

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] **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, [or] **and** 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 **testing laboratory designated by the** [Racing] Commission (**testing laboratory**). [Following the testing of the urine or blood sample (hereinafter “primary sample”)] **Upon completion of testing**, any residue portion of the urine or blood sample taken [(hereinafter “split sample”)] shall be preserved by the [Racing Commission] **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 [is determined positive for a foreign substance], for [10 days] **48 hours** 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] **48-hour** time period, may request in writing to the **State Steward or** [Racing Commission’s] Executive Director that [any] **the split sample(s)** 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] **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 [such] request is timely made, upon expiration of **either** the [10-day] **48-hour** time period **to request a split sample be tested or the 24-hour time period to select an outside laboratory**, the [Racing Commission] **testing** laboratory shall properly dispose of any **and all** split samples 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] **testing** laboratory testing process, the results of the [Racing Commission] **testing** laboratory testing on the primary sample shall be conclusive. If [such] a request is timely made, **an outside laboratory is timely selected**, and a split sample remains, the [Racing Commission] **testing** 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] **testing** laboratory findings, or [that] **if** the split sample was not of sufficient quantity for the outside laboratory to conduct valid testing or to reach a valid testing conclusion, [those] **the** findings of the [Racing Commission] **testing** laboratory shall be considered conclusive. If the [Board of Stewards determines that the] outside laboratory **testing** does not confirm substantially the [Racing Commission] **testing** 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. **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[, which is limited to where testing is conducted on a horse’s urine sample,] shall [not] 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[, whether an employee of the Racing Commission or a track association,] 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 [urine] sample[”] provisions of N.J.A.C. 13:70-14A.4(d) and (e) shall [not] apply to blood samples taken from horses pursuant to this TCO<sub>2</sub> testing methodology.

(a)

NEW JERSEY RACING COMMISSION

Harness Racing

Split Sample Testing Procedures

Proposed Amendments: N.J.A.C. 13:71-23.4 and 23.15

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 2018-030.

Submit written comments by May 18, 2018, to:

Frank Zanzuccki, Executive Director  
 Department of Law and Public Safety  
 New Jersey Racing Commission  
 PO Box 088  
 Trenton, NJ 08625-0088  
 E-mail: [NJRCWebinfo@lps.state.nj.us](mailto:NJRCWebinfo@lps.state.nj.us)

The agency proposal follows:

Summary

Subchapter 23, Medication and Testing Procedures, sets forth the rules of the New Jersey Racing Commission (Commission) relating to the permissible and prohibited practices of administering medications and therapies, as well as the penalties associated with same. The Commission proposes several amendments that will alter the split sample testing procedures in order to better protect the health and safety of racehorses in New Jersey, as well as the integrity of the sport.

N.J.A.C. 13:71-23.4 is proposed for amendment to lessen the effect of sample degradation between the time of the primary drug test and the split sample test. Certain factors accelerate the degradation process such

as exposure to light, oxygen, and other chemicals, as well as the temperature and passage of time.

Sample degradation is problematic in horse racing because most samples are collected post-race. When samples are procured from racehorses shortly after they have raced, the blood and urine of the animal will contain higher levels of lactic acid than they would than if the specimens were drawn during a period of extended rest. This lactic acid will lower the pH level of the animal's blood and urine and this resulting acidity will cause the sample to degrade at a faster rate than that of a sample with a neutral pH level.

The potency of all chemicals detectable in a blood or urine sample degrade with the passage of time; thus, it is imperative that the timeframe between the initial testing of a sample and the split sample testing of that sample be shortened as much as is practical. Expediting the timeframe between procurement of the sample and testing of the split sample helps to ensure the accuracy of the laboratory results by lessening the effect of degradation. The Commission has identified certain aspects of the current split sample testing rule that should be amended in order to achieve this aim.

N.J.A.C. 13:71-23.4(d) is proposed for amendment to implement the Commission's policy changes. Several of the amendments are purely technical or grammatical in nature; however, there are a few substantive changes being proposed to the subsection as well.

First, the Commission no longer has access to a laboratory of its own, as was the case when the rule was written; therefore, any and all references to the "Racing Commission laboratory" have been removed. The Commission is under contract with an out-of-State laboratory to conduct the testing of the samples procured from racehorses in New Jersey. The proposed amendments specify the contracted laboratory as the "testing laboratory."

Second, if a test results in a positive finding, the owner or trainer of that horse has the ability to request that a split sample of that horse's blood or urine sample be tested. The proposed amendments eliminate the requirement of written notification to the owner and trainer. However, the timeframe within which an owner or trainer has to request the split sample test is being shortened from 10 days to 48 hours upon the owner or trainer being notified of the positive test result. The primary reason for this change is to reduce sample degradation as detailed above. Now that split samples are sent to an out-of-State laboratory for storage, the process of shipping and handling of the testing samples can be lengthy. In light of the goal of reducing the overall timeframe between the sample being taken and the split sample being tested, shortening the timeframe a trainer or owner has to make a decision is both necessary and reasonable. In order to make the Commission aware of his or her decision to conduct a test of the split sample, the owner or trainer must inform either the State Steward or the Commission's Executive Director in writing.

Third, when a trainer or owner decides to proceed with testing of a split sample, the Commission will present that owner or trainer with a list containing no less than three alternative testing laboratories provided that three laboratories test for the substance(s) found. The owner or trainer will then have 24 hours from the time of being presented with the list to select one of the laboratories to conduct the test of the split sample. Prior to these proposed amendments, there was no timeframe in the rule within which an owner or trainer must select a laboratory. The Commission chose 24 hours as it is a reasonable timeframe for such a selection and necessary to avoid sample degradation.

