
The purpose of proposed amendments is to expand reasons under which licensees may be subject to drug and/or alcohol testing including impacts use of those substances has on public's confidence in the industry and to specify the impacts of the presence of alcohol on the licensee.

16.47.1.17 HUMAN DRUG OR CONTROLLED SUBSTANCE AND ALCOHOL TESTING:

A. ~~[General provisions: The following rules in this chapter establish and describe requirements, criteria, standards and procedures for human substance abuse testing for occupational licensees licensed by the commission.]~~ If a licensee has a medical condition which makes it necessary to possess or use a prohibited substance, or prescribed or controlled substance pursuant to Paragraph B of 15.2.6.8 NMAC, the licensee shall provide to the stewards a letter signed by a licensed physician, physician assistant, or nurse practitioner certifying that the consumption of the prohibited, or prescribed, or controlled substances will not adversely affect the divided attention, psychophysical abilities of the licensee, to include but not limited to reaction time and the ability to judge time and distance. The letter must certify that the prohibited, or prescribed, or controlled substance will not affect a licensee's ability to carry out their responsibilities properly and safely while in the performance of their duties which includes being in actual physical control of a large equine animal or operating mechanical equipment on the grounds of the association and will not jeopardize the health, safety and welfare of the other individuals participating.

B. ~~[Prohibited actions: All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.]~~

~~[C.]~~ **Restricted activities:** All licensees may be subject to testing for controlled substances, drugs and alcohol. It shall be ~~[an offense to exercise the privileges granted by a license from this commission]~~ a violation for a licensee to utilize their commission issued license if the licensee:

- (1) is engaged in illegal sale or distribution of alcohol or a controlled substance;
- (2) possesses, without a valid prescription, a controlled substance;
- (3) is intoxicated or under the influence of alcohol ~~[or a controlled substance];~~
- (4) is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the commission;
- (5) has in ~~[his/her]~~ their possession within the ~~[enclosure]~~ association grounds, any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;
- (6) refuses to submit to drug ~~[urine or]~~ or controlled substances or alcohol testing, ~~[when notified that such testing is based on a random drug testing procedure, is based on reasonable suspicion that the person is using drugs or alcohol or is based on the licensee's acting as if in an impaired condition] or both; [or]~~
- (7) presently has drugs ~~[controlled substances]~~ or controlled substances or alcohol in ~~[his/her]~~ their body. ~~[With regard to alcohol, the results of a test showing a reading of more than five hundredths percent of alcohol in the blood, urine, saliva or other bodily fluids of licensees in non safety sensitive positions shall be the criterion for a finding of alcohol present in the body. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph. Licensees in safety sensitive positions, jockeys, starters, assistant starters, exercise riders, pony persons, ambulance personnel, and outriders are in violation of this rule if they have any measurable level of alcohol.]~~

C. With regard to alcohol, the results of a breath test showing a reading of more than .035 BAC in the sample provided by a licensee in a non-safety sensitive position shall be the criterion for a finding of alcohol present in the body. Such results shall operate as prima facie evidence of the presence of alcohol in a prohibitive amount in a licensee.

D. Licensees in safety positions, as determined by the stewards are in violation of this rule if they have any measurable level of alcohol, as determined by a breathalyzer test. Such results shall operate as prima facie evidence of the presence of alcohol in a prohibitive amount in the licensee.

E. Trainers and Assistant Trainers: There is zero tolerance to be under the influence of controlled substances or Alcohol or both while saddling horses in the paddock.

[16.47.1.17 NMAC - Rp, 16 NMAC 47.1.16, 3/15/2001; Rp, 16.47.1.16 NMAC, 7/1/2017; A, 9/26/2018]