



**Meeting Agenda
May 20, 2024**

1. Call to Order and Establishment of Quorum
2. Consideration of Minutes for Meeting of March 25, 2024
3. Report of the Executive Director
4. Rulemaking
 - A. Adoption: SGC-06-24-00002-P, Pick-Four Wagers for Thoroughbred and Harness Racing
 - B. Adoption: SGC-06-24-00003-P, Pick-Five Wager for Thoroughbred Racing
 - C. Adoption: SGC-06-24-00004-P, Claiming Rules Revisions in Thoroughbred Racing
 - D. Proposed: Amendments to the existing harness whipping rule
5. New & Old Business
6. Adjournment

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Minutes

Meeting of 25 March 2024

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

1. **Call to Order and Establishment of Quorum**

Executive Director Robert Williams called the meeting to order at 1:21 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance were Chairman Brian O'Dwyer and Members John Crotty, Sylvia Hamer, Marissa Shorenstein, and Jerry Skurnik. Member Peter Moschetti was noted as having a conflicting appointment.

2. **Consideration of Minutes for Meeting of 4 December 2023**

The Commission considered previously circulated draft minutes of the meeting conducted on 4 December 2023. The minutes were accepted as circulated.

3. **Report of the Executive Director**

The Executive Director presented an update on the additional casino licensing process, laying out the obligation of all applicants to navigate the State Environmental Quality Review Act. The Director also noted the status of several applicants that have been engaged in the New York City Uniform Land Use Review Procedure, which requires navigation of the City Environmental Quality Review Act. Also discussed was that the City process, by law, is a coordinated review with the State. Finally, the Director noted the Franchise Oversight Board had scheduled a meeting to consider, among other things, approval of the Belmont Park renovation, the project State Environmental Quality Review Act finding, and a Loan and Repayment Agreement.

4. Rulemaking

A. ADOPTION: SGC-52-23-00014-P, Lottery Prize Payment and Subscription Amendments

The Commission considered adoption of amendments to the lottery prize payment and subscription rules intended to improve the claims process and clarify practices and interpretations.

ON A MOTION BY: Commissioner Skurnik
APPROVED: 5-0

B. PROPOSAL: Change in Commission Address

The Commission considered proposal of a consensus rulemaking to update the Commission's address in 15 sections of rules from 1 Broadway Center in Schenectady to 354 Broadway in Schenectady. Additionally, the proposal eliminates an unnecessary subdivision in Lottery Rule 5000.4.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

C. PROPOSAL: Amendments to the existing harness whipping rule

The Commission deferred consideration of this proposal, requesting that it be considered when Member Moschetti was in attendance.

5. Adjudications

A. In the Matter of Asim Convenience Corp.

The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations that the subject license be suspended as set forth in the Notice of License Suspension.

B. In the Matters of Norman Follett and Alexander Kazdan

The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations that no violation be found or penalty imposed against either licensee.

C. In the Matter of Thomas LaMarca

The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations that no violation be found or penalty imposed against the licensee.

D. In the Matter of Todd Pletcher

The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations that the penalties be imposed as had been determined by the State Steward and that the horse be disqualified from the race and any share of the purse from such race.

E. In the Matter of Jaime A. Torres

The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations of a violation and a 14-day suspension.

F. In the Matter of 7721 SM Deli & Grocery Inc.

The Commission duly deliberated and considered this matter and determined, upon a 6-0 vote, to sustain the Hearing Officer's Report and Recommendations recommending that 7721 SM's license be revoked.

6. New & Old Business

Chairman O'Dwyer noted that thoroughbred trainer Steve Asmussen's stable had been recently adjudged liable by a federal district court in Kentucky for wage and hour law violations totaling more than \$486,000 in actual and liquidated damages and raised specific concern with the judge's finding that there was willfulness on the part of Mr. Asmussen's stable. Chairman O'Dwyer noted that the Commission has substantial concern with the treatment of horsemen's employees and directed the Office of Counsel to examine the most recent judicial determinations and return with a recommendation of action, if warranted.

7. **Adjournment**

Before concluding, Chairman O'Dwyer noted appreciation of Member Skurnik service, as he had undertaken several appearances at community events to explain the downstate casino licensing process. The Chairman also noted the substantial Mega Millions and Powerball jackpot run ups, specifically indicated the benefit each had on both education and to lottery sales agents.

The meeting was adjourned at 1:56 p.m.

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Gaming Commission

354 Broadway, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns

Date: April 9, 2024

Re: Adoption of Proposed Rulemaking to Amend Thoroughbred and Harness Pick-Four Wagering Amendments (9 NYCRR §§ 4011.24 and 4122.46)

For Commission consideration is the adoption of amendments to the Thoroughbred and harness pick-four wagering rules. These changes, in regard to consolation pools and carryovers, would mirror the current Thoroughbred pick-six wager rule and the proposed rulemaking for amendments to the Thoroughbred pick-five rule. This proposal is similar to rules already in effect in other jurisdictions such as Kentucky, New Jersey and Florida, offering choices as to what method each track chooses to use for its pick-n wagers. This proposed rulemaking would amend sections 4011.24 and 4122.46 to allow each Thoroughbred and harness racetrack the option of offering a consolation payout for pick-four wagers. The proposed rulemaking would allow tracks to either carry over 100% of the net pool, as in the current pick-four rule, or carry over 75% of the net pool and pay out a consolation of 25%. Prior written approval of the Commission would be required before a track could change the method of apportioning the pick-four pool.

The Commission published a Notice of Proposed Rulemaking in the February 7, 2024 State Register, an excerpt of which is attached. The text of the proposed rule is also attached. The public comment period expired on April 8, 2024. No comments were received.

[REDACTED]

attachment

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

hour. This speed is very high and poses significant safety concerns through the populated areas of Saranac Lake and Lake Clear and other villages, especially when considering multiple users, including hikers, joggers, skiers and other users.

Another alternative would be to set specific speed limits on specific sections of the travel corridor. This would not allow for flexibility in establishing appropriate speed limits along the corridor and would not take into account on the ground data to guide appropriate speed limits or change them if warranted without going through the full regulatory process.

9. Federal Standards:

There is no relevant federal standard governing the use of State lands

10. Compliance Schedule:

Once the regulations are adopted, they will be effective immediately, and all persons using the trail will be expected to comply with the posted speed limits. The Department will educate the public about the regulations through information posted on the Department's web site, signage posted on the property, social media, and by working with user groups and other stakeholders to help disseminate information regarding the regulations.

Regulatory Flexibility Analysis

The emergency proposed rulemaking will provide the Department the authority to regulate speeds for all users along the Adirondack Rail Trail, thereby providing a safe and enjoyable experience for all users. A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted and is not required because it does not impose any reporting, record-keeping or other compliance requirements on small businesses and local governments. The proposed rulemaking relates solely to protecting public health, safety and general welfare for users of the Adirondack Rail Trail.

Rural Area Flexibility Analysis

The emergency proposed rulemaking will provide the Department the authority to regulate speeds for all users along the Adirondack Rail Trail, thereby providing a safe and enjoyable experience for all users. A Rural Area Flexibility Analysis is not submitted and is not required because the proposal will not impose any reporting, record-keeping or other compliance requirements on rural areas. The proposed rulemaking relates solely to protecting public health, safety and general welfare for users of the Adirondack Rail Trail.

Job Impact Statement

The emergency proposed rulemaking will provide the Department the authority to regulate speeds for all users along the Adirondack Rail Trail, thereby providing a safe and enjoyable experience for all users. A Job Impact Statement is not submitted and is not required because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed rulemaking relates solely to protecting public health, safety and general welfare for users of the Adirondack Rail Trail.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pick-Four Wagers for Thoroughbred and Harness Racing

I.D. No. SGC-06-24-00002-P

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

Proposed Action: Amendment of sections 4011.24 and 4122.46 of Title 9 NYCRR.

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

Subject: Pick-four wagers for thoroughbred and harness racing.

Purpose: To improve the pick-four wagers in thoroughbred and harness racing.

