

561, 587, and 649 and Financial Services Law Sections 102, 201, 202, 301, 302, 309, and 408.

The regulation was adopted to permit, on a voluntary basis, a broader range of regulated entities and applicants to make certain submissions electronically to the Department through the Nationwide Multistate Licensing System and Registry rather than make, as was required under the former rule, hard-copy submissions to the Department.

Comments on these Financial Services rulemakings may be submitted to Thomas Eckmier, Deputy General Counsel – Tom.Eckmier@dfs.ny.gov; (212) 709-1661; New York State Department of Financial Services, One State Street, New York, NY 10004.

There were no new or amended Financial Services rulemakings adopted in 2012.

New York State Gaming Commission

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 Gaming Commission (and its predecessor agencies, the Racing and Wagering Board and the Division of Lottery) for the calendar years 2017, 2012, 2007, 2002 and 1997. Public comments on the continuation or modification of these rules are invited and those received by March 14, 2022, will be considered. Please forward comments to Kristen M. Buckley, Secretary of the New York State Gaming Commission, One Broadway Center, Suite 500, Schenectady, New York 12301-7500 or by electronic mail at gamingrules@gaming.ny.gov.

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

2017

Horse Racing

SGC-45-16-00002 Advertising on jockeys

This rulemaking amended 9 NYCRR § 4041.6 to permit a jockey to display certain trade-related logos as well as the jockey's name on the pants and the rear of the helmet within certain parameters, all without special permission of the stewards. This rule is needed to eliminate unnecessary regulation by the stewards. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 103(2) and 104(1) and (19).

SGC-47-16-00017 Harness racing conflicts

This rulemaking added 9 NYCRR § 4105.17 and repealed § 4116.3 to expand the conflict-of-interest restrictions on racing secretaries and their assistants and substitutes in harness racing. This rule is needed to enhance the real and perceived integrity of New York racing by prohibiting certain practices that could compromise, or appear to compromise, the writing of races at New York harness pari-mutuel racetracks. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1) and (19) and 122.

SGC-17-17-00008 Account wagering

This rulemaking amended 9 NYCRR §§ 4500.1, 4500.2, 4500.3, 4500.4, 4500.5, 4500.6, 4500.7, 4500.8, 4500.9, 4500.10, 4500.11, 4500.12, 4500.13, 4500.14, 4500.15, 4500.16, 4500.17, 4500.20, 4500.21 and 4500.22 to regulate multi-jurisdictional account wagering providers. This rule is needed to implement regulation of multi-jurisdictional account wagering providers consistent with provisions of Chapter 174 of the Laws of 2013. The statutory basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law sections 104(1) and (19) and 1012(2).

SGC-17-17-00004 Unqualified standardbred horse

This rulemaking amended 9 NYCRR § 4113.5(a)(1) to allow standardbred horses not to requalify when uncontrollable events (such as weather) prevent a horse from racing on regular basis. This rule is needed to permit a more efficient and timely response by the Commission when extraordinary events have interfered with the normal opportunities for harness horses to race. The rule was further amended in

2020. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1) and (19) and 301(1).

Lottery

SGC-32-17-00005 Mega Millions amendments

This rulemaking amended 9 NYCRR §§ 5007.1, 5007.2, 5007.4 and 5007.7 to implement nationwide changes to the Mega Millions multi-state lottery game. This rule is needed to enable the State's continued participation in the game. Section 5007.2 was further amended in 2019. The statutory basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law section 104 and Tax Law sections 1601, 1604, 1612 and 1617.

Gaming

SGC-47-16-000024 Bonding of video lottery agents

This rulemaking amended 9 NYCRR § 5103.5 to revise the manner in which the bond amount required from each video lottery gaming agent is determined, reflecting current vendor fees. This rule is needed to allow the flexibility to require bond coverage from each video gaming facility that is commensurate with the State retention percentage at such facility. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 103(2) and 104(1) and (19) and Tax Law sections 1601, 1604(b) and 1617-a.

