



**MEETING AGENDA
SEPTEMBER 23, 2024**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES FOR MEETING OF JUNE 24, 2024
3. REPORT OF THE EXECUTIVE DIRECTOR
4. RULEMAKING
 - A. ADOPTION: SGC-25-24-00003-P, AMENDMENTS TO THE EXISTING HARNESS WHIPPING RULE
5. CONSIDERATION OF THE APPLICATION OF PENN SPORTS INTERACTIVE, LLC D/B/A ESPN BET TO ACQUIRE WSI US, LLC D/B/A WYNN INTERACTIVE
6. CONSIDERATION OF RESOLUTION 24-01: DELEGATION OF AUTHORITY TO ESTABLISH ADVISORY BOARD
7. STAFF PRESENTATION REGARDING RESPONSIBLE GAMING
8. NEW & OLD BUSINESS
9. ADJOURNMENT

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Minutes

Meeting of 24 June 2024

A meeting of the Commission was conducted in New York and Schenectady, New York.

1. Call to Order and Establishment of Quorum

Executive Director Robert Williams called the meeting to order at 1:13 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance in New York were Chairman Brian O'Dwyer and Members Sylvia Hamer, Marissa Shorenstein, and Jerry Skurnik. Members Martin Mack and Peter Moschetti attended from the Schenectady location.

Chairman O'Dwyer noted Commissioner Mack's confirmation and welcomed him to the Commission.

2. Consideration of Minutes for Meeting of 20 May 2024

The Commission considered previously circulated draft minutes of the meeting conducted on 20 May 2024. The minutes were accepted as circulated.

3. Report of the Executive Director

The Executive Director presented a report on the recently conducted Belmont Stakes Racing Festival, recent legislation that passed both houses at the end of session, and a forthcoming Gaming Facility Location Board Meeting.

4. Rulemaking

A. **ADOPTION: SGC-06-24-00004-P, Claiming Rules Revisions in Thoroughbred Racing**

The Commission considered the adoption of claiming rules revisions in Thoroughbred racing.

ON A MOTION BY: Commissioner Skurnik
APPROVED: 6-0

Mr. Williams noted that Commissioner John Crotty had indicated that had he been in attendance he would have voted affirmatively to adopt the rulemaking.

B. ADOPTION: SGC-15-24-00011-P, Change of Commission Address

The Commission considered adoption of a consensus rulemaking to update the official Commission address from 1 Broadway Center in Schenectady to 354 Broadway in Schenectady and eliminate an unnecessary subdivision in Lottery Rule 5000.4.

ON A MOTION BY: Commissioner Skurnik
APPROVED: 6-0

5. New & Old Business

A. Designation of a Chair for the Gaming Facility Location Board.

Chairman O'Dwyer moved the Commission to designate Vicki Been as chair.

APPROVED: 6-0

B. Call for Service

Chairman O'Dwyer noted that the Racing, Pari-Mutuel Wagering and Breeding Law obligates the Commission to establish an advisory board to assist in evaluating proper use of funds collected by the Thoroughbred Breeding and Development Fund and the Agriculture & New York State Horse Breeding Development Fund from various Agriculture and Markets and Tax Laws. Specifically, the Commission has been charged with appointing representatives of thoroughbred and standardbred owners and breeders, and animal protection organizations with expertise in the care of retired and rescued horses. Accordingly, the Chairman requested anyone interested in serving on the advisory board who meets qualifications to express their interest to Kristen Buckley at 518-388-3400 or sending an email to info@gaming.ny.gov.

6. Adjournment

Before concluding, Chairman O'Dwyer requested Deputy Executive Director Lee Park address progress with the proposed internship program to commence in 2025 and update the Commissioners regarding the previously discussed Lottery Aid to Education Awareness Program.

Following Mr. Park's presentation, Chairman O'Dwyer noted his attendance at the Belmont Stakes Racing Festival, and his tour, with Commissioner Hamer, of the backstretch. He also mentioned his continuing contact with the Racetrack Chaplaincy, to ensure appropriate focus on backstretch issues is maintained. The Chairman also thanked Commissioner Skurnik for his continued attendance at commercial casino licensing events in New York City, and the Division of Gaming for their stewardship of mobile sports betting issues. Finally, Chairman O'Dwyer noted new anti-slaughter legislation and discussed efforts of the Commission, the Department of Agriculture and Markets, the Thoroughbred Breeding and Development Fund and the Agriculture & New York State Horse Breeding Development Fund in ensuring the law is diligently enforced.

