

There should not be any social impact on a larger scale as these proposed amendments only affect the horses and persons involved with claiming races.

**Economic Impact**

Implementation of the proposed amendments will affect the trainers of claimants by a small degree. By eliminating a claimant’s right to void a claim should that claimant race a horse prior to receiving the post-race test results, the trainer for the claimant has to weigh the risk of entering the horse into a race prior to receiving test results from the race in which the horse was claimed. The claimant, as owner of the horse, will also face the loss of the purse should the horse test positive.

Due to the nature of the practices being prohibited, enforcement of the proposed amendments will come at no additional cost to the Commission, industry, or State. There are no other economic impacts envisioned at this time.

**Federal Standards Statement**

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the proposed amendments. The Commission proposes these amendments pursuant to the rulemaking authority set forth at N.J.S.A. 5:5-30.

**Jobs Impact**

The proposed amendments are not expected to create or eliminate any jobs in the racing industry. It is likely that additional job responsibilities will be required for certain employees of the Commission, but the responsibilities should be marginal and can be attended to by existing staff.

**Agriculture Industry Impact**

The proposed amendments may have an insignificant impact on the agriculture industry in New Jersey but there is an extreme unlikelihood that the rules would evoke a change in the costs or practices associated with agriculture.

**Regulatory Flexibility Statement**

The proposed amendments will not have an impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will not evoke a change in the operation and practice of any small businesses because the proposed amendments relate to the claiming of racehorses from claims races. There will be no need to involve any small businesses in the claiming of race horses.

**Housing Affordability Impact Analysis**

It is anticipated that the proposed amendments will not have an impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the proposed amendments will evoke a change in the average costs associated with housing because the proposed amendments relate to the claiming of racehorses from claims races.

**Smart Growth Development Impact Analysis**

It is anticipated that the proposed amendments will not have an impact on smart growth. There is an extreme unlikelihood that the proposed amendments will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments relate to the claiming of racehorses from claiming races.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 12. CLAIMING

13:70-12.1A Exemption from claim

(a) A horse **that is** entered into any claiming race governed by this subchapter shall be exempted from any claim of title, if:

- 1. Said horse has not started in any race for a period of 180 days from the date of [its] **the last claiming race in which the horse was a starter**;
- 2.-.3 (No change.)
- (b) (No change.)

13:70-12.20A Voidable claims

(a) A claim is voidable at the discretion of the successful claimant if:

1. A post-race test of the claimed horse pursuant to N.J.A.C. 13:70-12.36 returns a positive finding for any drug and/or substance foreign to the natural horse[;]. **However, if the successful claimant races the horse prior to receiving the results of the post-race test, the claimant waives his or her right to void the claim. Further, if the claimant races the horse prior to receiving the results of the post-race test and the horse tests positive for any substance, including the substance that the horse tested positive for in connection with the race in which it was claimed, the claimant’s trainer shall be liable for the positive post-race test in accordance with the rules of the Commission;** or

2. A claimed horse, after starting in the race from which it was claimed, and at the direction of the State Veterinarian, is ordered transported or “vanned off” via racetrack equine ambulance from the track. In such an instance, the claimant or his or her trainer shall have one hour from [post time] **off-time** of the race in which the horse was claimed, to inform the stewards of his or her decision to void the claim. Should the claimant, **or his or her trainer or representative**, take possession of the horse and remove it from the detention barn or should the claimant or his or her trainer fail to communicate to the stewards his or her decision to void the claim within one hour from [post time] **off-time**, the claim shall be considered valid and the right to void the claim shall expire. Communication of the claimant’s decision to void the claim may be made to the State Veterinarian who shall then log the time the decision was communicated and immediately contact the stewards.

(a)

**NEW JERSEY RACING COMMISSION**

**Harness Racing  
Definitions; Exemption from Claim; Voidable  
Claims; Scratched Horse**

**Proposed Amendments: N.J.A.C. 13:71-4.1, 14.2A,  
14.17B, and 14.18**

Authorized By: New Jersey Racing Commission, Frank Zanzuccki,  
Executive Director.

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

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2018-022.

