

RULE REVIEW

Office of Children and Family Services

Part 1 - Review of Existing Regulations for 2008, 2009 and 2010

Pursuant to the State Administrative Procedure Act (SAPA) section 207, the Office of Children and Family Services (OCFS) is required to review regulations that were promulgated five years previously, and at prior five year intervals, to determine whether to continue or modify the regulations.

The following information relates to regulations promulgated in 2000 and 2005 that are scheduled for review during 2010:

1. CFS-01-05-00006-P: Statewide Automated Child Welfare Information System (SACWIS)

Amended Parts 428 and 441 of and added Part 466 to 18 NYCRR to implement the State's SACWIS system to improve its functionality for child welfare workers time and to meet the requirements of federal law and regulations and to protect Federal financial participation.

Analysis of the need for the rule: These regulations are necessary to establish standards for the use of SACWIS by child welfare workers and to meet standards for federal financial participation.

Legal basis for the rule: Social Services Law, sections 20(3)(d), 34(3)(f), and 446.

2. CFS-09-05-00011-A: Uniform case records in child welfare cases

Amended 18 NYCRR sections 404.1(d)(2), 432.2(b)(3), 441.7, 465.1, 466.4 and Part 428 to support the uniform case record component of CONNECTIONS New York's statewide automated child welfare information system and to promote better child welfare practices.

Analysis of the need for the rule: These regulations are needed to establish standards for the uniform case records completed by child welfare caseworkers. Part 28 of the regulations were updated in 2005 to comply with the permanency hearing report and other reporting requirements enacted by Chapter 3 of the Laws of 2005.

Legal basis for the rule: SSL sections 20(3)(d), 153-k, 409-(1), 427(1) and 446.

3. CFS-09-05-00010-P: Emergency Approval or Certification of a Foster Home

Amended 18 NYCRR sections 443.1 and 443.7 to expand the circumstances in which an authorized agency may approve or certify a foster home on an emergency basis, to include voluntary placements, persons in need of supervision (PINS) and youth subject to juvenile delinquency proceedings.

Analysis of the need for the rule: These regulations are necessary to establish standards for the emergency approval and certification of foster homes and to satisfy federal requirements for foster home certification. Section 443.7 was further amended in 2007 to comply with federal and state requirements governing criminal history background checks of foster parents and others residing in the foster home.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f) and 378(5).

The following information relates to regulations promulgated in 1999 and 2004 that are scheduled for review during 2009:

1. CFS-21-03-00011: Subsidized child care services

Amended 18 NYCRR Part 415, Subparts 358-2, 358-3 and sections 403.1, 404.1, 404.5, 404.6, 404.8, 405.1, 405.2, 405.3 and 628.3 to establish standards for the provision of subsidized child care services by social services districts.

Analysis of need for the rule: These regulations are needed to provide standards regarding eligibility for and allocation of public subsidies for child care services.

Legal basis for the rule: Social Services Law (SSL) sections 410(1), and 410-u through 410-z.

2. CFS-30-03-00003: Administration of medication to children in day care

Amended 18 NYCRR sections 413.2, 414.11, 415.4, 416.11, 417.11, 418-1.11 and 418-2.11 governing the ability of child day care providers licensed or otherwise regulated by OCFS to administer medications to children in child day care settings.

Analysis of need for the rule: These regulations establish standards that child day care providers must meet in order to receive approval to administer medications to children in care.

Legal basis for the rule: SSL section 390, Chapter 20 of the Laws of 2004

3. CFS-52-96-00019: Foster care and adoption standards

Amended 18 NYCRR sections 421.18(n)(1), 430.9(c)(1) and (2), 430.1(c)(2)(v) and (vi), 430.12(c)(1)(ii)(d) and (e), 430.12(c)(2)(I)(a), 430.12(d)(2)(iii), and 431.9(a), added 421.26, 426.5(g), 428.3(g), 430.11(c)(2)(vii)-(ix), 430.12(c)(1)(ii)(f) and 431.9(e) to provide foster care and adoption standards relating to the implementation of the Federal Adoption and Safe Families Act of 1997 (P.L. 105-89).

Analysis of need for the rule: These regulations are necessary because they establish standards that safeguard children in foster care, provide for timely planning for permanency, and maintain New York State's eligibility for Title IV-E assistance.