Substance of proposed rule (Full text is posted at the following State website: <https://www.gaming.ny.gov/proposedrules.php>): The amendment of sections 4011.24 and 4122.46 of Subtitle T of Title 9 NYCRR will allow each Thoroughbred and harness racetrack the option of offering a consolation payout for pick-four wagers. The proposed amendments

would allow tracks to either carry over 100% of the net pool, as in the current pick-four rule, or carry over 75% of the net pool and pay out a consolation of 25%. Pursuant to the proposed amendments, prior written approval of the Commission would be required before a track could change the method of apportioning the pick-four pool.

Amendments to sections 4011.24 and 4122.46 would add relevant language to the subdivisions pertaining to surface transfers and race cancellations to reflect the proposed consolation payout options. The proposed amendments would also add new subdivisions to mirror the current Thoroughbred pick-six wager rule and the proposed rulemaking for amendments to the Thoroughbred pick-five rule.

Additionally, the proposed amendments to sections 4011.24 and 4122.46 would make stylistic changes, including the addition of titles to subdivisions.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 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.

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 enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. **NEEDS AND BENEFITS:** This rule making proposes to amend the Commission's Thoroughbred and harness pick-four wagering rules to enhance interest in the pick-four wagers by allowing each racetrack the option of offering a consolation payout. This proposal is similar to rules already in effect in other prominent jurisdictions. These jurisdictions offer choices as to what method each track chooses to use for its pick-n wagers, which mirror the Model Rules of Racing issued by The Association of Racing Commissioners International. These changes would promote uniformity in Thoroughbred and harness wagering rules and provide racetracks more flexibility to help increase their handle.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: None anticipated. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate Thoroughbred and harness racing.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: Experience of agency staff.

5. **LOCAL GOVERNMENT MANDATES:** None. The Commission is the only governmental entity authorized to regulate Thoroughbred and harness racing activities.

6. **PAPERWORK:** There will be no additional paperwork.

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

8. **ALTERNATIVES:** The alternative of not revising the pick-four wagering rules was considered and rejected. The current rules are not consistent with other prominent racing jurisdictions and the Model Rules of Racing issued by The Association of Racing Commissioners International. These changes are necessary to promote uniformity in Thoroughbred and harness wagering rules and provide racetracks more flexibility to help increase their handle.

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 amendments are revisions to the Commission’s Thoroughbred and harness pick-four wagering rules to enhance interest in the pick-four wager by allowing racetracks the option of offering a consolation payout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities. No local government activities are involved.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Pick-Five Wager for Thoroughbred Racing

I.D. No. SGC-06-24-00003-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 4011.25 of Title 9 NYCRR.

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

Subject: Pick-five wager for Thoroughbred racing.

Purpose: To improve the pick-five wager in Thoroughbred racing.

Text of proposed rule: Section 4011.25 of 9 NYCRR would be amended to read as follows:

§ 4011.25. Pick-five pools.

(a) *Description.* A winning pick-five wager requires selection of the first-place finisher in each of five designated, consecutive contests, unless otherwise provided in this section. The [association or corporation] track operator must obtain written approval from the commission concerning the scheduling of pick-five contests, the designation of the method used and the amount of any cap to be set on the carryover. Any changes to the approved pick-five format require prior approval from the commission.

(b) *Separate wager.* The pick-five wager is not a parlay and has no connection or relation to the other betting pools for the respective races. The pick-five pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, quinella, trifecta, superfecta or other wagering pool.

(c) *No resale.* Resale of pick-five tickets from one individual to another is prohibited, shall be grounds for ejection, and may be deemed illegal gambling.

(d) *Clear designation.* Races in which pick-five pools shall be conducted shall be clearly designated in the program and racing cards issued by the association or corporation.

(e) *Ticket design.* The design of the pick-five tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

* * *

(g) Wagering tickets and winners. If neither subdivision (h) nor subdivision (i) of this section applies, then the pick-five pool shall be apportioned, with the prior written approval of the commission following the request of track operator offering this wager, pursuant to either paragraph (1) or (2) of this subdivision, as follows:

(1) the net pick-five pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-five contests, based on the official order of finish, unless otherwise provided in this section. If there are no such wagers, the net pick-five pool shall be added to the carryover[.]; or

(2) the net pick-five pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-five contests, based on the official order of finish, or to the holders of wagers selecting the first-place finisher in each of the pick-five contests with no more than one all-win race, unless otherwise provided in this paragraph. Should there be no wager selecting winners of all five designated races or no wager selecting the winners of the designated races with no more than one all-win race, then 25 percent of the net pool, excluding carryover from the previous program, shall be distributed, less breaks, to the holders of wagers selecting the winners of the most pick-five races and 75 percent of the net pool shall be added to the carryover. In addition to the net-pool share and any carry-overs distributable when a wager correctly selects winners of all five designated races, or four winners and no more than one all-win race of a pick-five pool, there shall be distributed by the track operator from its own funds, upon such occurrence, any amounts the track operator has advertised that the track operator will add to the total distribution.

(h) Race cancellations. Except for pick-five pools in which a designated distribution is to be made, the following shall apply:

(1) If one or two of the pick-five races are cancelled or declared no race or non-betting, then those who selected the winners of other pick-five races shall share the net pool. Any carryover from previous programs will be carried over to the next pick-five wager pool. *If there are no such wagers and the track operator has selected the pick-five wagering option set forth in paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(2) If more than two of the pick-five races are cancelled or declared no race or non-betting, then the entire pool shall be cancelled and all pick-five wagers shall be refunded.

(3) If any of the designated races of the pick-five sequence is cancelled or declared no race or non-betting before the first pick-five race is made official, then the pick-five pool shall be declared off and the gross pool refunded.

(i) Surface transfer. When the condition of a turf course warrants a change of racing surface to a non-turf course in any of the pick-five races, and such change has not been known to the public before the close of wagering for the pick-five pool, then such changed race shall be deemed an all win race for pick-five wagering purposes. An [all win] all-win race means the winning horse of that race is assigned to each pick-five bettor as such bettor’s selection for that race. Except for pick-five pools in which a full distribution is to be made, a pick-five pool with surface transfer(s) shall be handled as follows:

(1) If there was a surface change to a non-turf course in only one of the pick-five races, then the bettors who selected the winners of the four pick-five races for which there were no surface changes shall share that day’s net pool for such wager as well as any carryover. *If there are no such wagers and the track operator has selected the pick-five wagering option set forth in paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(2) If there was a surface change to a non-turf course in more than one of the pick-five races, then the bettors who selected the winners of all the other pick-five races shall share that day’s net pool for such wager but shall not share any carryover (any such previous carryover to be carried over to the next performance’s pick-five wager pool). *If there are no such wagers and the track operator has selected the pick-five wagering option pursuant to paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(3) If there are one or more surface change races in the pick-five sequence, and there are no bettors who selected the winner(s) of all the other pick-five races, then:

(i) *if the track operator has selected the pick-five wagering option set forth in paragraph (1) of subdivision (g) of this section, the net pool for such program shall be carried over to the next performance’s pick-five wager pool[.]; or*

(ii) *if the track operator has selected the pick-five wagering option pursuant to paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(4) If there are one or more surface change races in the pick-five sequence and there are no bettors who selected the winner of any of the other pick-five races, then the entire pool for such program shall be refunded.

* * *

(k) Carryovers.

(1) The pick-five carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick-five carryover equals or exceeds the designated cap, then the pick-five carryover will be frozen until such carryover is won or distributed under the other provisions of this [rule] section. After the pick-five carryover is frozen, 100 percent of the net pool that ordinarily would be added to the pick-five carryover shall be distributed to those whose

Sections 4011.24 and 4122.46 of 9 NYCRR would be amended to read as follows:

§ 4011.24. Pick-four pools.

(a) Description. A winning pick-four wager requires selection of the first-place finisher in each of four designated, consecutive contests, unless otherwise provided in this section. The [association or corporation] track operator must obtain written approval from the commission concerning the scheduling of pick-four contests and the designation of the method used. Any changes to the approved pick-four format require prior approval from the commission.

(b) Separate wager. The pick-four wager is not a parlay and has no connection or relation to the other betting pools for the respective races. The pick-four pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, quinella, trifecta, superfecta or other wagering pool.

