

Agriculture Industry Impact Statement

The Commission has evaluated this proposed new rule and determined that it will not have an impact on the agricultural industry in the State. Accordingly, no further analysis is required.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required as the proposed new rule will have no impact on the reporting, recordkeeping, or compliance requirements of small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The Commission has evaluated the proposed new rule and determined that it will not have an impact on housing affordability or evoke a change in the average costs associated with housing in the State because the proposed new rule grants authority to the Executive Director to postpone or cancel a race to protect the health, safety, or welfare of the racing participants. Accordingly, no further analysis is required.

Smart Growth Development Impact Analysis

The Commission has evaluated the proposed new rule and determined that it will not have an impact on smart growth and is unlikely to evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in the State because the proposed new rule grants authority to the Executive Director to postpone or cancel a race to protect the health, safety, or welfare of the racing participants. Accordingly, no further analysis is required.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rule 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
Equine Fatality Report****Proposed Amendments: N.J.A.C. 13:70-2.1 and
14.16**

Authorized By: New Jersey Racing Commission, Judith A. Nason,
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 2019-153.

Submit written comments by January 31, 2020, to:

Judith A. Nason, Executive Director
Department of Law and Public Safety
New Jersey Racing Commission
PO Box 088
Trenton, New Jersey 08625-0088
Or via email to: NJRCWebinfo@lps.state.nj.us

The agency proposal follows:

Summary

N.J.A.C. 13:70-14.16 currently requires submission of an equine fatality report on the death of any racehorse upon the grounds of a New Jersey racetrack or off-track training facility. The fatality report includes, among other things, a statement as to cause of death. Failure to submit such a report results in the assessment of penalties upon the trainer of the racehorse and any other persons involved in the failure to submit a report. The rule assists the New Jersey Racing Commission (Commission) in maintaining oversight on the general health of the racehorses under its jurisdiction, as well as observing any trends in the racing-related fatalities of racehorses in New Jersey.

The safety and welfare of equine racing participants is a matter of paramount concern and the Commission is dedicated to taking steps intended to prevent as many racing-related or training-related deaths as possible. To do so, the Commission must be able to keep at-risk horses from starting in a race. Therefore, the Commission proposes to amend N.J.A.C. 13:70-14.16 to give the Commission additional data on causes of death, so that it can identify trends and other factors that may contribute to equine fatalities. In addition to requiring a necropsy, the Commission also proposes to require submission of the prior month's treatment records, instead of records from the previous 96 hours. Gathering data is vital to any subsequent measures the Commission may take towards monitoring at-risk horses to ensure they receive the proper care prior to being allowed to race, thereby safeguarding the health and welfare of the equine racing participants under its jurisdiction.

N.J.A.C. 13:70-2.1 is proposed for amendment to include a definition of the term "post-mortem necropsy." The term will be defined as "a thorough examination of a horse's remains by a licensed veterinary practitioner to determine the cause of death and other information about the condition of the deceased horse."

The heading of N.J.A.C. 13:70-14.16 is proposed for amendment to include the term "post-mortem necropsy," as the proposed amendment will now require a necropsy upon the death of any thoroughbred racehorse on the track during racing or training and also upon the death of any racehorse within one hour after racing or training on any racetrack.

N.J.A.C. 13:70-14.16(a) is proposed for amendment to create a strict 48-hour timeframe within which the deceased horse's trainer must submit an equine fatality report. The proposed amendment also requires the report to be submitted with the State Steward or the Chief State Veterinarian. The subsection is also proposed for amendment to remove "custodian" to make it clear that the trainer is the person that must file the equine fatality report.

N.J.A.C. 13:70-14.16(b) is proposed for amendment to require that the trainer file the form prescribed and furnished by the Commission. The proposed amendments also require that all of the requested information shall be provided and legible. N.J.A.C. 13:70-14.16(b)1 and 3 are proposed for amendment to clarify that the equine fatality report can include other registration identification, in addition to tattoo number, and to clarify the records regarding the purchase of equine are fiscal records.