2012

Rules adopted by the Racing and Wagering Board:

RWB-43-11-00003 Testing of certain licensees and officials in horse racing activities for blood alcohol content

This rulemaking added 9 NYCRR § 4042.6 to authorize testing of blood alcohol content to detect and deter alcohol intoxication by licensees. This rule is needed to ensure safe operations and integrity of racing. The rule was amended in 2013. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101) and 301(1).

RWB-43-11-00004 Use of cellular telephones in the paddock at harness tracks

This rulemaking added 9 NYCRR § 4104.14 to allow cellular telephones and other electronic communication devices in designated areas of a harness racetrack paddock. This rule is needed to permit trainers, drivers, owners and groom the ability to communicate while in the paddock area and harmonize practices with those at Thoroughbred racetracks. The rule was amended in 2016. The statutory basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law section sections 102 (formerly 101) and 301(1).

RWB-44-11-00001 Minimum diameter of a riding crop used in Thoroughbred racing

This rulemaking amended 9 NYCRR § 4035.9(a)(1)(iii) to require the use of a padded riding crop with a minimum shaft diameter of 3/8th of an inch. This rule is needed to protect the health of racehorses. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101), 205 and 218.

RWB-44-11-00002 The trifecta wager in thoroughbred horse racing

This rulemaking amended 9 NYCRR § 4011.22(i), since renumbered as 4011.21(h), to allow trifecta wagering when there are five betting entries in the racing fields. This rule is needed to make wagering more appealing to the betting public. The renumbering in 2015 also contained a stylistic edit. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101) and 235.

RWB-44-11-00020 Generally accepted auditing standards for off-track betting corporations

This rulemaking amended 9 NYCRR §§ 5208.1, 5208.2, 5208.3, 5208.4, 5208.5 and 5208.6 to establish uniform auditing standards for off-track betting corporations. This rule is needed to ensure the integrity of auditing procedures used by off-track betting corporations by establishing uniform standards for reporting and auditing activities. The statutory basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101), 516, 517, 520, 524 and 621.

RWB-52-11-00007 Authorizing and prohibiting the use of phenylbutazone

This rulemaking amended 9 NYCRR §§ 4043.2(d) and 4120.2(d) (both such subdivisions were repealed entirely in 2014) to make phenylbutazone a 48-hour drug only in both harness and Thoroughbred racing. This rule is needed to ensure that horses are not overmedicated to the point of adversely affecting the integrity of horseracing. The statutory basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101), 301(2)(a) and 902(1).

RWB-08-12-00001 Out-of-competition drug testing of Thoroughbred race horses

This rulemaking amended 9 NYCRR §§ 4012.5 and 4043.12 to include within existing equine drug-testing requirements racehorses that are not formally scheduled to race. This rule is needed to keep the Commission's out-of-competition testing rule for Thoroughbred horses in line with enforcement needs. Section 4012.5 was further amended in 2013 and section 4023.12 was further amended in 2013 and 2018. The statutory basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101) and 902(1).

RWB-23-12-00001 Maximum fines for violations in Thoroughbred, harness and Quarterhorse racing

This rulemaking amended 9 NYCRR §§ 4022.13, 4102.3 and 4207.29 to establish maximum fine amounts in accordance with statute. This rule is needed to make regulations consistent with statute. The statutory basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101), 250, 301(1), 310, 401(1) and 410.

RWB-25-12-00001 The reimbursement of costs to the State of New York for associate judges and starters at harness races

This rulemaking added 9 NYCRR § 4101.41 to implement reimbursement for the costs of hiring certain harness racing officials. This rule is needed to comply with the provisions of Part Y of Chapter 58 of the Laws of 2012. The rule was further amended in 2013. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101), 301 and 308.