The meeting was adjourned at 1:49 p.m.

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To: Commissioners

From: Edmund C. Burns

Date: August 21, 2024

Re: Adoption of proposed rulemaking for whips; use of whips, kicking, foot out of stirrups, goads, and head poles; penalties (9 NYCRR § 4117.8)

For Commission consideration is the adoption of amendments to the Commission's rules on the use of whips in harness racing. The proposed amendments would require that a driver keep a line in each hand, except as necessary to adjust equipment, while racing or training or at any time the horse is being driven on the track. The amended rule would establish uniformity across the State and promote the health and safety of racehorses.

The proposal would further define the allowable urging during a race and conduct that would be considered excessive or indiscriminate use of the whip. Kicking and foot-out-of-stirrup also would be further defined for clarity in that a driver who removes a foot from the stirrups would be treated as if the driver were found to have kicked a horse, and conduct would be considered a kick violation if a driver makes contact with a horse while feet are in or out of the stirrup. The proposed regulation would also establish penalties for these offenses, would allow for consideration of offenses in other jurisdictions and would constrain judges' discretion in setting such penalties.

The Commission published a Notice of Proposed Rulemaking in the June 18, 2024 State Register, an excerpt of which is attached and contains the text of the proposed rule. The public comment period expired on August 19, 2024. No comments were received.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
Sarah Klein, Director, Division of Horse Racing and Pari-Mutuel Wagering

Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: Joana.Lucashuk@dfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whip Use in Harness Racing

I.D. No. SGC-25-24-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of section 4117.8 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Whip use in harness racing.

Purpose: To promote the health and safety of racehorses.

Text of proposed rule: Section 4117.8 of 9 NYCRR would be amended to read as follows:

§ 4117.8. Whips, goads and head poles.

(a) *Whip specifications.* A driver [Drivers may] is permitted to carry only a black whip that shall not exceed [three] four feet [nine inches] in length, plus a snapper [no] not longer than six inches. No leather or unusual materials may be used. The conventional snapper shall not be knotted. Tape is permitted only on the handle of the whip. All other modifications of the whip are prohibited.

(b) *Prohibitions on urging.* No person shall possess or use any goading device or mechanical or electric device or appliance[,] other than a whip specified in subdivision (a) of this section, [may be used upon a horse] either while racing, training or at any other time on the track premises.

(c) *Allowable urging during a race.* A driver may use a whip or the lines only in the conventional manner, in accordance with the following:

(1) the driver must keep a line in each hand, except as may be necessary to adjust equipment (i.e., pulling plugs, dropping blinkers, etc.) while racing, training or at any other time when driving a horse on the track premises;

(2) lines shall remain reasonably taut during a race;

(3) use of the whip shall be restricted to forearm and wrist action only such that a driver's elbows must remain reasonably tucked and not raised above the driver's shoulder. For avoidance of doubt, raising the lines and using the whip with wrist-action only is permissible;

(4) a driver is permitted to use the whip to hit the wheel disc or shaft so long as the whip does not interfere with another horse or driver; and

(5) a driver is permitted to use a hand or the whip in a sliding, gliding or tapping manner about the level of the arch.

(d) *Excessive or indiscriminate use of whip.* While on the track premises at any time, no one shall use a whip in an[. Brutal,] excessive, [unnecessary or] indiscriminate, injurious, abusive or unnecessary manner, as the judges may determine in their discretion. [use of the whip, is prohibited.] The following actions shall be considered as excessive or indiscriminate use of the whip:

(1) causing [visible] an injury to the horse with the whip;

(2) whipping a horse after a race; and

(2) using the whip more than three times in succession without giving the horse time to respond to the urging;

(3) using the whip on a horse that is not visibly responding;

(4) using the whip on a tired horse or continuing to use the whip when the horse is not reasonably advancing or maintaining its position in the race;

(5) using the whip after the finish line;

(6) using the handle of the whip on a horse in any manner;

(7) striking another horse or driver with the whip or using the whip in a manner that interferes with another horse or driver;

(8) movement by the driver of their body or arms in an exaggerated manner;

[(3)] (9) whipping under the arch or shafts of the sulky;

(10) placing the whip between a horse's legs; or

(11) contacting the horse with the whip on the horse's hocks or below.

