

COMMENT: Mr. Drazin inquires whether the Executive Director will be on site when determining whether to cancel or postpone racing for other weather conditions such as ice or heavy rain. He states that “cancellation of turf racing usually occurs when there are heavy rains and the jockeys complain about the condition of the turf.” He writes that he “understands that the Commission agrees that the permit holder makes the initial decision [regarding whether to cancel or postpone],” and then describes the Executive Director as having “veto power or a final say.” Mr. Drazin explains that in order to make a determination on whether to cancel or postpone races on the turf due to rain, “the Executive Director would have to walk the turf course to make an assessment.” Mr. Drazin suggests that “the Chief State Veterinarian or the head veterinarian on-site during these extreme conditions be designated as the decision maker, as in fact, these decisions will be taken out of the hands of the permit holder with respect to the final say.”

RESPONSE: The rule grants the authority to postpone or cancel racing due to weather conditions to the Executive Director. The rule does not require the Executive Director to be present at the racetrack. However, the Executive Director may be present and/or consult with persons or staff who are present.

COMMENT: Mr. Drazin states that “there should be precise criteria in place so that a permit holder can anticipate the actions of the Commission.”

RESPONSE: As discussed in the responses to prior comments, the decision whether to postpone or cancel racing is fact-specific according to the circumstances presented.

COMMENT: Mr. Drazin suggests that the Commission “consider whether this ... rule will result in potential liability and exposure to damages being claimed against the [Commission], its Executive Director, or the State of New Jersey for either making or failing to make a decision.” He informs the Commission that “the track is usually sued as well as the trainer or any other party that may be involved” when a horse breaks down on the turf course and the decision maker “failed to take the races off the turf.” Mr. Drazin states that this rule “will create potential liability claims.”

RESPONSE: The Commission believes that the rule is necessary to ensure the health, safety, and welfare of the race participants by postponing or cancelling racing in the event that weather conditions pose an imminent risk.

COMMENT: Mr. Drazin suggests that “we are living in a time of reaction or over-reacting to other track safety concerns” because “horses race in extreme hot weather conditions in other parts of the country on a regular basis.” Mr. Drazin agrees that “it is important for the Commission to protect the safety of racing participants, the integrity of the sport, and the trust of the wagering public,” but he does not believe “there should be an overreaction to these outside influences.”

RESPONSE: The Commission believes the welfare of human and equine race participants is a paramount concern and has adopted this rule to ensure their safety. The Commission believes that the authority to cancel or postpone races should be placed with the Executive Director, in the event that a permit holder determines to proceed with live racing under conditions when safety is in question.

COMMENT: Mr. Drazin suggests that “the Commission ... provide criteria which would be utilized to cancel races in cold conditions” because thoroughbreds “race at night at the Meadowlands.” Mr. Drazin points out that “NYRA has recently published its policy regarding cold weather.”

RESPONSE: As discussed in the responses to other comments, the decision whether to postpone or cancel racing is fact-specific according to the circumstances presented.

COMMENT: Ms. De Russo states that she is in support of the notice of proposal 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. The

Commission notes that the commenter’s statement regarding retired racehorses is outside the scope of the notice of proposal.

Federal Standards Statement

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

Full text of the adopted new rules follows:

SUBCHAPTER 1. GENERAL RULES

13:70-1.43 Cancellation of racing to protect the health, safety, and welfare of racing participants

In the event a permit holder decides to proceed with the conduct of races, the Executive Director shall have the authority to order the postponement or cancellation of racing for any reason determined to pose a serious risk to the health, safety, and welfare of the equine and human race participants, including, but not limited to, extreme weather conditions, such as high heat and humidity.

(a)

NEW JERSEY RACING COMMISSION

Horse Racing

Riding Crop Prohibited; Emergency Use of Riding Crop; Riding Crop

Adopted Repeal and New Rule: N.J.A.C. 13:70-11.12

Adopted New Rules: N.J.A.C. 13:70-11.12A and 11.12B

Proposed: December 2, 2019, at 51 N.J.R. 1748(a).

Adopted: September 16, 2020, by the New Jersey Racing

Commission, Judith A. Nason, Executive Director.

Filed: September 28, 2020, as R.2020 d.112, **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 the following persons in response to the notice of proposal.

Dennis A. Drazin, Chairman and CEO of Darby Development

Matt Iuliano, Executive Vice President and Executive Director of The Jockey Club, commented on behalf of The Jockey Club’s Thoroughbred Safety Committee

Thomas M. Kennedy, Esq., General Counsel for the Jockeys’ Guild, Inc. (Guild)

Ramon Dominguez, a member of the National Museum Hall of Fame
Kathy Guillermo, Senior Vice President of Equine Matters Department of PETA

Kenneth Jordan, 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

Cindy Bartkowski, a horse owner and breeder

Paul Fine, a member of the public

Daniel Hoefflin, a breeder and racer of thoroughbred horses

Charles Simon, a member of the racing industry

John Chambers, a member of the public

Andy Asaro, a member of the public

COMMENT: Mr. Drazin states that “jockeys and exercise riders currently use riding crops for several purposes” and notes that it is “extremely important that the Commission permit jockeys and exercise riders to utilize riding crops to control the horse and prevent injury.” Mr. Drazin indicated that the new rule “will attempt to address the practice of encouraging a horse to run faster using a riding crop.”

