

New Jersey Medication Rules

TITLE 13. LAW AND PUBLIC SAFETY
CHAPTER 70. HORSE RACING
SUBCHAPTER 14A. MEDICATION AND TESTING PROCEDURES

§ 13:70-14A.1 Intent of medication rules; general provisions

(a) It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. For the purpose of these rules, a drug and/or substance administered to a horse is foreign to the natural horse irrespective of whether the said drug and/or substance is also naturally occurring to the horse.

(b) On the day of the race, irrespective of the date, time, and method of administration, no horse entered to start in or participating in any race shall carry in its body any drug and/or substance foreign to the natural horse, excepting external rubs and innocuous compounds as defined in this section and as otherwise provided for in this chapter. Examples of drugs and/or substances foreign to the natural horse, and thus prohibited pursuant to this section, are as follows:

1. Articles meeting the definition of drug as set forth in N.J.A.C. 13:70-2.1;
2. Chemical substances;
3. Stimulants;
4. Depressants;
5. Anesthetics;
6. Tranquilizers;
7. Anti-inflammatories;
8. Erythropietin (epogen, EPO);
9. Pain killers;
10. Sodium bicarbonate (baking soda);
11. Confectionery sugar;
12. Stamina builders;

13. Mixtures, compounds, or solutions commonly referred to as “milkshakes,” which contain any prohibited drug and/or substance; and

14. Controlled therapeutic medications equal to or in excess of the threshold levels set in the Association of Racing Commissioners International (RCI) Controlled Therapeutic Medication Schedule (Schedule), version 2.1 (Revised April 17, 2014), which is incorporated herein by reference, as amended and supplemented. The Schedule can be accessed at <http://arcicom.businesscatalyst.com/assets/arci-controlled-therapeutic-medication-schedule---version-2.1.pdf>.

(c) Nothing contained in this section, however, shall be construed to prohibit the horse from carrying in its body on the day of the race food products resulting from the normal and proper diet of a horse not containing prohibited drugs and/or substances.

(d) On the day of the race, except as otherwise provided for in these rules, no horse entered to start in or participating in any race shall have administered to it any such drug and/or substance foreign to the natural horse, including as a result of administration of an otherwise permissible external rub or what would otherwise constitute an innocuous compound. In no event, except for the intravenous administration of furosemide (Lasix) pursuant to N.J.A.C. 13:70-14A.9, or as may otherwise specifically be authorized by or pursuant to these rules, shall the administration of said excepted items be accomplished intravenously, by injection, by jugging or drenching, or through the use of a syringe or sharp, dose syringe, or tube apparatus. A non-prohibited external rub or innocuous compound as defined in this section shall on the day of the race be administered only by application on the exterior of the horse, except that food constituting the normal and proper diet of a horse not containing prohibited drugs and/or substances may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

(e) An external rub or innocuous compound is a single substance, mixture of substances, or compound that does not contain any of the examples of prohibited items as set forth in (b) above, or additionally, any other substance foreign to the natural horse that alters its normal physiological state.

HISTORY:

Amended by R.1994 d.125, effective March 7, 1994.

See: 25 N.J.R. 3099(a), 26 N.J.R. 136(a).

Amended by R.1995 d.295, effective June 5, 1995.

See: 26 N.J.R. 1955(a), 27 N.J.R. 2243(a).

Amended by R.2014 d.163, effective November 3, 2014.

See: 46 N.J.R. 1414(a), 46 N.J.R. 2161(a).

In the introductory paragraph of (b), inserted a comma following “time”, and substituted “this chapter” for “these rules”; in (b)12, deleted “and” from the end; in (b)13, substituted “ ‘milk-shakes,’ “ for “ ‘milk-shakes’ “, and substituted “; and” for a period at the end; added (b)14; and rewrote (e).

LAW REVIEW AND JOURNAL COMMENTARIES:

Horse Drugging-The New Jersey Trainer Absolute Insurer Rule. Luke P. Iovine, III, John E. Keefe, Jr., 1 Seton Hall J. sport L. 61 (1991).

CASE NOTES:

Violation by presence of Butazolidin in blood noted (also cited as former N.J.A.C. 13:70-14.17). State v. Dolce, 178 N.J.Super. 275, 428 A.2d 947 (App.Div.1981).

Trainer’s admission that he had administered Phenylbutazone or Flunixin to a race horse for which he was the trainer of record afforded adequate grounds for the imposition of sanctions because both substances were detected in samples of the horse’s blood taken on a day on which the horse had raced at a N.J. track, and the trainer’s claim that he had administered the drugs on the day prior to the race and that they had been detected due to an oversensitive testing process was not a defense. Maymo v. N.J. Racing Comm’n, OAL DKT. NO. RAC 8691-14, 2016 N.J. AGEN LEXIS 53, Initial Decision (February 3, 2016).

§ 13:70-14A.2 Testing

(a) Any horse entered to start at any licensed race meeting may be subjected to a pre-race and/or post-race blood, and/or urine test, at the direction of the State Veterinarian, and/or State Steward, in the manner prescribed by the New Jersey Racing Commission. The costs so incurred shall be borne by the track association. The cost to the track association for testing each sample shall be established by the New Jersey Racing Commission.

(b) Every owner, or his authorized agent, or trainer or any horse entered to race at any licensed racetrack shall immediately submit the said horse to any veterinarian designated by the Commission, for examination and/or testing whenever so requested by the Commission, Stewards, State Veterinarians, or Associate State Veterinarians.

§ 13:70-14A.3 Pre-race testing program

(a) All horses entered to start in any race where parimutuel wagering is conducted shall be subject to a pre-race blood and/or urine test.

(b) Such horses shall be tested in their respective barn area on the grounds of the permitholder on the day of the race at such time as designated by the Commission and shall be under the care of a duly licensed attendant designated by the trainer of the horse.

(c) A licensed veterinarian approved by the Commission shall be the only person allowed to draw blood for testing. A quantity of 20 cubic centimeters or such amount as the veterinarian may designate shall be extracted from each horse for testing purposes.

(d) Should the forensic analysis of such sample be classified as suspicious for any drug, or substance foreign to the natural horse except as expressly permitted by these rules and regulations, the horse shall be scratched.

(e) Should the forensic analysis of such sample be classified as positive for any drug, or substance foreign to the natural horse, the horse shall be scratched and placed on the Steward's list for seven days.

(f) The entry of a horse shall constitute permission for a veterinarian appointed by the New Jersey Racing Commission to obtain biological samples, and consent to the scratching of the horse from the race in the event such test is positive or suspicious.

(g) A trainer shall receive a warning for the first time a horse in his charge shall show a positive pre-race test. If the same horse shall again be positive on a pre-race test, then the trainer may be fined, suspended or both.

§ 13:70-14A.4 Post-race testing program; split urine or split blood samples

(a) No drug shall be administered or applied, internally or externally, to any horse that is to be sampled after a race until the blood and/or urine samples have been obtained unless permission from the State Veterinarian is obtained.

(b) Every horse to be tested shall be taken to a detention barn, to be supplied by the association in accordance with specifications set forth by the Commission. All blood samples shall be taken by a State Veterinarian while urine samples shall be secured by the State Veterinarian or a chemical inspector of the Commission at the direction of the State Veterinarian.

(c) During the taking of any blood and/or urine sample by the veterinarian representing the Commission, from the horse entered to race, the owner, trainer or their designated representative shall be present and witness the procedure. The sample so taken shall be immediately sealed and tagged on the form provided by the Commission and the evidence of such sealing shall be indicated by the signature of such owner, trainer or representative. It shall be the obligation of the owner, trainer or representative to cooperate fully with the State Veterinarian in obtaining any samples which may be required and to attend and witness the taking and securing of such sample.

