

(a)

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

Proposed: November 7, 2011 at 43 N.J.R. 2987(a).

Adopted: January 25, 2012 by the New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.Filed: March 7, 2012 as R.2012 d.068, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: April 2, 2012.

Expiration Date: December 7, 2017.

Summary of Public Comment and Agency Response:

Jean Public, New Jersey, submitted a written comment.

COMMENT: The Racing Commission received an e-mail from a member of the public identifying herself as "Jean Public." Ms. Public's comment is largely devoted to a dissatisfaction with horse racing generally. With regard to the rule proposal, she states that she is opposed to testing overall. She asserts that horse racing is abusive and that she does not trust testing laboratories because they can be "crooked." She indicates that the proposed amendment has no social benefit and that it enhances corruption by bringing in more "mafioso" into the State. She contends that horse owners should not be able to choose a laboratory because it encourages criminality. She states that the proposed amendment has negative social connotations because it encourages immoral gambling, which leads to robbery, killings, and horse deaths on the racetrack. Ms. Public also comments that the proposed amendment has no economic benefit because horse racing needs to be downsized and should not be propped-up with taxpayer dollars. She concludes her comment with the opinion that the proposed amendment creates too much opportunity for "skullduggery."

RESPONSE: The Racing Commission does not accept the comment, which in large part voices objection to horse racing generally and provides little or no support or opposition to the rule.

Federal Standards Statement

A Federal standards analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22 et seq., and the adopted amendment is not subject to any Federal requirements or standards.

Full text of the adoption follows:

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

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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. 13:71-23.5.

(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.