RESPONSE: The Commission believes that the safety of the jockeys, exercise riders, and horses is of paramount importance and the proposed rule is crafted in a way that allows jockeys and exercise riders to use a crop to control their mounts to prevent injury. Additionally, Mr. Drazin is correct to note that the proposed rule prohibits the use of the riding crop as a means of encouraging the horse to run faster.

COMMENT: Mr. Drazin states that he agrees that announcements should be made to the public if a jockey will not ride with a crop, but suggests that N.J.A.C. 13:70-11.12A(b) should not permit jockeys to ride without a crop under any circumstance because if jockeys “do not have a crop to control the horse for safety of the horse or rider, how could they possibly take potential action” to avoid injury or harm? Mr. Drazin also suggests that if a jockey decides to race without a crop, such a decision should be “approved in advance by the Stewards.” Mr. Drazin states that while the provision allowing a jockey to ride without a crop “may be well-intentioned,” he believes it can also “create a very dangerous situation.”

RESPONSE: The Commission understands Mr. Drazin’s concerns relating to N.J.A.C. 13:70-11.12A(b) and may consider proposing an amendment to N.J.A.C. 13:70-11.12A(b) at a later time, should the rule create unintended safety concerns. In the meantime, as the racetrack operator, Mr. Drazin or his staff have the ability to communicate directly with the jockeys and/or trainers to encourage all jockeys to ride with a crop in the interest of safety.

COMMENT: Mr. Drazin suggests that “there be some education process for the jockeys ... so that they will understand what is permissible.”

RESPONSE: Prior to the beginning of the thoroughbred race meeting, the Commission conducts a meeting with jockeys and trainers in which the Commission officials outline the rules regulating the race meeting. In this meeting, the officials will emphasize the newly adopted rule prohibiting the use of the riding crop to encourage the horse to run faster and explain the safety exception. Commission officials continue to meet with the jockeys weekly throughout the meet to review race replays. If any rule amendments or a new rule becomes effective during a meet, the amendments or new rule would be outlined and discussed at that time. During these meetings, the officials are available to answer questions regarding enforcement of any Commission rule. Further, the Commission will consider Mr. Drazin’s suggestion and require additional education specific to the new rule throughout the race meeting for jockeys to the extent needed.

COMMENT: Mr. Drazin states the importance of having uniform rules that can be adopted and enforced by all thoroughbred racing jurisdictions.

RESPONSE: The Commission understands Mr. Drazin’s position on this matter; however, the rules governing racing vary from jurisdiction to jurisdiction because the racing industry is regulated by a different regulatory body in each state. In this instance, the Commission believes that the new rule is necessary to maximize the safety, health, and welfare of the horses that compete while, at the same time, protecting the riders’ safety. It is possible that other jurisdictions will follow New Jersey’s lead and adopt similar rules to achieve uniformity; however, the Commission has no authority over the regulatory bodies in other racing jurisdictions.

COMMENT: Mr. Drazin explains that “there is currently a potential that the industry will attempt to address some Federal legislation which ultimately could include a uniform rule for riding crops” and that New Jersey’s rule may result in “unintended consequences” if it differs from the Federal rule.

RESPONSE: At present, no such Federal legislation exists and the Commission is required to take action to preserve and benefit the racing industry in New Jersey in accordance with current law. The Commission, of course, will abide by any Federal or New Jersey legislation.

COMMENT: Mr. Iuliano indicates support and writes to “encourage the New Jersey Racing Commission to adopt” the rule. Mr. Iuliano states that the Commission’s proposed rule is in line with The Jockey Club’s Thoroughbred Safety Committee’s recommendations, which “call for

eliminating the use of the riding crop for encouragement and allowing the riding crop to be used only to avoid dangerous situations to horse and rider.” Mr. Iuliano explains that The Jockey Club’s Thoroughbred Safety Committee is a standing committee of The Jockey Club that has “studied many issues related to the safety and integrity” of the thoroughbred racing industry and which exists to “review every facet of equine health and to recommend actions the industry can take to improve the health and safety of [t]horoughbreds.”

RESPONSE: The Commission thanks Mr. Iuliano for the support of The Jockey Club in regard to the new rules at N.J.A.C. 13:70-11.12, 11.12A, and 11.12B.

COMMENT: Commenting on the prior rule as opposed to the new rule, Mr. Kennedy states that N.J.A.C. 13:70-11.12, Abusive whipping by a jockey, “already bans abusive whipping” and that there has been “no reported discipline against a rider in the last 5 years for abusive whipping.”

RESPONSE: The Commission’s purpose in proposing the new rule is to maximize equine welfare without jeopardizing the safety of human or equine race participants by allowing riders to utilize the riding crop to control the horse when necessary for the safety of the horse or rider. The Commission believes that the prior rule was outdated and that, in order to maximize equine welfare, it is necessary to eliminate the use of the riding crop to encourage a horse to run faster.

COMMENT: Mr. Kennedy states that the Guild believes that “if the jockey continues to use the riding crop when the horse is clearly out of contention or has reached its maximum placing, he or she should be penalized.”