N.J.A.C. 13:70-14.16(c) is proposed for amendment to require that the deceased horse's attending veterinarian submit all records detailing treatments administered to the deceased horse within the 30-day period preceding the time of the horse's death. Such records shall be submitted to the State Steward within 48 hours of the time of the horse's death. Should the attending veterinarian fail to produce the treatment records within the 48-hour timeframe, the trainer and/or veterinarian may be subject to immediate suspension of their respective licenses if the Commission determines that one or both engaged in actionable delay.

Proposed new N.J.A.C. 13:70-14.16(d) creates several requirements relating to the actions taken following the death of a horse on the racetrack or within one hour after that horse having raced or trained.

N.J.A.C. 13:70-14.16(d)1 requires verbal notice, within one hour to the State Steward or a Commission veterinarian of the death of a horse that died on the racetrack or of a horse that died within an hour of having trained or raced. The paragraph also states that giving verbal notice does not negate the requirement that the trainer submit an equine fatality report within 48 hours of the horse's death.

N.J.A.C. 13:70-14.16(d)2 requires that a post-mortem necropsy be conducted upon the remains of any horse that died on the racetrack or that dies within one hour after the horse having raced or trained. A qualified veterinarian at a facility designated by the Commission shall conduct the post-mortem necropsy. The cost of the post-mortem necropsy, including all related transportation and other costs, shall be borne by the owner of the deceased horse.

N.J.A.C. 13:70-14.16(e) prohibits the removal of the remains of a deceased horse, if that horse died on the racetrack or within one hour after having raced or trained, from the racetrack or stabling area without the written consent of the State Steward, Chief State Veterinarian, or a designee of either. This subsection works in conjunction with proposed new N.J.A.C. 13:70-14.16(d)1 to ensure that all racing-related and training-related equine fatalities are brought to the prompt attention of Commission staff. It is the joint responsibility of the permit holder and the owner of the horse to prevent the unauthorized removal of the remains of a deceased horse.

Recodified N.J.A.C. 13:70-14.16(f) is proposed for amendment to make explicit an owner's, trainer's, or veterinarian's potential discipline if the equine fatality report or required veterinary records are not filed in compliance with the section. N.J.A.C. 13:70-14.16(f)1 is proposed for amendment to include the owner amongst those responsible for a violation of the section. The subsection is also proposed for amendment to remove "custodian" to make it clear that the trainer is the person that must file the equine fatality report.

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 Commission believes that the proposed amendments will have a positive social impact. The Commission will be able to gather data on thoroughbred racing-related and training-related equine fatalities. This information will assist the Commission in identifying and mitigating risk factors that may cause racing-related and training-related deaths. Identifying risk factors will allow the Commission to prohibit high-risk horses from racing until they first receive proper care.

By increasing regulatory oversight, the proposed amendments will promote the integrity of the sport and the trust of the wagering public.

Economic Impact

The Commission has evaluated the proposed amendments and determined that the only economic costs resulting from the proposed amendments arise from the cost of the required necropsy upon the death of a racehorse. These costs will be borne by the deceased horse's owner. Imposing these costs upon the owner is warranted because the horse is the property of the owner and necropsies gather data that is vital to the health and well-being of the industry, as well as the safety of the race participants.

Federal Standards Statement

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

Jobs Impact

The Commission has evaluated the proposed amendments and determined that they will not add or decrease any jobs in the State.

Agriculture Industry Impact

The Commission has evaluated the proposed amendments and determined that they will not have an impact on the agricultural industry in the State. Accordingly, no further analysis is required.

Regulatory Flexibility Analysis

The proposed amendments will impact the owners of racehorses. Many of the owners and some trainers are established as small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Under the proposed amendments, the owner of a deceased racehorse is responsible for the costs of the necropsy and transport of the deceased animal and the trainer's reporting requirements are being made more comprehensive with strict notification and documentation deadlines.

The Commission does not have data on numbers of owners and trainers organized as various types of legal entities, and therefore cannot estimate how many small businesses will be affected. For instance, a number of trainers and owners are licensed as individuals, not as a separate business entity. The reporting requirements have been narrowly tailored to increase oversight by the Commission, without burdening owners, trainers, or veterinarians with any additional reporting that is not absolutely necessary to deepening an understanding of the causes of racehorse fatalities. The only increased costs, as referenced in the Economic Impact above, would be the cost of a necropsy and transport of a horse's remains. These costs are assessed to the owner because the owner is the party responsible for all costs associated with the racehorse. The necropsy requirement, as detailed in the Summary above, is vital to the Commission's primary objective of protecting the health and safety of racing participants.

