

## Notice of Emergency Rule

### **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

#### **Division of Pari-Mutuel Wagering**

RULE NO.: RULE TITLE:

61DER17-1 Procedures for Collecting Samples from Racing Animals

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:** An Emergency rule is necessary because there exists an immediate danger to the public health, safety and welfare due to a final order concluding that the Division of Pari-Mutuel Wagering's ("Division") blood serum sample collection process contains some procedures that qualify as unadopted rules.

On February 7, 2017, the Division of Administrative Hearings issued a recommended order in DOAH case number 16-6423PL, holding that the Division could not rely on evidence obtained through serum sample collection methods provided in Florida Administrative Code, Rule 61D-6.005. On March 24, 2017, the Division issued a Final Order accepting the Findings of Facts and Conclusions of Law contained in the this Recommended Final Order.

An emergency rule is necessary because, without a valid serum sample collection process, the Division would be unable to test for many prohibited substances in racing animals and to take subsequent administrative action in cases where a prohibited substance is found in such an animal. Such substances would include performance enhancing substances, pain numbing substances, and others that could lead to potential injuries or death to both the racing animals or the jockeys riding them. Further, the Division must be able to test for such substances in order to ensure legitimate and fair races and to protect the betting public.

There are over two hundred pari-mutuel horse racing performances scheduled between March 27, and June 30, 2017. Each performance consists of up to eight races. An emergency rule is necessary to ensure the safety and legitimacy of these performances and the welfare of Florida's pari-mutuel industry in general.

**REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:** The procedure being used is fair under the circumstances because the Final Order will become effective immediately upon filing. Due to the large number of performances scheduled in the immediate future, conducting regular rule making, without an emergency rule in place, will not provide a timely remedy. Further, along with this Notice, the Division is filing a notice of rule development in order to work with the industry to find a long-term solution to this issue.

**SUMMARY:** Emergency rule 61DER17-1, adds language about collecting, centrifuging, sealing, storing, and shipping blood and serum specimens to the laboratory for analysis to the current sample collection rule. These changes address specific concerns identified by the administrative law judge in the Recommended Order and are a valid exercise of delegated legislative authority.

**THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:** Bryan Barber, bryan.barber@myfloridalicense.com, (850)717-1761, 2601 Blair Stone Road, Tallahassee, FL, 32399

**THE FULL TEXT OF THE EMERGENCY RULE IS:**

61DER17-1 Emergency Rule relating to Chapter 61D-6.005 F.A.C., Procedures for Collecting Samples from Racing Animals.

(1) Any horse the stewards, division, or track veterinarian of the meet designate, shall be sent immediately after the race to the detention enclosure for examination by the authorized representative of the division and for the taking of urine, blood or other such samples as shall be directed for the monitoring and detection of both permissible and impermissible substances. Blood specimens shall be taken only by a Florida licensed veterinarian (division or track) and witnessed by the horse's trainer of record, owner, or designee. Said veterinarian should attempt to attain up to six full 15-milliliter blood tubes from each horse sampled.

(2) Any racing greyhound the judges, division, or track veterinarian of the meet designate, shall be sent immediately prior to the race to the detention enclosure for examination by the authorized representative of the division for the taking of urine or other such samples as shall be directed for the monitoring and detection of both permissible and impermissible substances.

(3) The owner, trainer of record, groom, or other authorized person is permitted to witness when urine, blood or other specimens are taken from their horse. Each specimen shall be collected in a closed blood tube or urine container, assigned a sample number which is affixed to the specimen container, and the correspondingly numbered information portion of the sample tag shall be detached and may be signed by the owner, trainer, groom, or the authorized person if they choose to do so. The veterinary assistant shall accompany the state veterinarian during blood collection to ensure the veterinarian is taking blood from the correct horse. The veterinarian or veterinarian assistant shall record the time at which blood is collected from each animal. Failure of an owner, trainer of record or other authorized person to witness and/or sign the sample tag shall not preclude the division from proceeding with sample analysis. No horse shall be left unattended in the detention enclosure by the owner, trainer of record, groom, or authorized person. Said specimens shall be maintained in such a manner as to preserve the integrity of the specimen. Specimen containers shall be of the disposable type and shall not be reused.