(d) For each horse to be tested, the State Veterinarian or a designated employee shall cause one sample of the horse's urine, or 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 Racing Commission laboratory. Following the testing of the urine or blood sample (hereinafter "primary sample"), any residue portion of the urine or blood sample taken (hereinafter "split sample") shall be preserved by the Racing Commission laboratory until either: it is determined by said laboratory that the primary urine or blood sample is negative for a foreign substance; or, if the primary urine or blood sample is determined positive for a foreign substance, for 10 days 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 time period, may request in writing to the Racing Commission's Executive Director that any split sample 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 by the Racing Commission. If no such request is timely made, upon expiration of the 10-day period, the Racing Commission laboratory shall properly dispose of any split sample 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 laboratory testing process, the results of the Racing Commission laboratory testing on the primary sample shall be conclusive. If such a request is timely made, and a split sample remains, the Racing Commission 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 laboratory findings, or that the split sample was not of sufficient quantity for the outside laboratory to conduct valid testing or to reach a valid testing conclusion, those findings of the Racing Commission laboratory shall be considered conclusive. If the Board of Stewards

determines that the outside laboratory does not confirm substantially the Racing Commission 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. 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 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) Nothing contained in (d) above shall be interpreted: to preclude the State Steward from initiating the procedure set forth in N.J.A.C. 13:70-14A.5 upon notification of a positive urine or blood test by the Racing Commission laboratory; or to preclude the holding of an initial hearing with respect to an alleged violation of this subchapter where a request for testing of the split sample has been timely made and the results of testing by the outside laboratory are pending. However, where in such circumstances an appeal of any initial determined violation is filed pursuant to N.J.A.C. 13:70-13A.4, a stay of any ordered penalty notwithstanding the provisions of N.J.A.C. 13:70-13A.8 shall be issued pending receipt of the results of the outside laboratory testing. In the event the Board of Stewards determines in such case that the outside laboratory does not confirm substantially the Racing Commission laboratory findings, and the determined violation is therefore dismissed pursuant to (d) above, any allegation or determination of a violation as a result of any search initiated pursuant to N.J.A.C. 13:70-14A.5 shall not be affected.

HISTORY:

Amended by R.1999 d.98, effective April 5, 1999.

See: 30 N.J.R. 3757(a), 31 N.J.R. 887(b).

Added (d) and (e).

Amended by R.2001 d.249, effective July 16, 2001.

See: 33 N.J.R. 1335(a), 33 N.J.R. 2492(a).

Rewrote (d).

Petition for Rulemaking.

See: 43 N.J.R. 321(a), 1542(a).

Amended by R.2012 d.067, effective April 2, 2012.

See: 43 N.J.R. 2986(a), 44 N.J.R. 1121(b).

Section was "Post-race testing program; split urine sample". In (d), inserted " , or one or more sam-

ples of the horse's blood where the testing protocol is based on blood testing (hereinafter 'blood sample')," and inserted "or blood" throughout; and in (e), inserted "or blood" and substituted "circumstances" for "circumstance".

CASE NOTES:

Initial Decision (2008 N.J. AGEN LEXIS 756) adopted, which determined that appropriate chain of custody had been established for urine specimen that resulted in a positive finding for trainer's horse, despite trainer's contentions concerning the witness requirements of N.J.A.C. 13:70-14A.4(c), where it was proven that horse tested was trainer's horse. *Synnefias v. N.J. Racing Comm'n*, OAL Dkt. No. RAC 3520-06, 2008 N.J. AGEN LEXIS 1116, Final Decision (October 7, 2008).

§ 13:70-14A.5 Procedure following positive chemical analysis

(a) On receiving written notice from the official chemist that a post-race specimen has been found “positive” for any drug or substance foreign to the natural horse, the stewards shall proceed as follows:

1. They shall notify the State Police and authorize a search of the premises occupied by the stable involved.
2. They shall, as quickly as possible, notify the owner and trainer of the horse involved.
3. They shall, with the assistance of the State Police, conduct a thorough investigation, interviewing the trainer, assistant trainer and any other persons who may have pertinent knowledge of the circumstances involved.
4. During the progress of such investigation, the stable involved shall be permitted to race; save that the particular horse (or horses) involved shall not be entered or start until allowed to do so by the Stewards.

CASE NOTES:

Rule permitting warrantless administrative search of premises after positive drug test valid as within warrant exception for industries subject to pervasive and long-standing government regulation; scope of search (cited as former N.J.A.C. 13:70-14A.12 and 13:70-14.21). *State v. Dolce*, 178 N.J.Super. 275, 428 A.2d 947 (App.Div.1981).

§ 13:70-14A.6 Trainers

(a) A trainer shall be the absolute insurer of and is responsible for the condition of a horse within his care and custody.

(b) A trainer shall not enter or start a horse that has in its body any drug or substance foreign to the natural horse except as otherwise provided for in these rules and regulations.

(c) A trainer has the duty to be familiar with the medication rules of this Commission and with any drug or substances foreign to the natural horse administered to said horse at his direction or while in his care and custody.

(d) The trainer, owner, veterinarian, groom or other person charged with the custody, care and responsibility of a horse are all obligated to protect and guard the horse against administration of any drug or substance foreign to the natural horse except as otherwise provided for in these rules and regulations by any unauthorized individual, and the administration of any unauthorized drug or substance foreign to the natural horse by any person.

CASE NOTES:

Commission rules intended to place absolute responsibility upon the trainer in situations in which a horse has been administered a drug; trainer's suspension proper and not violative of due process, despite no finding of trainer's knowledge of drug or negligence (citing former N.J.A.C. 13:70-14.19). *Dare v. State*, 159 N.J.Super. 533, 388 A.2d 984 (App.Div.1978).

§ 13:70-14A.7 Penalties

(a) Should the stewards determine that any person or persons have violated any section of this subchapter, they may punish the offending party consistent with the penalties provided for in these rules and regulations.

(b) In addition thereto, the Stewards may penalize the owner of any horse, or any entry of which said horse is a part, that has started in any race with any drug or substance foreign in its body by disqualification and denial of any part of the purse with redistribution of purse moneys as in the case of a disqualification.

(c) Any individual suspended or disciplined in any fashion for multiple violations of this subchapter or any comparable rule of any other racing commission or turf governing body shall be deemed a repeat offender and shall be subject to enhanced penalties pursuant to RCI Model Rule ARCI-011-020B(13), Multiple Medication Violations (MMV) (version 5.7, Approved April 9, 2014), which is incorporated herein by reference, as amended and supplemented, or as otherwise ordered by the Commission or its Stewards (see N.J.A.C. 13:70-16). RCI Model Rule ARCI-011-020B(13), Multiple Medication Violations (MMV) may be accessed at [http://ua-rtip.org/sites/ua-rtip.org/files/Flat%20Racing%20Chapters%20\(5-11\).pdf](http://ua-rtip.org/sites/ua-rtip.org/files/Flat%20Racing%20Chapters%20(5-11).pdf). The Commission may, at its discretion, consider evidence of compliance with the guidelines set forth in the “Dosing Specifications” and “Withdrawal Guideline” columns of the Schedule as mitigating factors, when appropriate, in determining the penalty to be imposed for a violation of the levels listed in the “Threshold” column.

(d) Horses owned wholly or in part by persons suspended for violations of this subchapter or any comparable rule of any other racing commission or turf governing body are ineligible to start during the period of such suspension or as ordered by the Commission or its Stewards, unless sold to a bona fide purchaser (see N.J.A.C. 13:70-16). Horses trained by a person suspended for such violations, wherein the trainer does not have an ownership interest, are automatically eligible to start when placed in the hands of a licensed trainer approved by the Stewards. (See N.J.A.C. 13:70-13A for rules concerning appeals.)