RESPONSE: Under the new rule, the jockey will be penalized if he or she uses the riding crop when the horse is out of contention, has reached its maximum placing, or for any reason other than when necessary to control the horse for the safety of the horse or rider.

COMMENT: Mr. Kennedy states that racehorses should be subject to a post-race inspection “by a racing or official veterinarian looking for cuts, welts, or bruising to the skin and any adverse findings shall be reported to the Stewards.” Mr. Kennedy explains that this type of examination is required in the existing ARCI Model Rule and is in effect in other racing jurisdictions.

RESPONSE: N.J.A.C. 13:70-11.12A(g) requires a post-race visual inspection of each horse to look for evidence of an excessive or brutal use of the riding crop.

COMMENT: Mr. Kennedy states that the “existing [r]ule is plainly adequate to prevent any abusive conduct involving a riding crop and should be enforced.”

RESPONSE: The Commission does not believe that the prior rule, which prevented abusive whipping, adequately ensured equine welfare. The new rule ensures equine welfare by prohibiting whipping to encourage the horse to run faster. At the same time, the rule protects the safety of the human and equine racing participants by allowing the riding crop to be used to control the horse when necessary for the safety of the horse or rider.

COMMENT: Mr. Kennedy states that the notice of proposal is a “drastic and dangerous change in the conduct of horse racing that is not warranted based on any prior rulings of the Commission or the stewards.”

RESPONSE: The Commission believes that the prior rule did not adequately protect equine welfare. The Commission believes that the elimination of the use of the riding crop to encourage a horse to run faster is in the best interests of equine welfare and the new rule allows the use of the riding crop, when necessary, for the safety and welfare of the human and equine race participants.

COMMENT: Mr. Kennedy states that “it is the opinion of the Guild that the use of the current riding crop is not abusive to the horse and is humane to the equine athlete.” Mr. Kennedy further states that the well-being of horses and riders will not be enhanced by eliminating the “use of the riding crop for encouragement, communication, and control.” Mr. Kennedy explains that the jockeys will likely use the reins for encouragement in the absence of the riding crop and this has the potential for “throwing away the horse’s head, which could cause lack of control of the horse.”

RESPONSE: The Commission believes that the well-being of horses will be enhanced by eliminating the use of the riding crop for

encouragement, communication, and control when unrelated to the safety of the horse or rider. The Commission also believes that licensed jockeys will be able to communicate encouragement to the horse in a safe and permissible manner. Should a jockey believe he or she is losing control of the horse, such as if the jockey throws away the horse's head while encouraging the horse with the reins, the rule allows the use of the riding crop for control, when necessary, for the safety of the horse or rider.

COMMENT: Mr. Kennedy states that another dangerous circumstance will occur when there is an opening to advance position. He states that "[i]t is frequently necessary for a jockey to weave a horse through as many as 6 or 7 other horses, most seeking the rail, to improve the positioning of the horse. Openings to advance through a wall of horses arise suddenly and then can vanish as the leading horses again close ranks." Mr. Kennedy further explains that a jockey "must encourage his or her horse to accelerate into those openings and, without a crop to gain the horse's attention, a lag in response" may cause horses to clip heels and potentially lead to many horses falling, which "will inevitably lead to serious, and often times catastrophic, injuries to both horse and rider." Mr. Kennedy concludes that the use of the crop to encourage the horse to quickly move through an opening would avoid this potential danger.

RESPONSE: The Commission believes that the licensed race participants will develop safe and permissible methods to encourage the horse and will adapt to the new rule. The Commission points out that the rule allows use of the riding crop when necessary for safety should such a dangerous situation arise.

COMMENT: Mr. Kennedy states that the proposed rule "ignores the reality that jockeys need to use the crop to keep a horse's attention to avoid ducking from shadows, turf discoloration, puddles, mirrors, fans and other distractions." He states that jockeys must be able to react to a horse's sudden signal that it is going to "veer in or lug out." Mr. Kennedy claims that jockeys "will frequently be able to feel when a horse is about to do something that could potentially be dangerous that is not able to be detected by those who are not on the horse's back, including ... Stewards in the stand."

RESPONSE: The Commission believes that licensed jockeys will develop safe and permissible methods to encourage or communicate with a horse and points out that the rule allows the use of the riding crop when necessary for safety should such a dangerous situation arise.

COMMENT: Mr. Kennedy states that creating "a penalty system in which a jockey is punished for avoiding a dangerous situation before it even happens is contradictory to what is in the best interest of the horse and the sport." He states that such a penalty system is "particularly egregious because steward penalties to jockeys for riding infractions are very rarely overturned."

RESPONSE: The rule does not impose penalties for the proper use of the riding crop. A jockey will not be penalized for using the riding crop when necessary to protect the safety of the race participants. Further, the rule affords discretion to the stewards regarding the penalty to be imposed.

COMMENT: Mr. Kennedy states that jockeys are unlike other equestrians in that they "are limited in the aids that they have to maintain control of and communicate with the horse." He claims that while most riders "have the natural aids of the leg, hand, seat, and voice, along with the artificial aids of the spurs and/or riding crops," jockeys can only use their hands, voice, riding crop and, to a limited extent, their legs. He, thus, concludes that "[t]o eliminate the use of the riding crop would further reduce their ability to communicate with their mount."