Submit written comments by May 4, 2018, to:

Frank Zanzuccki, Executive Director  
Department of Law and Public Safety  
New Jersey Racing Commission  
PO Box 088  
Trenton, NJ 08625-0088  
E-mail: [NJRCWebinfo@lps.state.nj.us](mailto:NJRCWebinfo@lps.state.nj.us)

The agency proposal follows:

**Summary**

Subchapter 14, Claiming, sets forth the rules of the New Jersey Racing Commission (Commission) governing claiming races and specifies from whom a claim can derive, the process for such claim, and the actions of the racetrack judges and veterinarians in overseeing the claiming process and in properly responding to every claim. The Commission proposes several amendments to the subchapter in response to public comments received in connection with the adoption of a 2016 rulemaking pertaining to claiming rules. (see 48 N.J.R. 1597(a); 2828(a))

An amendment is proposed at N.J.A.C. 13:71-14.2A(a) to make a grammatical change.

N.J.A.C. 13:71-14.2A(a)1 is proposed for amendment to clarify the conditions necessary for a horse to be exempt from claiming. Specifically, the rule is proposed for amendment to explain that if a

horse is entered into a race, that horse can be scratched prior to off-time without harming the trainer's and owner's right to exempt that horse the next time it starts a race. The amendment is proposed to safeguard the health of racehorses. If a horse is entered into a race but still has a lingering injury, the owner and/or trainer need not fear that they have wasted their one-time exemption by entering the horse into a race, as long as the horse does not start. Further, paragraph (a)1, as proposed for amendment, clarifies that should a horse be entered into a race within the 180-day time period required to exempt the horse from claim, but subsequently does not start that race for any reason, such entrance does not reset the 180 days as the date of the horse's last start is a matter of record.

N.J.A.C. 13:71-14.17B(a)1 is proposed for amendment in response to concerns raised during the prior public comment period and to clarify a trainer's liability in the case of a claimed horse. The proposed amendment adds a restriction to the claimant's right to void a claim should a horse test positive for a drug or substance foreign to the natural horse after the race in which it was claimed. Typically, test results are received from the testing laboratory between seven and 10 days after the samples are taken. Should a sample of a claimed horse result in a positive finding, the claimant has a right to void his or her claim and return the horse to the previous owner. However, should the claimant decide to race the claimed horse prior to receiving the post-race test results, the claimant forfeits his or her right to void the claim regardless of the test results. This is warranted because of the risk of injury should the horse be raced. Further, should the claimant decide to race the horse in a subsequent race prior to receiving the test results and the horse tests positive in the subsequent race, the trainer of the horse is liable for the positive result even if the testing result from the race in which the horse was claimed returns a positive finding for the same substance as the finding in the subsequent race. The trainer will be liable if he or she enters a horse that tests positive.

N.J.A.C. 13:71-14.17B(a)2 is also proposed for amendment in response to concerns raised during the prior public comment period. The rule currently states that a claimant has one hour from the post time of the race to void a claim if the horse is vanned off the track in the equine ambulance. Due to the varying nature of a race's actual start time and the potential for delays due to inclement weather or other factors, the post time listed on the program is not a satisfactory guidepost from which to calculate the claimant's timeframe to void his or her claim. The intent of the rule is for the claimant to have one hour from the time the race is run to void his or her claim. Thus, the proposed amendments change the time limit from one hour after the post time of a race to one hour after the off-time of a race. This change is in line with the intent of the rule. The paragraph is also proposed for amendment to allow the actions of the claimant or his or her trainer "or representative" to cause the ability to void a claim to expire.

N.J.A.C. 13:71-14.18 is proposed for amendment to make it clear that should a horse been entered into a race due to administrative error, that horse shall not be subject to claim. A definition for the term "off-time" is proposed at N.J.A.C. 13:71-4.1 to clarify the amendments to N.J.A.C. 13:71-14.17B(a)2.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed amendments are in response to comments from the public. The impact of these proposed amendments will be felt by owners and trainers of racehorses who decide to utilize the exemption option when entering a horse into a claiming race. The amendments will also affect claimants that have the option of voiding their claim by eliminating the right to void a claim should the claimant decide to race the horse prior to receiving test results.

