

As amended, R.1982 d.109, effective April 5, 1982.  
 See: 13 N.J.R. 820(a), 14 N.J.R. 347(a).  
 Amended by R.1990 d.126, effective February 20, 1990.  
 See: 21 N.J.R. 3861(a), 22 N.J.R. 667(a).  
 Added reference to N.J.A.C. cite for appeals.

#### Case Notes

Racing judge's alleged inability to vote as he wished in penalty adjudications due to interference of state racing commission's executive director did not violate his First Amendment rights; racing judge's vote in any particular penalty case was not compelled expression on political or ideological matter, and penalty votes were not relevant to racing commission's ability to self-govern. *Latessa v. New Jersey Racing Comm'n*, C.A.3 (N.J.)1997, 113 F.3d 1313.

Imposition of penalty by State Steward proper. *Gallo v. New Jersey Racing Commission*, 6 N.J.A.R. 381 (1983).

#### 13:71-1.21 Financial irresponsibility

No licensee shall accumulate unpaid obligations or default in obligations, or issue drafts or checks that are dishonored or payment refused, or otherwise display financial irresponsibility reflecting on the track or the sport.

#### 13:71-1.22 Designation of Commission agents

In enforcing the racing laws and the rules and regulations of the Commission, the Commission may designate enforcement personnel assigned to it by the New Jersey Department of Law and Public Safety. Such personnel, while so acting, shall be designated as agents of the Commission.

R.1976 d.125, effective April 22, 1976.  
 See: 8 N.J.R. 47(b), 8 N.J.R. 308(a).

#### 13:71-1.23 Modification of penalties

The Commission may modify on its own motion any penalty or decision imposed by a racing official pursuant to the rules and regulations herein contained.

New Rule, R.1982 d.109, effective April 5, 1982.  
 See: 13 N.J.R. 820(a), 14 N.J.R. 347(a).

#### 13:71-1.24 Smoking prohibited

Smoking is prohibited under the shed row of any barn. Persons found violating this rule will be reported to the judges and shall be subject to a fine of \$25.00 for the first offense, \$50.00 for the second offense and to suspension for the third or subsequent violation.

R.1982 d.109, effective April 5, 1982.  
 See: 13 N.J.R. 820(a), 14 N.J.R. 347(a).  
 R.1983 d.337, effective August 15, 1983.  
 See: 15 N.J.R. 873(b), 15 N.J.R. 1383(a).

#### 13:71-1.25 Horsemen associations

(a) It shall be the intent of this section to establish guidelines that ensure that funds allocated to the horsemen's organizations by statute (N.J.S.A. 5:5-66) are used to finance programs to benefit all New Jersey horsemen and that administrative and overhead costs are reasonably related to such programs.

(b) Funds allocated to the horsemen's organizations by statute must be used to benefit all New Jersey horsemen. Membership in the horsemen's organizations shall not be a condition for receiving benefits.

(c) Amounts collected as voluntary dues from members are excluded from this rule. However, funds acquired from sources other than the statutory allocation to these associations must be kept separate and apart from funds obtained from the statutory allocation.

(d) The horsemen's organizations shall maintain adequate records concerning receipt of and distribution of funds allocated to them by statute. The New Jersey Racing Commission shall have access to all records maintained by the horsemen's organizations which relate directly or indirectly to funds allocated by statute.

(e) The horsemen's organizations shall submit detailed budgets to the Racing Commission by December 15 of each year, for the following calendar year, identifying the source and use of funds and any surplus or deficit that may result. The budget must include the actual prior year's expenses in each category for comparison purposes. In addition, quarterly budget reports must be filed with the Commission 45 days after the close of each quarter. These reports must reflect actual income and expenses to date, as well as projected income and expenses for the remainder of that year. Prior approval must be obtained from the Commission for all expenditures that exceed the approved budget levels.

(f) Audited financial statements, including balance sheet, income statement and source and use of funds, prepared by a certified public accountant of New Jersey, must be filed with the Commission by February 28 of each year for the preceding calendar year.

(g) Funding for benevolent programs, including but not limited to pension plans, health and life insurance plans, etc. will be considered reasonable if such program funding on an annual basis is at least 70 percent of the total statutory allocation. Whether or not a program will be considered a "benevolent program" will be decided upon application to the Racing Commission. Annual benevolence program funding below 70 percent of the total statutory allocation requires justification satisfactory to the Commission. The administrative costs and overhead expenses of administering the horsemen's organizations', including benevolent programs may not exceed 30 percent of the total allocated by statute unless and to the extent specifically authorized in advance by the Racing Commission.

