

# 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 1997, 2002 and 2007. Public comments on the continuation or modification of these rules are invited and those received by May 1, 2012, will be considered. Please forward comments 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.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.

2007

RWB-19-07-00004: Post race blood gas testing for thoroughbred and harness race horses. Amendments to 9 NYCRR to add new sections 4038.19(g), 4043.8, 4043.9, 4043.10, 4109.7(f), 4120.13, 4120.14 and 4120.15. Adopted pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Sections 101, 235 (formerly 227), 301, 305 and 902.

This rulemaking is necessary to assure the public's confidence and continue the high degree of integrity in racing at the pari-mutuel betting tracks. Through pre-race and post-race testing, this rulemaking will detect and deter the administration of alkali agents to thoroughbred racehorses and harness racehorses for the purpose of affecting the horse's performance.

Horses that have received an alkalizing agent will exhibit elevated levels of TCO2 over and above normal levels. This rulemaking benefits thoroughbred and harness racing by ensuring the betting public that horses that compete in pari-mutuel races have not been tampered with through the administration of alkali agents, and that no extraordinary advantage has been given to the horse through prohibited substances.

The rule should be continued, but the Board is considering modifications to the original 2007 TCO2 rulemaking that would:

- Clarify the four-hour time requirement for horses that receive furosemide. [Section 4043.8 (a) and 4120.13(a)];
- Change the time period for quarantining a horse to three days from 72 hours [9 NYCRR 4043.8(b) and 4120.13(b)];
- Changed the rule that imposed a pre-race detention order against a horse, and now makes such an order actionable against the owner [9 NYCRR 4043.9(b) and 4120.13(b)];
- Allow owners and trainers to obtain independent testing of the blood samples, which they may challenge at a hearing. [9 NYCRR 4340.8(b) and 4120.13(b)];
- Require that a horse test negative for excess TCO2 at the end of its pre-race detention period. [9 NYCRR 4043.8(e) and 4120.13(e)];
- Create a 10-day "safe harbor" provision to allow an owner to

move horses under a new trainer after the owner has been notified that a trainer is charged with violating the TCO2 rule. [9 NYCRR 4043.9(b) and 4120.14(b)]; and

- Give the Board the necessary authority to modify or eliminate certain pre-race detention orders in cases where court action or the failure of a seller to disclose the order to a third-party buyer unjustly impacts the third-party buyer. [9 NYCRR 4043.9(c) and 4120.14(c)].

RWB-19-07-00005: Authorizing two new games of chance known as the "Treasure Chest Raffle" and "Search for the Queen of Hearts." Added sections 5620.23 and 5620.24 to Title 9 NYCRR. The statutory authority for these amendments is in General Municipal Law section 188-a.

This rule should be continued without modification. Both games have been conducted with no reported problems. "Search for the Queen of Hearts" is one of the most popular charitable games in New York. These two games have added a new dimension to the traditional game of raffle, and are based on popular raffle games been conducted in other jurisdictions. This rule is necessary to ensure that the Board's approved games of chance keep pace with popular games of chance, and ensure increased charitable proceeds derived from lawful games of chance. These games provide a reliable source of revenue for charitable organizations and should be continued without modification.

RWB-20-07-00006: Use of the whip rule. This amended section 4117.8 of Title 9 NYCRR and allows harness drivers to make use of the whip at one-quarter of a mile from the finish of the race. Adopted pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Sections 101 and 301.

The previous rule allowed the use of a whip from one-eighth of a mile from the finish line. The current rule diminishes the public perception that the driver is not doing all he or she can to win the race. Judges at the racetracks in the state, as well as fans, had expressed concern that the former rule was too restrictive and did not allow enough time to urge the horse in the race. This rule has been non-controversial and there have been no problems in compliance or enforcement, and should be continued without modification.

RWB-20-07-00007: Wagering while on duty. To prohibit pari-mutuel corporation employees from making wagers while on duty. Amended sections 4005.4 and 4122.10 of 9 NYCRR. Adopted pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Sections 101 and 301.

This rule is needed to prevent the apparent or actual improprieties that occur when an employee of the pari-mutuel division of a harness or thoroughbred racing track places wagers while on duty even though there is no customer at the window.

The pari-mutuel division is responsible for accepting wagers, managing cash, paying holders of winning pari-mutuel tickets, and generally interacting with the public at a race track's betting windows. The public sees the pari-mutuel teller as someone who may have access to exclusive wagering information regarding horses or betting patterns in a any given race. If the pari-mutuel employee is allowed to place wagers while on duty, it may appear that the teller is exploiting

the position for personal gain, thereby eroding public confidence in pari-mutuel wagering in general. The Board successfully enforced this rule against 14 tellers at a downstate harness track in 2011, and serves as an important provision in ensuring integrity in pari-mutuel wagering. It should be continued without modification.

RWB-20-07-00008: Single service use and disposal of syringes and needles. Added sections 4120.16 and 4043.11 to Title 9 NYCRR. Adopted pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Sections 101 and 301.

This rule amendment is necessary to prevent the inadvertent administration of a prohibited or harmful drug to a horse and prevent the contamination of the horse's blood. This rule would require single-service syringes for all races horses. The rule is necessary to prevent inadvertent administration of a prohibited or harmful drug to a horse, which may affect the health or performance of a race horse. The rule is also necessary to prevent the contamination of the horse's blood, which could result in a positive drug test and the subsequent disqualification and penalty for a drug positive. The public benefit would be to ensure that horses have received a unadulterated dosage of the proper medication, and their performance has not been helped or hindered by residual contamination of a previous medication contained in a syringe. The Board has received no complaints about this rule, nor has it proven to be a hardship on the horsemen. It should be continued without modification.