Housing Affordability Impact Analysis

The Commission has evaluated the proposed amendments and determined that they will not have an impact on housing affordability or evoke a change in the average costs associated with housing because the proposed amendments concern the gathering of information regarding equine deaths associated with racetracks in the State. Accordingly, no further analysis is required.

Smart Growth Development Impact Analysis

The Commission has evaluated the proposed amendments and determined that they will not have an impact on smart growth in the State and are unlikely to evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendments concern the gathering of information regarding equine deaths associated with racetracks. Accordingly, no further analysis is required.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 2. DEFINITIONS

13:70-2.1 Definitions

The following words and terms, when used in this chapter, and when used in N.J.A.C. 13:71 unless defined in N.J.A.C. 13:71-4.1(b), shall have the following meanings unless the context clearly indicates otherwise:

...
"Post-mortem necropsy" means a thorough examination of a horse's remains by a licensed veterinary practitioner to determine the cause of death and other information about the condition of a deceased horse.
 ...

SUBCHAPTER 14. ILLEGAL PRACTICES

13:70-14.16 Equine fatality report; **post-mortem necropsy**

(a) [An] **Upon the death of a horse on any part of the grounds of a New Jersey racetrack or off-track training facility, an** equine fatality report shall be submitted to the New Jersey Racing Commission [regarding any equine death occurring on the grounds of any licensed racetrack or approved off-track stabling facility] **within 48 hours.** It shall be the responsibility of the trainer [or custodian] of the deceased animal to file [said report which shall be complete in all particulars] **the equine fatality report with the State Steward or Chief State Veterinarian.**

(b) [Said] **The equine fatality report shall be on forms prescribed and furnished by the Commission and shall be filled out entirely, legibly and specifically, and** include the following information and any other information deemed necessary by the Commission:

1. Name and tattoo number **or other registration identification** of deceased equine;

2. (No change.)
 3. Owner of record and [particulars] **fiscal records** regarding purchase of equine;
 4.-9. (No change.)

(c) The attending veterinarian shall certify the cause of death and shall submit [a report] **treatment records** describing all [administration of medication or drugs to said animal] **veterinarian treatments administered to the horse** within the [96 hour] **30-day** period preceding the time of death. **These records shall be submitted to the State Steward within 48 hours of the time of death. Failure to produce these records may result in the immediate suspension of the trainer and/or veterinarian.**

(d) **Upon the death of any horse on the track during racing or training, or upon the death of a horse within one hour after racing or training on any racetrack:**

1. **Verbal notice of the death of the horse shall be given to the State Steward or to a New Jersey Racing Commission veterinarian within one hour of the horse's death. Said notice shall not negate the obligation to submit an equine fatality report within 48 hours of the time of death; and**

2. **An appropriate post-mortem necropsy shall be conducted, by a qualified veterinarian at a facility designated by the Commission, to determine the cause of death and other relevant information about the condition of the deceased horse. The cost of the necropsy, including related transportation and other costs, shall be borne by the owner of the deceased horse.**

(e) **Upon the death of any horse on the racetrack during racing or training, or upon the death of a horse within one hour after racing or training on any racetrack, the remains of the deceased horse shall not be removed without the written consent of the State Steward, or his or her designee, or the Chief State Veterinarian, or his or her designee. It shall be the joint responsibility of the racetrack and the owner of the horse to prevent the unauthorized removal of the remains of a deceased horse.**

[(d)] (f) Failure to file the [foregoing] **equine fatality report or the required veterinary records** in a timely fashion or filing in an incomplete fashion may subject the **owner, trainer, [custodian] and/or veterinarian** to disciplinary action.

1. Any falsification or misstatement submitted in connection with an equine fatality report may also subject the **owner, trainer, [custodian] and/or veterinarian** to disciplinary action [as provided in N.J.A.C. 13:71-31.3].

[(e)] (g) An equine fatality report shall not be required in connection with any pony or mascot.

(a)

NEW JERSEY RACING COMMISSION

Horse Racing

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

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

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

Authorized By: New Jersey Racing Commission, Judith A. Nason, 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 2019-149.