Legal basis for the rule: SSL sections 372-b(1) and 409-f(1)

The following information relates to regulations promulgated during 1998 and 2003 that were scheduled for review during 2008:

1. CFS-26-02-00011: Health and Safety Requirements for Child Day Care Providers

Amended 18 NYCRR Parts 413, 414, 416, 417 and 418 to enhance health and safety requirements for child day care providers, by including criminal history background checks for staff, increased inspection and enforcement provisions, and other safety enhancements.

Analysis of need for the rule: The regulations were adopted to protect the health, safety and welfare of children receiving child day care and to delete unnecessary and/or outdated regulatory requirements.

Legal basis for the rule: SSL sections 390, 390-a and 390-b.

2. 9 NYCRR Subpart 171-2: Resident Mail

This Subpart was added to better describe the policies and procedures governing non-privileged correspondence to and from residents of facilities operated by OCFS.

Analysis of need for the rule: The rules are necessary to balance the residents' interest in the privacy of their mail with the safety and well-being of all residents. In 2008, OCFS adopted revisions to Subpart 171-2 as CFS-15-07-00010.

Legal basis for the rule: Executive Law sections 501 and 504
3. 9 NYCRR Subpart 171-3: Resident Privileged Mail

This Subpart was added to better describe the policies and procedures governing privileged mail sent and received by residents of facilities operated by OCFS.

Analysis of need for the rule: Residents of OCFS operated facilities have the right to privileged correspondence to or from the resident's legal representative or attorney of record, certain governmental officials, such as United States or New York State government officials, legislative representatives, and the judiciary. These rules are necessary to provide standards for the protection of residents' interest in the privacy of privileged mail.

Legal basis for the rule: Executive Law sections 501 and 504
4. 9 NYCRR Subpart 179-1: Disciplinary Actions

Subpart 179-1 was added to provide procedures for conducting hearings for violations of behavioral standards for the residents of secure facilities operated by OCFS.

Analysis of need for the rule: Residents of OCFS operated facilities have the right to fundamental due process when disciplinary action results in the loss of certain privileges.

Legal basis for the rule: Executive Law sections 501, 504, 504-a and 508

5. 9 NYCRR Subpart 179-4: Resident Rules

Subpart 179-4 was added to provide behavioral standards for residents of facilities operated by OCFS.

Analysis of need for the rule: Residents of OCFS operated facilities have the right to be informed about the rules that they must follow and for such rules to be set forth in writing.

Legal basis for the rule: Executive Law sections 501, 504, 504-a and 508

Public comments on the above are invited and will be accepted through (+45 days from date of publication) and should be directed to: Laura Etlinger, Esq., Bureau of Legislation and Special Projects, NYS Office of Children and Family Services, 52 Washington Street, Room 139N, Rensselaer, New York 12144. Email address: Laura.Etlinger@ofcs.state.ny.us.

Part 2 - Report of 2007 Review of Existing Regulations

In January, 2007, OCFS published in the State Register, a list of regulations adopted by OCFS in 2002. The regulatory sections reviewed are listed below. No comments were submitted in response to the listing of the regulations to be reviewed. After reviewing the regulations on that list, OCFS has determined the following:

1. CFS-42-01-00004. Market rates for subsidized child care. 18 NYCRR 415.9. These regulations were modified in 2002, and thereafter reviewed and modified again in 2004, 2006 and in early 2008, in accordance with the federally required biennial market rate survey of child care providers

2. CFS-34-02-00001. Business Enterprise Program. 18 NYCRR Part 729. The regulations are continued without modification as they are required by section 8714-a of the Unconsolidated Laws, and are deemed necessary by OCFS to continue the effective administration of the Commission for the Blind and Visually Handicapped Business Enterprise program

3. CFS-35-02-00002. Adoption subsidies for foster children. 18 NYCRR section 421.24. These regulations promote the adoption of foster children who have resided in a foster home for six months or more. 18 NYCRR section 421.24 was modified in 2008 to allow payment of adoption subsidies prior to finalization of adoptions to approved adoptive parents without requiring that the adoptive parent also be certified or approved as a foster parent

4. CFS-42-02-00021. Foster family boarding homes. 18 NYCRR Part 443. The regulations require the same standards for approved foster homes and certified foster homes pursuant to federal requirements.