HISTORY:

Amended by R.2014 d.163, effective November 3, 2014.

See: 46 N.J.R. 1414(a), 46 N.J.R. 2161(a).

Rewrote (c) and (d).

§ 13:70-14A.8 Possession of drugs or drug instruments

(a) No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting, or anywhere within the confines of a racetrack enclosure, or anywhere within the grounds of any licensed off-track stabling facility, any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drug or unauthorized prescription legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and
2. Of the chemical substance to be administered.

HISTORY:

Amended by R.1993 d.262, effective June 7, 1993.

See: 24 New Jersey Register 1060(a), 25 New Jersey Register 2488(a).

§ 13:70-14A.9 Administering medication to respiratory bleeders; standards for the administration of non-steroidal anti-inflammatory drugs (NSAID) and anti-ulcer medications; environmental contaminants

(a) The stewards may permit the administration of medication to control respiratory bleeding under the following conditions:

1. Furosemide may be administered intravenously to a horse which is entered to compete in a race to control respiratory bleeding. Administration of furosemide shall be permitted only after the State Veterinarian has placed the horse on the Furosemide List. In order for a horse to be placed on the Furosemide List, the following process must be followed:

i. After the horse's licensed trainer and a licensed, practicing veterinarian determine that it would be in the horse's best interests to race with furosemide they shall notify the State Veterinarian or his or her designee, using the prescribed form provided by the Racing Commission, that they wish the horse to be put on the Furosemide List;

ii. The form must be received by the State Veterinarian or his or her designee no later than the time of entry, so as to ensure public notification prior to race participation;

iii. A horse placed on the Furosemide List must remain on that list unless the licensed trainer and a licensed, practicing veterinarian submit a written request to remove the horse from the List. The request must be made to the State Veterinarian or his or her designee, on the proper form, no later than the time of entry; and

iv. After a horse has been removed from the Furosemide List, the horse may not be placed back on the List for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the State Veterinarian. If a horse is removed from the Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.

2. The use of furosemide shall be permitted for horses on the Furosemide List under the following circumstances on the grounds of any racetrack where a detention barn is utilized:

i. Furosemide shall be administered at the direction of the State Veterinarian no less than four hours prior to post time for the race for which the horse is entered;

ii. A horse qualified for furosemide administration must be brought to the detention barn within time to comply with the four-hour administration requirement specified in (a)2i above;

iii. The dose administered shall not exceed 500 milligrams per horse (500 mg) nor be less than 150 milligrams per horse (150 mg);

iv. Furosemide shall be administered by a single, intravenous injection only;

v. After treatment, the horse shall remain in the detention barn or other designated area in the care, custody and control of its trainer or the trainer's designated representative under association and/or Commission security supervision until called to the saddling paddock; and

vi. Failure to administer furosemide in accordance with this paragraph may result in the horse being scratched from the race by the stewards.

3. The use of furosemide shall be permitted for horses on the Furosemide List under the following circumstances on the grounds of any racetrack where a detention barn is not utilized:

i. Furosemide shall be administered no less than four hours prior to post time for the race for which the horse is entered;

ii. The furosemide dosage administered shall not exceed 500 milligrams per horse (500 mg) nor be less than 150 milligrams per horse (150 mg);

iii. Furosemide shall be administered by a single, intravenous injection;

iv. The trainer of the treated horse shall cause to be delivered to the State Veterinarian, no later than one hour prior to post time for the race for which the horse is entered, the following information, on a form provided by the Racing Commission:

(1) The name of the horse, racetrack name, and the date and time the furosemide was administered to the entered horse;

(2) The dosage amount of furosemide administered to the entered horse;

(3) The printed name and signature of the licensed, practicing veterinarian who administered the furosemide; and

(4) The signature of the trainer or his or her representative; and

v. Failure to administer furosemide in accordance with this paragraph may result in the horse being scratched from the race by the stewards.

4. If a horse is approved to receive Furosemide, the use of aminocaproic acid (AMICAR(R) injectable only) as an adjunct bleeder medication may be co-administered by a licensed veterinarian only when the horse receives Furosemide. Dose: AMICAR(R) injectable 10 ml (2.5 gram) I.V. four hours pre-race.

i. Veterinarians must report that the horse was co-treated with AMICAR(R) on the Furosemide medication slip.

ii. The administration of AMICAR(R), pursuant to this paragraph, is only approved through De-

ember 31, 2007.

(b) The State Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout. Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the following time periods:

1. For the first incident, the confirmed bleeder will be ineligible to race for 14 days;
2. For the second incident, the confirmed bleeder will be ineligible to race for 30 days;
3. For the third incident, the confirmed bleeder will be ineligible to race for 180 days; and
4. For the fourth incident, the confirmed bleeder will be barred from racing for its lifetime.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period. All horses on the Bleeder List who are eligible to race shall be administered furosemide before they can race. The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by (b) above. A horse may be recommended for removal from the Bleeder List only upon the direction of the licensed, practicing veterinarian, who shall certify in writing to the stewards the recommendation for removal. A horse which has been placed on a Bleeder List in another jurisdiction pursuant to these rules, shall be placed on a Bleeder List in this jurisdiction.

(d) Post race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with furosemide to control respiratory bleeding pursuant to the requirements set forth in (b) above. Post-race test results must show a detectable concentration of furosemide in the serum, plasma, or urine sample taken from a furosemide treated horse. Quantitation of furosemide in serum or plasma shall be performed and concentrations must be below the serum or plasma threshold levels authorized in N.J.A.C. 13:70-14A.1(b)14. In the event a post-race analysis of a blood sample reveals that the concentration of furosemide is at or above the permitted serum or plasma threshold levels authorized in N.J.A.C. 13:70-14A.1(b)14, or in the event that a post-race analysis of a blood or urine sample reveals no detectable concentration of furosemide, the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall be liable for the penalties as set forth in (e) below.

(e) Should the stewards determine that any person or persons have violated (d) above, they shall punish the offending party as follows:

1. A trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall receive a warning for the first violation.
2. A trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall receive a fine not to exceed \$ 500.00 for a second violation.

3. A trainer and other persons charged with responsibility including, without limitation, licensed, practicing veterinarians, shall be suspended, fined or both for a third violation.

4. Repeated violations of (d) above by a trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, for any horse under their care may subject said trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, to fine and/or suspension regardless of whether or not the same horse is involved.

(f) Notwithstanding anything to the contrary in this section or in N.J.A.C. 13:70-14A.1, no penalty shall be imposed where on the day of the race, a horse carries in its body either Phenylbutazone or Flunixin, both NSAIDs, under the following conditions:

1. The NSAID level is below the permitted serum or plasma threshold levels authorized in N.J.A.C. 13:70-14A.1(b)14, which are consistent with administration by a single intravenous injection that follows the FDA-approved dose regimen for each product(s) at least 24 hours before the post time for the race in which the horse is entered;

2. Phenylbutazone and Flunixin are not to be administered within the 24 hours before post time for the race in which the horse is entered; and

3. The presence of more than one of the approved NSAIDs or any unapproved NSAID(s) in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(g) In the event post-race testing determines that the threshold levels authorized in N.J.A.C. 13:70-14A.1(b)14 have been met or exceeded, there is evidence of more than one of the permitted NSAID(s) present or there is evidence of an unapproved NSAID, the stewards shall penalize the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, as follows, regardless of whether or not the same horse is involved:

1. First violation of N.J.A.C. 13:70-14A.9(f) - \$ 500.00 fine, loss of purse and 15 days suspension; and

2. Second or subsequent violation of N.J.A.C. 13:70-14A.9(f) - such fines, suspensions and/or other penalties allowed by this chapter.