RESPONSE: The Commission believes that use of the riding crop to encourage the horse is contrary to equine welfare and that licensed jockeys will develop new, safe, and permissible methods to encourage or communicate with a horse. The Commission points out that the rule allows use of the riding crop when necessary for safety should such a dangerous situation arise.

COMMENT: Mr. Kennedy states that it is unfair to "penalize thoroughbred jockeys as compared to harness drivers ..."

RESPONSE: Licensed jockeys and licensed drivers must abide by the respective applicable rules, which contain penalty provisions in the event a violation takes place. The Commission's rules for the thoroughbred industry and harness industry are different in many respects. The standardbred restricted-use-of-whips rule differs necessarily as a driver, unlike a jockey, is not close enough to the horse to allow physical contact.

COMMENT: Mr. Kennedy states that the Jockeys' Guild "is concerned that the Commission apparently believes that jockeys can control horses with their feet." He notes language from the Commission's proposed amendments to the harness racing whipping rule that state that a jockey's hands and feet are in contact with the horse, whereas a harness driver has no physical contact with the horse. Mr. Kennedy states that "the only part of the jockey's body that is in full contact with the horse during a race is his or her hands, which are almost always limited to holding the reins and the crop. Only a jockey's toes are used in the stirrups and there is very limited contact with the jockey's leg and the horse itself." For these reasons, Mr. Kennedy asserts that the Commission should not adopt a rule banning riding crops "on the erroneous premise that a jockey's feet are used to encourage and control horses in thoroughbred racing."

RESPONSE: The riding crop rule is not based upon the premise stated by Mr. Kennedy. The provision Mr. Kennedy quotes constitutes language in the Summary of the proposed standardbred restricted-use-of-whips rule, which points out that drivers have no physical contact with the horse unlike jockeys who are in close proximity to the horse with the ability to contact the horse with their hands and feet, if necessary.

COMMENT: Mr. Kennedy states that it is "unreasonable to ask [jockeys] to adhere to dramatically different rules regarding crop use in different and adjacent states." He claims that "[i]nconsistent industry rules on crop use will interfere" with a jockey's ability to instinctively react to changing race circumstances. He then cites a new riding crop rule that is being proposed in Maryland, although he admits that the rule he cites may be changed.

REPOSENSE: As each racing jurisdiction operates under its own set of rules, race participants have always needed to, and will continue to need to, adhere to differing rules regarding crop usage and many other aspects of racing. The Commission believes that the industry members will adapt to the new rule and that the new rule will benefit New Jersey's horses and the racing industry.

COMMENT: Mr. Kennedy informs the Commission that the ARCI is reviewing its current riding crop rule and considering possible amendments. He also states that California has rescinded its proposal that was similar in nature to that proposed by the New Jersey Racing Commission. He further states that several members of the Jockeys' Guild met with the Thoroughbred Safety Coalition "to develop a national consensus on responsible use of the riding crop," and that New Jersey's rule will "diminish the likelihood of an industry consensus if it acts unilaterally to ban crop use ... without taking into consideration the decisions of other racing authorities ..."

RESPONSE: The Commission is aware of the actions being taken in other racing jurisdictions and would welcome uniformity if the other racing jurisdictions decide to adopt the provisions of the new rule. The Commission believes the new rule will maximize equine welfare, while promoting and benefitting horse racing in New Jersey.

COMMENT: Mr. Kennedy states that "[a]ny decision about the use of the riding crop must take into consideration not only the safety of the horse and riders, but also the impact on the industry itself, including the owners, breeders, betting public, as well as the individuals whose livelihoods depend on horseracing." Mr. Kennedy states that it is the Jockeys' Guild's belief that the proposed rule will "destroy thoroughbred racing in New Jersey. Especially if other surrounding jurisdictions ... continue to allow responsible and regulated use of the riding crop ..." He states that "trainers will relocate horses that need urging to run in states with more lenient crop use rules," and that "gamblers will bet on races in other states where responsible crop use is allowed because they are better able to handicap a race where jockeys are still allowed to give their best effort." He states that all of this "will lead to decreased purses and quality of racing."

RESPONSE: The Commission considered the potential effect of the new rule on the industry and notes that the new rule is supported by The Jockey Club. The Commission does not agree with the Guild's predictions for the New Jersey racing industry. On the contrary, the Commission believes that this rulemaking will maximize equine welfare, while promoting and benefitting horse racing in New Jersey.

COMMENT: Mr. Kennedy expresses concern over the mandate at proposed N.J.A.C. 13:70-11.12(b)2 that allows the stewards to penalize the jockey for abusive whipping without disqualifying or placing the horse

or forfeiting the purse. He claims that “[f]or more than 100 years, a riding foul that results in a horse achieving better placing resulted in a forfeiture of purse money by the owner and trainer as well as the jockey.” He states that this rule sets a “dangerous precedent” and “opens the distinct reality that jockeys will be pressured by owners and trainers to utilize a crop for better placing since they are immune” from incurring a penalty under the rule themselves. Mr. Kennedy states that “[t]here is no basis for penalizing only the rider if the stewards conclude that the unauthorized use of the crop resulted in better placing.”

