

(b)

NEW JERSEY RACING COMMISSION

Harness Racing

**Whips; Restricted Use of Whip and Prohibition of
Goading Devices**

**Adopted Amendments: N.J.A.C. 13:71-20.14 and
20.15**

Proposed: December 2, 2019, at 51 N.J.R. 1753(a).

Adopted: September 16, 2020, by the New Jersey Racing
Commission, Judith A. Nason, Executive Director.

Filed: September 28, 2020, as R.2020 d.114, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: October 19, 2020.

Expiration Date: August 28, 2024.

Summary of Public Comment and Agency Response:

The official comment period ended on January 31, 2020. The following is a summary of the comments received and the responses of the New Jersey Racing Commission (Commission). The Commission received comments from several persons in response to the rulemaking:

Jason Setlemoir, COO/General Manager of Meadowlands Racing & Entertainment, commented on behalf of New Meadowlands Racetrack, LLC

Howard Bruno, General Manager of Freehold Raceway, commented on behalf of Freehold Raceway.

John Campbell, President & CEO of the Hambletonian Society, commented on behalf of the Hambletonian Society

Kathy Guillermo, Senior Vice President of Equine Matters Department of PETA

Tyler Buter, a member of the public
 Jenna Martin, a member of the public
 MaryAnn Zimmerman, a member of the public
 Tammy Cailliau, a member of the public
 Mary Murphy, a member of the public
 Helen Volshonok, a member of the public
 Philip Miele, a member of the public
 Karla Hornung, a member of the public
 Nicolette Smith, a member of the public
 Karen De Russo, a member of the public

COMMENT: Mr. Settlemoir states that "New Meadowlands Racetrack, LLC supports the proposed harness racing new whipping rule for the [S]tate of New Jersey."

RESPONSE: The Commission thanks Mr. Settlemoir and New Meadowlands for their support of the new rule.

COMMENT: Mr. Bruno states that Freehold Raceway endorses the new rule because Freehold shares the Commission's desire "for the protection of equine participants and believe[s] that adoption of [the] rule will establish clear guidelines and go a long way in meeting the stated goals" of the rulemaking.

RESPONSE: The Commission thanks Mr. Bruno and Freehold Raceway for their support of the new rule.

COMMENT: Mr. Campbell states that the "Hambletonian Society would like to go on record as supporting this rule change, which directly addresses the humane treatment of horses and the public perception of racing." Mr. Campbell further states that the Hambletonian Society board "has gone on record in support of commissions, industry organizations and individual racetracks" and has "advocated stricter rules governing the prompting of horses during the race including the elimination of one-handed whipping." Mr. Campbell further states that the Hambletonian Society has "offered rule changes at the USTA and encouraged the commissions in the eight jurisdictions in which it services races to require a driver to keep a line in each hand for the entire duration of the race while maintaining control of the horse." Mr. Campbell further states that the Hambletonian Society board "will continue to push for passage of rules pertaining to racetrack safety and humane treatment of horses."

RESPONSE: The Commission thanks Mr. Campbell and the Hambletonian Society for their support of the new rule.

COMMENT: Ms. Guillermo states that she supports the new rule and thanks the Commission for its action to prohibit whipping in horse racing. She states that "[t]his is a step in the right direction" and she hopes it is "the first of many changes."

RESPONSE: The Commission thanks the commenter for her support and agrees that the new rule promotes equine health and welfare.

COMMENT: Mr. Buter states that the industry "can take other steps to please the people that feel we are injuring horses." He further states that no drivers "attempt to injure or harm" a horse when urging it to run. He further states that "drivers should use black colored whips because linen or white whips are not visually appealing on TV." He further states that "limiting the number of times a driver is allowed to consecutively urge a horse is also important."

RESPONSE: The Commission has amended the rules to ensure equine welfare in New Jersey's harness racing industry by prohibiting the whipping of a horse using shoulder and elbow action. The Commission has no evidence that the color of the whip relates to equine safety, which is the point of the rule.

COMMENT: Ms. Martin states that she is in favor of the rulemaking "to stop the use of whips in racing." She states that she does not like that "lately the care of the horses seems to be on the back burner" and that she hopes the "passage of this proposal and others like it will put the health of the horse where it belongs, at the front."

RESPONSE: The Commission thanks the commenter and agrees the new rule promotes equine health and welfare.

COMMENT: Ms. Zimmerman states that she is a long-time fan of standardbred racing and is writing to "express [her] full support of the New Jersey Racing Commission's proposed amendments." She also writes to "commend the actions of the NJRC on these important steps to protect the health and welfare of the equine athlete as well as the image of

the sport" which "will help ensure racing's future by eliminating a practice that many of today's fans view as cruel and inhuman."

RESPONSE: The Commission thanks the commenter and agrees the new rule promotes equine health and welfare and will benefit New Jersey horse racing.

COMMENT: Ms. Cailliau states that she is in favor of the proposed rule and that "[i]t seems the use of whips has become disproportionate in recent years and the idea that something that was once used to urge horses has now become a tool of abuse is disheartening." She further states that she wishes that whips no longer be used.

RESPONSE: The Commission thanks the commenter for her support and believes that the new rule promotes equine health and welfare by restricting the use of the whip to wrist action only.

COMMENT: Ms. Murphy fully supports this rule and states that "[t]hese animals already give their all and seeing them with bloody stripes on their hindquarters at the end of a race really takes away from the sport."