The proposed amendments should serve to better safeguard the health of racehorses in New Jersey as they clarify that an owner or trainer can scratch a horse from a race in which it is entered without losing the horse's right to be exempt from claim. Further, should a horse be vanned off of a racetrack, the proposed amendments ensure that the claimant will have a full hour to consider whether to void his or her claim.

There should not be any social impact on a larger scale as these proposed amendments only affect the horses and persons involved with claiming races.

#### Economic Impact

Implementation of the proposed amendments will affect the trainers of claimants by a small degree. By eliminating a claimant's right to void a claim should that claimant race a horse prior to receiving the post-race test results, the trainer for the claimant has to weigh the risk of entering the horse into a race prior to receiving test results from the race in which the horse was claimed. The claimant, as owner of the horse, will also face the loss of the purse should the horse test positive.

Due to the nature of the practices being prohibited, enforcement of these rules will come at no additional cost to the Commission, industry, or State. There are no other economic impacts envisioned at this time.

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#### Jobs Impact

The proposed amendments are not expected to create or eliminate any jobs in the racing industry. It is likely that additional job responsibilities will be required for certain employees of the Commission, but the responsibilities should be marginal and can be attended to by existing staff.

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The proposed amendments may have an insignificant impact on the agriculture industry in New Jersey but there is an extreme unlikelihood that the rules would evoke a change in the costs or practices associated with agriculture.

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The proposed amendments will not have an impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will not evoke a change in the operation and practice of any small businesses because these amendments relate to the claiming of racehorses from claims races. There will be no need to involve any small businesses in the claiming of race horses.

#### Housing Affordability Impact Analysis

It is anticipated that the proposed amendments will not have an impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the proposed amendments will evoke a change in the average costs associated with housing because the proposed amendments relate to the claiming of racehorses from claims races.

#### Smart Growth Development Impact Analysis

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**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 4. DEFINITIONS

##### 13:71-4.1 Definitions

(a) (No change.)

(b) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

**"Off-time"** shall mean the moment at which the official starter says go, officially dispatching the horses in each contest.

...

SUBCHAPTER 14. CLAIMING

13:71-14.2A Exemption from claim

(a) A horse **that is** entered into any claiming race governed by this subchapter shall be exempted from any claim of title, if:

1. Said horse has not [been entered] **started** in any race for a period of 180 days from the date of the last claiming race in which the horse was a starter;

2.-3. (No change.)

(b) (No change.)

13:71-14.17B Voidable claims

(a) A claim is voidable at the discretion of the successful claimant if:

1. A post-race test of the claimed horse pursuant to N.J.A.C. 13:71-14.32 returns a positive finding for any drug and/or substance foreign to the natural horse [; or]. **However, if the successful claimant races the horse prior to receiving the results of the post-race test, the claimant waives his or her right to void the claim. Further, if the claimant races the horse prior to receiving the results of the post-race test and the horse tests positive for any substance, including the substance that the horse tested positive for in connection with the race in which it was claimed, the claimant's trainer shall be liable for the positive post-race test in accordance with the rules of the Commission; or**

2. A claimed horse, after starting in the race from which it was claimed, and at the direction of the State Veterinarian, is ordered transported or "vanned off" via racetrack equine ambulance from the track. In such an instance, the claimant or his or her trainer shall have one hour from [post time] **off-time** of the race in which the horse was claimed to inform the [Judges] **judges** of his or her decision to void the claim. Should the claimant or his or her trainer **or representative** take possession of the horse and remove it from the detention barn or should the claimant or his or her trainer fail to communicate to the [Judges] **judges** his or her decision to void the claim **within one hour from off-time**, the claim shall be considered valid and the right to void the claim shall expire. Communication of the claimant's decision to void the claim may be made to the State Veterinarian who shall then log the time the decision was communicated and immediately contact the [Judges] **judges**.