RESPONSE: The Commission chose not to disqualify or place the horse out of the belief that the owner should not be penalized for a jockey’s violation of the new rule through loss of purse money. The Commission decided instead to penalize the jockey should the jockey violate the rule. The Commission believes that a scenario described by Mr. Kennedy is unlikely to occur because such an action by an owner or trainer to cause an intentional violation of the Commission’s rules would likely be found to constitute a regulatory violation, such as conduct detrimental to the sport. The Commission encourages any jockey pressured to violate the rule to report it to the Commission.

COMMENT: Mr. Kennedy states that the Jockeys’ Guild “fully supports the proposed limits to crop use to the horse’s shoulders and hind quarters, a ban on contacting the horse with anything except the soft tube of the riding crop, and the ban on causing any visible sign, mark, welt or break in the skin of the horse by a crop,” proposed at N.J.A.C. 13:70-11.12A(c), (d), and (e).

RESPONSE: The Commission thanks Mr. Kennedy and the Guild for their support in this regard.

COMMENT: Mr. Kennedy proffers additional areas “that should be included” in the proposed rule and suggests that the Commission use the ARCI Model Rule for guidance.

RESPONSE: In drafting the rulemakings, the Commission considered several available resources and decided to advance the rule as proposed.

COMMENT: Mr. Kennedy recommends that the Commission also adopt the portion of the ARCI Model Rule that requires a post-race inspection of the horses, under the supervision of a racing veterinarian, to look for cuts, welts, or bruises in the skin.

RESPONSE: As stated in the response to prior comments, N.J.A.C. 13:70-11.12A(g) requires a post-race visual inspection of each horse.

COMMENT: Mr. Kennedy states that a regulation regarding the usage of a riding crop should emphasize that “the riding crop shall only be used for safety, correction, control, and to maximize placing.” He continues that use of the riding crop should be “appropriate, proportionate, professional,” and “shall be monitored so as not to compromise the welfare of the horse.”

RESPONSE: The Commission believes that the new rule, which allows the use of the riding crop for safety, will maximize equine welfare, minimize negative public perception, and benefit the racing industry in New Jersey.

COMMENT: Mr. Kennedy states that the Jockeys’ Guild is, to an extent, supportive of N.J.A.C. 13:70-11.12A(a), which would require the riding crops carried by jockeys and exercise riders to “conform to certain parameters.”

RESPONSE: The Commission thanks the Guild for its support of this portion of the rulemaking.

COMMENT: Mr. Kennedy requests that, due to the “many factors that must be considered and evaluated” regarding the composition of the riding crop, specifically the “soft tube” set forth in the proposed rule, “the riders be able to provide input on any changes made to the specifications.”

RESPONSE: As advances in technology are realized, the Commission is open to considering future changes should the need arise.

COMMENT: Mr. Kennedy states “that any regulatory changes implemented contain humane specifications and dimensions but still be broad enough to allow for variances for individual jockey preferences.”

RESPONSE: The Commission is unclear as to what Mr. Kennedy is referring to when he uses the term “humane specifications,” as the term is undefined, but believes the rule allows for certain variances in the racing equipment, specifically the riding crop, so long as the equipment meets the requirements of the proposed rule.

COMMENT: Mr. Kennedy requests that “any proposed changes must be evaluated in the ‘real world’ to be able to fully evaluate the performance as well as the effectiveness of such change(s) . . .”

RESPONSE: To the extent that the rule can be evaluated to determine its effectiveness, the Commission will consider relevant and reasonable factors.

COMMENT: Mr. Kennedy states that in 2008, the industry “came together to determine what could be done to improve the riding crop, as well as the public perception of the use of the riding crop.” Mr. Kennedy informed the Commission that, as a result of the industry meeting, modifications were made to the “popper” and that these modifications were agreed to by the Jockeys’ Guild, The Jockey Club, and the ARCI and were adopted as Model Rule ARCI-010-035-A.

RESPONSE: The Commission points out that the industry has continued to change since 2008. In 2019, The Jockey Club publicly advocated for the elimination of the riding crop to encourage a horse to run faster. The Commission agrees that the elimination of the use of the riding crop to encourage the horse promotes equine welfare and benefits the New Jersey racing industry while, at the same time, protecting the safety of the race participants. Additionally, the Commission will consider possible amendments as further improvements are made to racing equipment.

COMMENT: Commenting on a different organization’s rules, Mr. Kennedy states that the Jockeys’ Guild “supports the current ARCI model rules regarding riding crop specifications.” He continues that the ARCI model rule “essentially mirrored what was being used in Great Britain” and “there was a considerable amount of testing down in the real world . . .”

RESPONSE: The Commission has not adopted the ARCI’s Model Rules. The Commission believes the rule that was proposed and adopted promotes equine welfare and protects the safety of the human and equine racing participants.

