

Commission, for a fee to be paid for by the owner or trainer as appropriate.

Federal Standards Statement

A Federal standards analysis is not necessary as there are no Federal standards or requirements applicable to the proposed amendment. The Racing Commission proposes this amendment pursuant to the rulemaking authority set forth in N.J.S.A. 5:5-30.

Jobs Impact

The proposed amendment will not have any impact on the workforce in the State as no jobs will be generated or lost as a result of the proposed amendment. It is anticipated that the proposed amendment may result in additional job responsibilities for certain employees of the Racing Commission, but these responsibilities should be marginal and can be attended to by the existing staff.

Agriculture Industry Impact

The proposed amendment will not have an impact on the agriculture industry in the State.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting or recordkeeping requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although some owners and trainers operate as small businesses, the implementation of the split sample testing procedure for blood, as set forth in the proposed amendment, is discretionary to the owner or trainer. Where the owner or trainer elects to initiate the procedure by timely requesting such in writing to the Racing Commission's Executive Director, the proposed amendment would require the Racing Commission laboratory to forward a split blood sample to the preapproved outside laboratory selected by the owner or trainer. Such an outside laboratory may operate as a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and would test the split sample pursuant to its business purpose, as well as report its findings to the Racing Commission, for a fee to be paid by the owner or trainer as appropriate.

Smart Growth Impact

The proposed amendment will have no impact on the achievement of smart growth or the implementation of the State Development Plan.

Housing Affordability Impact Analysis

The proposed amendment will not impact affordable housing in New Jersey. The proposed amendment extends the current procedures to allow the confirmatory testing of split blood samples taken from horses, which the Racing Commission laboratory has determined to be positive for a foreign substance, and has no implications to affordable housing in the State.

Smart Growth Development Impact Analysis

The proposed amendment does not affect Smart Growth Development in the State because it has no relevance to housing or other types of development recommended for Planning Areas 1 or 2, or designated centers, under the State Development and Redevelopment Plan. The proposed amendment extends the current procedures to allow the confirmatory testing of split blood samples taken from horses, which the Racing Commission laboratory has determined to be positive for a foreign substance.

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

SUBCHAPTER 14A. MEDICATION AND TESTING PROCEDURES

13:70-14A.4 Post-race testing program; split urine **or split blood** samples

(a)-(c) (No change.)

(d) For each horse to be tested, the State Veterinarian or a designated employee shall cause one sample of the horse's urine, **or one or more samples of the horse's blood where the testing protocol is based on blood testing (hereinafter "blood sample")**, to be sent to the Racing Commission laboratory. Following the testing of the urine **or blood**

sample (hereinafter "primary sample"), any residue portion of the urine **or blood** sample taken (hereinafter "split sample") shall be preserved by the Racing Commission laboratory until either: it is determined by said laboratory that the primary urine **or blood** sample is negative for a foreign substance; or, if the primary urine **or blood** sample is determined positive for a foreign substance, for 10 days following the issuance of written notification of such finding to the owner and trainer at their respective addresses as set forth in their current license applications on file with the Racing Commission. The owner or trainer, prior to the expiration of such 10-day time period, may request in writing to the Racing Commission's Executive Director that any split sample be sent to another laboratory for testing (hereinafter "outside laboratory"). The outside laboratory shall be selected by the requesting owner or trainer from a minimum of three appearing on a list of eligible laboratories to be previously approved by the Racing Commission. If no such request is timely made, upon expiration of the 10-day period, the Racing Commission laboratory shall properly dispose of any split sample and the findings of its testing shall be conclusive. If such a request is timely made, and if the entire primary sample was consumed during the Racing Commission laboratory testing process, the results of the Racing Commission laboratory testing on the primary sample shall be conclusive. If such a request is timely made, and a split sample remains, the Racing Commission laboratory shall cause the split sample or portion thereof to be delivered to the selected outside laboratory for testing. If the Board of Stewards determines that the outside laboratory confirms substantially the Racing Commission laboratory findings, or that the split sample was not of sufficient quantity for the outside laboratory to conduct valid testing or to reach a valid testing conclusion, those findings of the Racing Commission laboratory shall be considered conclusive. If the Board of Stewards determines that the outside laboratory does not confirm substantially the Racing Commission laboratory findings, any outstanding allegation or determined finding that the foreign substance in question was in the horse's system at the time of the subject race shall be dismissed. The owner or trainer requesting the testing of any split sample shall bear all costs related to the shipment and testing of same by the outside laboratory. The timely submission by an owner or trainer of a request for split sample testing shall not result in a deferral or suspension of the implementation of the procedures set forth in N.J.A.C. 13:70-14A.5.