(c) No resale. Resale of pick-four tickets from one individual to another is prohibited, shall be grounds for ejection and may be deemed illegal gambling.

(d) Clear designation. Races in which pick-four pools shall be conducted shall be clearly designated in the program and racing cards issued by the [association or corporation] track operator.

(e) Ticket design. The design of the pick-four tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

* * *

(g) Wagering tickets and winners. If neither subdivision (h) nor subdivision (i) of this section applies, then the pick-four pool shall be apportioned, with the prior written approval of the commission following the request of the track operator offering this wager, pursuant to either paragraph (1) or (2) of this subdivision, as follows [in the following order]:

(1) If no carryover, in the following order:

(i) If no pick-four ticket is sold combining the winners of the four pick-four races, all pick-four tickets designating three winners shall be considered winning tickets and the net pool distributed equally to holders of such tickets.

[(2)] (ii) If no pick-four ticket is sold combining the winners of three such races, all pick-four tickets designating two winners shall be considered winning tickets and the net pool distributed equally to holders of such tickets.

[(3)] (iii) If no pick-four ticket is sold combining the winners of two such races, all pick-four tickets designating one winner shall be considered winning tickets and the net pool distributed equally to holders of such tickets.

[(4)] (iv) If no pick-four ticket is sold designating any winner to win in the designated pick-four races, the pick-four shall be declared off and the gross pool refunded[.]; or

(2) If carryover and no consolation payout. The net pick-four pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-four contests, based on the official order of finish, unless otherwise provided in this section. If there are no such wagers, the net pick-four pool shall be added to the carryover; or

(3) If carryover and consolation payout. The net pick-four pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-four contests, based on the official order of finish, or to the holders of wagers selecting the first-place finisher in each of the pick-four contests with no more than one all-win race, unless otherwise provided in this paragraph. Should there be no wager selecting winners of all four designated races or to the holders of wagers selecting the winners of the designated races with no more than one all-win race, then 25 percent of the net pool, excluding carryover from the previous program, shall be distributed, less breaks, to the holders of wagers selecting the winners of the most pick-four races and 75 percent of the net pool shall be added to the carryover. In addition to the net-pool share and any carry-overs distributable when a wager correctly selects winners of all four designated races, or three winners and no more than one all-win race of a pick-four pool, there shall be distributed by the track operator from its own funds, upon such occurrence, any amounts the track operator has advertised that the track operator will add to the total distribution.

(h) Race cancellations. Except for pick-four pools in which a designated distribution is to be made, the following shall apply:

(1) If one or two of the pick-four races are cancelled or declared no race or non-betting, then those who selected the winners in the greatest number of other pick-four races shall share the net pool. If there are no such wagers and the track operator has selected the pick-four wagering option pursuant to paragraph (3) of subdivision (g) of this section, 25 percent of the net pick-four pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-four races, and 75 percent shall be added to the carryover.

(2) If more than two of the pick-four races are cancelled or declared no race or [nonbetting] non-betting, then the entire pool shall be cancelled and all pick-four wagers shall be refunded.

(3) If any of the designated races of the pick-four sequence is cancelled or declared no race or non-betting before the first pick-four race is made official, then the pick-four pool shall be declared off and the gross pool refunded.

(i) *Surface transfers.* When the condition of a turf course warrants a change of racing surface to a non-turf course in any of the pick-four races, and such change has not been known to the public before the close of wagering for the pick-four pool, such changed race shall be deemed an all win race for pick-four wagering purposes. An [all win] *all-win* race means the winning horse of that race is assigned to each pick-four ticket holder as such ticket holder's selection for that race. If there is a surface transfer in one or more of the pick-four races, then those who selected the winners in the greatest number of races without a surface transfer shall share the net pool. If there are no wagers selecting the winner of at least one of the races without a surface transfer, then the entire pool for such program shall be refunded. If any of the designated races is cancelled or declared "no race," then the pick-four pool will be determined by the winners of the remaining race or races. For racetrack operators that have selected the pick-four wagering option pursuant to either paragraph (2) or (3) of subdivision (g) of this section, except for pick-four pools in which a final distribution is to be made, a pick-four pool with a surface transfer or transfers shall be handled as follows:

(1) If there was a surface change to a non-turf course in only one of the pick-four races, then the bettors who selected the winners of the three pick-four races for which there were no surface changes shall share that day's net pool for such wager as well as any carryover. If there are no such wagers and the track operator has selected the pick-four wagering option pursuant to paragraph (3) of subdivision (g) of this section, 25 percent of the net pick-four pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-four races, and 75 percent shall be added to the carryover.

(2) If there was a surface change to a non-turf course in more than one of the pick-four races, then the bettors who selected the winners of all the other pick-four races shall share that day's net pool for such wager but shall not share any carryover (any such previous carryover to be carried over to the next performance's pick-four wager pool). If there are no such wagers and the track operator has selected the pick-four wagering option pursuant to paragraph (3) of subdivision (g) of this section, 25 percent of the net pick-four pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-four races, and 75 percent shall be added to the carryover.

* * *

(k) Carryovers.

(1) The pick-four carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick-four carryover equals or exceeds the designated cap, then the pick-four carryover will be frozen until such carryover is won or distributed under the other provisions of this section. After the pick-four carryover is frozen, 100 percent of the net pool that ordinarily would be added to the pick-four carryover shall be distributed to those whose selection finished first in the greatest number of pick-four contests for that performance.

(2) A written request for permission to distribute the pick-four carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and performance for the distribution.

(3) If for any reason the pick-four carryover must be held over to a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick-four carryover plus accrued interest shall then be added to the net pick-four pool of the following meet on a date and performance so designated by the commission.

(4) With the written approval of the commission, the track operator may contribute to the pick-four carryover a sum of money up to the amount of any designated cap.

(l) Other designated distributions. The pick-four carryover may be designated for distribution on a specified date and performance, other than as a final distribution, as set forth in subdivision (m) of this section, only under the following circumstances:

(1) upon written approval from the commission as provided in subdivision (i) of this section; or

(2) upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick-(n) wagering to another, or when the pick-four pool is discontinued.

If the pick-four carryover is designated for distribution on a specified date and performance in which there are no wagers selecting the winner in each of the pick-four races, then the net pool, with any carryover, shall be distributed as a single-price pool to those whose selection finished first in the greatest number of pick-four contests.

(m) Final distribution. The track operator shall select, with the approval of the commission, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting at a track after which such track operator will operate at another track, when there shall be a final distribution of all accumulated carryovers together with the net pool of the pick-four pool conducted during such program to the holders of wagers selecting the

winners of the most pick-four races contested during such program. If all pick-four races on the program designated for final distribution are cancelled and no further programs are conducted at the meeting, then no other pick-four pools shall be conducted during such week and the commission shall require that a pick-four pool be conducted on the first program of the next race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

(n) *Suspension of wager.* The track operator may suspend previously approved pick-four wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick-four wagering is reinstated. A track operator may request approval of a pick-four wager or separate wagering pool for specific performances.

[(k)–(o)] (o) [Reserved]

(p) *Other occurrences.* In the event of occurrences not encompassed within the explicit provisions of this section, distribution shall be formulated on the basis of established pari-mutuel practice and in accordance with the distribution philosophy set forth in this section; provided, nevertheless, that if full distribution of the pool is made on the basis of outstanding tickets, then the method of formulation announced by the track operator, and the basis upon which payments have been made, shall be deemed conclusively correct and not subject to review.

* * *

(s) *Betting information.* A track operator may display publicly information in regard to combinations wagered upon, amounts wagered on such combinations, numbers of tickets sold or number of tickets still capable of winning a pick-four pool. The operation of the totalisator equipment and reports generated thereby shall be subject to the strict supervision of the commission.

[(s)–(w)] (t)–(w) [Reserved]

(x) *Rule availability.* Copies of this section shall be made available free of charge by the track operator to the public in the public betting area of the track.

