statutory authority is Public Officers Law, section 87(1)(b). The repeal of 9E NYCRR 5400(1)(i) facilitates the FOIL access procedure at the Racing and Wagering Board insofar as it removed the provision that required the Board to notify any person or entity who has records on file with the Board whenever a FOIL request is submitted to the Board. The repeal of 9E NYCRR 5400(1)(i) is consistent with the legislative declaration in the Public Officers Law, which states “the people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society.” This amendment was adopted because previous Board Rule 5400(1)(i) was determined to be an obstacle to the Board’s ability to respond to FOIL requests in a timely manner. The repeal of 9E NYCRR 5400(1)(l) was consistent with the County of New York Supreme Court’s November 2003 finding in *Daily Racing Form, Inc. v. The State of New York Racing and Wagering Board*, wherein the court stated “The Racing and Wagering Board’s practice of notifying every entity it supervises of a FOIL request for records and arranging a prior review and screening of the Board’s proposed response, is in direct conflict with the Public Officers Law and so delays production of records that it vitiates the public access right it is intended to implement.” This repeal should be continued without modification.

#### 2000

RWB-47-99-00001-A: Bell Jar Ticket Art Approval Rule. Amendment to 9 NYCRR 5608.4. Statutory authority is General Municipal Law, Article 9-A, sections 186 and 188-a(1). This rule amends the bell jar ticket regulations by allowing manufacturers of bell jar tickets to submit, for Board approval, artist’s renderings of bell jar tickets, payout cards and flares. This rule amendment removes an inconsistency between Board Rule 5608.4 and Section 195-n(1) of the General Municipal Law. Previously, the Board rules required that an actual ticket or flare be submitted for approval. This was costly because it required full production of the ticket, payout card or flare. Allowing the submission of an artist’s rendition alleviates the burden and cost on the bell jar ticket manufacturer, and therefore the rule should be continued without modification.

RWB-15-00-00005-A: Operation, Licensing, Conduct and Enforcement of Games of Chance and Bingo. Games of Chance Rules and Regulations, and Bingo Rules and Regulations. Amendment of 9 NYCRR, sections 5600.1, 5602.1, 5603.7, 5607.13, 5611.1, 5611.2, 5623.1, 5814.6, 5815.11 and Parts 5608, 5620, 5622, 5624, and 5820. Statutory authority is General Municipal Law, Article 9-A, sections 186 and 188-a; Executive Law, Article 19-B, section 435. This rule is necessary to ensure compliance and consistency with legislative changes in the General Municipal Law, Articles 9-A and 14-H. The rules strengthen the Board’s enforcement capabilities authorized by law, thereby preventing the infiltration of undesirables, the diversion of proceeds from charitable organizations, and the erosion of the legitimate games of chance and bingo operations conducted by licensed authorized organizations. These amendments give force and effect to the comprehensive bell jar ticket statute and should be continued without modification.

RWB-38-00-00001-A: Occupational License Renewal Dates. Amendment to 9 NYCRR 4002.7, 4101.24(d), and 4205.1(j). Statutory authority is Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 213, 309 and 409. This rule changed the renewal date for persons who hold occupational licenses in the areas of thoroughbred racing, harness racing and quarterhorse racing. Occupational licenses are now issued based upon the birthdate of licensees rather than upon a calendar year basis. This rule has proven valuable in allocating the volume of applications over the span of a calendar year, thereby reduc-

ing the administrative logjam that used to occur. Under this rule, licenses are processed in an orderly and timely fashion. This rule should be continued without modification.