

RULE REVIEW

New York State Gaming Commission

Five-Year Review of Existing Regulations

As required by section 207 of the State Administrative Procedure Act, the following is a list of rules adopted by the New York State Gaming Commission (including rulemaking of its legacy agencies, the Division of Lottery and the Racing and Wagering Board) in the calendar years 2018, 2013, 2008, 2003 and 1998. Public comments on the continuation or modification of these rules is invited and those received by March 27, 2023, will be considered. Comments may be submitted to Kristen M. Buckley, Acting 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.

RULES ADOPTED IN 2018

Horse racing

SGC-45-15-00004-RP Anti-stacking of NSAIDs, add Diclofenac to harness rules and delete meclufenamic acid from 48-hour NSAID restrictions

This rulemaking amended 9 NYCRR §§ 4043.2(e) and 4120.2(e) to limit the stacking of non-steroidal anti-inflammatory drugs (“NSAIDs”), while allowing only one additional NSAID within one week of a horse racing; deleted meclufenamic acid from the list of NSAIDs that are permitted within one week of racing; and added diclofenac to the list of permissible NSAIDs to use within one week of racing in harness horses. The NSAID rule was amended further in 2020. The rules concerning meclufenamic acid and diclofenac because meclufenamic acid is no longer marketed by a pharmaceutical company and there is no veterinary necessity for its use within one week of racing, and the regulation of diclofenac in harness racing conforms now to the rule in Thoroughbred racing. Thoroughbred drug-regulation rules continue to be necessary because federal assumption of Thoroughbred drug regulation has not begun and harness racing drug-regulation rules continue to be necessary because the agency charged with federal drug regulation in harness racing has not announced a plan to effect such regulation. The legal basis for the rules is Racing, Pari-Mutuel Wagering and Breeding Law (“RWL”) §§ 103, 104, 301 and 902.

SGC-19-18-00004 Thoroughbred prohibited substances

This rulemaking, initiated by the Racing Medication and Testing Consortium and adopted by the Board of Directors of the Association of Racing Commissioners International, Inc., amended 9 NYCRR § 4043.12 to expand the list of prohibited substances in Thoroughbred racing to include all substances and methods that the World Anti-Doping Agency bans in human competition, with exceptions for therapeutic use, and added another rule, 9 NYCRR § 4043.16, to require appropriate veterinary oversight for the use of equine drugs. These rules are needed to maintain a broad prohibition of performance-

enhancing drugs and mandate veterinary oversight of drug use for Thoroughbred race horses. Thoroughbred drug-regulation rules continue to be necessary because federal assumption of Thoroughbred drug regulation has not begun. The legal basis for the rules is RWL §§ 103 and 104.

Gaming

SGC-32-18-00002 Casino Blazing 7s progressive wager

This rulemaking added as 9 NYCRR § 5324.11(q) the Blazing 7s progressive wager as an additional permissible wager for the black-jack game at commercial casinos and detailed game rules and related pay tables. This rule is needed to maintain appropriate regulation of casino games and promote public confidence and trust in the integrity of casino games. The legal basis for this rule is RWL §§ 104, 1307(1) and 1335.

Charitable gaming

SGC-20-18-00005 Bell Jar electronic funds transfers

This rulemaking amended 9 NYCRR § 4624.9 to allow charitable organizations to make electronic transfers of funds to pay their additional license fees to the Commission, instead of requiring payment only by check. This rule is needed to modernize payment methods and improve administrative efficiency for both the Commission and for charitable organizations without sacrificing security or accountability. This rule was amended further in 2022. The legal basis for this rule is RWL § 104 and General Municipal Law § 188-a.

RULES ADOPTED IN 2013

Lottery

SGC-30-13-00009 Mega Millions and Raffle Game

This rulemaking added a new rule, 9 NYCRR § 5007.14, to add a raffle game to the mix of multistate Lottery draw games. This rule is needed to attract customers to generate more revenue. This rule was amended further in 2019 to make stylistic and consistency changes. The legal basis for the rule is RWL §§ 103 and 104 and Tax Law §§ 1601, 1604, 1612 and 1617.

Gaming

SGC-35-13-00002 Video Lottery Gaming Advertising

This rulemaking added a new rule, paragraph 3 of 9 NYCRR § 5116.6(b), to conform with the Memorandum of Understanding with the Seneca Nation of Indians. This rule is needed to conform to the requirements of the agreement. The legal basis for the rule is RWL §§ 103 and 104 and Tax Law §§ 1604 and 1617-a.