Notwithstanding the prohibitions described in this section, a driver may use the whip in any reasonable manner to ensure the safety of the horses and drivers in the race.

(e) *Kicking prohibited.* [Drivers are] The kicking of a horse is prohibited [from kicking, punching, or jabbing a horse, or using the whip so as to interfere with or cause disturbance to any other horse or driver in a race. The use of the whip shall be confined to an area above and between the sulky shafts to include the sulky shafts and the outside wheel discs. Drivers shall keep a line in each hand from the start of the race until one-quarter of one mile before the finish of the race]. *Kicking, for purposes of this subdivision, means delivering a blow or thrust with the foot against any part of the horse's body or impelling by striking with the foot at any time on the track premises, including before, during or after a race.*

(f) *Foot out of stirrup.* A driver found to have removed a foot from the stirrups shall be punished as if the driver were found to have kicked a horse. Additionally, it shall be considered a kicking violation if a driver makes any contact with a horse while both feet are in or out of the stirrups or any foot supports. Notwithstanding the foregoing, a driver is allowed, in the discretion of the judges, to remove a foot from the stirrup temporarily for the purpose of pulling earplugs or to adjust equipment.

[(d)] Under the supervision of the judges, there shall be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip.]

[(e)] (g) *Head poles.* Head poles may be used on a horse but shall not protrude more than 10 inches beyond the horse's nose.

(h) *Penalties.*

(1) The penalties for a kicking violation of this rule are as follows, depending on the severity of the violation:

	Suspension
First offense	30 days
Second offense	90 days
Third offense	License revocation

(2) The penalties for a non-kicking violation of this rule are as follows, depending on the severity of the violation:

	Suspension	Fine
First offense	none	\$100
Second offense	3 days	\$250
Third offense	7 days	\$500
Fourth offense	15 days	\$1,000
Fifth or subsequent offense	For each subsequent offense, the penalty for both suspension days and the amount of the fine shall be double the last penalty imposed.	

When calculating penalties for successive non-kicking violations under this section, any kicking violation that occurs between non-kicking violations shall be considered and equated to three non-kicking offenses for purposes of calculating escalating penalties for non-kicking violations.

(3) A driver's penalty shall be based on the number of offenses that the driver has had across all racetracks in the United States and, to the extent records are available to the judges, Canada, over the 365-day period that includes and immediately precedes the date of the most recent offense.

(4) Any brutal or indiscriminate use of the whip or excessive number of offenses may subject a driver to license revocation, without regard to the number of offenses.

(5) In addition to the penalties set forth in this subdivision, the violation of any of the provisions in this section may result in loss of placement or disqualification if, in the discretion of the judges, the driver and horse gained an unfair advantage due to such violation.

(6) Nothing in the penalties set forth in this subdivision shall preclude a judge, as the circumstances may warrant, from referring a licensee to the commission for a review of the character and fitness of such licensee to hold a racing license.

(i) *Publication required.* All harness racing corporations or associations conducting a pari-mutuel meet shall publish this section in each day's official racing program.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, Gaming Commission, 354 Broadway, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3332, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** The New York State Gaming Commission (“Commission”) is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) Sections 103(2) and 104 (1) and (19). Pursuant to Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. **LEGISLATIVE OBJECTIVES:** To amend the Commission’s rules on the use of whips in harness racing to establish uniformity across the State and promote the health and safety of racehorses.

3. **NEEDS AND BENEFITS:** Commission rules currently provide that drivers may carry a whip of a certain length, which may be used in a conventional manner. Drivers are prohibited from kicking, and drivers must keep a line in each hand from the start of the race until one quarter of one mile before the finish of the race. The Commission believes that the current rules do not provide enough clarity on permissible use of the whip, kicking a horse or a driver taking feet out of the stirrup during a race. Furthermore, the current rule does not provide a penalty structure to deter prohibited conduct or promote uniformity in discipline for violations of these rules. This proposal is intended to address these concerns.