(h) The following anti-ulcer medications may be administered up to 24 hours prior to the race in which the horse is entered: Omeprazole; Cimetidine; Ranitidine; and Sucralfate. In the event a horse tests positive for any of the anti-ulcer medications identified in this section, the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall be subject to the following penalties:

1. \$ 250.00 fine for the first violation;
2. \$ 500.00 fine and loss of purse for the second violation; and
3. Increased fine, loss of purse and license suspension as deemed appropriate by stewards for the third and subsequent violations.

(i) The following substances may be present in post-race samples as a result of possible environmental contamination from plants that are traditionally grazed or harvested as equine feed or are present from contamination during cultivation, processing, treatment, storage and transportation phases that contribute to contamination:

1. Atropine;
2. Dimethyl sulfoxide;
3. Estranediol;
4. Hydrocortisone;
5. Morphine and Metabolites;
6. Salicylic acid;
7. Scopolamine;
8. Strychnine;
9. Testosterone;
10. Theobromine; or
11. Theophylline.

(j) If a horse tests positive for one of the substances identified in (i) above, within 10 days of being notified of the positive test, the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, may request in writing a hearing before the stewards for the purpose of determining whether the positive test resulted from environmental contamination as described in (i) above. The trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall have the burden of proof at the hearing. If the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, meet their burden of proof in showing environmental contamination as described in (i) above, the stewards shall consider the environmental contamination as a mitigating circumstance in assessing a penalty.

(k) Regulatory thresholds (the concentration of the drug below which no administrative action is taken) are established for caffeine as 100 nanograms per milliliter (100 ng/mL) of serum or plasma. A positive test which exceeds the regulatory threshold will subject trainers and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, to penalties consistent with those permitted by the New Jersey Racing Commission rules.

HISTORY:

Amended by R.1988 d.244, effective June 6, 1988.

See: 20 N.J.R. 506(b), 20 N.J.R. 1207(b).

A respiratory bleeder has an additional opportunity to participate and further allows a horse that is a third time bleeder to be suspended from racing for three months rather than being barred from racing.

Amended by R.1990 d.485, effective October 1, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1716(b), 22 N.J.R. 3154(a).

Authorizes the administration of medication in assigned stall instead of detention barns; dosage levels and time requirements adopted are those recommended by the Association of Racing Commissioners International and provides for disciplinary action in the event post-race tests show excessive levels in blood of horse.

Amended by R.1990 d.576, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1233(a), 22 N.J.R. 3499(d).

Provides for the acceptance of certification of respiratory bleeders from racing commissions in other jurisdictions.

Amended by R.1991 d.263, effective May 20, 1991.

See: 23 N.J.R. 674(a), 23 N.J.R. 1684(a).

Change in text from "14 calendar days" to "10 calendar days" and from "three months" to "90 days" in (d).

Amended by R.1992 d.19, effective January 6, 1992.

See: 23 N.J.R. 2919(c), 24 N.J.R. 108(b).

Revised (a)3.

Amended by R.1994 d.129, effective March 7, 1994.

See: 25 N.J.R. 3100(a), 26 N.J.R. 1237(a).

Amended by R.1995 d.298, effective June 5, 1995.

See: 26 N.J.R. 1956(a), 27 N.J.R. 2243(b).

Amended by R.1996 d.444, effective October 7, 1996.

See: 28 N.J.R. 3054(a), 28 N.J.R. 4488(a).

Amended by R.1997 d.90, effective February 18, 1997.

See: 28 N.J.R. 5056(a), 29 N.J.R. 584(a).

In (a)3, inserted reference to observation by a licensed veterinarian on the racetrack grounds.

Petition for Rulemaking: Notice of Action on Petition for Rulemaking: Administering Medication to Respiratory Bleeders.

See: 38 N.J.R. 1881(a), 2893(b), 4762(c).

Amended by R.2006 d.223, effective June 19, 2006.

See: 38 N.J.R. 1389(a), 38 N.J.R. 2723(a).

Section was “Administering medication to respiratory bleeders; standards for the administration of phenylbutazone”. Rewrote the section.

Amended by R.2007 d.171, effective May 21, 2007.

See: 38 N.J.R. 4819(a), 39 N.J.R. 2133(a).

Added (a)4; and in the introductory paragraph of (b), deleted “as observed by the State Veterinarian” following “workout”.

Amended by R.2011 d.272, effective November 7, 2011.

See: 43 N.J.R. 727(a), 43 N.J.R. 3036(a).

Section was “Administering medication to respiratory bleeders; standards for the administration of non steroidal anti-inflammatory drugs (NSAID) and anti-ulcer medications; environmental contaminants”. In (f)1i, substituted “two” for “five” twice.

Amended by R.2014 d.163, effective November 3, 2014.

See: 46 N.J.R. 1414(a), 46 N.J.R. 2161(a).

Rewrote (d) and (f); and in (g), substituted “authorized in N.J.A.C. 13:70-14A.1(b)14 have been met or” for “set forth for the two permitted NSAID(s) were”, and deleted “two” preceding “permitted”.

CASE NOTES:

Trainer’s admission that he had administered Phenylbutazone or Flunixin to a race horse for which he was the trainer of record afforded adequate grounds for the imposition of sanctions because both substances were detected in samples of the horse’s blood taken on a day on which the horse had raced at a N.J. track, and the trainer’s claim that he had administered the drugs on the day prior to the race and that they had been detected due to an oversensitive testing process was not a defense. *Maymo v. N.J. Racing Comm’n*, OAL DKT. NO. RAC 8691-14, 2016 N.J. AGEN LEXIS 53, Initial Decision (February 3, 2016).

§ 13:70-14A.10 Breathalyzer test

Officials, jockeys, trainers and grooms shall, when directed by the State Steward, submit to a breathalyzer test and if the results thereof show a reading of more than .05 percent of alcohol in the blood, such person shall not be permitted to continue his duties. The stewards may fine or suspend any participant who records a blood alcohol reading of .05 percent or more. Any participant who records a reading above the prescribed level on more than one occasion shall be subject to expulsion, or such penalty as the stewards may deem appropriate.

CASE NOTES:

Regulation valid as reasonable under the Fourth Amendment; drug disclosure form did not violate jockey’s privacy interests; urinalysis test information use regulations must also be applied to breathalyzer test results; tests to be conducted privately. *Shoemaker v. Handel*, 619 F.Supp. 1089 (D.N.J.), affirmed 795 F.2d 1136 (3rd Cir.1986) certiorari denied 107 S.Ct. 577, 479 U.S. 986, 93 L.Ed.2d 580.

Preliminary injunction denied to jockeys who sought to halt implementation of Commission’s breathalyzer and urine test regulations, as they did not establish a likelihood of success on the merits of their unconstitutionality claim; horse racing comes within a recognized “pervasively regulated business” exception to the administrative search warrant requirement. *Shoemaker v. Handel*, 608 F.Supp. 1151 (D.N.J.1985).

§ 13:70-14A.11 Urine test

(a) No licensee or official shall use any Controlled Dangerous Substance as defined in the “New Jersey Controlled Dangerous Substance Act”, N.J.S.A. 24:21-1, et seq. or any prescription legend drug, unless such substance was obtained directly, or pursuant to a valid prescription or order from a licensed physician, while acting in the course of his professional practice. It shall be the responsibility of the official, jockey, trainer and groom to give notice to the State Steward that he is using a Controlled Dangerous Substance or prescription legend drug pursuant to a valid prescription or order from a licensed practitioner when requested.

(b) Every official, jockey, trainer and groom for any race at any licensed racetrack may be subjected to a urine test, or other non-invasive fluid test at the direction of the State Steward in a manner prescribed by the New Jersey Racing Commission. Any official, jockey, trainer or groom who fails to submit to a urine test when requested to do so by the State Steward shall be liable to the penalties provided in N.J.A.C. 13:70-31.