RESPONSE: The Commission thanks the commenter for her support and agrees the new rule promotes equine health and welfare.

COMMENT: Ms. Volshonok is in support of the rulemaking and states that she has "appreciated the sport since [she was] a child, but ha[s] always thought the use of whips was excessive and leaves the horses open to more injuries."

RESPONSE: The Commission thanks the commenter for her support and agrees the new rule promotes equine health and welfare.

COMMENT: Mr. Miele is in support of the rulemaking and states that, "[a]s a long standing fan of the sport, [he] has seen not only the consequences of using a whip on the health of the beautiful horses, but on the health of the industry as well. Horse racing is struggling with its image and has been under a microscope lately. The welfare of the horses used in all types of racing has become front page news lately, and [he] believes banning the use of whips will not only help the health of the horses competing, but also the public image of the sport."

RESPONSE: The Commission thanks the commenter for his support, and agrees the new rule promotes equine health and welfare and will benefit New Jersey racing by potentially increasing racetrack attendance and wagering handle.

COMMENT: Ms. Hornung is in support of the rulemaking and states that "[a]nything [the Commission] can do to make the horses safer and healthier is a bonus and should be enacted as soon as possible. Horses are gentle, sensitive creatures that should be treated with care and kindness."

RESPONSE: The Commission thanks the commenter for her support and agrees the new rule promotes equine health and welfare.

COMMENT: Ms. Smith is in support of the rulemaking and states that the rulemaking will "increase support for ... racing with the public and will reduce the amount of injuries to horses from excessive whipping."

RESPONSE: The Commission thanks the commenter and agrees the new rule promotes equine health and welfare.

COMMENT: Ms. Smith states that she believes the Commission should consider replacing whips with something that can be used to direct a horse away from the rail or dangerous obstacles but that also won't cause injury to the horse—specifically something that wouldn't draw blood or leave welts on the skin, as she believes the "safety of both horse and rider would be better served by the use of such device."

RESPONSE: The Commission believes that the whips required at N.J.A.C. 13:71-20.15 are the most effective tool for directing the horse away from dangerous circumstances and that the rule promotes equine welfare by restricting whipping to wrist action only. This restriction, which is expected to reduce the force of contact with the horse, will minimize harm to the horse. The new rule also requires a visual inspection of each horse after each race for evidence of excessive or brutal use of the whip.

COMMENT: Ms. De Russo states that she is in support of the rulemaking and applauds the rule changes and believes such changes are overdue. Ms. De Russo states that "if NJ is to grow its racing industry it must appeal to the general public. Most people do not want to watch these beautiful creatures treated inhumanely." She also states that the next rule change "is to ensure the owners have a responsibility to the horses that are no longer racing."

RESPONSE: The Commission thanks the commenter for her support and agrees the new rule promotes equine health and welfare and will

benefit New Jersey horse racing. The Commission notes that the commenter's statement regarding retired racehorses is outside the scope of the rulemaking.

Federal Standards Statement

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the adopted amendments.

Full text of the adoption follows:

SUBCHAPTER 20. RULES OF RACING

13:71-20.14 Whips

Drivers will be allowed whips not to exceed four feet plus a snapper not longer than six inches. No leather or unusual materials may be used. The conventional snapper shall not be knotted or altered in any way and tape is permitted only on the handle of the whip. All other modifications of the whip are prohibited.

13:71-20.15 Restricted use of whip and prohibition of goading devices

(a) No person shall possess or use a goading device, chain, or mechanical devices or appliances, other than the ordinary whip, as permitted at N.J.A.C. 13:71-20.14, upon any horse while in a race, training, or at any other time on property subject to the Commission's jurisdiction. The brutal use of a whip or blunt spur, kicking a horse with a foot, striking a horse with the whip under the seat of the sulky, or indiscriminate use of a whip shall be considered a violation.

(b) The whip cannot be used on a horse in an excessive, indiscriminate, brutal, or unnecessary manner, as determined in the discretion of the judges, including, without limitation, that the driver shall not:

1. Cause an injury, visible or not, to the horse with the whip;
2. Use the whip more than three times in succession without giving the horse time to respond to the whip;
3. Repetitively use the whip when a horse is not responding;

4. Continue to use the whip when a horse is not advancing its position in the race;

5. Use the whip on a horse that is out of contention; or

6. Use the whip after the finish of a race.

(c) A driver may use a whip only in a conventional manner, as follows:

1. The driver must keep a line in each hand, except as may be necessary to adjust equipment (that is, pulling plugs, dropping blinkers) beginning when the horse is behind the starting gate and continuing through the finish of the race;

2. One handed whipping is prohibited at any time during the race;

3. Whipping shall be restricted to wrist action only and the whipping arm shall not be raised above the driver's shoulder height;

4. Drivers shall not move their whipping arm in an exaggerated manner and the lines shall remain reasonably taut during the race;

5. The driver shall not strike, jab, or use the handle of the whip on a horse; and

6. The driver shall not strike another horse or driver with the whip or use the whip in a manner that interferes with, or causes disturbance to, another horse or driver.

(d) The location where the whip is used is limited as follows:

1. The driver shall not use the whip below the level of the arch or shaft, or forward of the race bike's wheels;

2. Above the level of the shaft, the driver may use the whip only in a sliding, gliding, or tapping manner; and

3. The driver shall not place the whip between a horse's legs.

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