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NEW JERSEY RACING COMMISSION**Horse Racing****Split Sample Testing Procedures****Adopted Amendments: N.J.A.C. 13:70-14A.4, 14A.13, and 14A.14**

Proposed: March 19, 2018, at 50 N.J.R. 1029(a).

Adopted: July 18, 2018, by New Jersey Racing Commission, Judith

A. Nason, Acting Executive Director.

Filed: July 18, 2018, as R.2018 d.156, without change.

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

Effective Date: August 20, 2018.

Expiration Date: August 28, 2024.

Summary of Public Comment and Agency Response:

The official comment period ended May 18, 2018. The following is a summary of the comment received and the Commission's response. The Commission received one comment via electronic mail from a member of the public calling herself "Jean Public."

1. COMMENT: The commenter states that horse racing owners should not be able to "get second opinions," and she suggests that this rule gives owners "a second shot at the apple." She also states that there is a "strong tendency for labs to be so appreciative of all this testing money that they may be tempted to give fake results."

RESPONSE: The Commission adopted the split sample rule in 1999. The adopted amendments merely shorten the timeframe in which a trainer or owner must request a split sample, so as to reduce the effects of sample degradation. The comment addresses an issue beyond the scope of the amendments. As a result, the Commission rejects the comment.

Federal Standards Statement

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the adopted amendments. The Commission adopts these amendments pursuant to the rulemaking authority set forth at N.J.S.A. 5:5-30.

Full text of the adoption follows:

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) In order to conduct a post-race test of a horse, the State Veterinarian or a designated employee shall cause one sample of the horse's urine, and one or more samples of the horse's blood to be sent to the testing laboratory designated by the Commission (testing laboratory). Upon completion of testing, any residue portion of the urine or blood sample taken shall be preserved by the testing laboratory as a "split sample" until either: it is determined by said laboratory that the primary urine or blood sample is negative for a foreign substance or, if a foreign

substance is discovered in the primary urine or blood sample, for 48 hours following the notification of such finding to the owner and trainer. The owner or trainer, prior to the expiration of such 48-hour time period, may request in writing to the State Steward or Executive Director that the split sample(s) be sent to another laboratory for testing. The laboratory shall be selected by the requesting owner or trainer from a list of eligible laboratories presented to the owner or trainer by the Racing Commission. The list should contain a minimum of three alternative laboratories. Upon being presented with the list of alternative outside laboratories, the owner or trainer requesting the split sample shall have 24 hours to decide which outside laboratory will conduct the test of the split sample. If no request is timely made, upon expiration of either the 48-hour time period to request a split sample be tested or the 24-hour time period to select an outside laboratory, the testing laboratory shall properly dispose of any and all split samples and the findings of its testing shall be conclusive. If a request is timely made, and if the entire primary sample was consumed during the testing laboratory testing process, the results of the testing laboratory testing on the primary sample shall be conclusive. If a request is timely made, an outside laboratory is timely selected, and a split sample remains, the testing laboratory shall cause the split sample or portion thereof to be delivered to the selected outside laboratory for testing. If the outside laboratory confirms substantially the testing laboratory findings, or if the split sample was not of sufficient quantity for the outside laboratory to conduct valid testing or to reach a valid testing conclusion, the findings of the testing laboratory shall be considered conclusive. If the outside laboratory testing does not confirm substantially the testing laboratory findings, any outstanding allegation or finding that the foreign substance in question was in the horse's system at the time of the subject race shall be dismissed. If the testing laboratory detects a foreign substance at a level that is at or above a threshold established in this chapter, the overage shall be deemed confirmed if the outside laboratory confirms the presence of that foreign substance in the split sample at any level. 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 owner or trainer shall pay the costs at the time he or she selects which outside laboratory will test the sample. Failure of the owner or trainer to provide payment at the time he or she selects which outside laboratory will conduct the test of the split sample shall constitute a waiver of all rights to split sample testing. 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) (No change.)

13:70-14A.13 Out-of-competition testing (on non-race days and on race days pre-race) of racehorses for Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agents; penalties, procedures, and testing costs for positive test results for Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agents, as a result of out-of-competition testing; penalties, procedures, and testing costs for positive test results for Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agents, as a result of post-race blood sample testing (on race days) conducted pursuant to other provisions of this chapter

(a)-(g) (No change.)

(h) The split sample testing provisions of N.J.A.C. 13:70-14A.4 shall be applicable to the out-of-competition testing authorized pursuant to this section.

(i) (No change.)

13:70-14A.14 Post-race blood gas testing program

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

(d) All persons participating in any blood gas testing program or quarantine process as described in this section shall act at the direction of the Commission representative as designated by the Commission or its Executive Director. The taking of blood samples from a horse, as authorized by this section for the purpose of testing on the clinical auto analyzer, shall be additional to and not in lieu of, any other sampling or testing of blood or urine authorized by this chapter. The split sample provisions of N.J.A.C. 13:70-14A.4(d) and (e) shall apply to blood samples taken from horses pursuant to this TCO₂ testing methodology.