(e) Nothing contained in (d) above shall be interpreted: to preclude the State Steward from initiating the procedure set forth in N.J.A.C. 13:70-14A.5 upon notification of a positive urine **or blood** test by the Racing Commission laboratory; or to preclude the holding of an initial hearing with respect to an alleged violation of this subchapter where a request for testing of the split sample has been timely made and the results of testing by the outside laboratory are pending. However, where in such circumstances an appeal of any initial determined violation is filed pursuant to N.J.A.C. 13:70-13A.4, a stay of any ordered penalty notwithstanding the provisions of N.J.A.C. 13:70-13A.8 shall be issued pending receipt of the results of the outside laboratory testing. In the event the Board of Stewards determines in such case that the outside laboratory does not confirm substantially the Racing Commission laboratory findings, and the determined violation is therefore dismissed pursuant to (d) above, any allegation or determination of a violation as a result of any search initiated pursuant to N.J.A.C. 13:70-14A.5 shall not be affected.

(a)

**NEW JERSEY RACING COMMISSION
Harness Racing
Medication and Testing Procedures
Proposed Amendment: N.J.A.C. 13:71-23.4**

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 2011-230.

Submit written comments by January 6, 2012 to:

Michael Vukcevic, 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

Subchapter 23, Medication and Testing Procedures, sets forth the rules of the New Jersey Racing Commission concerning administration of medication and foreign substances to harness race horses. Existing N.J.A.C. 13:71-23.4, Post-race testing program; split urine sample, sets forth the procedure concerning outside laboratory confirmatory testing for horse urine samples determined positive for a foreign substance by the Racing Commission laboratory. The existing rule allows for outside laboratory confirmatory testing with regard to positive test findings by the Racing Commission laboratory with regard to urine samples of horses only. The Racing Commission proposes to amend N.J.A.C. 13:71-23.4, to also allow for outside laboratory confirmatory testing on blood samples of horses determined to test positive for a prohibited foreign substance by the Racing Commission laboratory.

Existing subsection (d) permits the owner or trainer of a horse, following the testing of the urine sample (hereinafter "primary sample"), at his or her cost, and consistent with the procedure and time restrictions set forth in the rule, to request that split sample testing be conducted on any residue portion of the urine sample (hereinafter "split sample") determined to be positive by the Racing Commission laboratory. The outside laboratory, which is to conduct testing on the split sample, is selected by the owner or trainer from a minimum of three laboratories appearing on a list of eligible outside laboratories previously approved by the Racing Commission. If no request for such testing is made in writing within 10 days following the issuance of written notification of the positive test result to the horse's owner or trainer, the Racing Commission laboratory shall properly dispose of any split sample and the findings of its testing shall be conclusive. If the owner or trainer timely requests split sample testing, and if the primary urine sample was not entirely consumed during the Racing Commission testing process, the remaining split sample portion of the urine specimen is provided to the outside testing laboratory by the Racing Commission.

Existing subsection (d) also provides that, following receipt of the outside urine test results by the Racing Commission Board of Judges, and if the Board of Judges determines that the outside laboratory testing result confirms substantially the Racing Commission laboratory findings, or that the split urine sample portion was not sufficient to conduct valid testing or to reach a valid testing conclusion by the outside laboratory, the finding of the Racing Commission laboratory shall be considered conclusive. However, if the Board of Judges determines that the outside laboratory does not confirm substantially the Racing Commission laboratory findings, any outstanding allegation or determined finding that the foreign substance in question was in the horse's system at the time of the subject race shall be dismissed.

Further, at subsection (d), the Commission noted an error in the cross-reference at the end of the subsection. The cross-reference to N.J.A.C. 13:71-23.4 should really be to N.J.A.C. 13:71-23.5. This error occurred at the time of proposal, was continued in the notice of adoption, and has persisted in the Code ever since (see 33 N.J.R. 2018(a), 3453(a)). The Commission is proposing to correct this error at this time.

Existing subsection (e) provides that nothing contained in existing subsection (d) shall preclude the Racing Commission State Steward from initiating the procedure set forth in N.J.A.C. 13:71-23.5 upon notification of a positive urine test by the Racing Commission laboratory. N.J.A.C. 13:71-23.5 authorizes a search of the premises occupied by the stable in the event of such a positive test, as well as an investigation related to the positive test result. Existing subsection (e) also sets forth criteria concerning the hearing process where any testing to be conducted by the outside laboratory remains pending.