RWB-29-12-00007 Claims of Thoroughbred horses that die on the track during or after a race

This rulemaking amended 9 NYCRR § 4038.5(a) to remove an incentive that a trainer or owner may have for entering an unsound horse in a claiming race for the purpose of racing and potentially transferring a horse without proper regard to the horse's well-being and the integrity of racing. This rule is needed to reduce fatalities of Thoroughbred horses and injuries to jockeys. Section 4038.5 was further amended in 2014, 2016 and 2020. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law section 102 (formerly 101).

RWB-30-12-00001 Procedures and penalties for the testing of Thoroughbred and harness race horses for the presence of excess TCO2 levels

This rulemaking amended 9 NYCRR §§ 4043.8, 4043.9, 4120.13 and 4120.14 to revise the TCO2 testing rule to reflect current scientific developments and revise penalties to best deter violations. This rule is needed to bring the TCO2 testing rule horse in line with enforcement needs. The statutory basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law sections 103(2), 301(1) and (2)(a) and 902(1).

RWB-33-12-00002 The minimum price for which a horse shall be entered in a claiming race

This rulemaking amended 9 NYCRR § 4038.2 to mandate a claiming price-to-purse proportion and thus establish a relationship between investment in a horse and the potential purse in a manner designed to provide a safer racing environment in which financial incentive is lessened to race a horse that should not be raced. This rule is needed to diminish the risk of injury to human and equine participants in horse racing. The rule was further amended in 2019. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law section 102 (formerly 101).

2007

Rules adopted by the Division of Lottery:

LTR-50-06-00004 Video lottery gaming

This rulemaking amended 21 NYCRR Part 2836 (since renumbered

as 9 NYCRR Subtitle T, Chapter IV, Subchapter A, Parts 5100-5122) to allow for the licensed operation of video lottery gaming. These rules are needed to regulate video lottery gaming. These rules have been amended in 2013, 2015, 2016, 2017, 2019 and 2021. The statutory basis for the rules is Tax Law section 1617-a.

Rules adopted by the Racing and Wagering Board:

RWB-19-07-00004 Post race blood gas testing for Thoroughbred and harness race horses

This rulemaking added 9 NYCRR §§ 4038.19(g), 4043.8, 4043.9, 4043.10, 4109.7(f), 4120.13, 4120.14 and 4120.15 to detect and deter the administration of alkali agents to Thoroughbred racehorses and harness racehorses for the purpose of affecting the horse's performance. These rules are needed to assure the public's confidence and continue the high degree of integrity in racing at the pari-mutuel betting tracks. The statutory basis for these rules is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101), 235 (formerly 227), 301, 305 and 902.

RWB-19-07-00005 Authorizing the "Treasure Chest Raffle" and "Search for the Queen of Hearts" as games of chance

This rulemaking added 9 NYCRR §§ 5620.23 and 5620.24 (since renumbered as §§ 4620.23 and 4620.24). This rule is needed to ensure that the Commission's approved games of chance keep pace with popular games of chance, and ensure increased charitable proceeds derived from lawful games of chance. The statutory basis for the rules is General Municipal Law section 188-a.

RWB-20-07-00006 Use of the whip rule

This rulemaking amended 9 NYCRR § 4117.8 to allow harness drivers to make use of the whip at one-quarter of a mile from the finish of the race. The previous rule allowed the use of a whip from one-eighth of a mile from the finish line. This rule is needed to diminish 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. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101) and 301.

RWB-20-07-00007 Wagering while on duty

This rulemaking amended 9 NYCRR §§ 4005.4 and 4122.10 to prohibit pari-mutuel corporation employees from making wagers while on duty. 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 racetrack places wagers while on duty even though there is no customer at the window. The public sees the pari-mutuel teller as someone who may have access to exclusive wagering information regarding horses or betting patterns in a 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 statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101) and 301.

RWB-20-07-00008 Single service use and disposal of syringes and needles

This rulemaking added 9 NYCRR §§ 4043.11 and 4120.16 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 requires single-service syringes for all racehorses. The rule is needed to prevent inadvertent administration of a prohibited or harmful drug to a horse, which may affect the health or performance of a racehorse. The rule is also needed 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 statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101) and 301.