(h) General administration and overhead expenses are considered reasonable if they are less than 30 percent of the statutory allocation. Funding above 30 percent of the total statutory allocation requires justification satisfactory to the Commission. Within this category, expenses for travel, entertainment, meals and lodging are considered reasonable

if they conform to the horsemen's organizations' travel and expense reimbursement guidelines on file and approved by the Commission. For expenses in excess of amounts allowed under these guidelines, the Racing Commission may require special justification and/or prior approval.

(i) Payments to national programs are allowed only to the extent that the horsemen's organizations can clearly show that the payments benefit all New Jersey horsemen, not just members of these organizations.

(j) If the accumulated surplus exceeds \$250,000 at the end of a calendar year, horsemen's organizations are required to utilize the amount in excess of the \$250,000 for new or expanded benevolent programs or justify to the Racing Commission why they do not intend to utilize the excess funds.

(k) Violation of this section may subject the organization to a fine not to exceed \$1,000 per violation.

New Rule, R.1988 d.76, effective February 16, 1988.

See: 19 N.J.R. 856(a), 20 N.J.R. 405(b).

Amended by R.1988 d.401, effective August 15, 1988.

See: 20 N.J.R. 1174(a), 20 N.J.R. 2071(a).

Substantially amended.

Amended by R.1989 d.109, effective February 21, 1989.

See: 20 N.J.R. 2997(a), 21 N.J.R. 451(d).

Repealed old (j) and substituted new (j).

### **13:71-1.26 Commission employees/appointees; prohibited affiliations with permitted racetracks**

No employee or appointee of the New Jersey Racing Commission shall provide any services to a permitted race-track facility in this State, whether or not for compensation, where those services are outside the scope of his or her duties on behalf of the Commission.

New Rule, R.1993 d.686, effective December 20, 1993.

See: 25 N.J.R. 4459(a), 25 N.J.R. 5939(a).

## **SUBCHAPTER 2. VIOLATIONS**

### **Cross References**

Judges and patrol judges, see N.J.A.C. 13:71-8.5.

### **13:71-2.1 Liability**

Any person or association licensed by the Commission or any person or association subject to the jurisdiction of the Commission violating any of its rules or regulations shall be liable to the penalties herein provided, unless otherwise limited in and by the rules and regulations of the Commission.

### **13:71-2.2 Attempt to violate**

Any attempt to violate the law or any of the rules and regulations of the Commission falling short of actual accomplishment shall constitute an offense and shall be punishable as if consummated.

### **13:71-2.3 Penalties**

(a) The penalties for violation of the law or the rules of the Commission shall be as follows:

1. Denial, revocation or suspension of license;
2. Monetary fines not exceeding \$5,000 for each violation. The stewards may not impose directly a fine in excess of \$500.00;
3. Suspension from one or more activities at one or more tracks;
4. Expulsion from racing in New Jersey;
5. Forfeiture of purse;
6. In addition to the foregoing, the Commission may impose as a condition to licensing such conditions as it shall deem appropriate to secure compliance with the rules, regulations and directives of the Commission.

(b) Any penalty of suspension from driving shall commence after a hearing before the judges and shall be served on a continuing basis. Where the term of suspension equals or is less than the normal number of scheduled live race days during a week at the track association where the infraction occurred, the continuous suspension shall be imposed as soon as practical following the hearing and on dates where live racing there occurs. Where the term of suspension exceeds the normal number of scheduled live race days during a week at the track association where the infraction occurred, the continuous suspension shall be imposed as soon as practical following the hearing and on dates so as to encompass the maximum number of live race days there possible. However, where the term of suspension cannot be imposed consistent with the formulas set forth in this subsection due to the suspension of racing at the track where the infraction occurred, or where the judges determined that the application of such formulas would otherwise not be practical, the judges shall, in their discretion, determine the continuous dates over which the suspension is to be served. There shall be exceptions for stakes, futurities, early closures or feature races during the period of suspension as set forth below:

1. The board of judges may permit a driver serving a suspension of 10 days or less to drive in a designated race during the suspension if:
  - i. The race has been specified as a designated race by the racing secretary of the association before the inception of the race meeting at the association;
  - ii. The race has been approved as a designated race by the board of judges officiating at the meeting;

iii. The driver, before the beginning of the suspension, satisfactorily demonstrates to the board of judges that the driver is scheduled to drive a horse in the designated race; and

iv. The driver agrees to serve an additional racing day of suspension in place of the day on which the driver drives in the designated race.

(c) The penalties provided above, where applicable, shall be exacted from all persons, whether licensed by the Commission or not.

As amended, R.1976 d.125, effective April 22, 1976.

See: 8 N.J.R. 47(b), 8 N.J.R. 308(a).

As amended, R.1976 d.292, effective September 16, 1976.

See: 8 N.J.R. 250(c), 8 N.J.R. 483(a).

As amended, R.1982 d.109, effective April 5, 1982.

See: 13 N.J.R. 820(a), 14 N.J.R. 347(a).

Amended by R.1993 d.484, effective October 4, 1993.

See: 25 N.J.R. 2647(b), 25 N.J.R. 4600(c).

Amended by R.2001 d.250, effective July 16, 2001.

See: 33 N.J.R. 1338(a), 33 N.J.R. 2493(c).

In (b), inserted "as set forth below:" at the end of the introductory paragraph, and added 1.

#### Case Notes

First driver pulling in front of second horse and causing second driver to take evasive action constituted interference; suspension ordered. *LaChance v. New Jersey Racing Commission*, 93 N.J.A.R.2d (RAC) 13.

Veterinarian's use of non-FDA-approved drug for his own horse at his own farm in another state; not conduct detrimental to racing. *Chovanes v. New Jersey Racing Commission*, 93 N.J.A.R.2d (RAC) 5.

#### 13:71-2.4 Betting restrictions; owner, trainer and driver

No owner, trainer or driver of a horse entered in a race shall bet or cause any other person to bet on his behalf on any horse other than his own horse. In the case of exotic pools all tickets purchased by an owner, trainer or driver must include his horse entered to race.

R.1976 d.125, effective April 22, 1976.

See: 8 N.J.R. 47(b), 8 N.J.R. 308(a).

(b) After a declaration to start has been made, no horse shall be withdrawn except by permission of the judges.

(c) Prior to the opening of the declaration box, when futurities, stakes, early closing or late closing events are programmed, the presiding judge shall communicate with the race secretary to ascertain if any declarations by mail, telegraph or otherwise are in his office and not deposited in the box. If there are such declarations, the presiding judge shall see that they are declared and drawn in the proper event. To avoid conflicts and misunderstandings when the time of declaration of any race is stated in day or hours prior to the day of the race, it shall be construed to exclude Sunday.

### 13:71-16.2 Entry box and drawing of horses at pari-mutuel meetings

(a) The entry box shall be opened by the presiding judge at the advertised time and the presiding judge will be responsible to see that at least one horseman or an official representative of the horsemen is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the presiding judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

(b) Upon receiving a request by the race secretary, the presiding judge, at his discretion, may open the entry box prior to the time of closing and give the race secretary the opportunity to process declarations contained therein. Information as to names of horses declared shall not be given by the race secretary or his assistants until after the time for declaration has passed.

### 13:71-16.3 Error in declaration

(a) Where a horse properly declared is omitted from the race by error of the association, or its agent or employee, the horse shall be added to the race but given the outside post position provided, however, that the error is discovered prior to the printing of the official program or prior to scratch time, whichever is sooner.

1. In the event that there is not a position on the gate available to add the horse omitted in error, the race shall be redrawn. This shall apply only in stakes events, late closers, early closers and futurities and shall not apply to overnight events.

Amended by R.1991 d.315, effective June 17, 1991.  
Sec: 23 N.J.R. 1069(a), 23 N.J.R. 1961(a).

Reconstructed existing text to include an (a) and new (a)1; deleted ", other than by telephone,"; added "or its agents or employee,"; substituted "printing" for "publication"; added "or prior to scratch time, whichever is sooner"; deleted "and said program disclosed such position".

### 13:71-16.4 Qualifying races

(a) Declarations for overnight events shall be governed by the following:

1. Within two weeks of being declared in, a horse that has not raced previously at the gait chosen must go a qualifying race under the supervision of the presiding judge or an associate judge and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.

2. A horse that does not show a charted line for the previous season, or a charted line within its last six starts must go a qualifying race as set forth in paragraph 1 of this subsection. Uncharted races contested in heats or more than one dash and consolidated in accordance with paragraph 4 of this subsection will be considered one start.

3. A horse that has not started at a charted meeting for a period of 30 days must go a qualifying race as set forth in paragraph 1 of this subsection. Any horse that fails to race within 30 days after having started in a current year shall start in a qualifying race and meet the standards of the meeting before being allowed to start in a race with pari-mutuel wagering.

4. When a horse has raced at a charted meeting during the current season and then goes to meetings where races are not charted, the information from the uncharted races may be summarized, including each start, and consolidated in favor of charted lines, and the requirements of paragraph 2 of this subsection would then not be applicable. The consolidated line shall carry date, place, time, driver, finish track conditions and distance if race is not at one mile.

5. The judges may require any horse that has been on the steward's list to go a qualifying race. If a horse has raced in individual time not meeting the qualifying standards for the class of horse, he may be required to go a qualifying race.

6. The judges may permit a horse to qualify by means of a timed workout consistent with the demonstrated form and ability of the horse.

7. To enable a horse to qualify, qualifying races should be held at least one full week prior to the opening of any meeting that opens before July 1 of a season and shall be scheduled at least twice a week. Qualifying races shall also be scheduled twice a week during the meeting.

Amended by R.1976 d.125, effective April 22, 1976.  
Sec: 8 N.J.R. 47(b), 8 N.J.R. 308(a).

### 13:71-16.5 Entries

When the starters in a race include two or more horses owned or trained by the same person, or trained in the same stable or by the same management, they shall be coupled as

an "entry" and a wager on one horse in the "entry" shall be a wager on all horses in the "entry". "Ownership" shall be construed to mean any person required to be licensed as an owner pursuant to these rules and in the instance of multiple ownerships, persons possessing at least a five percent commonality of interest in each of the respective horses. Provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownerships, the said horses may at the request of the association and with the approval of the Commission, be permitted to race as separate betting entries. If the race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and their post positions shall be drawn by lot. The above provisions shall also apply to elimination heats.

As amended, R.1982 d.109, eff. April 5, 1982.

See: 13 N.J.R. 820(a), 14 N.J.R. 347(a).

Section substantially amended.

Petition for Rulemaking.

See: 34 N.J.R. 3030(b), 3545(a), 3655(a), 3994(b).

### 13:71-16.6 Also eligibles

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. Also eligibles shall be drawn from those horses having the least preference. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse it replaces, except in handicap races. In handicap races the also eligible horse shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the race secretary's office. All horses on the also eligible list and not moved into race by 9:00 A.M. on the day of the race shall be released.

### 13:71-16.7 Preference

(a) Preference shall be given in all overnight events according to a horse's last previous purse race during the current year. The preference date on a horse that has drawn to race and then scratched is the date of the race from which he was scratched.

(b) When a horse is racing for the first time in the current year, the date of the first declaration shall be considered its last race date and preference applied accordingly.

(c) Where the word "preferred" is used in a condition it shall not supersede date preference.

### 13:71-16.8 Steward's list

(a) A horse may be placed on the "Steward's list" if:

1. It is dangerous;
2. Unmanageable;
3. Sick;
4. Lameness;
5. Unable to qualify;
6. Otherwise unfit.

(b) The horse must be placed on the "Steward's list" by the presiding judge and declarations on such horse shall be refused.

(c) Owners and trainers shall be notified in writing of such action and the reason for such action.

(d) The clerk of the course shall make a note on the eligibility certificate of such horse showing the date the horse was placed on the "Steward's list" the reason therefor and the date of removal if the horse has been removed. A horse which has been a late scratch from a claiming race may be put on the "Steward's list".

### 13:71-16.9 Driver information

Declarations shall state who will drive the horse and the driver's colors. Drivers may be changed until 9:00 A.M. of the day preceding the race without permission but the presiding judge must be notified thereof. No driver shall be changed thereafter except by permission of the judges and only then for good cause. When a nominator starts two or more horses, the judges shall approve or disapprove the second and third drivers.

### 13:71-16.10 Postponement—reasons for; rescheduling races

(a) In case of unfavorable weather, or other unavoidable cause, the racing association may postpone the races upon notification of the same to the Commission.

(b) When a racing program is postponed, the races scheduled shall be rescheduled as follows:

1. Early closing, late closing races, stakes and futurities shall be postponed to the next racing day.
2. If there is no time remaining in the scheduled race meeting and it cannot be extended to permit the race to be programmed, the entrance money and forfeits shall be divided equally among the nominators who have horses on the grounds declared in and eligible to start.