Other

SGC-30-13-00010 Establishment of Rules of New York State Gaming Commission

This rulemaking combined the rules of two separate agencies, the Division of Lottery and the Racing and Wagering Board, to effectuate their merger and integrate their rules into 9 NYCRR, Parts 4000 – 5500, as the New York State Gaming Commission, as required by statute. These rules are needed to maintain consistency within the agency’s rules. Various amendments were made since to various rules. The legal basis for the rules is L. 2012, c. 60, Part A (RWL §§ 101-129).

Rules proposed initially by the Racing and Wagering Board:

RWB-08-13-00003 Restricting anabolic steroids in horse racing

This rulemaking amended 9 NYCRR §§ 4043.15 and 4120.12 to replace urine with plasma thresholds for detecting an improper administration of anabolic steroids to a race horse, because plasma thresholds more closely indicate time of administration. This rule was amended further in 2016. This rule is needed for the effective regulation of the integrity of horse races. Thoroughbred drug-regulation rules continue to be necessary because federal assumption of Thoroughbred drug regulation has not begun and harness racing drug-regulation rules continue to be necessary because the agency charged with federal drug regulation in harness racing has not announced a plan to effect such regulation. The legal basis for the rule is RWL §§ 103, 104 and 301.

RWB-08-13-00005 Claims voidable if horse is vanned off the track

This rulemaking added a new rule, paragraph (3) of 9 NYCRR § 4038.5(a), to deter the entry in claiming races of horses susceptible to breakdowns by allowing a claimant one hour to void the claim if the horse is vanned off the track after the race began. Section 4038.5 was amended further in 2014, 2016, 2018 and 2020. This rule is needed to protect horse health and safety by disincentivizing the entry of potentially unsound horses in claiming races. Thoroughbred safety rules continue to be necessary because federal assumption of Thoroughbred drug regulation has not begun. The legal basis for the rule is RWL §§ 103 and 104.

RWB-08-13-00006 Clenbuterol and corticosteroid use in Thoroughbred horse racing

This rulemaking amended 9 NYCRR § 4043.2(e)(9), (g) and (i) and added a new rule, 9 NYCRR § 4043.4(b), to increase the waiting period before a Thoroughbred horse may race after an administration of clenbuterol, because a race horse otherwise may be drugged to modify muscle mass artificially, or a corticosteroid, because a longer time period permits better evaluation of whether the veterinary treatment has healed the horse before it races. This rulemaking also requires corticosteroid joint injection reports to the Commission and claimants of a horse because this information helps limit the debilitating effects of repetitive corticosteroid treatments. Section 4043.2 was amended further in 2014, 2016, 2018 and 2020. Section 4043.4 was amended further in 2020. This rule is needed for the effective regulation of the integrity of horse races. Thoroughbred drug-regulation rules continue to be necessary because federal assumption of Thoroughbred drug regulation has not begun. The legal basis for the rule is RWL §§ 103 and 104.

RULES ADOPTED IN 2008

Rules adopted by the Division of Lottery:

LTR-44-07-00002 Lucky Sum promotional game feature

This rulemaking added new subdivisions (h) and (g) to 21 NYCRR § 2828.3 to add Lucky Sum to the New York Numbers and Win-4 games. These rules are needed because innovative games generate more revenue. These rules are now 9 NYCRR §§ 5009.2(h) and 5010.2(g). This rule was amended further in 2019. The legal basis for the rules is RWL § 104 and Tax Law § 1604(a).

LTR-44-07-00003 Lotto Extra promotional game feature

This rulemaking added a new section 2817.12 to 21 NYCRR to add Lotto Extra to the New York Lotto game. These rules are needed because innovative games generate more revenue. This rule is now 9 NYCRR § 5008.9. The legal basis for the rules is RWL § 104 and Tax Law § 1604(a).

Rules adopted by the Racing and Wagering Board:

RWB-32-07-00013 Licensing and standards for totalisator companies

This rulemaking added Part 5100 of 9 NYCRR to regulate wagering pools and totalisator companies with licensing, reporting, equipment and operating-procedure requirements to address the increasingly interstate nature of wagering tabulation. These rules are needed for effective regulation of wagering on horse races. These rules are now Part 4300 of 9 NYCRR. The legal basis for the rules is RWL §§ 103, 104, 235, 301, 305, 401, 405, 520 and 1002.