Adding the requirements that lines must be kept in separate hands while racing, training or at any other time when driving a horse on track premises, and that use of the line must be restricted to forearm and wrist action (not raised above the shoulder) will clearly provide what is permissible and will also bring New York in line with many other racing jurisdictions such as New Jersey, Pennsylvania, Ohio, Maine, Massachusetts and Kentucky, as well as the United States Trotting Association Model Rules. The proposed amendments would require that a driver keep a line in each hand, except as necessary to adjust equipment, while racing or training or at any time the horse is being driven on the track.

The proposal would further define the allowable urging during a race and conduct that would be considered excessive or indiscriminate use of the whip. Kicking and foot-out-of-stirrup also would be further defined for clarity in that a driver who removes a foot from the stirrups would be treated as if the driver were found to have kicked a horse, and conduct would be considered a kick violation if a driver makes contact with a horse while feet are in or out of the stirrup. The proposed regulation would also establish penalties for these offenses, would allow for consideration of offenses in other jurisdictions and would constrain judges’ discretion in setting such penalties.

Adding a set penalty structure for any violation of this rule would ensure that any successive offense within one year concerning whipping, kicking or urging, after an offense at any United States or Canadian racetrack, would result in an increased penalty. Furthermore, any indiscriminate use of the whip could subject the driver to license revocation, as would a third successive kicking violation. This structure would provide greater consideration of past offenses, establish uniformity across New York’s tracks, and would be a further safeguard to ensure the health and welfare of racehorses and maintain the integrity of the sport.

This rulemaking would promote the health and safety of racehorses by discouraging kicking and unwarranted whipping that could physically harm a horse.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulations is minimal. The proposed rulemaking may result in additional fines to harness drivers.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rules will be negligible. This rule will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission’s experience regulating gaming activities within the State.

5. **LOCAL GOVERNMENT MANDATES:** There are no local government mandates associated with these rules.

6. **PAPERWORK:** The rules are not expected to impose any significant paperwork or reporting requirements on the regulated entities other than a potential for increased documentation of additional fines and penalties issued by the Commission.

7. **DUPLICATION:** The rules do not duplicate or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The alternative of not proposing this rulemaking was considered and rejected. The proposed rule is necessary to protect the safety of equine athletes, because the current rule is believed to be an insufficient deterrent to inappropriate conduct that could harm horses and the proposal is believed to promote practices that protect racehorse health.

9. **FEDERAL STANDARDS:** There are no minimum standards of the Federal government for this or a similar subject area.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed changes do not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. There will be no adverse impact on small businesses, local governments, rural areas or jobs.

The proposed rule making would amend the Commission’s rules on the use of whips in harness racing. The proposed amendments would require that a driver keep a line in each hand, except as necessary to adjust equipment, while racing or training or at any time the horse is being driven on the track. The amended rule would establish uniformity across the State and promote the health and safety of racehorses.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on local governments, rural areas or employment opportunities. No local government activities are involved. Any potential additional reporting requirements and recordkeeping for attending veterinarians should be minimal.

Department of Health

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Health publishes a new notice of proposed rule making in the *NYS Register*.

Perinatal Services, Perinatal Regionalization, Birthing Centers and Maternity Birthing Centers

I.D. No.	Proposed	Expiration Date
HLT-22-23-00011-P	May 31, 2023	May 30, 2024

Long Island Power Authority

NOTICE OF ADOPTION

12-Month Bill Protection Guarantee

I.D. No. LPA-09-24-00014-A

Filing Date: 2024-05-31

Effective Date: 2024-06-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The Long Island Power Authority approved changes to the Tariff for Electric Service clarifying the applicability of the 12-Month Bill Protection Guarantee under the Time of Day (TOD) rate program.

Statutory authority: Public Authorities Law, section 1020-f(u) and (z)

Subject: 12-Month Bill Protection Guarantee.

Purpose: To broaden applicability of Bill Protection Guarantee to all customers enrolled in Rate Code 194 or 195 by last migration.

Text of final rule: The Trustees of the Long Island Power Authority (“LIPA” or the “Authority”) approved modifications to its Tariff for