* * *

PART 4122

Pari-Mutuel Wagering

Section	
4122.1	Pari-mutuel wagering
4122.2	Heat as race
4122.3	Sale of pari-mutuel tickets
4122.4	Time for wagering

NYS Gaming Commission Pick-four wagering amendments (proposed)

Text to be deleted appears in [brackets]

Text to be added is underlined

- 4122.5 Bookmaking
- 4122.6 Betting by minors
- 4122.7 Time for wagering to close
- 4122.8 No wagering after close
- 4122.9 Denomination of pari-mutuel tickets
- 4122.10 Method of wagering
- 4122.11 Notice to pari-mutuel manager before wagering opens
- 4122.12 Limited wagering fields
- 4122.13 Coupled entries wagering
- 4122.14 Field wagering
- 4122.15 Payments
- 4122.16 Official result of race to be reported and effect thereof
- 4122.17 Payment where no wagering on a position
- 4122.18 Dead heats and coupled entries
- 4122.19 Incomplete finishes
- 4122.20 Payoff errors
- 4122.21 Time to present winning tickets
- 4122.22 Daily doubles
- 4122.23 Daily double terms
- 4122.24 Daily double: failure to select a winner and race cancellations; dead heats; scratches
- 4122.25 Refunds and exchanges
- 4122.26 Effect of scratch
- 4122.27 Coupled entry scratch
- 4122.28 Race declared off
- 4122.29 Forms
- 4122.30 Report of unpaid tickets
- 4122.31 Report if no totalisator
- 4122.32 Report of payoff
- 4122.33 Report of attendance and handle
- 4122.34 Test of mutuel equipment
- 4122.35 Display of public information
- 4122.36 Personnel
- 4122.37 Daily reports
- 4122.38 Parlay betting
- 4122.39 Exacta
- 4122.40 Triple
- 4122.41 Jackpot super high five
- 4122.42 Quinella
- 4122.43 Shortages
- 4122.44 Payments to the Agriculture and New York State Horse Breeding Development Fund
- 4122.45 Super exotic pools
- 4122.46 [Pick four pools] Pick-four pools
- 4122.47 Pick-six jackpot pools

4122.48 Grand Slam wager

4122.49 Additional authorized wagers

§ 4122.46. [Pick four pools] Pick-four pools.

* * *

(a) *Description.* The [pick four] pick-four (or other approved name) is a form of pari-mutuel wagering conducted on four races specifically designated as [pick four] pick-four races by the commission. Each bettor selects, in order, the first placed horse in each of the four races designated and advertised by the track as [pick four] pick-four races, in the race order so designated by the commission.

(b) *Separate wager.* The [pick four] pick-four is not a parlay and has no connection with nor relation to the other betting pools for the respective races. The [pick four] pick-four pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, quinella, triple, superfecta or other wagering pool.

(c) *No resale.* Resale of [pick four] pick-four tickets from one individual to another is prohibited, shall be grounds for ejection, and may be deemed illegal gambling.

(d) *Clear designation.* Races in which [pick four] pick-four pools shall be conducted shall be clearly designated in the program and racing cards issued by the [corporation] track operator.

(e) *Ticket design.* The design of the [pick four] pick-four tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(f) *Scratched horses and nonstarters.* At any time after wagering begins on the [pick four] pick-four pool, should an entire betting entry or field be scratched or declared a nonstarter in any [pick four] pick-four race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the [pick four] pick-four pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the track in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field upon which the most wagering money has been registered at the track in the place pool at the close of place pool betting for that race shall be designated.) Wagers in the [pick four] pick-four pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except at tracks with totalisator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), in which case, the wagers upon scratched constituent horses will be deemed wagers upon the “designated horse” in such race. In case no starter remains representing any betting entry or field, wagers upon such entry or field shall be deemed wagers upon the “designated horse” in the race affected by the scratch. Should the balance of a betting entry or field race as a

[nonbetting] non-betting starter for purposes of other pari-mutuel pools, as provided in section 4122.27 of this Part, wagers upon such entry or field shall be deemed wagers upon the “designated horse” for such race. Should a programmed starter be scratched or declared a nonstarter in any pick-four race prior to the start of the first leg, the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg.

(g) [*Failure to select a winning combination.*] Wagering Tickets and Winners. If subdivision (h) of this section does not apply, then:

(1) the track operator may, with the prior written approval of the commission following the request of the track operator offering this wager, elect to apportion the pick-four pool in the following order:

(i) If no [pick four] pick-four ticket is sold combining the winners of the four [pick four] pick-four races, all [pick four] pick-four tickets designating three winners shall be considered winning tickets and the net pool distributed equally to holders of said tickets.

[(2)] (ii) If no [pick four] pick-four ticket is sold combining the winners of three such races, all [pick four] pick-four tickets designating two winners shall be considered winning tickets and the net pool distributed equally to holders of said tickets.

[(3)] (iii) If no [pick four] pick-four ticket is sold combining the winners of two such races, all [pick four] pick-four tickets designating one winner shall be considered winning tickets and the net pool distributed equally to holders of said tickets.

[(4)] (iv) If no [pick four] pick-four ticket is sold designating any winner to win in the designated [pick four] pick-four races, the [pick four] pick-four shall be declared off and the gross pool refunded[.]; or

[(5) If any of the designated races are cancelled or declared “no race,” the pick four will be determined by the winners of the remaining race or races.]

(2) If carryover and no consolation payout. The net pick-four pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-four contests, based on the official order of finish, unless otherwise provided in this section. If there are no such wagers, the net pick-four pool shall be added to the carryover; or

(3) If carryover and consolation payout. The net pick-four pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-four contests, based on the official order of finish, or to the holders of wagers selecting the first-place finisher in each of the pick-four contests with no more than one all-win race, unless otherwise provided in this paragraph. Should there be no wager selecting winners of all four designated races

or to the holders of wagers selecting the winners of the designated races with no more than one all-win event, then 25 percent of the net pool, excluding carryover from the previous program, shall be distributed, less breaks, to the holders of wagers selecting the winners of the most pick-four races and 75 percent of the net pool shall be added to the carryover. In addition to the net-pool share and any carry-overs distributable when a wager correctly selects winners of all four designated races, or three winners and no more than one all-win race of a pick-four pool, there shall be distributed by the track operator from its own funds, upon such occurrence, any amounts it has advertised that it will add to the total distribution.

(h) Race cancellations. Except for pick-four pools in which a designated distribution is to be made, the following shall apply:

(1) If one or two of the pick-four races are cancelled or declared no race or non-betting, then those who selected the winners in the greatest number of other pick-four races shall share the net pool. If there are no such wagers and the corporation has selected the pick-four wagering option pursuant to paragraph (3) of subdivision (g) of this section, 25 percent of the net pick-four pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-four races, and 75 percent shall be added to the carryover.

(2) If more than two of the pick-four races are cancelled or declared no race or non-betting, then the entire pool shall be cancelled and all pick-four wagers shall be refunded.

(3) If any of the designated races of the pick-four sequence is cancelled or declared no race or non-betting before the first pick-four race is made official, then the pick-four pool shall be declared off and the gross pool refunded.

(i) [Reserved]

(j) Dead heats. In the event of a dead heat for win in [any or all pick four races] a pick-four race, all [pick four] pick-four tickets designating [either] any such horse to win [in said race or races] shall be eligible for participation in the remaining [pick four] pick-four races, and the net pool shall be equally distributed to the winners, that is, the net pool will be divided by the total amount represented by all winning tickets and the resulting price, per dollar, and after breakage, shall be the payoff price, which shall be uniform for any winning combination.

(k) Carryovers.

(1) The pick-four carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick-four carryover equals or exceeds the designated cap, then the pick-four carryover will be frozen until such carryover is won or distributed under the other provisions of this section. After the pick-four carryover is frozen, 100 percent of the net pool that

ordinarily would be added to the pick-four carryover shall be distributed to those whose selection finished first in the greatest number of pick-four contests for that performance.

(2) A written request for permission to distribute the pick-four carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and performance for the distribution.

(3) If for any reason the pick-four carryover must be held over to a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick-four carryover plus accrued interest shall then be added to the net pick-four pool of the following meet on a date and performance so designated by the commission.

(4) With the written approval of the commission, the corporation may contribute to the pick-four carryover a sum of money up to the amount of any designated cap.