RWB-31-07-00009 Failure to finish a harness race

This rulemaking amended 9 NYCRR § 4117.2(c) to clarify the process whereby judges decide the order of finish in cases where a horse fails to finish a race because it breaks its gait. It also allows the judges to determine the appropriate order of finish in light of the circumstances of the race. This rule is needed because it promotes safe driv-

ing, avoids 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. The statutory basis for the rule is Racing, Pari-Mutuel Wagering and Breeding Law sections 102 (formerly 101) and 301.

2002

Rules adopted by the Racing and Wagering Board:

RWB-37-01-00002 Games of Chance

This rulemaking amended 9 NYCRR §§ 5602.1, 5606.1, 5606.14, 5608.7, 5620.12, 5624.1, 5624.18 and 5624.21 (since renumbered as §§ 4602.1, 4606.14, 4608.7, 4620.12, 4624.1, 4624.18 and 4624.21) to make technical changes to update form numbers and addresses for agency offices, harmonize language and correct typographical errors. These rules are needed to make uniform the application and reporting forms used by the agency 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. The statutory basis for the rules is General Municipal Law section 188-a.

RWB-38-01-00001 Bell Jar Games

This rulemaking amended 9 NYCRR §§ 5600.1, 5608.4, 5608.5, 5608.7, 5611.1, 5611.2, 5620.19 and 5620.22 (since renumbered as §§ 4601.1, 4608.5, 4609.7, 4611.1, 4611.2, 4620.10 and 4620.22) to establish procedures for bell jar ticket review by the Commission; authorize games of chance known as “seal cards,” “merchandise boards,” and “coin boards” and allow for the manufacture, approval and distribution of such games; change the sales reporting period for bell jar ticket manufacturers and distributors from monthly to quarterly; and permit the leasing of games of chance equipment and give the agency and local governments authority over such leasing. These rules are needed to give force and effect to the Games of Chance Law, as amended. The statutory basis for the rules General Municipal Law section 188-a.

RWB-28-02-00006 Electronic Bingo Aids

This rulemaking amended 9 NYCRR § 5800.1 (since renumbered as § 4800.1) and added Part 5823 (since renumbered as Part 4823) to authorize the use of electronic bingo aids in the conduct of charitable bingo and establish licensing and agency oversight. This rule is needed to establish licensing standards, ensure that sales of electronic bingo aids do not lead to the commercialization of bingo as prohibited by the New York State Constitution, establish the proper use of electronic bingo aids and establish reporting requirements. The statutory basis for these rules is Executive Law section 435(1)(a).

1997

Rule adopted by the Division of Lottery:

LTR-33-97-00002 Lottery Subscriptions

This rulemaking amended 21 NYCRR §§ 2804.13(a) and § 2804.16 (since renumbered as 9 NYCRR §§ 5005.1(c) and 5055.7(c)) to limit the number of persons who may claim a Lottery subscription prize and the time during which an error in a lottery subscription may be corrected. This rule was amended in 2013 and 2016. These rules are needed to make regulation of the subscription program consistent and manage potential disputes. The statutory basis for this rule is Tax Law section 1604(a).

Rules adopted by the Racing and Wagering Board:

RWB-43-96-0004 Additional License Fee for Raffles

This rulemaking amended 9 NYCRR § 5624.3 (since renumbered as § 4624.3) to incorporate the statutorily required 2% license fee into the agency’s rules. The rule is needed to conform with General Municipal Law Article 9-a. The statutory basis for the rule is General Municipal Law sections 188-a and 195-f(4).

