
The purposes of proposed amendments are to provide for random or episodic testing without notice, provide for licensee's ability for confirmation test, define what constitutes a refusal to submit to drug or alcohol testing and create progressive penalty system for licensees whose test results show presence of alcohol.

16.47.1.18 TESTING PROCEDURES:

A. ~~[General:]~~ Controlled Substance and Drug Testing:

(1) At its discretion, the commission may conduct random or episodic random drug testing, as well as testing based on reasonable suspicion, in order to ensure safety on the ~~[racetrack]~~association grounds.

(2) ~~[When conducted, random drug testing shall apply, equally, to all licensees who are, at the time of the random testing, exercising the privileges of their license in such ways as may affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.]~~ All licensees may be subject to testing for controlled substances and drugs.

(3) No advance notice need be given ~~[as to onset or cessation of random testing]~~.

(4) Refusing to test, failing to appear for a test, leaving before the test is over or otherwise failing to cooperate shall be considered a positive test. If this occurs during a race meet, the licensee is subject to and may be ejected from association grounds.

~~[(4)](5)~~ For licensees who are testing under the provisions in this chapter, and whose urine testing shows the presence of drugs ~~[(controlled substances) or alcohol, any field screening test results]~~ or controlled substances shall be confirmed by a laboratory acceptable to the commission ~~[which shall include gas chromatography/mass spectrometry (GC/MS) procedures]~~.

~~[(5)](6)~~ An association ~~[will]~~shall provide a drug ~~[(controlled substances) and alcohol-]~~ or controlled substance screening test for all applicants for ~~[groom]~~grooms, exercise riders, jockey valets, starters, assistant starters, ambulance personnel, and pony persons when making application for license. The cost for the drug-screening test will be borne by the applicant payable to the association at a reasonable cost approved by the commission.

~~[(6)](7)~~ The licensee being tested may request a confirmation test when the sample quantity permits. Such request shall be made in writing immediately after a positive result of the test and be directed to the commission agent involved in the testing. The licensee requesting a confirmation test, or their agent, shall be present during the preparation and packing of the sample for delivery to the commission's testing laboratory. The licensee and the commission shall both be notified of the confirmation testing results.

~~[B. Split sample: When the sample quantity permits, each test sample shall be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized by the licensee to obtain an independent analysis of the urine sample.]~~

~~[C.]~~ (8) **Chain of custody:** The commission shall provide for a secure chain of custody for the confirmation sample ~~[to be made available to the licensee]~~. The commission shall retain ownership of all samples.

~~[D.]~~ (9) **Financial responsibility:** All costs for the transportation and confirmation testing for the sample portion ~~[made available for the licensee]~~ shall be the financial responsibility of the ~~[requesting person]~~ commission, unless otherwise noted in a stewards' ruling. ~~[Payment to the testing laboratory shall be due from the requesting person at the time the request is made to have the split sample tested]~~

B. Alcohol Testing:

(1) At its discretion, the commission may conduct random or episodic breath alcohol testing as well as testing based on reasonable suspicion, in order to ensure safety on the association grounds.

(2) All licensees may be subject to breath alcohol testing.

(3) No advance notice need be given as to random breath alcohol testing.

(4) Refusing to test, failing to appear for a test, leaving before the test is over or otherwise failing to cooperate shall be considered a positive test. If this occurs during a race meet, the licensee is subject to and may be ejected from association grounds.

(5) If the breath testing results for jockeys, exercise riders, jockey valets, trainers, assistant trainers, starters, assistant starters, ambulance personnel, outriders, and pony persons show a reading of more than .000 percent of alcohol, such licensee shall be relieved of their duties for that day.

(6) If the breath testing results for other non-safety position licensees show a reading of more than .035 percent of alcohol, such licensees shall be relieved of their duties for that day.

(7) For a licensee's second breath testing violation in any jurisdiction, the licensee shall be referred to the board of stewards and shall be fined no less than two hundred dollars and shall be suspended for a period of not more than sixty days.

(8) For a licensee's third breath testing violation in any jurisdiction, the licensee shall be fined two hundred dollars, suspended for a minimum of sixty days, and referred to the commission's board of stewards for further action.

[16.47.1.18 NMAC - Rp, 16 NMAC 47.1.16, 3/15/2001; Rp, 16.47.1.17 NMAC, 7/1/2017]