(l) *Other designated distributions.* The pick-four carryover may be designated for distribution on a specified date and performance, other than as a final distribution, as set forth in subdivision (m) of this section, only upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick-(n) wagering to another, or when the pick-four pool is discontinued.

If the pick-four carryover is designated for distribution on a specified date and performance in which there are no wagers selecting the winner in each of the pick-four races, then the net pool, with any carryover, shall be distributed as a single-price pool to those whose selection finished first in the greatest number of pick-four contests.

(m) *Final distribution.* The track operator shall select, with the approval of the commission, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting at a track after which such track operator will operate at another track, when there shall be a final distribution of all accumulated carry-overs together with the net pool of the pick-four pool conducted during such program to the holders of wagers selecting the winners of the most pick-four races contested during such program. If all pick-four races on the program designated for final distribution are cancelled and no further programs are conducted at the meeting, then no other pick-four pools shall be conducted during such week and the commission shall require that a pick-four pool be conducted on the first program of the next race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

(n) *Suspension of wager.* The track operator may suspend previously approved pick-four wagering with the prior approval of the commission. Any carryover shall be held

NYS Gaming Commission Pick-four wagering amendments (proposed)

Text to be deleted appears in [brackets]

Text to be added is underlined

until the suspended pick-four wagering is reinstated. A corporation may request approval of a pick-four wager or separate wagering pool for specific performances.

(o) [Reserved]

[(i)] (p) *Other occurrences.* In the event of occurrences not encompassed within the explicit provisions of this section, distribution shall be formulated on the basis of established pari-mutuel practice and in accordance with the distribution philosophy set forth in this section; provided, nevertheless, that if full distribution of the pool is made on the basis of outstanding tickets, the method of formulation announced by the track operator, and upon which basis payments have been made, shall be deemed conclusively correct and not subject to review.

(q) *Posting of winning combinations.* Every pick-four wagering combination entitled to a payoff shall be posted publicly by the track operator together with the payoff price.

(r) *Non-transferability.* Pick-four tickets shall be nontransferable, and violations of this subdivision may lead to confiscation and cancellation of such tickets in addition to other disciplinary action.

(s)-(w) [Reserved]

[(j)] (x) *Rule availability.* Copies of this section shall be made available free of charge by the track operator to the public in the public betting area of the track.



Gaming Commission

354 Broadway, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns

Date: April 9, 2024

Re: Adoption of Proposed Rulemaking to Amend Thoroughbred Pick-Five Wagering Rule (9 NYCRR § 4011.25)

For Commission consideration is the adoption of amendments to the Thoroughbred pick-five wagering rule that would allow each Thoroughbred racetrack the option of offering a consolation payout for pick-five wagers, similar to rules already in effect in other jurisdictions such as California, Kentucky, New Jersey and Florida. The proposal would allow a Thoroughbred racetrack to choose one of two options for conducting pick-five wagering: either carry over 100% of the net pool or carry over 75% of the net pool while paying out a consolation of 25%. Prior written approval of the Commission would be required before a track could change the method of apportioning its pick-five pools and each track operator would be required to ensure that the wagering public is aware of the differences in the way the pick-five pool is apportioned.

The Commission published a Notice of Proposed Rulemaking in the February 7, 2024 State Register, an excerpt of which is attached and contains the text of the proposed rule. The public comment period expired on April 8, 2024. One comment was received. The New York Racing Association, Inc., which is the franchised corporation in New York conducting racing at Aqueduct, Belmont Park and Saratoga Race Course, expressed support for the proposal.

[REDACTED]

attachment

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

adverse impact on small businesses, local governments, rural areas or jobs.

The proposed amendments are revisions to the Commission’s Thoroughbred and harness pick-four wagering rules to enhance interest in the pick-four wager by allowing racetracks the option of offering a consolation payout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities. No local government activities are involved.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Pick-Five Wager for Thoroughbred Racing

I.D. No. SGC-06-24-00003-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 4011.25 of Title 9 NYCRR.

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

Subject: Pick-five wager for Thoroughbred racing.

Purpose: To improve the pick-five wager in Thoroughbred racing.

Text of proposed rule: Section 4011.25 of 9 NYCRR would be amended to read as follows:

§ 4011.25. Pick-five pools.

(a) *Description.* A winning pick-five wager requires selection of the first-place finisher in each of five designated, consecutive contests, unless otherwise provided in this section. The [association or corporation] track operator must obtain written approval from the commission concerning the scheduling of pick-five contests, the designation of the method used and the amount of any cap to be set on the carryover. Any changes to the approved pick-five format require prior approval from the commission.

(b) *Separate wager.* The pick-five wager is not a parlay and has no connection or relation to the other betting pools for the respective races. The pick-five pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, quinella, trifecta, superfecta or other wagering pool.

(c) *No resale.* Resale of pick-five tickets from one individual to another is prohibited, shall be grounds for ejection, and may be deemed illegal gambling.

(d) *Clear designation.* Races in which pick-five pools shall be conducted shall be clearly designated in the program and racing cards issued by the association or corporation.

(e) *Ticket design.* The design of the pick-five tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

* * *

(g) Wagering tickets and winners. If neither subdivision (h) nor subdivision (i) of this section applies, then the pick-five pool shall be apportioned, with the prior written approval of the commission following the request of track operator offering this wager, pursuant to either paragraph (1) or (2) of this subdivision, as follows:

(1) the net pick-five pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-five contests, based on the official order of finish, unless otherwise provided in this section. If there are no such wagers, the net pick-five pool shall be added to the carryover[.]; or

(2) the net pick-five pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick-five contests, based on the official order of finish, or to the holders of wagers selecting the first-place finisher in each of the pick-five contests with no more than one all-win race, unless otherwise provided in this paragraph. Should there be no wager selecting winners of all five designated races or no wager selecting the winners of the designated races with no more than one all-win race, then 25 percent of the net pool, excluding carryover from the previous program, shall be distributed, less breaks, to the holders of wagers selecting the winners of the most pick-five races and 75 percent of the net pool shall be added to the carryover. In addition to the net-pool share and any carry-overs distributable when a wager correctly selects winners of all five designated races, or four winners and no more than one all-win race of a pick-five pool, there shall be distributed by the track operator from its own funds, upon such occurrence, any amounts the track operator has advertised that the track operator will add to the total distribution.

(h) Race cancellations. Except for pick-five pools in which a designated distribution is to be made, the following shall apply:

(1) If one or two of the pick-five races are cancelled or declared no race or non-betting, then those who selected the winners of other pick-five races shall share the net pool. Any carryover from previous programs will be carried over to the next pick-five wager pool. *If there are no such wagers and the track operator has selected the pick-five wagering option set forth in paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(2) If more than two of the pick-five races are cancelled or declared no race or non-betting, then the entire pool shall be cancelled and all pick-five wagers shall be refunded.

(3) If any of the designated races of the pick-five sequence is cancelled or declared no race or non-betting before the first pick-five race is made official, then the pick-five pool shall be declared off and the gross pool refunded.

(i) Surface transfer. When the condition of a turf course warrants a change of racing surface to a non-turf course in any of the pick-five races, and such change has not been known to the public before the close of wagering for the pick-five pool, then such changed race shall be deemed an all win race for pick-five wagering purposes. An [all win] all-win race means the winning horse of that race is assigned to each pick-five bettor as such bettor’s selection for that race. Except for pick-five pools in which a full distribution is to be made, a pick-five pool with surface transfer(s) shall be handled as follows:

(1) If there was a surface change to a non-turf course in only one of the pick-five races, then the bettors who selected the winners of the four pick-five races for which there were no surface changes shall share that day’s net pool for such wager as well as any carryover. *If there are no such wagers and the track operator has selected the pick-five wagering option set forth in paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(2) If there was a surface change to a non-turf course in more than one of the pick-five races, then the bettors who selected the winners of all the other pick-five races shall share that day’s net pool for such wager but shall not share any carryover (any such previous carryover to be carried over to the next performance’s pick-five wager pool). *If there are no such wagers and the track operator has selected the pick-five wagering option pursuant to paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(3) If there are one or more surface change races in the pick-five sequence, and there are no bettors who selected the winner(s) of all the other pick-five races, then:

(i) *if the track operator has selected the pick-five wagering option set forth in paragraph (1) of subdivision (g) of this section, the net pool for such program shall be carried over to the next performance’s pick-five wager pool[.]; or*

(ii) *if the track operator has selected the pick-five wagering option pursuant to paragraph (2) of subdivision (g) of this section, 25 percent of the net pick-five pool, excluding any carryover from previous programs, shall be distributed, less breaks, as a single price pool to those who selected the first-place finisher in the greatest number of pick-five races, and 75 percent shall be added to the carryover.*

(4) If there are one or more surface change races in the pick-five sequence and there are no bettors who selected the winner of any of the other pick-five races, then the entire pool for such program shall be refunded.