The proposed amendment is intended to make the split sample urine testing provisions set forth in N.J.A.C. 13:71-23.4, which are presently applicable to horse urine samples, equally applicable to blood samples, which also test positive for a prohibited foreign substance, taken by the Racing Commission.

The Commission has determined that the comment period for this notice of proposal will be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

Social Impact

The proposed amendment will not have an impact on the general public. However, because it seeks to expand the scope of the present rule to include outside laboratory testing on blood samples determined by the Racing Commission laboratory to test positive for a foreign substance, it is anticipated that it will have a positive impact on the integrity of horse racing as perceived by aspects of the regulated community. The proposed amendment is considered particularly responsive to the horsemen's group representing the harness horsemen of this State. A number of those horsemen apparently perceive that the integrity of the Racing Commission blood testing program can be enhanced by affording the opportunity for confirmatory testing by an outside laboratory. Accordingly, the Racing Commission believes that the proposed amendment will have a positive impact on the harness horsemen.

Economic Impact

The proposed amendment will have no economic impact on the general public. It would, however, have a limited monetary impact on those owners and trainers who experience a post-race positive test and elect to initiate the split sample testing procedure set forth within the proposed amendment. This is because, as is the case under the existing rule with regard to the outside confirmatory testing procedure for urine samples, the proposed amendment requires that the owner or trainer requesting the split blood sample testing pay for all costs associated with the sample's transport to, and testing by, the outside laboratory. The proposed amendment may potentially benefit the trainer or owner, who, in their discretion requests such testing, by resulting in a dismissal of the allegation or finding of a rule violation dependent upon the test result findings of the outside laboratory, therefore, the Racing Commission believes that these costs are appropriate.

The proposed amendment will have a positive economic impact on those outside laboratories who conduct the testing on the split blood samples. Such an outside laboratory would test the split sample pursuant to its business purpose, as well as report its findings to the Racing Commission, for a fee to be paid for by the owner or trainer as appropriate.

Federal Standards Statement

A Federal standards analysis is not necessary as there are no Federal standards or requirements applicable to the proposed amendment. The Racing Commission proposes this amendment pursuant to the rulemaking authority set forth in N.J.S.A. 5:5-30.

Jobs Impact

The proposed amendment will not have any impact on the workforce in the State as no jobs will be generated or lost as a result of the proposed amendment. It is anticipated that the proposed amendment may result in additional job responsibilities for certain employees of the Racing Commission, but these responsibilities should be marginal and can be attended to by the existing staff.

Agriculture Industry Impact

The proposed amendment will not have an impact on the agriculture industry in the State.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting or recordkeeping requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although some owners and trainers operate as small businesses, the implementation of the split sample testing procedure for blood, as set forth in the proposed amendment, is discretionary to the owner or trainer. Where the owner or trainer elects to initiate the procedure by timely requesting such, in writing, to the Racing

Commission’s Executive Director, the proposed amendment would require the Racing Commission laboratory to forward a split blood sample to the pre-approved outside laboratory selected by the owner or trainer. Such an outside laboratory may operate as a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and would test the split sample pursuant to its business purpose, as well as report its findings to the Racing Commission, for a fee to be paid by the owner or trainer as appropriate.

Smart Growth Impact

The proposed amendment will have no impact on the achievement of smart growth or the implementation of the State Development Plan.

Housing Affordability Impact Analysis

The proposed amendment will not impact affordable housing in New Jersey. The proposed amendment extends the current procedures to allow the confirmatory testing of split blood samples taken from horses, which the Racing Commission laboratory has determined to be positive for a foreign substance, and has no implications to affordable housing in the State.

Smart Growth Development Impact Analysis

The proposed amendment does not affect Smart Growth Development in the State because it has no relevance to housing or other types of development recommended for Planning Areas 1 or 2, or designated centers, under the State Development and Redevelopment Plan. The proposed amendment extends the current procedures to allow the confirmatory testing of split blood samples taken from horses, which the Racing Commission laboratory determined to be positive for a foreign substance.

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

SUBCHAPTER 23. MEDICATION AND TESTING PROCEDURES

13:71-23.4 Post-race testing program; split urine **or split blood** samples

(a)-(c) (No change.)