(c) Any official, jockey, trainer and groom who is requested to submit to a urine test shall provide the urine sample, without undue delay, to a chemical inspector of the Commission. The sample so taken shall be immediately sealed and tagged on the form provided by the Commission and the evidence of such sealing shall be indicated by the signature of the tested official, jockey, trainer or groom. The portion of the form which is provided to the laboratory for analysis shall not identify the individual official, jockey, trainer or groom by name. It shall be the obligation of the official, jockey, trainer or groom to cooperate fully with the Chemical Inspector in obtaining any sample which may be required to witness the securing of such sample.

(d) A “positive” Controlled Dangerous Substance or prescription drug result shall be reported, in writing, to the Executive Director or his or her designee. On receiving written notice from the official chemist that a specimen has been found “positive” for controlled dangerous substances or prescription legend drugs, the Executive Director or his or her designees shall proceed as follows:

1. For a licensee’s first violation, he or she shall not be allowed to participate in racing until such time as his or her condition has been professionally evaluated.

i. After such professional evaluation, if said licensee’s condition proves non-addictive and not detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing, until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee’s expense, and agrees to further testing at the direction of the Executive Director or his or her designee.

ii. After such professional evaluation in which said licensee’s condition proves addictive or detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee’s expense, and show documented proof that he or she has successfully completed a certified rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approv-

al requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee.

iii. In addition to other requirements specified in this subsection, the Racing Commission may require a licensee to submit additional proof of rehabilitation as may be required in view of the licensee's patient assessment; his or her medical, drug and/or alcoholism history including current physiological dependency on drugs and/or alcohol and the duration of the addiction or abuse; and the facts and circumstances surrounding the violation.

2. For a licensee's second violation, he or she shall be required to enroll in a certified drug rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee. Said licensee's license shall be suspended for six months or until the requirements are fulfilled, whichever is greater.

3. For a licensee's third violation, he or she shall be liable to the penalties provided in N.J.A.C. 13:70-31, including revocation of the individual's license. A licensee may apply for reinstatement after five years but such reinstatement shall be at the discretion of the Commission based upon a review of the licensee's entire record.

4. After a licensee's first violation, such additional drug tests, as are required by the Commission, may be at the licensee's expense. It shall be the licensee's responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

(e) Any information received in the process of obtaining a urine sample, including but not limited to medical information, the results of any urine test, and any reports filed as a result of attending a Supervisory Treatment Program shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the information received and/or reports of any positive results and/or reports from a Supervisory Treatment Program shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee, Counsel to the Racing Commission and the subject, except in the instance of a contested matter. In the instance of a contested matter, any information received and reports prepared shall not be disclosed without the approval of the Executive Director or his designee.

(f) Information received and reports prepared pursuant to this rule shall be stored in a locked secure area in the office of the Executive Director for a period of one year, after which time, they shall be destroyed. However, the Commission may maintain the information received and reports on individuals who have violated this rule for the purpose of recording the number of violations and the results of supervisory treatment, and for use should future violations occur.

HISTORY:

Amended by R.1985 d.602, effective December 2, 1985 (operative January 1, 1986).

See: 17 New Jersey Register 1640(a), 17 New Jersey Register 2912(a).

Substantially amended.

Amended by R.1985 d.641, effective December 16, 1985.

See: 17 New Jersey Register 2363(a), 17 New Jersey Register 2996(a).

Amended by R.1991 d.75, effective February 19, 1991.

See: 22 New Jersey Register 3451(a), 23 New Jersey Register 611(a).

New (d)1.-4., added restrictions for individuals who have tested positive for a controlled dangerous substance or prescription medication without a valid prescription.

CASE NOTES:

Regulation valid as reasonable under the Fourth Amendment; drug disclosure form did not violate jockeys' privacy interests; urinalysis test information use regulations must also be applied to breathalyzer test results; tests to be conducted privately. *Shoemaker v. Handel*, 619 F.Supp. 1089 (D.N.J.), affirmed 795 F.2d 1136 (3rd Cir.1986) certiorari denied 107 S.Ct. 577, 479 U.S. 986, 93 L.Ed.2d 580.

Preliminary injunction denied to jockeys who sought to halt implementation of Commission's breathalyzer and urine test regulations, as they did not establish a likelihood of success on the merits of their unconstitutionality claim; horse racing comes within a recognized "pervasively regulated business" exception to the administrative search warrant requirement. *Shoemaker v. Handel*, 608 F.Supp. 1151 (D.N.J.1985).

§ 13:70-14A.12 Anti-recombinant human EPO antibody testing program

(a) A determination by the Racing Commission Equine Testing Laboratory that a pre-race or post-race blood sample taken from a horse entered to start in a race pursuant to N.J.A.C. 13:70-14A.2 is positive for elevated titers of anti-recombinant human EPO antibody, as a result of post-race testing utilizing the anti-recombinant human EPO antibody test, shall result in the following actions by the Racing Commission Board of Stewards:

1. The Racing Commission State Veterinarian shall be notified of the name of the horse for placement on the Veterinarian's list pursuant to N.J.A.C. 13:70-19.36.
2. The Board of Stewards shall authorize a search of the premises occupied by the stable involved pursuant to N.J.S.A. 13:70-14A.5.
3. Unless the Board of Stewards determine otherwise as a result of a hearing requested pursuant to (a)4 below, the horse shall not be permitted to enter a race or to race until such time as the owner or trainer makes the horse available for retesting by the Racing Commission pursuant to (b) below, and the testing results are determined negative with the anti-recombinant human antibody test. In the event retesting determines that the horse is negative with the anti-recombinant human EPO antibody test, the Board of Stewards shall cause the horse to be removed from the Veterinarian's list and the horse shall be eligible to enter races and compete in races.
4. The owner and trainer of the horse shall be notified by the Board of Stewards in writing of: the initial positive test result for elevated titers of anti-recombinant human EPO antibody; that a hearing will be afforded by the Board of Stewards, following written request to them, at which hearing the owner and/or trainer of the horse can challenge the validity of the positive test results of the Racing Commission Equine Testing Laboratory; and that the horse is not permitted to race until the terms of (b) below are satisfied, unless the results of any requested hearing demonstrates to the satisfaction of the Board of Stewards that the horse was negative for elevated titers of anti-recombinant human EPO antibody as a result of the initial anti-recombinant human EPO antibody test. In the latter case, the Board of Steward's shall remove the horse from the Veterinarian's list and the horse shall be permitted to race.

(b) An owner or trainer whose horse has tested positive for elevated titers of anti-recombinant human EPO antibody may not request that its horse be retested until 21 days following the date of the initial positive test as reported by the Racing Commission's Equine Testing Laboratory. If any retest of the horse results in a Racing Commission determination that the horse is or remains positive with the anti-recombinant human EPO antibody test, the owner or trainer may not request that its horse be retested again until 21 days following the date of the last positive retest as reported by the Racing Commission's Equine Testing Laboratory. All requests after the initial positive test for the retesting of a horse shall be in writing and directed to the Board of Stewards, accompanied by a \$50.00 payment for administrative and testing costs. Following receipt of a timely request for retesting, the production of the horse at a permitted racetrack premises in this State approved by the Board of Stewards, and the receipt of the \$50.00 retesting fee, the Board of

Stewards shall direct the State Veterinarian to take a blood sample from the horse for the purpose of retesting.

(c) Any horse claimed from a race pursuant to N.J.A.C. 13:70-12, Claiming, shall have its blood tested for elevated titers of anti-recombinant human EPO antibody. The successful claimant shall have the option to void the claim should the claimed horse test positive with the anti-recombinant human EPO antibody test.

(d) A horse which tests positive with the anti-recombinant human EPO antibody test remains subject to the requirements of this rule despite being sold, otherwise transferred, or claimed where the claimant elects not to void the claim as authorized by (c) above.

