

Agriculture Industry Impact

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 this 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 empowers the Executive Director to postpone or cancel a race for the health, safety, or welfare of the race participants. Accordingly, no further analysis is required.

Smart Growth Development Impact Analysis

The Commission has evaluated this proposed new rule and determined that it will not have an impact on smart growth in the State 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 because the proposed new rule empowers the Executive Director to postpone or cancel a race for the health, safety, or welfare of the race 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**13:71-1.38 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.

(a)

NEW JERSEY RACING COMMISSION**Harness Racing
Equine Fatality Report****Proposed Amendments: N.J.A.C. 13:71-4.1 and 20.24**

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 2019-154.

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. 13:71-20.24 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 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. 13:71-20.24 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.

Although there are significantly fewer standardbred fatalities than thoroughbred, any equine fatality is a tragedy. The proposed amendments will allow the Commission to obtain important data regarding the cause of the breakdown and enable staff to identify trends in the types of racing injuries and other factors that may contribute to equine fatalities. 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 and thereby safeguarding the health and welfare of the equine racing participants under its jurisdiction.

N.J.A.C. 13:71-4.1 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. 13:71-20.24 is proposed for amendment to include the term "post-mortem necropsy," as the rule will now require a necropsy upon the death of any standardbred racehorse on the racetrack and also upon the death of any racehorse within one hour after racing, training, or warming up the horse on any racetrack.

N.J.A.C. 13:71-20.24(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. 13:71-20.24(b) is proposed for amendment to require that the trainer file the form prescribed and furnished by the Commission. The proposed amendments require that all of the requested information shall be provided and legible. N.J.A.C. 13:71-20.24(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 that the records regarding the purchase of equine are fiscal records.

N.J.A.C. 13:71-20.24(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. 13:71-20.24(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 had raced, trained, or warmed up.

N.J.A.C. 13:71-20.24(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. 13:71-20.24(d)2 requires that a post-mortem necropsy be conducted upon the remains of any horse that died on the racetrack or that died within one hour after the horse raced, trained, or warmed up on the racetrack. 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. 13:71-20.24(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, trained, or warmed up on the racetrack, from the racetrack property without the written consent of the State Steward or the Chief State Veterinarian, or a designee of either. This subsection works in conjunction with proposed new N.J.A.C. 13:71-20.24(d)1 to ensure that all such 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. 13:71-20.24(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.

Recodified N.J.A.C. 13:71-20.24(f)1 is proposed for amendment to include the owner amongst those responsible for a violation of the section.

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. As standardbred fatalities do not, fortunately, occur frequently, any impact on small businesses, regardless of size, would be infrequent.

Housing Affordability Impact Analysis

The Commission has evaluated the proposed amendments and determined that they will not have an impact on housing affordability in the State and are unlikely to evoke a change in the average costs of housing because the proposed amendments concern the collection of information regarding, and the investigation of, equine fatalities at racetracks. 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 designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments concern the collection of information regarding, and the investigation of, equine fatalities at 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 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:

...

"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 20. RULES OF RACING

13:71-20.24 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 racetrack during racing, training, or warming-up the horse, or upon the death of a horse within one hour after racing 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, training, or warming-up the horse, or upon the death of a horse within one hour after any such activity, 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) (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Harness Racing

Whips; Restricted Use of Whip and Prohibition of Goading Devices

Proposed Amendments: N.J.A.C. 13:71-20.14 and 20.15

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 2019-150.

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

Amendments are proposed at N.J.A.C. 13:71-20.14 and 20.15 that will significantly restrict the use of whips by drivers during a race and will modify the physical characteristics of the whips that can be used. The proposed amendments will promote equine health, safety, and welfare by allowing a driver to urge a horse with wrist action only as explained below.

Most notably, the proposed amendments ban one-handed whipping completely by requiring the drivers to keep a line of the reins in each hand through the finish of the race. As a result, drivers will not be able to raise their arms above the shoulder or even use elbow action when using the whip. Instead, drivers are limited to using wrist action only while, at the same time, holding the reins reasonably taut. The proposed amendments also prohibit a permitted whip from being used in an excessive or indiscriminate manner.

Currently, drivers are allowed to whip one-handed, using their shoulder and elbow. The proposed amendments would eliminate whipping a horse using shoulder or elbow action to encourage a horse to run faster. Protection of the equine participants is of the utmost importance and it is incumbent upon the Commission to ensure the health, safety, and welfare of the horses who compete in this State.

For this reason, the Commission believes it is necessary to restrict the use of the whip to wrist action only, while holding the reins reasonably taut. As detailed in the proposed amendments, drivers will only be allowed to use the whip in this manner above the level of the shaft in a sliding, gliding, or tapping manner. The proposed amendments clearly prohibit causing any injury to the horse, using the whip repetitively when the horse is not responding, or continuing to use the whip when the horse is not advancing its position or is out of contention. The proposed amendments also require a visual inspection of each horse following each race for evidence of injury or of brutal or excessive whipping.

Jockeys who ride horses have more methods to encourage and control horses than do drivers, as the jockey is in close proximity to the horse and a jockey's hands and feet are in contact with the horses. Drivers, who have no contact with the horse, have no method to encourage a horse other than with the use of the whip. As a result, the Commission does not believe it can eliminate the use of the whip entirely as the Commission is proposing for thoroughbred racing. However, the Commission does believe that prohibiting shoulder and elbow action, allowing wrist action only and otherwise restricting whipping as set forth in these proposed amendments, will protect the State's equine athletes from harm and reassure the public that equine welfare is a priority in this State.

To further promote equine welfare, the proposed amendments at N.J.A.C. 13:71-20.14 will shorten the permissible length of the whips used in standardbred racing, as well as the length of the snapper attached to the end of the whip. The proposed amendments also prohibit the presence of leather or other unusual materials in the design of the whip and prohibit the snapper from being knotted or altered in any way. The proposed amendments allow tape to be placed on the handle of the whip but prohibit all other modifications.

The existing heading of N.J.A.C. 13:71-20.15, Use of goading devices, and so forth, is proposed for amendment. The proposed new heading, "Restricted use of whip and prohibition of goading devices," encompasses each aspect of the proposed rule.

The proposed amendments at N.J.A.C. 13:71-20.15(a) continue to prohibit the use of any goading device, other than the ordinary whip as described at N.J.A.C. 13:71-20.14, by any person.

Proposed new N.J.A.C. 13:71-20.15(b) through (e) detail the prohibited and permissive uses of a whip during a harness race and bar modifications to the whip.