(4) Once collected, the blood tubes shall be allowed to rest undisturbed for at least 30 minutes. After resting, serum shall be separated from the blood through the process of spinning the blood tubes in a centrifuge. Spinning shall be performed for no less than ten minutes at 2,800 rpm. The veterinarian or veterinarian assistant must stand with the centrifuge at the start of the spin to ensure the centrifuge is balanced. The veterinarian or veterinarian assistant shall record the times when the centrifuge process begins.

(5) After centrifuging, the serum in the blood tubes shall be poured into a tube suitable for freezing and shipping. If multiple blood tubes exist with the same sample number, they will be combined into a single tube suitable for freezing and shipping. At least two people, including the one doing the pour, must be present to witness the pour. The time the pour is performed shall be recorded. The owner, trainer of record, groom, or other authorized person is permitted to witness when serum is poured from the blood tubes to the tube suitable for freezing and shipping.

(6) The tube, containing the serum specimen shall be closed and sealed. The sealing process is complete after a sample number, that corresponds to the original sample number used for collection, and tamper proof evidence tape, are affixed to the tube.

(7) Sealed serum specimens shall be stored in a freezer until they are shipped to the testing laboratory.

~~(8)~~(4) The owner, trainer of record, or other authorized person is permitted to witness when urine or other specimens are taken from their greyhound. Each specimen shall be collected in a closed blood tube or urine container, assigned a sample number which is affixed to the specimen container, and the correspondingly numbered information portion of the sample tag shall be detached and signed by the owner, trainer of record, groom or the authorized person if they choose to do so. Failure of an owner, trainer of record or other authorized person to witness and/or sign the sample tag shall not preclude the division from proceeding with sample analysis. Said specimens shall be maintained in such a manner as to preserve the integrity of the specimen. Specimen containers shall be of the disposable type and shall not be reused.

~~(9)~~(5) Only those persons stated in subsections (3) and (4) of this rule who are currently licensed by the division shall be admitted at any time to the detention enclosure, except the division staff immediately in charge of such work, the stewards or judges, or such other persons as authorized by the director, division official, or the division veterinarian.

~~(10)~~(6) If representatives of the division are unable to collect a urine specimen from a horse which has remained in the detention enclosure for up to ninety minutes, they shall have the option to accompany the horse to its own barn for additional attempts at collecting a specimen. The owner, trainer of record, groom, or other authorized person shall accompany the horse and division personnel to its barn and shall remain with the horse until a specimen is collected, and is permitted to accompany the division personnel and specimen back to the detention enclosure for sealing of the specimen container(s).

~~(11)~~(7) The division veterinarian or division investigator is authorized to confiscate any legend or proprietary drugs, medications, unlabeled medication, medication with altered labels, medicinal compounds (natural or synthetic) or other materials which are found in the stable area, kennel compound or elsewhere on race tracks, or in the possession of any person participating in or connected with racing, including veterinarians and trainers, and which are suspected of containing improper legend or proprietary drugs, medications, medicinal compounds (natural or synthetic) or other materials which are illegal or impermissible under these rules. Such legend or proprietary

drugs, medications, unlabeled medication, medication with altered labels, medicinal compounds (natural or synthetic) or other materials shall be delivered to the laboratory under contract with the division for analysis.

~~(12)(8)~~ The division may confiscate any evidence that an illegal or impermissible legend or proprietary drug, medication, or medicinal compound (natural or synthetic) may have been administered to a racing animal.

~~(13)(9)~~ Any licensee who threatens to or interferes with, or fails to allow the taking of urine, blood or other specimens authorized by Chapter 550, F.S., is subject to any disciplinary action authorized by Chapter 550, F.S., or the rules promulgated thereunder.

*Rulemaking Authority 120.80(4)(a), 550.0251(3), 550.2415(12), (13) FS. Law Implemented 120.80(4)(a), 550.0251, 550.1155, 550.2415 FS. History—New 10-20-96, Amended 12-15-97, 11-19-01, 6-15-15 \_\_\_\_\_.*

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: 3/24/17