(e) The split sample testing provision of N.J.A.C. 13:70-14A.4(d), which is limited to where testing is conducted on a horse's urine sample, shall not be applicable to anti-recombinant human EPO antibody testing conducted pursuant to this section.

HISTORY:

New Rule, R.2006 d.101, effective March 6, 2006.

See: 37 N.J.R. 3784(a), 38 N.J.R. 1322(a).

§ 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) The presence of Erythropoietin (Epogen, EPO), DarbEPO or other blood doping agents in the racehorse is deemed adverse to the best interests of thoroughbred racing, and adverse to the best interests of the racehorse in that such condition alters its normal physiological state. Accordingly, in addition to such substances being prohibited from being present in the body of a racehorse on race day pursuant to N.J.A.C. 13:70-14A.1 and 14A.4, and in addition to elevated titers of anti-recombinant human EPO antibodies being prohibited from being present in the body of a racehorse on race day pursuant to N.J.A.C. 13:70-14A.12, the presence of Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agents in any racehorse under the trainership of any licensed New Jersey trainer is hereby prohibited at any location and at anytime, including days where a race horse is neither entered to or scheduled to participate in a race.

(b) Racing Commission representatives may, without prior notice, appear upon off-track stabling facilities and permitted racetrack facilities subject to its jurisdiction in furtherance of out-of-competition testing, that is, for the purpose of taking blood samples from racehorses on race days (pre-race) or on non-race days to test such samples (on the same date the sample is taken, or on a subsequent date) for the presence of Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agents. Upon arrival at such premises and if present, the Racing Commission representative shall advise the facility's owner, and the trainer of the racehorse or racehorses from which blood samples are to be taken, of its purpose. Additionally, the Racing Commission State Steward may require that any New Jersey licensed trainer stabled within New Jersey, at his or her cost, produce at a permitted New Jersey racetrack (as designated by the State Steward), and within 24 hours of a State Steward request, any racehorse under his or her custody and control for out-of-competition testing. Additionally, the State Steward may require that any New Jersey licensed trainer stabled outside this State, at his or her cost, produce at a permitted New Jersey racetrack (as designated by the State Steward), and within 48 hours of a State Steward request, any racehorse under his or her custody and control (which racehorse or racehorses competed in New Jersey in the same calendar year of the request, or which racehorse was intended or is intended to compete in New Jersey in the calendar year of the request), for out-of-competition testing. The State Steward may, in his or her discretion, and for good cause shown, extend these time frames for a trainer's requested production of the horse at a permitted New Jersey racetrack. In the event of the failure of any licensed New Jersey trainer or agent thereof to timely produce a racehorse for out-of-competition testing at a permitted racetrack facility as requested by the State Steward, or in connection with the Racing Commission's appearance on a premises subject to its jurisdiction for such purpose, the penalties set forth in (e) below shall be imposed upon the trainer and

any responsible person where said failure to produce the horse is due to non-cooperation. Also, in the event of such non-production of a horse due the non-cooperation of the trainer and any other responsible person, the ineligibility restrictions as to the racehorse subject of the request for production, as set forth in (f) below, shall be imposed.

(c) In the event of a positive test for the presence of Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agent, as a result of out-of-competition testing, the following actions shall be taken by the Racing Commission Board of Stewards:

1. They shall authorize a search of the New Jersey premises occupied by the stable pursuant to N.J.A.C. 13:70-14A.5;

2. They shall cause the horse to be immediately placed on the Veterinarian's list pursuant to N.J.A.C. 13:70-19.36 (thereby rendering the horse ineligible to compete), pending the conduct of a hearing by the Board of Stewards;

3. The owner and trainer of the horse shall be notified in writing by the Board of Stewards, by personal service or by mail sent to the address listed in their respective applications on file with the Racing Commission, of the initial out-of-competition testing result and of the horse's placement on the Veterinarian's list pending the conduct of a hearing by the Board of Stewards. The writing shall further set forth, in a designated space, the date it was mailed or personally served by the Board of Stewards; and

4. The Board of Stewards shall schedule a hearing, by written notice to the trainer and any other responsible person, which hearing notice sets forth the alleged violations of the Racing Commission's rules, as well as the date and time of the hearing. The hearing notice may be incorporated into the written notice provided pursuant to (c)3 above. Where the owner of the horse is not a subject of the hearing, the owner shall be provided a copy of the notice of hearing as an interested party. The written notice of hearing shall be by personal service or by mail sent to the address listed in their respective applications on file with the Racing Commission.

(d) In the event a violation of this section is determined, following the conduct of a hearing by the Board of Stewards pursuant to (c)4 above, the trainer of the horse subject of the violation shall, within five days of the issuance of the related ruling, provide the State Steward with \$ 2,000 as reimbursement to the Racing Commission for the administrative and testing costs associated with the initial positive test. In the event the positive test result finding is appealed, and in the event such appeal results in a final determination that no violation was committed, the \$ 2,000 shall then be returned to the trainer.

(e) In the event a violation of this section is determined, following the conduct of a hearing by the Board of Stewards pursuant to (c)4 above, the license of the trainer, as the absolute insurer of the horse pursuant to N.J.A.C. 13:70-14A.6, and any other responsible person, shall be suspended by the Board of Stewards for 10 years for a first violation. In addition, said trainer and any other responsible person shall be fined \$ 50,000 for a first violation, and shall be prohibited from appearing upon or at any premises subject to the Racing Commission's jurisdiction for the 10-

year license suspension period. For a second violation, the penalty of license revocation shall be imposed. A person whose license has been revoked, as a result of a violation of this section, shall permanently be prohibited from licensure in any capacity and from appearing upon or at any premises subject to the jurisdiction of the Racing Commission. Where a violation of this section is determined, the ineligibility period as to the horse, as set forth in (f) below, shall also be imposed by the Board of Stewards. Such ineligibility period shall be calculated to begin running on the date the horse was placed on the Veterinarian's list pursuant to (c)2 above. Where no violation is determined, as a result of the conduct of a hearing by the Board of Stewards, the horse shall be promptly removed from the Veterinarian's list and shall then be eligible to compete in racing.

(f) In the event a violation of this section is determined, following the conduct of a hearing by the Board of Stewards pursuant to (c)4 above, a horse determined to test positive for the presence of Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agent shall be ineligible to compete in racing in this State for a period of 120 days. Following said 120-day period of ineligibility, the horse which tested positive shall continue to be ineligible to compete in racing in this State until: following a written request to the Racing Commission State Steward by the owner or trainer of the horse and the production of that horse for testing (at cost to the requesting party and at a location determined by the State Steward) accompanied by a \$ 2,000 payment for administrative and testing costs payable to the Racing Commission, the horse is determined by the Racing Commission to test negative for the presence of Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agents; and said horse is determined by the Racing Commission to test negative for elevated titers of anti-recombinant human EPO antibody, pursuant to the testing methodology set forth at N.J.A.C. 13:70-14A.12. Where such testing results in a determination that the horse either tests positive for presence of Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agent, or for elevated titers of anti-recombinant human EPO antibody, the owner or trainer may not request that the horse be retested until 21 days following the date of the last positive retest as reported to the Racing Commission by the Racing Commission's Equine Testing Laboratory. In the event of any such retest, and subject to payment of the requisite administrative and testing costs (that is, \$ 2,000) to the Racing Commission, the horse shall be retested for the presence of Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agents, and for elevated titers of anti-recombinant human EPO antibody.

(g) A horse which tests positive for the presence of Erythropoietin (Epogen, EPO), DarbEPO or other blood doping agent, as a result of out-of-competition testing, remains subject to the requirements of (f) above despite its being sold, or otherwise transferred.