* * *

(k) Carryovers.

(1) The pick-five carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick-five carryover equals or exceeds the designated cap, then the pick-five carryover will be frozen until such carryover is won or distributed under the other provisions of this [rule] section. After the pick-five carryover is frozen, 100 percent of the net pool that ordinarily would be added to the pick-five carryover shall be distributed to those whose

selection finished first in the greatest number of pick-five contests for that performance.

* * *

(4) With the written approval of the commission, the [association] *track operator* may contribute to the pick-four carryover a sum of money up to the amount of any designated cap.

* * *

(m) Final distribution. The *track operator* shall select, with the approval of the commission, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting at a track after which such track operator will operate at another track, when there shall be a final distribution of all accumulated [carry-overs] *carryovers* together with the net pool of the pick-five pool conducted during such program to the holders of wagers selecting the winners of the most pick-five races contested during such program. If all pick-five races on the program designated for final distribution are cancelled and no further programs are conducted at the meeting, then no other pick-five pools shall be conducted during such week and the commission shall require that a pick-five pool be conducted on the first program of the next race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

(n) *Suspension of wager*. The [association or corporation] *track operator* may suspend previously approved pick-five wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick-five wagering is reinstated. [An association or corporation] *A track operator* may request approval of a pick-five wager or separate wagering pool for specific performances.

* * *

(p) *Other occurrences*. In the event of occurrences not encompassed within the explicit provisions of this section, distribution shall be formulated on the basis of established pari-mutuel practice and in accordance with the distribution philosophy set forth in this section; provided, nevertheless, that if full distribution of the pool is made on the basis of outstanding tickets, then the method of formulation announced by the track and the basis upon which payments have been made shall be deemed conclusively correct and not subject to review.

* * *

(s) *Betting information*. A [racing association] *track operator* may display publicly information in regard to combinations wagered upon, amounts wagered on such combinations, numbers of tickets sold or number of tickets still capable of winning a pick-five pool. The operation of the totalisator equipment and reports generated thereby shall be subject to the strict supervision of the commission.

* * *

(x) *Rule availability*. Copies of this section shall be made available free of charge by the *track operator* to the public in the public betting area of the track.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 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.

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 enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. **NEEDS AND BENEFITS:** This rule making proposes to amend the Commission's Thoroughbred pick-five wagering rule to enhance interest in the pick-five wager by allowing each Thoroughbred racetrack the option of offering a consolation payout. This proposal is similar to rules al-

ready in effect in other prominent jurisdictions. These jurisdictions offer choices as to what method each track chooses to use for its pick-n wagers, which mirror the Model Rules of Racing issued by The Association of Racing Commissioners International.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: None anticipated. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate Thoroughbred racing.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: Experience of agency staff.

5. **LOCAL GOVERNMENT MANDATES:** None. The Commission is the only governmental entity authorized to regulate Thoroughbred racing activities.

6. **PAPERWORK:** There will be no additional paperwork.

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

8. **ALTERNATIVES:** The alternative of not revising the pick-five wagering rule was considered and rejected. The current rule is not consistent with other prominent racing jurisdictions and the Model Rules of Racing issued by The Association of Racing Commissioners International. These changes provide racetracks more flexibility to help increase their handle.

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 amendments are a revision to the Commission's Thoroughbred pick-five wagering rule to enhance interest in the pick-five wager by allowing racetracks the option of offering a consolation payout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Claiming Rules Revisions in Thoroughbred Racing

I.D. No. SGC-06-24-00004-P

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

Proposed Action: Amendment of sections 4038.1, 4038.3 and 4038.4 of Title 9 NYCRR. This rule was previously proposed as a consensus rule making under I.D. No. SGC-34-23-00009-P.

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

Subject: Claiming rules revisions in Thoroughbred racing.

Purpose: To improve the claiming process in Thoroughbred racing.

Text of proposed rule: Sections 4038.1, 4038.3, and 4038.4 of 9 NYCRR would be amended to read as follows:

§ 4038.1. Who may make claim.

(a) Licensed and participating owners. Claims may be made by an owner licensed for the current year, or duly authorized agent, if the owner is presently registered in good faith for racing at that meeting and [has nominated a starter in the previous or current race meet of the licensed or franchised racing association, up to or including the race in which the claim is made] *the owner has started a horse:*

(1) *within the previous 120 days, including the race in which such horse started, in a race meeting of the licensed or franchised association; or*

(2) *in the current or previous race meeting of the licensed or franchised racing association.*

Such claim shall be in the name of the owner making the claim, or in the name of the entity of which the potential claimant is the managing owner.



Gaming Commission

354 Broadway, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns

Date: April 9, 2024

Re: Adoption of Proposed Rulemaking for Thoroughbred Claiming Rules Amendments (9 NYCRR §§ 4038.1, 4038.3 and 4038.4)

For Commission consideration is the adoption of a proposed rule to amend Thoroughbred claiming regulations. A claiming race is a race in which the entrants are available to be purchased by certain licensed owners for a predetermined amount. Interested buyers place a claim prior to the race. If only one qualified person submits a claim for a horse, ownership of that horse is transferred following the race. If there are multiple qualified claimants for one horse, a random drawing determines which person receives ownership. In response to concerns from some horse owners and their representatives, this proposal was developed after meetings with the New York Thoroughbred racetracks and horsemen's organizations. The proposal would:

- allow claimants who have raced on a circuit within 120 days, which would increase the number of owners qualified to make claims;
- allow 30 additional days for holders of a certificate of eligibility who have lost a competition by lot for a claimed horse, providing an owner with an opportunity to claim when the owner has not been successful in claiming a horse within the first 30 days of a race meeting;
- reduces from 30 to 20 days the restriction against running a claimed horse again for a claiming price less than 25% greater than the claiming price;
- establishes a further 10-day period in which a claimed horse may start for a price equal to the claiming price; and
- extends from 30 to 60 days the prohibition against running a claimed horse outside of New York State, with an exception for horses claimed at Finger Lakes racetrack, in which case the horse may run elsewhere after 30 days from the end of a Finger Lakes racing season.

The Commission published a Notice of Proposed Rulemaking in the February 7, 2024 State Register, an excerpt of which is attached and contains the text of the proposed rule. The public comment period expired on April 8, 2024. Two comments were received. The New York Racing Association, Inc. ("NYRA"), which is the franchised corporation in New York conducting racing at Aqueduct, Belmont Park and Saratoga Race Course, expressed support for the proposal. Chris Mancusi, who says he lost many dispositions

Commissioners
April 9, 2024
Page 2

by lot of claims on the NYRA circuit and had been thereby prevented from claiming a horse at a subsequent NYRA meet, expressed support for the proposal.

[REDACTED]

attachment

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

selection finished first in the greatest number of pick-five contests for that performance.

* * *

(4) With the written approval of the commission, the [association] track operator may contribute to the pick-four carryover a sum of money up to the amount of any designated cap.

* * *

(m) Final distribution. The track operator shall select, with the approval of the commission, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting at a track after which such track operator will operate at another track, when there shall be a final distribution of all accumulated [carry-overs] carryovers together with the net pool of the pick-five pool conducted during such program to the holders of wagers selecting the winners of the most pick-five races contested during such program. If all pick-five races on the program designated for final distribution are cancelled and no further programs are conducted at the meeting, then no other pick-five pools shall be conducted during such week and the commission shall require that a pick-five pool be conducted on the first program of the next race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The commission may also order a final distribution for an earlier time in the commission's discretion.