(d) For each horse to be tested, the State Veterinarian or a designated employee shall cause one sample of the horse’s urine, **or one or more samples of the horse’s blood where the testing protocol is based on blood testing (hereinafter “blood sample”)**, to be sent to the Racing Commission laboratory. Following the testing of the urine **or blood** sample (hereinafter “primary sample”), any residue portion of the urine **or blood** sample taken (hereinafter “split sample”) shall be preserved by the Racing Commission laboratory until either: it is determined by said laboratory that the primary urine **or blood** sample is negative for a foreign substance; or, if the primary urine **or blood** sample is determined positive for a foreign substance, for 10 days following the issuance of written notification of such finding to the owner and trainer at their respective addresses as set forth in their current license applications on file with the Racing Commission. The owner or trainer, prior to the expiration of such 10-day time period, may request in writing to the Racing Commission’s Executive Director that any split sample be sent to another laboratory for testing (hereinafter “outside laboratory”). The outside laboratory shall be selected by the requesting owner or trainer from a minimum of three appearing on a list of eligible laboratories to be previously approved by the Racing Commission. If no such request is timely made, upon expiration of the 10-day period, the Racing Commission laboratory shall properly dispose of any split sample and the findings of its testing shall be conclusive. If such a request is timely made, and if the entire primary sample was consumed during the Racing Commission laboratory testing process, the results of the Racing Commission laboratory testing on the primary sample shall be conclusive. If such a request is timely made, and a split sample remains, the Racing Commission laboratory shall cause the split sample or portion thereof to be delivered to the selected outside laboratory for testing. If the Board of Judges determines that the outside laboratory confirms substantially the Racing Commission laboratory findings, or that the split sample was not of sufficient quantity for the outside laboratory to conduct valid testing or to reach a valid testing conclusion, those findings of the

Racing Commission laboratory shall be considered conclusive. If the Board of Judges determines that the outside laboratory does not confirm substantially the Racing Commission laboratory findings, any outstanding allegation or determined finding that the foreign substance in question was in the horse’s system at the time of the subject race shall be dismissed. The owner or trainer requesting the testing of any split sample shall bear all costs related to the shipment and testing of same by the outside laboratory. The timely submission by an owner or trainer of a request for split sample testing shall not result in a deferral or suspension of the implementation of the procedures set forth in N.J.A.C. 13:71-[23.4]**23.5**.

(e) Nothing contained in (d) above shall be interpreted: to preclude the State Steward from initiating the procedure set forth in N.J.A.C. 13:71-23.5 upon notification of a positive urine **or blood** test by the Racing Commission laboratory; or to preclude the holding of an initial hearing with respect to an alleged violation of this subchapter where a request for testing of the split sample has been timely made and the results of testing by the outside laboratory are pending. However, where in such circumstances an appeal of any initial determined violation is filed pursuant to N.J.A.C. 13:71-3.4, a stay of any ordered penalty notwithstanding the provisions of N.J.A.C. 13:71-3.8 shall be issued pending receipt of the results of the outside laboratory testing. In the event the Board of Judges determines in such case that the outside laboratory does not confirm substantially the Racing Commission laboratory findings, and the determined violation is therefore dismissed pursuant to (d) above, any allegation or determination of a violation as a result of any search initiated pursuant to N.J.A.C. 13:71-23.5 shall not be affected.

TRANSPORTATION

(a)

**MOTOR VEHICLE COMMISSION
REGULATORY AFFAIRS (COMMERCIAL
PASSENGER TRANSPORTATION)**

Zone of Rate Freedom

Proposed Amendment: N.J.A.C. 16:53D-1.1

Authorized By: Motor Vehicle Commission, Raymond P. Martinez, Chair.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21, and 48:4-2.20 through 2.25.

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

Proposal Number: PRN 2011-238.

Submit written comments by January 6, 2012 to:

Steven E. Robertson, Director
Attention: Regulatory and Legislative Affairs
New Jersey Motor Vehicle Commission
225 East State Street
PO Box 162
Trenton, New Jersey 08666-0162

The agency proposal follows:

Summary

The public comment period for this notice of proposal will be 60 days, since the notice is not listed in the agency calendar. This notice of proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Motor Vehicle Commission (hereinafter “the Commission”) proposes to amend the provisions of N.J.A.C. 16:53D, Zone of Rate Freedom. The Commission is statutorily obligated to establish a Zone of Rate Freedom (ZORF) for regular route private autobus carriers providing service within the State for each calendar year. See N.J.S.A. 48:4-2.21, as amended by P.L. 2003, c. 13, §98. See also N.J.S.A. 48:4-2.20 through 2.25.