COMMENT: Mr. Kennedy states that the “ultimate goal is to establish a standard of the riding crop that is in the best interest of the welfare of the horse, while taking into consideration that [sic] the differences of riding styles and preferences of the professional athletes who [are] the other necessary component of our sport.” He expresses a desire to “establish a specification of the riding crop that would meet the humane standard while still allowing for variances necessary for each individual jockey’s style and preferences” and that the Jockeys’ Guild “looks forward to working with regulators . . . with the ultimate goal being what is best for both the horses and the jockeys.”

RESPONSE: The Commission believes that the welfare of racehorses is best served by not allowing the horses to be struck with the riding crop for any reason other than the safety of the horse and rider. The Commission is unclear as to what Mr. Kennedy is referring to when he uses the term “humane specifications,” as the term is undefined, but believes the rule allows for certain variances in the racing equipment, specifically the riding crop, so long as the equipment meets the requirements of the proposed rule.

COMMENT: Mr. Kennedy states that the establishment of a specification of the riding crop is an “area where an industry consensus is necessary to allow riders in multiple states to utilize their crops wherever they ride.”

RESPONSE: The Commission requires each licensee to abide by its rules when participating in racing in New Jersey. The Commission has no authority in any other racing jurisdiction, and while promulgating similar rules between neighboring jurisdictions is a worthwhile goal that can lead to expedience and efficiency in certain aspects of the racing industry, achieving consensus, which may not be possible, can create unnecessary delay and undermine progress. The Commission believes the new rule ensures equine welfare by prohibiting use of the riding crop to encourage the horse. At the same time, the rule protects the safety of the human and equine racing participants by allowing the riding crop to be used to control the horse when necessary for the safety of the horse or rider.

COMMENT: Mr. Kennedy states that the “proposed rules must be withdrawn because the N.J.R.C. cannot propose or adopt racing rules with only four members.” Mr. Kennedy then advances a complex legal analysis in support of his argument.

RESPONSE: The Commission is validly constituted and may properly act. A majority of sitting members of the Commission constitutes a quorum that may legally vote at a public meeting.

COMMENT: Mr. Dominguez, a former jockey, states his “strong appreciation for any effort that seeks to improve safety for horses and riders” and understands the challenges “facing the thoroughbred industry from an animal welfare perspective.” He also states that “the ability to control [a] mount is paramount to the safe running of a race, and a safely run race is in the best interest of all participants.” He continues by explaining that the United States is “in a position to lead by example through the passage of common sense regulations that take all perspectives into account.” Mr. Dominguez believes that the discussion of the usage of the riding crop must continue and that he “is not a proponent of outright barring or severely restricting its use as outlined in the proposed rule changes.” He explains that “while these changes do answer concerns of public perception, they do not advance safety in a meaningful way and in fact detract from it.” He states that “[r]emoving the riding crop ... will not make racing safer or more equitable” and he urges the Commission to “reconsider the use rules, to bring riders to [the] table for further discussion, and to work with a broad coalition of industry participants to collaboratively draft regulations that are consistent across jurisdictions.” He concludes by stating that “[r]ule changes of this magnitude require thoughtful consideration and collaboration from all sides.”

REPOSE: The Commission points out that the rule will not “remove the riding crop,” nor will it restrict or limit the use of the riding crop for purposes of safety. The rule eliminates the use of the riding crop to encourage the horse to run faster. The proposed rule is intended to maximize equine welfare without compromising the safety of the racing participants.

COMMENT: Mr. Dominguez is “grateful to the commission for taking into account design changes recently made to the riding crop and taking steps to mandate that use of a crop with a foam popper.” As the inventor of the 360 GT, the first riding crop to use a soft foam tube, Mr. Dominguez explains that he “designed this crop with the horse in mind” and has been working on the project for more than a decade. He believes that a foam crop that “uses sound as a primary motivator” is important and that equipment “needs to evolve along with the sport” and that a “softer crop would be just as effective.” Mr. Dominguez states that he stands “ready to work with riders and regulators in New Jersey to bring [the soft-padded riding crop] into widespread use.”

RESPONSE: The Commission welcomes improvements that promote equine welfare without compromising the safety of the human and equine racing participants, such as modifications to the riding crop.

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. Jordan states that he is against the new rule because “existing changes to the riders [sic] crop and the lack of research on how handle will be affected make it unnecessary to implement the rule change now.”

RESPONSE: The Commission believes that the rule promotes equine welfare and will benefit racing in New Jersey by increasing attendance and wagering handle.

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 for her support and agrees the new rule promotes equine health and welfare.

COMMENT: Ms. Zimmerman states that she is a long-time fan of thoroughbred racing and is writing to “express [her] full support of the New Jersey Racing Commission’s proposal” which “eliminates the use of the riding crop except when necessary to control the horse for the safety of the horse or rider.” 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 inhumane.”

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.

COMMENT: Ms. Cailliau is in favor of the proposed rule and states 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 states that she wishes that whips no longer be used.

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

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 states that she 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 states that he 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 horse racing.

COMMENT: Ms. Hornung states that she 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 states that she 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 for her support 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 newly proposed N.J.A.C. 13:70-11.12B requires the use of a tool that will accomplish the goals stated by Ms. Smith when the use of the riding crop is necessary for the safety of the race participants.

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.