(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) Nothing contained in this section shall be construed to disallow the Racing Commission to conduct post-race blood testing (that is, sampling of a horse's blood on race day following the race, for testing on that same date or on a subsequent date) for Erythropoietin (Epogen, EPO), DarbEPO, or other blood doping agents, pursuant to post-race testing otherwise authorized by this chapter. See N.J.A.C. 13:70-14A.4. In the event of a positive test for the presence of Erythro-

poietin (Epogen, EPO), DarbEPO, or other blood doping agent, as a result of post-race testing, the procedures set forth in (c) above, as well as the provisions of (d) through (f) above, shall apply and the penalties, testing costs and horse ineligibility criteria set forth in this section shall therefore be imposed. In the event of such a positive, determined as a result of post-race testing, any purse won by the offending horse shall be forfeited pursuant to N.J.A.C. 13:70-14A.7.

HISTORY:

New Rule, R.2007 d.329, effective October 15, 2007.

See: 39 N.J.R. 2593(a), 39 N.J.R. 4412(a).

§ 13:70-14A.14 Post-race blood gas testing program

(a) An excess level of total carbon dioxide (TCO₂) in the race horse is deemed adverse to the best interests of thoroughbred racing, and adverse to the best interests of the horse in that such condition alters its normal physiological state. Accordingly, a State Veterinarian representing the Commission may obtain blood samples in compliance with post-race testing provisions of N.J.A.C. 13:70-14A.4 and this section, from the horse for the purpose of the testing of said samples by the Racing Commission laboratory for a TCO₂ level on a clinical auto analyzer that applies an ion selective electrode method (ISE) for measuring TCO₂ in blood. Where the TCO₂ level, based upon such testing, equals or exceeds 37 or more millimoles per liter (37 mmole/L), the stewards shall order the relief authorized pursuant to (b) below.

(b) Where the TCO₂ level in a horse is determined to equal or exceed the level set forth in (a) above, and it is not determined that such a TCO₂ level is physiologically normal for that particular horse pursuant to (c) below, the stewards shall order the following relief:

1. The trainer, as the absolute insurer of the horse responsible for the condition of a horse within his or her care and custody pursuant to N.J.A.C. 13:70-14A.6, shall for a first violation have his or her license suspended for a 75-day period, be ordered to pay a \$ 1,000 fine and be denied the privileges of all grounds subject to the jurisdiction of the Commission during the suspension period. For a second violation, the license of the trainer shall be ordered suspended for a 180-day period, a \$ 2,500 fine shall be ordered and the trainer shall be denied the privileges of all grounds subject to the jurisdiction of the Commission during the suspension period. For a third or subsequent violation, the license of the trainer shall be ordered suspended for a minimum of one year to a maximum of licensure revocation, a \$ 5,000 fine shall be ordered and the trainer shall be denied the privileges of all grounds subject to the jurisdiction of the Commission during the suspension period. The licensure suspension aspect of these penalties shall be increased by a minimum of two years where evidence independent of the testing demonstrates that the excessive TCO₂ level of the horse resulted from the administration of a drug or substance foreign to the horse in violation of N.J.A.C. 13:70-14A.1 and that such foreign substance was administered nasogastrically or orally, using a tubing device, jug or by any intravenous means;

2. In addition to the liability of the trainer as set forth in (b)1 above, any additional persons responsible shall be subject to the penalties set forth in (b)1 above;

3. Disqualification and denial of purse with redistribution of any purse money due, pursuant to N.J.A.C. 13:70-14A.7; and

4. Pre-race guarded quarantine pursuant to N.J.A.C. 13:70-14A.15.

(c) If the level of TCO₂ is determined to equal or exceed those set forth in (a) above, and the licensed owner or trainer of that horse contends in writing to the stewards within three calendar days of notification of the results that such a level is physiologically normal for the particular horse, said licensee may by such writing request that the horse be held in guarded quarantine. In

the event so requested, and in the event the requesting licensee satisfies its burden of producing the horse for such purpose, the track association shall make such guarded quarantine available, for a period of time to be determined by the stewards but in no event more than 72 hours, at the sole expense of the licensee requesting same. In the event the requesting licensee fails to timely request guarded quarantine or fails to produce the horse for such purpose, the Commission's post-race TCO<2> testing results for the horse shall be final and conclusive. During any guarded quarantine, the horse shall be re-tested periodically and, although the horse may not race during such quarantine period, it may be exercised and trained at times prescribed by the track association and consistent with the ability to monitor the horse, take blood samples from the horse and test those blood samples of said horse. If the stewards are satisfied, on the basis of the evident facts, the quarantine and the testing of the horse's blood during the quarantine period utilizing the Clinical Auto Analyzer, that the level of TCO<2> set forth in (a) above is physiologically normal for that particular horse, the stewards shall not order the relief set forth in (b) above and the horse shall be permitted to compete. In such case, the stewards in their discretion may, at the sole expense of the track association, require that the horse re-establish that such TCO<2> level is physiologically normal to it pursuant to the quarantine procedure set forth in this subsection but no sooner than 45 days after the last quarantine period for the purpose of such re-establishment.

(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<2> testing methodology.

HISTORY:

New Rule, R.2007 d.330, effective October 15, 2007.

See: 39 N.J.R. 2596(a), 39 N.J.R. 4415(a).

§ 13:70-14A.15 Post-race blood gas testing program; pre-race guarded quarantine

(a) Where a trainer, during any 12-month period, has had any single horse under his or her custody, care and control test equal to or in excess of the total carbon dioxide level (TCO<2>) set forth in N.J.A.C. 13:70-14A.14(a), and where the level of TCO<2> has not been determined as physiologically normal for the horse in such instance pursuant to N.J.A.C. 13:70-14A.14(c), that horse subsequently scheduled to participate in a race under the custody, care and control of said trainer shall be placed under pre-race guarded quarantine. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the trainer, for a length of time to be determined by the stewards but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected horse for six months following the date of the order of quarantine, regardless of whether the horse is transferred to a new bona fide trainer.

(b) Where a trainer, during any 12-month period, has had any horse or horses under his or her custody, care and control test equal to or in excess of TCO<2> level set forth in N.J.A.C. 13:70-14A.14 on two occasions, and where the said level of TCO<2> has not been determined as physiologically normal for the horse in either of such instance, all horses subsequently scheduled to participate in a race under the custody, care and control of that trainer shall be placed under pre-race guarded quarantine. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the trainer, for a length of time to be determined by the stewards but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected trainer for eight months following the date of the second order of quarantine of a horse or horses under his or her custody, care and control. However, if during the eight-month period any additional horse under the custody, care and control of the trainer is determined to have an excessive TCO<2> level in accord with N.J.A.C. 13:70-14A.14, and where the level of TCO<2> has not been determined as physiologically normal for the horse, the stewards shall order that the eight-month pre-race guarded quarantine period as to all of the trainer's horses be extended for a length of time which they deem appropriate. Any horses under the custody, care and control of the trainer at the time the trainer experienced the excessive TCO<2> level, which are transferred to a new bona fide trainer (with the exception of the particular horse or horses which experienced the excessive TCO<2> level), shall not be subject to such pre-race quarantine once under the custody, care and control of the new trainer. However, the trainer whose horse actually experienced the excessive TCO<2> level who is subject of the pre-race quarantine order for all of his or her horses shall be required to have all of his or her horses submit to pre-race quarantine for the period ordered, regardless of when said trainer acquired or acquires his or her horses, which pre-race quarantine shall not be imposed at the same time the trainer is serving the license suspension imposed pursuant to N.J.A.C. 13:70-14A.14(b)1.