Fourth, should the drug or foreign substance found by the testing laboratory have a threshold established by rule, the outside laboratory need only confirm the presence of that drug or foreign substance in any amount. A finding in an amount greater than or equal to the established threshold is not necessary to confirm the findings of the testing laboratory. This provision is being added to eliminate a loophole whereby a drug or foreign substance in a sample that tested at or above a threshold set forth in the Commission's rules degrades between the dates of the original test and the split sample test to a level below the threshold. This amendment is directly related to the realities of sample degradation detailed above.

Lastly, the proposed amendments require the owner or trainer to make full payment of all costs relating to split sample testing at the time

they select the outside laboratory that will perform the testing. The costs of split sample testing will vary based upon which laboratory is selected but the owner and trainer will be fully aware of the total cost of testing and shipping at the time of selection. Further, the proposed amendments state that should full payment not be made at the required time, the owner and trainer will forfeit all rights to split sample testing.

The additional amendments to the subsection are technical or grammatical in nature.

N.J.A.C. 13:71-23.15(h) is proposed for amendment to comply with the proposed amendments to N.J.A.C. 13:71-23.4(d). Namely, language limiting split sample testing exclusively to urine is being eliminated. Split sample testing of blood is now permissible if the positive test result was found in the racehorse's blood sample.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The proposed amendments will help the Commission to protect the health, safety, and welfare of the racehorses under its purview and help safeguard the integrity of the sport.

The primary impact of the proposed amendments will be felt by those owners and trainers choosing to have a split sample of their horse tested. The actual procurement of samples will not be altered, but the timeframes involved in the election of a split sample are going to be reduced. While this may present a certain hardship to the owners and trainers involved, the new timeframes are necessary and reasonable in light of the Commission's goal of reducing sample degradation. Shortening the timeframes in the manner proposed should decrease the number of positives that are not confirmed as such because the split sample has degraded in the weeks following the original test.

The proposed amendments will also positively enhance the public's perception of the racing industry because New Jersey will have more stringent split sample procedures.

#### **Economic Impact**

Implementation of the proposed amendments will have an insignificant impact on the State or persons involved with the racing industry. While the timeframe for procurement of payment is being shortened, the existing rule still requires an owner or trainer opting for testing of a split sample to bear any costs of that testing. This aspect of the rule will not be changed; thus there will not be any costs apart from those which already exist.

Due to the nature of the practices being prohibited, enforcement of these rules will come at no additional cost to the Commission, racing industry, or the State. There are no other economic impacts envisioned at this time.

#### **Federal Standards Statement**

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

#### **Jobs Impact**

The proposed amendments are not expected to create or eliminate any jobs in the racing industry. No additional job responsibilities will be required for employees of the Commission.

#### **Agriculture Industry Impact**

The proposed amendments may have an insignificant impact on the agriculture industry in New Jersey but there is an extreme unlikelihood that the amendments will evoke a change in the costs or practices associated with agriculture.

#### **Regulatory Flexibility Analysis**

Some racehorse owners and trainers may be considered small businesses as defined by the Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq. The proposed amendments may have an impact on these small businesses as the amendments will impose a compliance requirement upon racehorse trainers and owners. While trainers and owners have always had to follow the same procedure with regard to determining whether to have a split sample tested, the proposed

amendments reduce the timeframe in which the trainers and owners must make that determination.

The agency’s purpose for proposing these amendments is to reduce the effect of sample degradation and must apply uniformly to all trainers and owners, whether they qualify as small businesses or not. The proposed amendments do not have the potential to create any economic impact on small businesses. The proposed amendments propose no additional reporting or recordkeeping requirements.

**Housing Affordability Impact Analysis**

In it anticipated that the proposed amendments will not have an impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the proposed amendments will evoke a change in the average costs associated with housing because the proposed amendments relate to the post-race drug testing of horses and in no way relate to the real estate market.

**Smart Growth Development Impact Analysis**

It is anticipated that the proposed amendments will not have an impact on smart growth. There is an extreme unlikelihood that the proposed amendments will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments relate to the post-race drug testing of horses and in no way relate to the real estate market.

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

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**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 [such] request is timely made, upon expiration of **either** the [10-day] **48-hour time period to request a split sample be tested or the 24-hour time period to select an outside laboratory**, the [Racing Commission] **testing** laboratory shall properly dispose of any **and all** split samples 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] **testing** laboratory testing process, the results of the [Racing Commission] **testing** laboratory testing on the primary sample shall be conclusive. If [such] a request is timely made, **an outside laboratory is timely selected**, and a split sample remains, the [Racing Commission] **testing** 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] **testing** laboratory findings, or [that] if the split sample was not of sufficient quantity for the outside laboratory to conduct valid testing or to reach a valid testing conclusion, [those] **the** findings of the [Racing Commission] **testing** laboratory shall be considered conclusive. If the [Board of Judges determines that the] outside laboratory **testing** does not confirm substantially the [Racing Commission] **testing** 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. **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 these 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. 13:71-23.5.

(e) (No change.)

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

(h) The split sample testing provisions of N.J.A.C. 13:71-23.4(d), which is limited to where testing is conducted on a horse’s urine sample,] shall [not] be applicable to the out-of-competition testing authorized pursuant to this section.

(i) (No change.)