COMMENT: Ms. Bartkowski states that she is opposed to the rulemaking as she finds “the new rules too extreme.” She states that adopting the rules used by the British racing club “seem to be a better compromise that will allow riders to ‘encourage’ their mounts to stay in the game and perhaps accelerate while limited the effort used.” She also questions the ability of the jockeys to convey the need for speed.

RESPONSE: The Commission believes that jockeys and trainers will adapt to the new parameters that are necessary for equine welfare while, at the same time, allowing the riding crop to be used when necessary to protect the race participants.

COMMENT: Mr. Fine states that he is opposed to the portion of the rule eliminating the use of the riding crop to encourage the horse to run faster. He states that the “sole reasons for conducting a horse race is to determine who is the fastest horse” and that the riding crop is “an essential tool for helping riders communicate with their horses,” which also includes “being able to communicate when more speed is needed.”

RESPONSE: The Commission disagrees with the commenter’s assessment that the sole reason for conducting a horse race is to determine the fastest horse. There are multiple reasons for conducting a horse race, which reasons include providing a forum to display equine and human teamwork and competitiveness, as well as to provide the public with recreational opportunities. The purpose of the rule is to maximize equine welfare during the race. The Commission agrees that communication between rider and mount is important and allows the use of the riding crop when necessary for safety. However, jockeys will need to rely on safe and permissible methods to communicate the need for more speed to their mounts as the riding crop can no longer be used to encourage the horse.

COMMENT: Mr. Fine believes that the riding crop rules adopted in Great Britain, which “strictly limit the number of times a jockey may use a riding crop for encouragement ... strikes the right balance, and would be a much better model for NJ and the US.”

RESPONSE: The Commission does not believe that striking a horse for encouragement, even if the number of strikes is limited, is appropriate.

COMMENT: Mr. Fine claims that “[m]ost folks who want to eliminate the use of the riding crop for encouragement also want to ultimately abolish horse racing entirely” and sees “no reasons to try and appease this small group of extremists” because “they are not racing fans.”

RESPONSE: The Jockey Club has called for the elimination of the riding crop for encouragement. In addition to protecting the horses that race, the Commission believes that the new rule will benefit the New Jersey racing industry by increasing attendance and wagering handle.

COMMENT: Mr. Fine suggests that to make racing safer, the Commission should “encourage Monmouth to replace its dirt track with a synthetic track.”

RESPONSE: The Commission notes that this comment is outside the scope of this rulemaking.

COMMENT: Mr. Hoefflin states that he is in support of the new rule and states that “[i]n almost all cases, a whip is unnecessary. The public hates whips and so does our stable.”

RESPONSE: The Commission thanks the commenter for his support and agrees the new rule promotes equine health and welfare and benefits horse racing in New Jersey.

COMMENT: Mr. Simon states that he is opposed to the rule and believes it “will cause more irreparable harm to the State’s thoroughbred racing industry than any theoretical benefits that may be derived.” Mr. Simon states that clear and concise rules regarding the usage of a riding crop would be “far more beneficial to horses” than this rule, which he claims will make the officials “have to read the mind of jockeys as to what constitutes a safety measure ...” He continues that this rule does not target the “actual people who pour hundreds of millions of dollars into the business” and, thus, the rule seems to be a “boondoggle.” Mr. Simon believes that the rule is being proposed to appease “radical activists who don’t actually and never will participate in the racing industry” and that it seems like “a losing plan.”

RESPONSE: The Commission believes that the new rule’s prohibition of the use of the riding crop except when necessary for safety is clear. The new rule ensures equine welfare by prohibiting whipping to encourage the horse. At the same time, the rule protects the safety of the human and equine racing participants by allowing the riding crop to be used to control the horse when necessary for the safety of the horse or rider.

COMMENT: Mr. Simon states that horse racing is about “competition and not just participation.” He further states that “allowing a horse a minor bit of encouragement is going to be much more beneficial” because the new rule will “result in decreased handle from bettors who will not accept riding wherein the jockeys don’t look like they have for over 100 years.” He doesn’t believe that “a few mild taps” is going to cause the activists to change their tune regarding racing and that the new rule is “going to lead to the demise of a billion dollar industry that once thrived in the state and has shown signs of rebounding in recent years.”

RESPONSE: The Commission believes that the new rule will benefit the racing industry in New Jersey by increasing attendance and wagering handle.

COMMENT: Mr. Chambers states that he would like to see the use of whips minimized but feels that “in some cases it is necessary for the safety of other horses or the rider.” He understands the negative public perception but believes that crop usage “does have its place in helping control the horse.” He states that the rule should be balanced against safe racing. He agrees that the riding crop “should not be used to try and encourage a horse to go faster” and that he’s seen plenty of races “where a good hand ride by the jockey gets a better result than vigorous whipping of a horse.”

RESPONSE: The Commission believes the new rule accomplishes a balance of prohibited use of the riding crop, except when necessary for safety.

COMMENT: Mr. Asaro’s comment refers to proposed rule changes in California and he references certain jockeys’ decisions during California races. Mr. Asaro states that “he will not bet on or attend races at any jurisdiction that follows the whip rules outlined by the Jockey Club or any using of the whip for defensive purposes only.”

