

Good morning, Chairman Siddoway, Vice Chairman Hagedorn, and Committee Members.

My name is Ardie Noyes. I am the Business Operations Manager for the Idaho State Racing Commission. I appear before you this morning to present for your consideration, **Docket No. 11-0406-1701.**

**This rule is simple in nature.**

In short, there are two sections of our rules that outline the timeframes for procedures related to hearings regarding equine drug violations. The timeframes in these two sections currently don't match well.

I would like to provide for you a summary of both rules, and then go over the changes we are proposing.

The two rule sections I'm referring to are:

- a. 11.04.06.051.01 – which is the rule regarding Steward's Jurisdiction
- b. 11.04.11.160 – which is an IDAPA rule regarding split sample testing in the medication section.

**We are only proposing a rule change for the first rule I mentioned, but it does have an affect on the second rule.**

**The first rule, the one we're seeking the change on -** states a Steward's jurisdiction lasts for 30 days after a race meet is held. This means the Stewards must hold all hearings, and make all determinations which haven't already been settled, within 30 days after the last day of racing.

**The second rule which there is NO change to,** is being brought to your attention as it provides a timeline of a horseman's right to due process through the split sample procedures. Currently, after a race has been run, it takes approximately a week, in some cases up to 10 days for the **final** lab results to come in to the Commission. Commission staff then forwards the test results to the Stewards via email. No purse monies can be released to the winners until these lab results have been received in the Commission office, then forwarded to the Stewards who also verify all test results have been shown to be free of drug abuses.

If a horseman's winning horse is found to have a positive drug test, all purse monies for that particular race are held by the Racing Association. To schedule a hearing, the Stewards must provide a written notice to the horseman. Because racing happens all throughout our state, our rules provide for the delivery of a hearing notice via certified US postal mail. It can take up to 5 business days for a horseman to receive notice of a hearing. According to our rules, the notice itself must provide 3 days' notice to the horseman. **(Please note that already, at this point, approximately 20 days has passed since the race has been held.)**

Once the notice is served upon the horseman, he also has a right to request a split sample test be done. A split sample test is an important part of a horseman's right to due process. The Racing Commission Veterinarian takes extra testing samples from every winning horse. This way, there is un-tested material ready for the horseman to use for split sample purposes. If, for any reason, a horseman feels the **primary laboratory** test results are not accurate, they have

the right to request this extra un-tested specimen be sent to a third party laboratory for independent testing. Our rules refer to these as referee labs. These are certified labs that have volunteered to be available for split sample testing. Our rules provide the horseman with 3 business days, from the date of the receipt of notice, to request a split sample test. (By now, if accounting for weekend days, it has been 25 days since the race took place.)

Also, as soon as the notice is served upon the horseman, he has a right to request a continuance. Stewards may allow a continuance and rescheduling of a hearing, if the horseman can show that having a hearing on a particular date will be a hardship to them, or if they prefer to have the hearing after their split sample test has arrived. Typically, those who request a split sample test also request a continuance so that the hearing will be held after the split sample result comes in.

Once the split sample has been requested, the Racing Commission must confirm with the referee lab that they will accept this particular split sample, and must also confirm the cost of testing and shipping for that sample. Some labs provide guidelines for their response times, and others do not. Typically, this process can take up to two more business days. (27 days has now passed.)

According to our rules, before the Racing Commission can send out the split sample test, they must receive from the horseman, the full amount for shipping and lab fees to cover the cost of the split sample test. Our rules do not provide a time limit for horsemen to send in payment. But it typically takes up to 5 business days for the Commission to receive payment via US mail. By now, (32 days has passed.) The Steward's jurisdiction has already expired, and in most cases, the horseman hasn't even received their split sample test results back yet.)

Once the Racing Commission receives payment, or is notified by the split sample laboratory that payment has been received by them, our rules provide the Commission with up to ten business days for shipment of the samples to the laboratory. (By now, up to 44 days has passed.)

Once the split samples have shipped, the time it takes for the lab to return a result is up to the lab. It can take 14 or more days to receive a split sample results back, because it all depends on the lab's workload and processes. But even with a faster turnaround, the Steward's jurisdiction has already expired.

The Racing Commission's overall concern and goal is to establish consistency in the enforcement process, and to ensure every participant is afforded proper time to exercise their due process.

If a Steward's jurisdiction expires, the Racing Commission will be forced to hire attorneys to act in the place of the Stewards, to bring the case forward once the split sample result comes in. The process at that point is to hire a hearing officer to decide the case. Such an action causes several negative impacts to the horseman in question, but it also negatively impacts the other horsemen who were involved in the race:

1. **Delay in purse money distribution for all winners.** Typically, hearings handled by stewards are resolved the same day of the hearing. Purse money distribution can be done the same day. If attorneys are hired, they will need to have time to become familiar with the case and with racing before they can bring it to a hearing officer. This could take several months more to be resolved. This is important because there are not one but up to five interested parties that have some claim to the purse money. Most purses are divided up amongst the first five finishers. And in racing, purse money is usually used to fund the horseman's continued participation in more races in Idaho, but also in the larger racing circuit that goes on nationwide. A delay in purse money distribution could significantly impact the livelihood of many owners, trainers, and other persons who make a career of racing.
2. **Delay in publishing of racing win records.** Again, because of the time it would take to bring the case forward to a hearing officer, racing win records would be delayed because final results of the race would still be in question. This is important because a horse's win record determines whether they are eligible to race in larger stakes races that have very large purses. Though Idaho's season may have closed, surrounding states where Idaho's horsemen vigorously participate, continue racing. Delaying a win record could mean a horseman would be denied the chance to compete for a large purse.
3. **Cost of extended time and frustration.** It can be costly and time consuming to go through a hearing process. Horsemen need fast and timely resolutions to race meets so that they can continue to compete.
4. **Loss of the right to a hearing resolved by knowledgeable and licensed Racing Stewards.** Idaho Racing Stewards hold professional licenses to practice. They have completed a national Racing Steward education program, and have passed extensive exams. They are required to annually complete Continuing Education to stay current with changes in the industry, and to conform to national racing standards. Attorneys and hearing officers, though well educated, are not well versed in the nuances of racing.

As it stands now, this problem exists due to the adoption of the ARCI uniform rules back in 2010. Many states have worked closely with the industry in making necessary changes for their particular jurisdictions. In 2016 the Commission worked over the split sample rules and they were passed during the 2016 Legislative session. However at that time we did not address this rule as we were concentrating on the split sample rules.

Our proposed rule will extend the Steward's jurisdiction from 30 to 90 days, and would provide the Racing Commissioners an option to extend that jurisdiction under a special circumstance—for example, in the case of a horseman-requested continuance that delays the hearing, or if a slow-to-respond lab prolongs the results of a split sample test.

This change does not cost the Commission anything. Because the cost of Stewards is cheaper than attorneys and hearing officers, this rule change could positively impact the Commission financially.

Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

Thank you for your time. I stand ready to answer any questions you may have.