RWB-33-07-00005 Internet and telephone account wagering on horse racing

This rulemaking added Part 5300 of 9 NYCRR to authorized telephone and internet wagering and impose reporting, recordkeeping, operational and license application requirements for racetracks and off-track betting corporations in New York. These rules are needed for effective regulation of wagering on horse races. These rules are now Part 4500 of 9 NYCRR. These rules were amended in 2017 to encompass multi-jurisdictional account wagering providers. The legal basis for the rules is RWL §§ 103, 104, 231, 301, 401, 518, 1002 and 1012.

RWB-43-07-00011 Disqualification of horse for interference

This rulemaking amended 9 NYCRR § 4035.2(d) to explicitly authorize the stewards to disqualify a horse for careless riding, such as the jockey striking another horse with the padded riding crop by mistake. Section 4035.2 was amended further in 2010 and 2013. This rule is needed to promote the integrity of horse races. The legal basis for the rules is RWL §§ 103, 104, 205 and 218.

RWB-34-08-00004 Harness racing claiming procedure

This rulemaking amended subdivisions (a), (b), (d), (e) and (p) of 9 NYCRR § 4109.3 to clarify the procedures for harness horse claims, including ability to withdraw claim before race, procedures that ensure confidentiality and honoring claims despite minor errors. This rule was amended further in 2016. This rule is needed for the effective regulation of harness horse races. The legal basis for the rules is RWL §§ 103, 104 and 301.

RWB-44-08-00008 Use of anabolic steroids in race horses

This rulemaking amended 9 NYCRR §§ 4043.2(e)(9) and 4120.2(e)(9) and added new rules 9 NYCRR §§ 4043.15 and 4120.12, to restrict the use of anabolic steroids on race horses to only four, subject to strict race-day thresholds and used for only therapeutic purposes, because of concern that anabolic steroids may artificially increase horses' muscle mass. Sections 4043.2, 4043.15, 4120.2 and 4120.12 were amended further in 2013, 2014 and 2016. These rules are needed for the effective regulation of the integrity of horse races. Thoroughbred drug-regulation rules continue to be necessary because federal assumption of Thoroughbred drug regulation has not begun and harness racing drug-regulation rules continue to be necessary because the agency charged with federal drug regulation in harness racing has not announced a plan to effect such regulation. The legal basis for the rules is RWL §§ 103, 104 and 301.

RULES ADOPTED IN 2003

The Division of Lottery and the Racing and Wagering Board adopted no rules in 2003 for which a rule review is required.

RULES ADOPTED IN 1998

No rules were adopted by the Division of Lottery

Rules adopted by the Racing and Wagering Board:

RWB-24-98-00006 Use of whips

This rulemaking amended 9 NYCRR § 4117.8 to provide more criteria for harness judges to apply to limit use of the whip during races and to conform to other racing jurisdictions. This rule is needed to enhance equine safety and promote the integrity of harness horse races. The last sentence of this rule was amended in 2007 to permit the whip to be used in the final one-quarter mile. Harness racing safety rules continue to be necessary because the agency charged with federal safety regulation in harness racing has not announced a plan to effect such regulation. The legal basis for the rule is RWL §§ 103, 104 and 301.

RWB-22-98-00013 Apprentice weight allowances

This rulemaking amended 9 NYCRR §§ 4032.1 and 4032.4 to increase the weight standards of apprentice jockeys to modern standards and to conform to other racing jurisdictions. Section 4032.1 was amended further in 2016. These rules are needed for the effective regulation of Thoroughbred horse racing. The legal basis for the rules is RWL §§ 103, 104 and 205.

RWB-23-98-00005 Games of chance regulations

This rulemaking amended 9 NYCRR §§ 5603.7, 5607.15, 5607.28, 5608.1, 5608.13, 5609.1, 5610.1, 5610.2, 5611.1, 5611.2, 5620.19, 5622.12, 5622.13, 5622.22, 5623.1, 5624.1, 5624.3, 5624.5 and 5624.21 to codify bell-jar-related statutory amendments to the Gen-

eral Municipal Law. These rules are needed for the effective regulation of charitable gaming bell jar games. Part 5600 of 9 NYCRR has been renumbered Part 4608. Some of these provisions have been amended to conform to subsequent statutory changes. The legal basis for the rules is RWL §§ 103 and 104 and General Municipal Law article 9-A (General Municipal Law §§ 185—195-r).