RESPONSE: Mr. Asaro’s comment regarding proposed California rules or California races is outside the scope of the rulemaking. To the extent this comment applies to the new rule in New Jersey, the Commission believes that the new rule will benefit racing by increasing attendance and wagering handle.

Federal Standards Statement

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

Full text of the adoption follows:

SUBCHAPTER 11. POST TO FINISH

13:70-11.12 Riding crop prohibited

(a) No jockey or exercise rider may use a riding crop at any time, or for any reason, except when necessary to control the horse for the safety of the horse or rider.

(b) If a jockey or exercise rider uses the riding crop in a manner contrary to this section:

1. The jockey or exercise rider may be suspended and/or fined by the stewards; and

2. The jockey’s share of the purse shall be forfeited if, in the opinion of the stewards, the unauthorized use of the crop caused the horse to achieve a better placing.

13:70-11.12A Emergency use of riding crop

(a) Only riding crops, as permitted, and as defined at N.J.A.C. 13:70-11.12B, shall be allowed. The riding crop shall only be used when necessary to control the horse to avoid injury to the horse or rider.

(b) In all races where a jockey will not ride with a riding crop, an announcement shall be made over the public address system.

(c) The riding crop shall never be used on the head, flanks, or on any other part of the horse other than the shoulders or hind quarters.

(d) A jockey or exercise rider shall not contact the horse with anything except the soft tube of the riding crop.

(e) A jockey or exercise rider shall not strike a horse in a manner that causes any visible sign, mark, welt, or break in the skin of the horse, or that is otherwise excessive.

(f) The riding crop should be shown to the horse before use, whenever possible.

(g) If the riding crop is used, under the supervision of the stewards, there shall be a visual inspection of each horse following each race for evidence of excessive or brutal use of the riding crop.

(h) If a jockey or exercise rider uses the riding crop in a manner contrary to this section:

1. The jockey or exercise rider may be suspended and/or fined by the stewards; and

2. The jockey's share of the purse shall be forfeited if, in the opinion of the stewards, the unauthorized use of the crop caused the horse to achieve a better placing.

13:70-11.12B Riding crops

(a) All riding crops must be soft-padded.

(b) Riding crops shall have a shaft and a soft tube and must conform to the following dimensions and construction:

1. The maximum allowable weight shall be eight ounces;

2. The maximum allowable length, including the soft tube attachment, shall be 30 inches;

3. The minimum diameter of the shaft shall be three-eighths of one inch; and

4. The shaft, beyond the grip, must be smooth, with no protrusions or raised surface, and covered by shock absorbing material that gives a compression factor of at least one millimeter throughout its circumference.

(c) The soft tube is the only allowable attachment to the shaft and must meet the following specifications:

1. Shall have a maximum length beyond the shaft of one inch;

2. Shall have a minimum width of 0.8 inches and a maximum width of 1.6 inches;

3. There shall be no reinforcements or additions beyond the end of the shaft;

4. There shall be no binding within seven inches of the end of the shaft;

5. The soft tube shall be made of shock absorbing material with a compression factor of at least five millimeters throughout its circumference;

6. The soft tube shall be made of a waterproof, ultraviolet, and chemical resistant foam material that is durable and preserves its shock absorption in use under all conditions; and

7. The soft tube shall be replaced after reasonable wear and tear is visibly evident.

(d) The riding crops are subject to inspection and approval by the stewards and the clerk of the scales, based upon (c) above.

(a)

NEW JERSEY RACING COMMISSION

Harness Racing

Cancellation of Racing to Protect the Health, Safety, and Welfare of Racing Participants

Adopted New Rule: N.J.A.C. 13:71-1.38

Proposed: December 2, 2019, at 51 N.J.R. 1750(a).

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

Filed: September 28, 2020, as R.2020 d.113, **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 response of the New Jersey Racing Commission (Commission). The Commission received comments from two persons in response to the notice of proposal:

Howard Bruno, General Manager of Freehold Raceway; and

Karen De Russo, a member of the public.

COMMENT: Mr. Bruno states that Freehold Raceway "is in support of the ... rule," but requested that "language be added indicating that any

cancellation at the direction of the Executive Director would be considered as a day raced in order [to] meet statutory minimums on required number of race days." Mr. Bruno adds that such "language would be consistent with the current practice regarding weather-related cancellations."

RESPONSE: The Commission thanks Mr. Bruno and Freehold Raceway for their support. Any decision by the Executive Director to cancel racing will be presented to the Commissioners for ratification in accordance with the current practice regarding weather-related cancellations.

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. The Commission notes that the commenter's statement regarding retired racehorses is outside the scope of the rule proposal.

Federal Standards Statement

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

Full text of the adopted new rule follows:

SUBCHAPTER 1. GENERAL RULES

13:71-1.38 Cancellation of racing to protect the health, safety, and welfare of racing participants

In the event a permit holder decides to conduct races, the Executive Director shall have the authority to order the postponement or cancellation of racing for any reason determined to pose a serious risk to the health, safety, and welfare of the equine and human race participants, including, but not limited to, extreme weather conditions, such as high heat and humidity.

(b)

NEW JERSEY RACING COMMISSION

Harness Racing

Whips; Restricted Use of Whip and Prohibition of Goaded 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 Settlemoir, 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