(c) Where a single horse, during any 12-month period, is determined to have an excessive TCO<2> level in accord with N.J.A.C. 13:70-14A.14, and where the level of TCO<2> has not been determined as physiologically normal for the horse, the horse shall be placed under pre-race guarded quarantine even where the horse has been transferred to a new trainer. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the current trainer, for a length of time to be determined by the stewards but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected horse for six months following the date of the order of quarantine. However, where during the pendency of such six-month period the horse is under the custody, care and control of the new trainer and the horse is again determined to exhibit an excessive TCO<2> level in accord with N.J.A.C. 13:70-14A.14, and where the level of TCO<2> has not been determined as physiologically normal for said horse, the stewards shall order that the six-month pre-race guarded quarantine period for the horse be extended for a length of time which they deem appropriate. Where such an event, during any 12-month period, constitutes the second incident of any horse or horses under the custody, care and control of the current trainer of said horse exhibiting an excessive TCO<2> level in accord with the procedures set forth in N.J.A.C. 13:70-14A.14, the provisions of (b) above shall apply as to that current trainer.

HISTORY:

New Rule, R.2007 d.330, effective October 15, 2007.

See: 39 N.J.R. 2596(a), 39 N.J.R. 4415(a).

§ 13:70-14A.16 Post-race blood gas testing program; punishment for failure to cooperate

In the event any owner, trainer, licensed representative of same, or any person subject to the jurisdiction of the Racing Commission, fails to cooperate in connection with the blood gas testing program authorized pursuant to N.J.A.C. 13:70-14A.14, or with regard to any procedures set forth in N.J.A.C. 13:70-14A.4(a) and (b), or otherwise set forth in or implemented pursuant to N.J.A.C. 13:70-14A.14 or 14A.15, in addition to ordering the relief set forth in N.J.A.C. 13:70-14A.14, the stewards may, consistent with this chapter, impose fines or suspensions, or both, on the non-cooperating person. In determining the length of such suspension or amount of the fine, the stewards may consider prior violations of N.J.A.C. 13:70-14A.14, 14A.15, or this section.

HISTORY:

New Rule, R.2007 d.330, effective October 15, 2007.

See: 39 N.J.R. 2596(a), 39 N.J.R. 4415(a).

§ 13:70-14A.17 Anabolic steroids

(a) The administration of anabolic steroids to horses that race shall be a prohibited practice except as authorized in (c) below.

(b) Any horse entered to start at a permitted race meet may be subjected to a blood and urine test in order to identify the presence and/or levels of anabolic steroids.

(c) Test results identifying the presence of boldenone, nandrolone, and testosterone shall not constitute a violation of this section if the level of these permitted anabolic steroids test below the following threshold levels in blood plasma:

Boldenone - 200 picograms/milliliter (200 pg/mL);

Nandrolone - 200 picograms/milliliter (200 pg/mL);

Intact Male Horses: 500 picograms/milliliter (500 pg/mL);

All Other Horses: 200 picograms/milliliter (200 pg/mL);

Testosterone -

Intact Male Horses: 2,000 picograms/milliliter (2,000 pg/mL);

All Other Horses: 200 picograms/milliliter (200 pg/mL).

For the purposes of this section, "intact male horse" shall mean a male horse that has not been gelded.

(d) Any blood samples containing one of the three anabolic steroids listed in (c) above that quantitatively measures at or above the threshold levels shall constitute a violation of this section. Any samples identifying the presence of more than one of the three permitted anabolic steroids shall constitute a violation of this section regardless of the threshold levels identified in the sample. Any samples identifying the presence of one of the three permitted anabolic steroids, even if it tests below the threshold level, shall constitute a violation of this section if the samples also indicate the presence of any other anabolic steroid.

(e) The split sample testing procedures set forth in N.J.A.C. 13:70-14A.4 in connection with urine samples shall be extended to apply to blood and/or urine samples taken in connection with testing for anabolic steroids.

(f) The trainer is the absolute insurer of the condition of all horses within his or her care and custody. For a first violation of this section, the trainer's license shall be suspended for a 45-day period, he or she shall be ordered to pay an \$ 1,000 fine and be denied the privileges of all grounds

subject to the jurisdiction of the Commission during the suspension period. For a second violation of this section, the trainer's license shall be suspended for a 90-day period, he or she shall be ordered to pay a \$ 2,500 fine and be denied the privileges of all grounds subject to the jurisdiction of the Commission during the suspension period. For a third violation of this section, the trainer's license shall be permanently revoked and he or she shall be permanently denied the privileges of all grounds subject to the jurisdiction of the Commission.

(g) In addition to the liability of the trainer, any person licensed in any capacity by the Commission who is involved in the administration of anabolic steroids to a horse who tests in violation to this section shall be subject to penalties up to or equal to the penalties set forth in (f) above for trainers. Persons not licensed by the Commission who have been involved in the administration of anabolic steroids to a horse who tests in violation of this section shall be subject to penalties as determined by the Commission.

(h) Upon determining that a violation of this section occurred, the tested horse shall be disqualified from the race and denied the purse money, which shall be redistributed in accordance with N.J.A.C. 13:70-14A.7(b). The horse shall be declared ineligible to compete in any race in New Jersey for a period of at least 30 days after the date upon which the samples violating this section were taken. After the 30-day disqualification has been completed, no horse shall be allowed to enter a race or race until such time as the owner or trainer makes the horse available to the Commission for retesting and the samples taken are in compliance with this section. The trainer or owner who submits the horse for retesting shall bear all costs, as determined by the Executive Director, that are related to the collection and testing of the samples taken.

(i) The Commission shall commence testing for anabolic steroids pursuant to this section April 19, 2010. In recognition of the amount of time that horsemen may need to "wash out" their horses in order to return their metabolisms to the range of normal, the imposition of the penalties set forth in (f) and (g) above will begin on August 18, 2010, with the following exception. Any horse which tests in violation of the terms of this section between April 19, 2010 and August 17, 2010, shall be disqualified from the race and denied the purse money, which shall be redistributed consistent with N.J.A.C. 13:70-14A.7(b). Consistent with (h) above, a horse that tests in violation of this section during the "wash out" period, shall be declared ineligible to compete in any race in New Jersey for a period of at least 30 days after the date upon which the samples were taken. After the 30-day disqualification has been completed, no horse shall be allowed to enter a race until such time as the owner or trainer makes the horse available to the Commission for retesting and the samples taken are in compliance with this section. The trainer or owner who submits the horse for retesting shall bear all costs, as determined by the Executive Director, that are related to the collection and testing of the samples taken.

(j) The trainer of a horse that was claimed outside of the State of New Jersey or purchased in a private sale in any state may request that the claimed horse be tested for the presence of anabolic steroids prior to entering that horse to race in New Jersey. The trainer who requests such testing shall bear all costs, as determined by the Executive Director, that are related to the collection and testing of the blood sample consistent with (h) and (i) above. A horse that tests in violation of this section shall be declared ineligible to compete in any race in New Jersey for a period of at least

30 days after the date upon which the samples were taken. After the 30-day disqualification has been completed, the horse shall not be allowed to compete until such time as the trainer makes the horse available to the Commission for retesting and the samples taken are in compliance with this section. Any trainer who fails to request this testing prior to entering a horse claimed outside of the State of New Jersey or purchased in a private sale to race and the horse tests positive for the presence of anabolic steroids in violation of this section, the trainer shall be liable for all penalties set forth in this section.

HISTORY:

New Rule, R.2010 d.058, effective April 19, 2010.

See: 41 N.J.R. 3382(a), 42 N.J.R. 798(a).

Administrative correction.

See: 43 N.J.R. 1205(a).

Amended by R.2014 d.163, effective November 3, 2014.

See: 46 N.J.R. 1414(a), 46 N.J.R. 2161(a).

Rewrote (c); and in (d), substituted “three” for “four” throughout, inserted “at or” and the second occurrence of “threshold”, and deleted “at or” following “tests”