(n) Suspension of wager. The [association or corporation] track operator may suspend previously approved pick-five wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick-five wagering is reinstated. [An association or corporation] A track operator may request approval of a pick-five wager or separate wagering pool for specific performances.

* * *

(p) Other occurrences. In the event of occurrences not encompassed within the explicit provisions of this section, distribution shall be formulated on the basis of established pari-mutuel practice and in accordance with the distribution philosophy set forth in this section; provided, nevertheless, that if full distribution of the pool is made on the basis of outstanding tickets, then the method of formulation announced by the track and the basis upon which payments have been made shall be deemed conclusively correct and not subject to review.

* * *

(s) Betting information. A [racing association] track operator may display publicly information in regard to combinations wagered upon, amounts wagered on such combinations, numbers of tickets sold or number of tickets still capable of winning a pick-five pool. The operation of the totalisator equipment and reports generated thereby shall be subject to the strict supervision of the commission.

* * *

(x) Rule availability. Copies of this section shall be made available free of charge by the track operator to the public in the public betting area of the track.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 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.

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 enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. NEEDS AND BENEFITS: This rule making proposes to amend the Commission's Thoroughbred pick-five wagering rule to enhance interest in the pick-five wager by allowing each Thoroughbred racetrack the option of offering a consolation payout. This proposal is similar to rules al-

ready in effect in other prominent jurisdictions. These jurisdictions offer choices as to what method each track chooses to use for its pick-n wagers, which mirror the Model Rules of Racing issued by The Association of Racing Commissioners International.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: None anticipated. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate Thoroughbred racing.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: Experience of agency staff.

5. LOCAL GOVERNMENT MANDATES: None. The Commission is the only governmental entity authorized to regulate Thoroughbred racing activities.

6. PAPERWORK: There will be no additional paperwork.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The alternative of not revising the pick-five wagering rule was considered and rejected. The current rule is not consistent with other prominent racing jurisdictions and the Model Rules of Racing issued by The Association of Racing Commissioners International. These changes provide racetracks more flexibility to help increase their handle.

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 amendments are a revision to the Commission's Thoroughbred pick-five wagering rule to enhance interest in the pick-five wager by allowing racetracks the option of offering a consolation payout.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Claiming Rules Revisions in Thoroughbred Racing

I.D. No. SGC-06-24-00004-P

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

Proposed Action: Amendment of sections 4038.1, 4038.3 and 4038.4 of Title 9 NYCRR. This rule was previously proposed as a consensus rule making under I.D. No. SGC-34-23-00009-P.

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

Subject: Claiming rules revisions in Thoroughbred racing.

Purpose: To improve the claiming process in Thoroughbred racing.

Text of proposed rule: Sections 4038.1, 4038.3, and 4038.4 of 9 NYCRR would be amended to read as follows:

§ 4038.1. Who may make claim.

(a) Licensed and participating owners. Claims may be made by an owner licensed for the current year, or duly authorized agent, if the owner is presently registered in good faith for racing at that meeting and [has nominated a starter in the previous or current race meet of the licensed or franchised racing association, up to or including the race in which the claim is made] *the owner has started a horse:*

(1) *within the previous 120 days, including the race in which such horse started, in a race meeting of the licensed or franchised association; or*

(2) *in the current or previous race meeting of the licensed or franchised racing association.*

Such claim shall be in the name of the owner making the claim, or in the name of the entity of which the potential claimant is the managing owner.

(b) Holder of a certificate of eligibility to claim. A person who has not previously been licensed in any state as an owner, upon application for an owner's license in this State, may apply to the stewards for a certificate authorizing him or her to claim one horse during the next 30 racing days following the issuance of the certificate. The stewards may grant an extension [if deemed appropriate] of 30 racing days if the certificate holder had entered a claim but had lost the disposition by lot pursuant to section 4038.5(b) of this Part. The certificate shall be valid for claiming only at the track of the racing association at which it was issued. Such certificate shall be issued by the stewards only after the stewards have been advised by the commission that after an initial background check, and from the face of the application, the applicant appears to be qualified to be licensed and only after the applicant has designated a licensed trainer who will assume care and responsibility for the horse to be claimed.

* * *

§ 4038.3. Conditions for starting claimed horse.

If a horse is claimed the horse shall not start in a claiming race for a period of [30] 20 days from the date of the claim for less than 25 percent more than the amount for which such horse was claimed. For a period of 10 days thereafter, a horse is eligible to start for a claiming price equal to or greater than the price at which the horse had been claimed. On the 31st day, the horse may start in a claiming race for any price.

§ 4038.4. Sale, transfer restricted.

If a horse is claimed the horse shall not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from the date of the claim. A claimed horse shall not, unless reclaimed, remain in the same stable or under the control or management of its former owner or trainer for a like period. A claimed horse shall not race outside New York State for a period of [30] 60 days from the date of the claim or the end of the meeting at which such horse was claimed, whichever period of time is longer, except that a horse may run:

- (a) in a sweepstakes elsewhere for which the horse was nominated by its former owner or trainer[.];
- (b) after a period of 30 days from the end of a Finger Lakes racing season, if the horse had been claimed at Finger Lakes racetrack; or
- (c) if permission is granted by the stewards.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 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.

Consensus Withdrawal Objection

The Commission received a public comment disagreeing with the proposal. The commenter stated that 30 days "was plenty" to require a claimed horse to not race outside New York State after a claim. The commenter cited the "free enterprise system" and stated that this aspect of the proposed rule would make it "more difficult for horse ownership to be cost efficient."

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 improve the claiming process in Thoroughbred racing.

3. **NEEDS AND BENEFITS:** The proposed rulemaking would amend Thoroughbred claiming regulations. A claiming race is a race in which the entrants are available to be purchased by certain licensed owners for a predetermined amount. Interested buyers place a claim prior to the race. If only one qualified person submits a claim for a horse, ownership of that horse is transferred following the race. If there are multiple qualified claimants for one horse, a random drawing determines which person receives ownership.

Some horse owners and their representatives have communicated to Commission staff that the claiming rules need revisions. Commission staff met with personnel of The New York Racing Association, Inc.; Finger Lakes Racing Association, Inc.; New York Thoroughbred Breeders, Inc.; New York Thoroughbred Horsemen's Association, Inc.; and the Finger

Lakes Horsemen's Benevolent and Protective Association to hear concerns and develop changes that would retain the integrity of the claiming process, while recognizing horsemen's and track issues.

NYRA conducts race meetings of varying lengths and horse populations. Consequently, the current rule, which requires an owner, in order to be eligible to claim, to have entered a starter in the previous race meeting, precludes some otherwise active owners from claiming horses. Some owners may not have participated in a previous meeting because of the meeting's short duration or because racing opportunities had been incompatible with the owner's stable of horses. The proposed rule would address these concerns by allowing claimants who have raced on a circuit within 120 days, which would increase the number of owners qualified to make claims.

Additionally, due to the frequency of multiple claims on a single horse, it is possible that someone actively trying to claim may not succeed in acquiring a horse within 30 racing days, which the current rule requires. Allowing 30 additional days for holders of a certificate of eligibility would provide an owner with an opportunity to claim when the owner has not been successful within the first 30 days of a race meeting, because the owner has lost the opportunity to claim to another claimant when multiple claims had been made on the same horse. Creating an opportunity to extend claiming eligibility for unsuccessful claimants would allow these owners additional chances to claim a horse.

Additionally, current Commission regulations provide that when a horse is claimed from a particular value class, the horses is ineligible to start in the same value class for 30 days. A review of recent data, however, indicates that horses generally run on a 28-day schedule and condition books generally schedule a value class every 28 days. Under current regulations, a claimant who wants to start a horse again in the same class may be effectively forced to wait 56 days from the date of the claim. The position has been advanced that such period is unnecessarily long and causes issues for owners, trainers and the racetrack, which seeks to fill competitive races. By reducing the requisite waiting period, owners will have a greater opportunity to start a horse for the price at which the horse had been claimed, given that the owners would be able to gain access to races that had already been written in the track's condition book 28 days in advance.