Office of Temporary and Disability Assistance

Pursuant to the State Administrative Procedure Act (SAPA) § 207, the Office of Temporary and Disability Assistance (OTDA) must review at regular intervals those regulations that were adopted on or after January 1, 1997. The purpose of the review is to determine whether the regulations should be retained as written or modified. On January 13, 2021, OTDA published in the New York State Register a

list of regulations from Title 18 of the New York Codes, Rules and Regulations (NYCRR) that OTDA adopted in 2018, 2016, 2011, 2006 and 2001. Those regulations are set forth below:

Rules adopted in 2018

A. TDA-35-17-00005 Application process for SNAP

Amended 18 NYCRR § 387.8 to extend the State timeframe for processing and the issuance of SNAP benefits on an expedited basis from five to seven days following the date of application.*

Analysis of the need for the rule: These amendments were needed to align State regulations with federal requirements regarding the expedited process for applying for SNAP benefits in New York State.

Legal basis for the rule: 7 USC Chapter 51 (generally); 7 USC §§ 2011, 2013, and 2020(e)(9); 7 CFR 273.2(e) and (j)(2); SSL § 17(a)-(b), (j), 20(3)(d), and 95; L. 2012, ch. 41.

Rules adopted in 2016

B. TDA-03-16-00001 Referrals of Human Trafficking Victims from Established Providers of Social or Legal Services*

Amended 18 NYCRR §§ 765.1 and 765.2 to clearly define the participant agencies that are statutorily authorized to participate in the referral process.

Analysis for the need for the rule: These amendments were needed to conform State regulations with Chapter 368 of the Laws of 2015.

Legal basis for the rule: SSL § 20(3)(d); L. 2015, ch. 368; L. 2011, ch.24; L. 2007, ch. 74; SSL Article 10-D

C. TDA-45-15-00012 Public Assistance (PA) Resources Exemption for Four-Year Accredited Post-Secondary Educational Institutions

Amended 18 NYCRR § 352.23(b)(4) to exempt up to \$1,400 for funds in a separate bank account for the sole purpose of paying tuition at two-year or four-year accredited post-secondary educational institutions, so long as the funds are not used for any other purpose.

Analysis for the need for the rule: By allowing PA recipients to utilize the exempt resources amount for either a two-year or four-year accredited educational institution, the regulatory amendment offers PA recipients enhanced educational options to advance their workforce readiness and financial earning capabilities through the pursuit of higher education.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 131(1) and 131-n; L. 2014, ch. 58, part J, § 5

D. TDA-45-15-00011 Burden of Proof at Fair Hearings Challenging Interim Assistance Reimbursement (IAR) Amounts

Amended 18 NYCRR 358-5.9(a) to clarify the burden of proof for fair hearings concerning Interim Assistance reimbursement (IAR). The amendments provided that a social services district (district) must establish that its actions were correct at a fair hearing concerning the amount deducted from the initial payment of supplemental security income as reimbursement of PA.

Analysis for the need for the rule: The amendments rendered State regulations consistent with case precedents set by the New York State courts.

Legal basis for the rule: SSL §§ 20(3)(d), 22(8) and 95; L. 2012, ch. 41

E. TDA-47-15-00004 Child Support Program*

Amended 18 NYCRR §§ 346.2, 347.12, 347.17, 347.25, 352.15, 352.22, 352.31, and 369.1; repealed and added new §§ 347.2 and 347.13, and added § 300.13 to amend regulatory requirements concerning the distribution and disbursement of child support collections.

Analysis of the need for the rule: These amendments were required to comply with federal statutes and requirements.

Legal basis for the rule: SSL §§ 17(a)-(b), (j), 20(2)-(3), 34, 111-a, 111-c(2)(a), (d), 131-a(8)(a)(v), 158(5)-(6)(i), 348(2)-(3); Federal Social Security Act, §§ 408(a)(3), 457; 45 CFR §§ 302.32, 302.50-302.52, 303.72; Federal Deficit Reduction Act of 2005 (P.L. 109-171)

F. TDA-20-15-00001 Information Appropriate for Victims of Sexual Assault*

Added 18 NYCRR § 351.2(m) to require districts to make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault