

## **LAW AND PUBLIC SAFETY**

### **NEW JERSEY RACING COMMISSION**

#### **Harness Racing**

#### **Sulky**

#### **Inspection Stickers; Certification**

Proposed Repeal: N.J.A.C. 13:71-29.2

Proposed Amendment: N.J.A.C. 13:71-29.3

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 2006-308.

Submit written comments by November 17, 2006 to:

Michael Vukceovich, Deputy Director  
Department of Law and Public Safety  
New Jersey Racing Commission  
P.O. Box 088  
Trenton, New Jersey 08625-0088

The agency proposal follows:

#### **Summary**

The New Jersey Racing Commission (Racing Commission) is interested in obtaining public comment regarding proposed amendments to its harness racing rules, specifically, N.J.A.C. 13:71 Sulky. These changes are being proposed to the Racing Commission in response to a receipt of a petition for rulemaking by Jeffrey Pocaro, Esq. (see 37N.J.R. 3078(a)).

At its July 15, 2005 meeting the Commission referred back to staff the petition by Mr. Pocaro requesting amendments to Subchapter 29 , Sulky, so that further review could be

conducted concerning his request. At its September 15, 2005 meeting the Racing Commission determined to refer the matter for further deliberation for a 90 day period pursuant to N.J.A.C. 1:30-4.2(a)3 (see 37 N.J.R. 4477(c)). On January 18, 2006, the Racing Commission determined to advertise one of the four proposed rule amendments submitted by Mr. Pocaro for public comment as well as additional proposed amendments concerning the sulky rules.

The proposed amendments to N.J.A.C. 13:71-29.3 would require a sulky (harness horse race bike) involved in an accident to have a “do not use” label affixed to it by the paddock judge or his designee at the racetrack when the incident occurs. The sulky then must be inspected and repaired if necessary by its manufacturer who has the only authorization to remove the “do not use” label and determine the sulky safe for use again in competition.

The amendments would further place the responsibility of the operational fitness and maintenance of sulkies with the driver/trainers who have custody of them.

The repeal of N.J.A.C. 13:71-29.2, the inspection of sulkies rule, is proposed because it is unmanageable and not practically enforced. Due to a lack of on-site individuals to monitor compliance the Commission feels the recodification of N.J.A.C. 13:71-29.3 as 29.2 with amendments deals more directly and is more manageable when applied to the course of everyday business and will place New Jersey in a more consistent posture with our neighboring states in the mid-Atlantic region.

The Racing Commission is providing a 60-day comment period for the notice of proposal. Therefore, this notice is exempt from the rulemaking calendar requirement in accordance with N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rulemaking petition of Mr. Pocaro is supported by the Standardbred Breeders and

Owners' Association of New Jersey, Inc. (SBOA), which represents and acts on behalf of licensed harness horsemen in New Jersey. Since the proposed amendments and repeal are supported by the SBOA, the Racing Commission believes it will achieve a positive social impact among the harness horsemen community. Sulkies in disrepair are removed from operation resulting in a safer environment for all participants. The repeal of N.J.A.C. 13:71-29.2 will eliminate an inspection process that did not work and replace it with a more definitive rule which can be monitored in a realistic fashion. Amended N.J.A.C. 13:71-29.3, recodified as N.J.A.C. 13:71-29.2, will place responsibility for sulky maintenance with the driver/trainer of its custody.

The Racing Commission, other than in regard to the harness horsemen, does not believe that the proposed changes will have any social impact.

### **Economic Impact**

Many horsemen and wagering patrons are of the opinion that sound equipment (sulky) has a positive influence on a horse's chances to win a race, thus impacting the potential to win purses or wagering proceeds. If one accepts this viewpoint, an economic impact would arguably arise if a horse could not compete in a race or during a race to its potential because its equipment is faulty or broken. The proposed changes would insure sulkies are sound for competition and will not compromise the horses ability or drivers safety resulting in a competitive contest based only on the performance of the racehorse thus allowing a truer finish, fairer disbursement of the races proceeds and bringing more integrity to harness racing which may encourage more patron participation. By requiring a driver/trainer maintain the race fitness of his or her sulky, a person of responsibility can be defined by rule whereby in existing N.J.A.C. 13:71-29.2 it could not. No extra cost will be incurred. However as in the past, basic maintenance costs will be evidenced in order to keep sulkies race worthy.

### **Federal Standards Statement**

A federal standards statement is not necessary, as there are no Federal standards or requirements applicable to the proposed amendments or repeal. The Racing Commission proposes this rule pursuant to the rulemaking authority set forth in N.J.S.A. 5:5-22 et seq.

### **Jobs Impact**

The proposed amendments and repeal will not result in the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed amendments and repeal will have no impact on the agriculture industry in the State.

### **Regulatory Flexibility Analysis**

The proposed amendments and repeal do not impose any reporting or recordkeeping requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. The proposed amendments do, however, impose compliance responsibilities on racehorse trainers some of whom operate as small businesses. Conditions are established that require timely filing procedures and production of written authorization from a manufacturer of a sulky deemed not fit for competition, whether the sulky was involved in an accident or the Paddock Judge removed it for cause from competition, to be returned. The costs of these compliance requirements are as discussed above in the Economic Impact Statement. The proposed amendment, in order to achieve this purpose, must be applied uniformly to all parties to ensure participant safety. For this reason, the rule does not provide a differing or lesser compliance standard based upon business size. It is not anticipated that professional services will be required to comply with these rules.

### **Smart Growth Impact**

The proposed amendments and repeal will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

[13:71-29.2      Inspection stickers

- a.      Each sulky in use must contain an inspection sticker indicating the year and month the sulky was inspected, affixed in a visible location on the arch and shaft.
1.      The sticker shall be affixed to the sulky by a representative of the manufacturer. It shall represent that the sulky is free of any stress marks, broken equipment, rust or rot spots.

2. The sticker shall be color coded to indicate the life cycle of each sulky and placed on file with the New Jersey Racing Commission and a copy to the Paddock Judge.]

13:71-[29.3]29.2 Certification

- (a) No sulky shall be used after the expiration of eight years from the year of manufacture or the recommended period for use by the manufacturer, whichever is less.

[1. No sulky shall be used that does not have affixed to it in a visible location on the arch or shaft a current inspection sticker.]

2. A current inspection sticker shall have been issued no more than two years prior to the date of use.

3. The sticker shall be affixed to the sulky by a representative of the manufacturer after the sulky passes a visual inspection.

4. The sulky shall fail inspection if it fails to satisfy any requirements of this subchapter.]

1. If a sulky is involved in an accident, the Paddock Judge will affix a label to the sulky that says “do not use.” The owner of the sulky that receives a “do not use” label must then have the sulky inspected by its manufacturer. The manufacturer is authorized to remove the “do not use” label after inspecting the sulky and making any necessary repairs. Only the manufacturer or his representative is permitted to remove the “do not use” label. Any person other than a manufacturers representative, removing a “do not use” label is subject to a fine and/or suspension. Documentation identifying the sulky and repairs made must be filed by the trainer with the Paddock Judge prior to its introduction back into use.

2. The driver/trainer is responsible for the operation and maintenance of all sulkies used during training, qualifying or racing of horses under his or her care. Sulkies found unfit for use by the Paddock Judge or representative thereof in participation of the above activities will subject said driver/trainer to a fine and/or suspension.

Recodify existing N.J.A.C. 13:71-29.4 and 29.5 as 13:71-29.3 and 29.4 (No change in text.)