Submit written comments by January 31, 2020, to:

Judith A. Nason, Executive Director
 Department of Law and Public Safety
 New Jersey Racing Commission

PO Box 088
 Trenton, New Jersey 08625-0088
 Or via email to: NJRCWebinfo@lps.state.nj.us

The agency proposal follows:

Summary

Existing N.J.A.C. 13:70-11.12 allows the use of the riding crop to encourage the horse. The proposed repeal and replacement of this section will ban that usage, as the new rules prohibit the use of riding crops by jockeys and exercise riders at any time and for any reason, except when necessary for the safety of the horse or rider. The proposed repeal and replacement of N.J.A.C. 13:70-11.12 prohibits the use of the riding crop to encourage a horse to run faster under any circumstances. Protection of the equine participants is of the utmost importance and it is incumbent upon the New Jersey Racing Commission (Commission) to ensure the health, safety, and welfare of the racehorses that compete in this State. For this reason, the Commission believes it is necessary to make substantive changes to the rules governing the use of riding crops in thoroughbred racing.

The riding crop can be an important tool in controlling a horse's focus and running direction. The Commission has the responsibility to ensure the safety, health, and welfare of all human and equine racing participants and, for that reason, the proposed repeal and new rules must allow the use of a riding crop when necessary to control the horse to avoid injury to the horse or rider.

Proposed new N.J.A.C. 13:70-11.12A enumerates the restrictions placed on the emergency use of the riding crops that can be used by jockeys and exercise riders to avoid injury by controlling the horse.

The language of existing N.J.A.C. 13:70-11.12 is proposed for repeal. As stated in the Summary above, the former industry practice of encouraging a horse to run faster through use of a riding crop is no longer in the best interests of the sport. Therefore, the proposed repeal and new rule clearly prohibit the use of the riding crop, except when necessary for safety, and specify the penalties that shall be assessed when a violation occurs.

Proposed new N.J.A.C. 13:70-11.12(a) states that no jockey or exercise rider may use a riding crop at any time and for any reason, except when necessary for safety. Jockeys and exercise riders will need to encourage horses by means that do not involve actual or perceived harm to the horse.

Proposed new N.J.A.C. 13:70-11.12(b)1 and 2 set forth the penalties that may be imposed should an exercise rider or a jockey violate this rule.

Proposed new N.J.A.C. 13:70-11.12A, Emergency use of riding crop, sets forth the limited emergencies when use of a riding crop is permissible. Generally, such emergency use is only permissible to control the horse to avoid injury to the horse or rider.

Proposed new N.J.A.C. 13:70-11.12A(a) requires that the riding crops carried by jockeys and exercise riders conform to the parameters set forth in proposed new N.J.A.C. 13:70-11.12B, which permits jockeys and exercise riders to use the riding crop when necessary to control the horse to avoid injury to the horse or rider. Proposed new subsection (b) requires that an announcement be made to the public before a race whenever a jockey is going to ride without a riding crop. Proposed new subsection (c) prohibits the use of the riding crop on a horse's head, flanks, or any other part of the horse other than the shoulders or hind quarters. Proposed new subsection (d) prohibits the jockey or exercise rider from contacting the horse with any part of the riding crop other than the soft tube portion of the riding crop. Proposed new subsection (e) prohibits a jockey or exercise rider from striking a horse in a manner that causes any visible sign, mark, welt, or break in the skin of a horse, or striking a horse in a manner that is otherwise excessive.

Proposed new N.J.A.C. 13:70-11.12A(f) requires that the riding crop shall be shown to a horse before its use whenever possible. Proposed new subsection (g) requires that, under the supervision of the stewards, a visual inspection of each horse following each race for evidence of excessive or brutal use of the riding crop shall be conducted when the riding crop was used to avoid injury. Proposed new paragraphs (h)1 and 2 set forth the penalties to be imposed should a jockey or exercise rider violate this rule.

Proposed new N.J.A.C. 13:70-11.12B, Riding crop, is proposed to detail the specifications required of the only riding crop allowed for use by jockeys and exercise riders. The riding crop specifications are intended to minimize any possible exposure of the horse to harm. Proposed new