Those federal requirements remain in effect, therefore, continuation of the regulations is deemed necessary by OCFS. Several sections of Part 443 have been amended and updated since 2002 to, for example, expand the circumstances in which an authorized agency may approve or certify a foster home on an emergency basis and reflect changes in caseworker contact requirements

5. CFS-23-01-00001-A. Criminal history record checks. 18 NYCRR sections 421.15(c)(8) and 421.27(d)-(g) and (k). These amendments relating to state criminal history record checks applicable to the application process for prospective adoptive parents were enacted to implement the requirements of SSL section 378-a(2). The regulations were modified in 2007 (CFS-27-07-00003) to incorporate new State and federal statutory provisions that require federal criminal history record checks and, by emergency regulation in 2008, to reflect a federal requirement for mandatory disqualification of applicants who are convicted of certain crime

Racing and Wagering Board

As required by State Administrative Procedure Act Section 207, the following rules were adopted by the New York State Racing and Wagering Board in 2001 and 2006 and must be reviewed in 2011. Public comments on the continuation or modification of these rules are invited and those received by April 15, 2011, will be considered. Comments should be submitted to the Secretary to the New York State Racing and Wagering Board, 1 Broadway Center, Suite 600, Schenectady, New York 12305-2553 or by electronic mail to info@racing.gov.ny.

1. Rule I.D. No.: RWB-34-01-00004-A (Effective October 24, 2001)

Uncoupling Rule, section 4025.10 of Title 9 NYCRR.

Description: This rule amends the thoroughbred rules to allow for uncoupling for pari-mutuel wagering of thoroughbred horses with common ownership or training in races with a gross purse of \$1 million or more. Specifically, this amendment created a new subdivision (g) under Section 4025.10 to state: "Notwithstanding the provisions of subdivisions (b) and (d) of this rule, no entry shall be coupled by reason of common ownership or training in any race in which the gross purse is one million dollars or more, provided however that the provisions of subdivision (e) of this rule shall continue to be applicable in any such races. In any race subject to the provisions of this subdivision, the racing secretary shall have the authority to establish a mutuel field and coupled entries in any race with more than 14 starters."

Analysis of the Need for the Rule: This rule is necessary to generate greater revenue in support of horse racing and government by allowing more betting interests at premier thoroughbred races. Coupling is when two horses are entered in the same race and are considered a single betting interest because both horses are owned by the same owner or trained by the same trainer. In general, the purpose of coupling is avoid potential manipulation of betting pools. However, in contests where the gross purse is more than \$1 million, the Board has determined that there is sufficient scrutiny and oversight to uncouple the betting interests without compromising the integrity of pari-mutuel wagering. Such contests are rare, and include such prestigious hallmark races as the Belmont Stakes, the Breeders' Cup and the Travers Stakes. The size of the betting pools in such races are extraordinarily large and by creating additional betting interests in such races, additional revenue is generated. The Board has followed the effectiveness of this rule since adoption and in July 2010, the Board further adopted a rule amendment (RWB-16-10-00034) that relaxed coupling requirements for less prestigious thoroughbred races. The 2010 rule amendment permitted the uncoupling of two horses in any race when the horses were trained by the same trainer, but owned by different owners.

Legal Basis for the Rule: Racing, Pari-Mutuel Wagering and Breeding Law Section 101.

2. Rule I.D. No.: RWB-40-05-00001-A (Effective January 4, 2006)
Equine Medication Rules, sections 4043.2 and 4120.2 of Title 9 NYCRR.

Description of the Rule: Authorizes and prohibits drugs and medi-

cations used to treat race horses prior to a race to eliminate obsolete drugs and medications, add new drugs and medications, and reclassify the timing of administration of certain new drugs or medications.

Analysis of the Need for the Rule: These amendments continue to be necessary to ensure that the Board's equine medication rules address the proper administration of equine treatment using the most up-to-date practices and drugs.

The Board is required by law to ensure the integrity of racing and pari-mutuel wagering. This rulemaking is critical to establish clear and enforceable criteria for the use of equine medicine in horseracing.

These amendments were developed after considerable industry input and comment between 2000 and 2005. The New York State Racing and Wagering Board formed a Medication Committee comprised of veterinarians, chemists, track management and horsemen to focus on updating New York's drug rules which have been on the rulebooks for more than twenty years. The Board has worked not only on a statewide basis to seek industry input and analysis, but also regionally through a Mid-Atlantic Consortium of Racing States, as well as nationally through The Association of Racing Commissioners' International, the North American Pari-Mutuel Regulators Association and the National Thoroughbred Racing Association. The content and justification for these amendments are still valid.