RWB-31-07-00009: Failure to finish a harness race. Amended section 4117.2(c) of Title 9 NYCRR. Adopted pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Sections 101 and 301.

This rule is necessary because it clarifies the process whereby judges decide the order of finish in cases where a horse fails to finish a race because it breaks its gait. In harness racing, the horses must maintain a specific gait. If the horse breaks its gait, it cannot win unless it drops back and restarts its gait. In instances where a leading horse breaks its gait, this rule allows horses that are on gait to go around that horse and continue to the finish line, even if it means leaving the track to pass on the inside. It also allows the judges to determine the appropriate order of finish in light of the circumstances of the race.

The previous rule automatically disqualified a horse that left the track even if it was the fault of a horse that broke its gait. The previous rule forced the trailing driver to remain on the track and risk injury to himself or his horse. The new rule gives the trailing driver an option to avoid injury, remain in the race and allow the judges to employ their discretion in determining the proper order of finish. This rule should remain in effect because it promotes safe driving, avoid the disqualification of more than one horse when only one horse is at fault, and preserves the integrity of the race for the betting public. It should be continued without modification.

2002

RWB-37-01-00002: Games of Chance. Amendments to 9 NYCRR Sections 5602.1, 5606.1, 5606.14, 5608.7, 5620.12, 5624.1, 5624.18, and 5624.21. Makes technical amendments to the Board's rules and regulations for the conduct of games of chance by updating form numbers, addresses for Board offices, makes uniform language "as prescribed by the board" when referring to games of chance forms, and corrects typographical errors. The statutory authority for these amendments is in General Municipal Law section 188-a.

These amendments are necessary to make uniform the application and reporting forms used by the Board and licensing authorities in ensuring that charitable gaming is conducted in accordance with the Games of Chance Law and that charitable gaming funds are used properly. These amendments also corrected outdated information in the Board's rules and regulations and should be continued in order to provide accurate information. These rules should be continued without modification because they serve to provide proper information regarding form numbers and Board reporting requirements. These rules also make the language of various rule uniform, which previously used different terms to describe the same process. These amendments were technical in nature and should be continued without modification.

RWB-38-01-00001: Bell Jar Games. Amendments made to 9 NYCRR 5600.1, 5608.4, 5608.5, 5608.7, 5611.1, 5611.2, 5620.19,

and 5620.22. The statutory authority for these amendments is section 188-a of the General Municipal Law. The amendments establish procedures for bell jar ticket review by the Board; authorize games of chance known as "seal cards", "merchandise boards", and "coin boards," and allows for the manufacture, approval and distribution of such games; changes the sales reporting period for bell jar ticket manufacturers and distributors from monthly to quarterly; and permits the leasing of games of chance equipment and gives the Board and local governments authority over such leasing. These rules should be continued in order to give force and effect to the Games of Chance Law, and the amendments that were enacted by statute in 1998 and 1999. These rules should be continued without modification because they serve to implement the provisions of the Games of Chance Law.

RWB-28-02-00006: Electronic Bingo Aids (EBAs). Amendments made 9 NYCRR 5800.1, and the addition of new Part 5823. These amendments authorize the use of electronic bingo aids in the conduct of charitable bingo. The statutory authority for these amendments is section 435(1)(a) of the Executive Law. Electronic bingo aids are used by players in helping to track their numerous bingo cards to determine if they have a "bingo" based on the numbers called. These amendments establish certain licensing standards for manufacturers of electronic bingo aids, ensure that the sales of electronic bingo are do not lead to the commercialization of bingo as prohibited by the New York State Constitution, establish proper use of electronic bingo aids so as to preserve the traditional elements of bingo, and establish reporting requirements for the sale and use of electronic bingo aids. These amendments should be continued to allow the use of electronic bingo aids in charitable bingo, which have proven valuable in increasing net proceeds for charitable organizations and attracting more players to charitable bingo in New York State. These rules should be continued without modification because they allow vision-impaired players to take part in charitable bingo and bolster charitable gaming funds by increasing the number of face cards that a player can play. Executive Law Section 431 states in applicable parts that "it is hereby declared to be the policy of the legislature that. . . the conduct of the game and all attendant activities should be so regulated and adequate controls so instituted so as to discourage commercialization in all its forms. . . and to insure the maximum availability of the net proceeds of bingo exclusively for application to the worthy causes and undertakings specified herein." These rules meet those objectives by requiring that only licensed bingo suppliers distribute EBAs and that all EBAs are approved by the Board. The new rules also ensure that all proceeds derived by an organization from the sale and lease of EBAs are properly reported and subject to the same controls and limitations that apply to proceeds derived directly from the sale of bingo face-cards.

1997

RWB-43-96-0004: Additional License Fee for Raffles. Amendments made 9 NYCRR 5624.3. This rule is necessary to incorporate the statutorily required 2% license fee into the Board's rules and regulations. The statutory authority for this rule is found in sections 188-a and 195-f(4) of the General Municipal Law. This rule is necessary to conform the Board's rules with the Games of Chance Law found in Article 9-a of the General Municipal Law. Licensed authorized organizations are required to pay an additional license fee of 2% of the net proceeds from the conduct raffles. Such fees are to be paid to the municipality that issued the raffle license. This rule should be continued in order to give force and effect to the Games of Chance Law, and the amendment that was enacted in Chapter 309 of the Laws of 1996. This rule should be continued without modification because it serves to implement specific provisions of the Games of Chance Law.