Finally, current rules prohibit a claimed horse from running outside New York for a period of 30 days. The proposal would extend that general prohibition to 60 days, which would mitigate entry shortages that have been experienced at New York tracks. An exception is proposed for horses claimed at Finger Lakes Racetrack toward the end of the Finger Lakes racing season, in which case the prohibition would be limited to 30 days from the end of the Finger Lakes racing season.

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 negligible.

(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.

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

8. **ALTERNATIVES:** The alternative of not proposing this rulemaking was considered and rejected. The proposed rulemaking addresses concerns with, and develops changes that would retain, the integrity of the claiming process, while recognizing horsemen's and track issues.

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.

This proposed rulemaking will amend the New York State Gaming Commission's Thoroughbred claiming regulations. The proposed amend-

ments will address concerns communicated to Commission staff by some horse owners and their representatives.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, rural areas or employment opportunities. No local government activities are involved.

New York State Police

INFORMATION NOTICE

AMENDMENT TO THE RULES OF THE NEW YORK STATE POLICE PURSUANT TO ARTICLE 39-BB OF THE GENERAL BUSINESS LAW OF THE STATE OF NEW YORK

Part 482 of Subtitle K of Title 9 of the Official Compilation of Codes, Rules and Regulations is renamed "Licensed Firearm Dealers and Gunsmiths"; and

A new Subpart 482-1 of Part 482 of Subtitle K of Title 9 of the Official Compilation of Codes, Rules and Regulations is established, titled "Licensed Gunsmiths Engaged in the Business of Assembling or Manufacturing Firearms"; and

The existing Sections 482.1 through 482.7 of Part 482 of Subtitle K of Title 9 of the Official Compilation of Codes, Rules and Regulations are renumbered as Sections 482-1.1 through 482-1.7 of Subpart 482-1 of Part 482 of Subtitle K of Title 9 of the Official Compilation of Codes, Rules and Regulations; and

A new Subpart 482-2 of Part 482 of Subtitle K of Title 9 of the Official Compilation of Codes, Rules and Regulations is established, titled "Licensed Firearm Dealer and Gunsmith Business Practices"; and

Rule 23, "Licensed Firearm Dealer and Gunsmith Business Practices" of the Rules of the New York State Police, is filed with and published by the Department of State as Sections 482-2.1 through 482-2.6 of Subpart 482-2 of Part 482 of Subtitle K of Title 9 of the Official Compilation of Codes, Rules and Regulations, to read as follows:

PART 482

(Statutory Authority: Executive Law, section 223; *General Business Law*, sections 875-b, 875-e, 875-f, 875-g, and 875-h)

LICENSED FIREARM DEALERS AND GUNSMITHS [ENGAGED IN THE BUSINESS OF ASSEMBLING OR MANUFACTURING FIREARMS]

SUBPART 482-2

LICENSED FIREARM DEALER AND GUNSMITH BUSINESS PRACTICES

(Rule 23 of the New York State Police)

Section 482 - 2.1 Purpose and Scope. (Rule 23.1)

(a) Pursuant to Article 39-BB of the New York General Business Law, the Division of State Police is responsible for promulgating rules and regulations related to certain business practices of dealers in firearms and gunsmiths.

(b) This Subpart shall implement the provisions of sections 875-b, 875-e, 875-f, 875-g, and 875-h of the New York General Business Law.

Section 482 - 2.2 Definitions. (Rule 23.2)

As used in this Subpart (Rule 23), the following terms are defined as follows:

(a) "Dealer" means a gunsmith or dealer in firearms licensed pursuant to section 400.00 of the New York Penal Law.

(b) "Employee" means a person hired by a dealer or agent of the dealer who works for the dealer in return for compensation, financial or otherwise.

(c) "Firearm" has the same meaning as that term is defined in subdivision three of section 265.00 of the New York Penal Law.

(d) "Rifle" has the same meaning as that term is defined in subdivision eleven of section 265.00 of the New York Penal Law.

(e) "Shotgun" has the same meaning as that term is defined in subdivision twelve of section 265.00 of the New York Penal Law.

Section 482 - 2.3. Minimum Standards for Security Alarm Systems. (Rule 23.3)

Security alarm systems installed and maintained on a dealer's business premises pursuant to the requirements of subdivision two of section 875-b of the New York General Business Law must satisfy the following minimum standards:

(a) The alarm system must be installed and maintained by a security alarm operator who is properly licensed pursuant to Article 6-D of the New York General Business Law;

(b) The alarm system must be monitored by a central station;

(c) The alarm system shall, at a minimum, monitor and provide protection at each point of entry into areas containing firearms, rifles, shotguns, and/or ammunition, including doorways and windows; and

(d) The alarm system shall provide motion detection within other areas of the premises containing firearms, rifles, shotguns, and/or ammunition, as deemed appropriate by the licensed installer.

Section 482 - 2.4 Minimum Standards for Employee Training Records. (Rule 23.4)

Records documenting the successful completion of the employee training required by section 875-e of the New York General Business Law must be maintained by dealers for at least five (5) years following the completion of such training by each employee.

Section 482 - 2.5 Minimum Standards for Firearm, Rifle, and Shotgun Transaction Records. (Rule 23.5)

Records documenting the acquisition, disposition, tracing, or other transactions involving firearms, rifles and shotguns required by subdivisions one through four of section 875-f of New York General Business Law must be maintained by dealers for at least twenty (20) years following such transaction.

Section 482 - 2.6 Compliance Program. (Rule 23.6)

(a) The annual compliance certification required by paragraph b of subdivision 1 of section 875-g of the New York General Business Law must be submitted to the Division of State Police no later than the thirty-first day of January each year.

(b) Such certification shall identify the dealer's name, address, and telephone number; a primary contact person for such dealer; e-mail addresses for the dealer and the primary contact person; the dealer or gunsmith license number; and the county in which the dealer is licensed. The certification shall be signed by a person duly authorized to act on behalf of the dealer, and must include the following certification language:

"By signing this document I hereby certify that I am authorized to endorse and submit this certification on behalf of the dealer in firearms and/or gunsmith identified herein, and that to the best of my knowledge such dealer in firearms and/or gunsmith is in full compliance with all of the requirements contained within Article 39-BB of the New York General Business Law."

(c) Pursuant to paragraph a of subdivision 2 of section 875-g of the New York General Business Law, every dealer is subject to periodic inspection by the Division of State Police at least once every three years to determine whether such dealer is in compliance with the requirements contained within Article 39-BB of the New York General Business Law. The Division of State Police will provide notice of at least one business day prior to conducting such inspection, which will occur during the dealer's regular and usual business hours. Dealers will be notified by the State Police of any compliance violations discovered during such inspections.

Public Service Commission

NOTICE OF ADOPTION

Interconnection Contract

I.D. No. PSC-22-22-00014-A

Filing Date: 2024-01-18

Effective Date: 2024-01-18

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

Action taken: On 1/18/24, the PSC adopted an order approving modifications to the Standardized Interconnection Requirements (SIR) implementing an Interconnection Contract for State agencies.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Interconnection Contract.

Purpose: To approve modifications to the SIR implementing an Interconnection Contract for State agencies.

Substance of Final Rule: The Commission, on January 18, 2024, adopted an order approving modifications to the Standardized Interconnection Requirements (SIR) implementing an Interconnection Contract for State agencies. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc.,



Gaming Commission

354 Broadway, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

To: Commissioners

From: Edmund C. Burns
Sarah Klein

Date: March 21, 2024

Re: Proposed Rulemaking for Whips; use of whips, kicking, foot out of stirrups, goads, and head poles; penalties (9 NYCRR § 4117.8)

For Commission consideration are 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.

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. 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.

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. This structure would provide greater consideration of past offenses, establish

Commissioners
March 21, 2024
Page 2

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.

Text of a proposed rule is attached.

[REDACTED]

attachment

cc: Robert Williams, Executive Director

Text to be deleted appears in [brackets]

Text to be added is underlined

§ 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 initial penalty for kicking shall be a suspension of seven days, with subsequent violations doubling the last penalty imposed.

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

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

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.