Since the amendments were adopted, the Board has followed national trends related to the use of therapies and substances on racehorses, including hyperbaric chambers for horses, gene therapy and other medicinal methods for enhancing the performance of a horse. It has been determined that if rules are needed for effectively regulating such methods, the Board will introduce such rules to supplement the equine medicine rules. Moreover, the Board's Office of Counsel has, as part of the Board's enforcement and adjudication efforts, frequently reviewed these rules on a regular basis to ensure that they are enforceable and rational.

Legal Basis for the Rule: Racing, Pari-Mutuel Wagering and Breeding Law Section 101(1), 902(1) and 301(2)(a).

3. Rule I.D. No.: RWB-03-06-00007-A (Adopted May 17, 2006)

Non-starter Rule, Sections 4009.21 and 4115.10 of Title 9 NYCRR.

Description of the Rule: This rule allows bettors who have wagered on a horse that has been declared a "non-starter" to collect on their "win" payouts if the non-starter horse finishes in first place, despite being interfered with or otherwise obstructed at the start of the race. Under the previous rules, if a horse is declared a non-starter, all wagers on the horse are refunded. This was not always the preferred option of the wagering public. There were instances where a horse may have been interfered with or otherwise obstructed at the beginning of a race and is able to recover and beat the field. In such instances, the bettor would prefer to receive the "win" payout rather than receive a refund of the original wager. If the non-starter horse finishes in any position lower than "win," a full refund will be granted because the interference or obstruction may have played a factor in preventing the horse from finishing first.

Analysis of the Need for the Rule: The proposed amendments to NYCRR sections 4009.21 (thoroughbred) and 4115.10 (harness) remain necessary to clarify how the stewards and judges rule when a horse has an unfair start in a given race. The previous rule was subject to various interpretations as to what should be done when a horse has an unfair start, is declared a non-starter, and yet rallies to win the race. The current rule is necessary to provide clarification and ensure consistent rulings in such situations. Since the rule has been adopted, the Board has received no complaints about the rule, nor have there been any appeals filed that would cause the Board to revisit the rational basis for the rule.

Legal Basis for the Rule: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 301.

4. Rule I.D. No.: RWB-06-06-00008-A (Effective May 17, 2006)

Parlay Wagering, sections 4010.6 and 4122.38 of Title 9 NYCRR.

Description of the Rule: The rule expands from six to eight the number of races on which parlay betting can occur.

Analysis of the Need for the Rule: These rules are necessary to expand parlay wagering opportunities; thoroughbred section 4010.6

and harness section 4122.38, entitled "Parlay Betting," by maximizing wagering opportunities to the betting public that are now available through state-of-the-art technological capabilities of the totalizer systems whereby wagers are computerized, processed and transacted. A parlay is a single bet that links together two or more individual wagers; where the total winnings from one wager are "rolled into" the wager for next consecutive racing contest. The parlay bet is preserved so long as every wager for the respective racing contest in the series wins. If any single wager loses, the entire parlay bet is lost. A parlay series can be extended up to eight racing contests from the previous limit of six races. At the time of the original promulgation of the parlay rule in 1988, the parlay wager was limited to six races because of the totalizer system's capability. At that time, six races was the maximum number of races that could be processed by the totalistic system. Due to technological advancements in the totalizer system's technology, there is now a capacity to include up to eight races when taking a parlay bet. This provides for another method of wagering, increases the wagering handle for race tracks and increases potential revenue to the state.

Legal Basis for the Rule: Racing, Pari-mutuel Wagering and Breeding Law, sections 101 and 227.

5. Rule I.D. No.: RWB-06-06-00009-A (Adopted May 17, 2006)

Proposition Wager, section 4011.25 and 4122.47 of Title 9 NYCRR.

Description of the Rule: To permit a proposition wager to be offered by racing associations or corporations on its own races. The object of a proposition wager is for the bettor to choose which horse, out of two or three, as designated by the track, will finish before the other horse, or horses no matter what the overall placing of any of the horses. The proposition wager will be offered either as a "head to head" or "head to head to head". In the "head to head", two horses are the subject of the proposition wager. The bettor bets which of the two horses will finish before the other. In the "head to head to head" offering, the bettor must choose which horse of three will finish before the others.