13:71-14.18 Scratched horse

Should a horse that has been claimed be scratched prior to off-time, the claim on that horse shall become void. However, should the claimant of the scratched horse wish to continue with his or her claim, he or she may elect to do so by informing the horsemen's bookkeeper prior to off-time of the race that he or she wishes his or her claim to remain in effect despite the horse being scratched. Upon receiving such notification from the claimant, the horsemen's bookkeeper shall immediately inform the [Judges] **judges** of the claimant's decision to continue with the claim. Any horse drawn into a claiming race is eligible to be claimed, excepting those horses exempted pursuant to N.J.A.C. 13:71-14.2A. Horses entered in claiming races that have been cancelled by the New Jersey Racing Commission shall not be subject to claims. **Any horse entered into a claiming race due to an administrative error shall likewise not be subject to claims.**

1978 Executive Reorganization Plan; and Executive Order No. 65 (1997).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-025.

Submit written comments by May 4, 2018, to:

Paul F. Sprewell  
 Administrative Practice Officer  
 New Jersey Department of Transportation  
 PO Box 600  
 Trenton, NJ 08625-0600  
 Submit electronically at [NJDOTRules@dot.nj.gov](mailto:NJDOTRules@dot.nj.gov).

This rule may be viewed or downloaded from the Department's website at <http://www.state.nj.us/transportation/about/rules/proposals.shtm>.

The agency proposal follows:

**Summary**

N.J.A.C. 16:53E establishes rules concerning the State's oversight of the safety of rail fixed guideway systems through the Department, designated as the State's oversight agency by Executive Order No. 65 (1997), which conform to the requirements established pursuant to 49 U.S.C. § 5329(e). The Office of Fixed Guideway Oversight in the Department is responsible for the administration of this chapter.

In April 2016, 49 CFR Part 674 replaced 49 CFR Part 659 and significantly strengthened a State Safety Oversight (SSO) Agency's authority to investigate accidents and oversee a rail transit agency's implementation of its System Safety Program Plan (SSPP) and Public Transportation Agency Safety Plan. Under 49 CFR 674, every state must establish an SSO program and ensure that the State Safety Oversight Agency is financially and legally independent from any rail transit agency that it oversees. The Federal Transit Administration (FTA) reviews and approves each state's SSO program standard, certifying whether states are meeting the statutory criteria. Also, the FTA can impose penalties on those states with non-existent or non-compliant safety oversight programs. The Department adopts and incorporates by reference 49 CFR Part 674, in the proposed new rules. The full text of the Federal regulations and all supplements and revisions can be found by examining the electronic versions of Federal regulations at <https://www.gpo.gov/fdsys>.

Because of the change to the Federal regulations, the Department evaluated Chapter 53E and determined that extensive revisions would be necessary. With this in mind, a full repeal and replacement of the chapter is proposed. Because the Department is providing a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The existing subchapters proposed for repeal are summarized as follows:

Subchapter 1, Purpose, Application and Scope, provides the purpose, scope, and applicability of the chapter; adopts and incorporates by reference the Federal Transit Administration rail fixed guideway systems state safety oversight regulations, and certain published guides, guidelines, reports, and manuals of the FTA; and establishes provisions regarding conflicts of interest.

Subchapter 2, Definitions, provides the definitions for terms used throughout the chapter.

Subchapter 3, Safety and Security Oversight Program Standards and Procedures, provides the requirements of the Department in its role as oversight agency.

Subchapter 4, System Safety Program Plan, provides the requirements and procedures for the system safety program plan.

Subchapter 5, System Security Plan, provides the requirements and procedures for the system security plan (SSP).

Subchapter 6, Department Approval of the System Safety Program Plan, establishes approval requirements for system safety program plans.

Subchapter 7, Department Approval of the System Security Plan, provides the approval process for system security plans.

Subchapter 8, Transit Agency Annual Internal Audit Reports, establishes requirements for annual audits.

**TRANSPORTATION**

**(a)**

**DIVISION OF MULTIMODAL SERVICES  
 OFFICE OF FIXED GUIDEWAY SAFETY OVERSIGHT  
 Fixed Guideway Systems State Safety Oversight  
 Proposed Repeal and New Rules: N.J.A.C. 16:53E**

Authorized By: Richard T. Hammer, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:25-8c, 48:2-12, and 52:14D-6; 49 U.S.C. § 5329(e); 49 CFR Part 674; October 5,