Analysis for the Need for the Rule: This rule is necessary to generate greater revenue in support of horse racing and government by allowing more betting interests at thoroughbred and harness races. This rule was adopted in order to give force and effect to Chapter 373 of the Laws of 2004, which amended section 907 of the Racing, Pari-mutuel Wagering and Breeding Law. The impetus for the enactment of RPMWBL Section 907 was the 2005 Breeders' Cup, which was hosted in New York. Proposition wagering has traditionally been a hallmark of the Breeders' Cup, a world class racing event in thoroughbred racing. Section 907 expired in June 2009. The rule, however, remains in effect and it continues to be beneficial for New York to offer proposition wager because it provides another interesting betting option for the betting public. The rule does not require a race track operator to offer proposition wagering, but it is beneficial to have the rule on the books, particularly if New York intends to host the Breeders' Cup in the future. Title 9E NYCRR. Sections 4011.25 (thoroughbred) and 4122.47 (harness) may still be necessary to enable the Board to supervise and regulate the proposition wager, if race track operators desire to offer it. Nevertheless, the Board is open to repealing the rule if comments from the racing industry stakeholders and the public justify the repeal of the rule.

Legal Basis for the Rule: Racing, Pari-mutuel Wagering and Breeding Law, sections 101, 227, 301 and 305.

6. Rule I.D. No.: RWB-23-06-00007-A (Effective September 13, 2006)

Horsemen's Contract Rule, section 4003.13 and 4101.8 of Title 9 NYCRR.

Description of the Rule: This rule requires that a race track operator have a contract with the respective horsemen's organization prior to the Racing and Wagering Board assigning race dates and license approval in a calendar year.

Analysis for the Need for the Rule: This rule is necessary to ensure that a horsemen's contract is agreed to prior to granting race dates and a license to a race track operator. It is necessary to ensure the continuity of racing and coordination between horsemen and track operators. It is in the best interests of racing to require a written agreement be-

tween the track operator and the representative horsemen's association as a condition of racing. Since adoption, the requirement for the contract has prompted both track operators and horsemen's organizations to address the need for contracts and renewal contracts in a timely fashion. Prior to this rule being adopted, certain racing associations sought to operate by referencing past written agreements or continuing rights while the vast majority of racing associations voluntarily and annually submitted updated written agreements with their respective horsemen's associations. The agreements expire periodically and the Board rule clarifies the intent of the Racing Law by mandating a contract as a condition of racing.

Legal Basis for the Rule: Racing, Pari-mutuel Wagering and Breeding Law sections 101, 207, 210, 241 and 307(5)(a) and (b).

7. Rule I.D. No.: RWB-23-06-00008-A (Effective September 13, 2006)

Claiming of Race Horses, section 4038.1, 4038.2, 4038.4, 4038.5, 4028.6 and 4038.19 of Title 9 NYCRR.

Description of the Rule: This rule removed claiming restrictions imposed by the previous rule and replaced obsolete language and titles with language and titles that reflects present day practices. The changes are procedural in nature and reflected current industry practices. The rule requires that claim box and envelope shall remain unopened until after the results of the race are made official. The rule allows a claim to be voidable by the claimant if there is a post-race positive test, or if the test results of a previous race have not been cleared by the date of the claim and result in a post-race positive test.

Analysis of the Need for the Rule: The previous rule has been in effect for more than 30 years and required updating in 2006 to simplify the claiming process for new owners as well as for existing owners. The rule also included language that defined circumstances when claims should be voidable. The current rule has proven to be workable and rational.

Legal Basis of the Rule: Racing, Pari-mutuel Wagering and Breeding Law sections 101, 207, 208 and 902.

8. Rule I.D. No.: RWB-24-06-00004-A (Effective September 13, 2006)

Raffle Requirements Rule. Section 5601.1, 5602.1 and 5624.1 of Title 9 NYCRR.

Description of the Rule: Regulatory exemption of registration, licensing and reporting requirements for raffles conducted by certain charities.

Analysis of the Need for the Rule: These rules were adopted to give force and effect to Chapter 678 of the Laws of 2004 and Chapter 400 of the Laws of 2005. These Games of Chance laws exempted charitable organizations from the registration, licensing and reporting requirements for certain raffle activities. The continuation of these rules is necessary to continue to give force and effect to the statutes.

Legal Basis for the Rule: General Municipal Law, sections 188-a and 190-a.