

LAW AND PUBLIC SAFETY

NEW JERSEY RACING COMMISSION

Horse Racing

Medication and Testing Procedures

Proposed Amendment: N.J.A.C. 13:70-14A.9

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director

Authority: N.J.S.A. 5:5-30

Calendar Reference: See Summary below for explanation of exception to
calendar requirement

Proposal Number: PRN 2006-70.

Submit written comments by May 19, 2006 to:

Michael Vukcevich, Deputy Director
Department Of Law And Public Safety
New Jersey Racing Commission
P.O. Box 088
Trenton, New Jersey 08625-0088

The agency proposal follows:

Summary

N.J.A.C. 13:70-14A Medication and Testing Procedures sets forth the rules of the New Jersey Racing Commission concerning the administration of medication and foreign substances to thoroughbred race horses. The proposed amendment to N.J.A.C. 13:70-14A.9 establishes new conditions for the administration of furosemide used to treat respiratory bleeding in race horses. The use of furosemide as a diuretic medication for the treatment of

horses, diagnosed with Exercised Induced Pulmonary Hemorrhage (EIPH), has been the accepted practice in veterinary medicine for 30 years. The proposed amendment changes the procedure for allowing a horse to be administered furosemide by allowing the trainer and licensed, practicing veterinarian to determine that it is in the horse's best interest to be placed on the "Furosemide List" and to provide the proper notice to the State Veterinarian, changes the threshold level for furosemide that determines a rule violation, requires that furosemide must be found in the post-race test sample, and establishes procedures associated with requesting that the horse be removed from the Furosemide List including submitting a written request signed by the trainer and licensed, practicing veterinarian. The time and way for administering the furosemide remain unchanged, but as proposed, the dosage may not exceed 500 milligrams or be less than 150 milligrams. The Racing Commission will monitor compliance by continuing its quantitative testing program. The threshold level for furosemide is increased to 100 nanograms per milliliter of serum or plasma. Penalties associated with non-compliance with the furosemide rule will change to the extent that the penalties will be imposed for the new threshold levels. The proposed amendment also explains the conditions that are required for a horse to be placed on and removed from the "Bleeder List."

The proposed amendment also establishes conditions for the use of one of two non-steroidal anti-inflammatory drugs (NSAID), Phenylbutazone (that is, Butazolidin) or Flunixin (that is, Banamine[®]), up to 24 hours pre-race

and establishes a threshold level for non-compliance and penalties resulting from a violation. Also included in the proposed amendment is the establishment of conditions for the use of certain anti-ulcer medications and penalties resulting from a positive for any of the anti-ulcer medications. Further, certain identified substances are recognized as substances that 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. Within 10 days of being notified of a positive test for one of the identified substances, the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, may request a hearing before the stewards, at which the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, will have the burden of proof to show environmental contamination. If the trainer and other persons charged with responsibility, including, without limitation, licensed practicing veterinarians, meet his or her burden of proof, the stewards shall consider the environmental contamination as a mitigating circumstance in assessing a penalty. The proposed amendment also establishes a regulatory threshold for caffeine.

The Racing Commission has provided a 60-day comment period on this notice of proposal. Therefore, this proposal is excepted from the rulemaking

calendar requirement in accordance with N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment, by establishing changes in the conditions for the use of specific therapeutic substances in the horse, will have a positive social impact because simplifying the procedures for veterinarians and trainers to add a horse to the Furosemide List and treat the horse for Exercise Induced Pulmonary Hemorrhage (EIPH) makes it easier for these racing participants to prepare their horses for racing and provides notification to the betting public that a horse is racing on furosemide.

Economic Impact

The proposed amendment is expected to have a positive economic impact. Simplifying the conditions for the use of these therapeutic substances makes it cost effective for the equine veterinarian, trainer and owner of a race horse because the costs associated with the time and expense of the veterinary procedure of endoscopic analysis is ended as a requirement to receive furosemide.

Federal Standards Statement

A Federal Standards analysis is not necessary as there are no Federal standards or requirements applicable to the proposed amendment. The Racing Commission proposes this amendment pursuant to the rulemaking authority set forth in N.J.S.A. 5:5-30.

Jobs Impact

The proposed amendment will not result in the generation or loss of

jobs. The proposed amendment imposes additional job responsibilities on the Racing Commission staff and its equine testing laboratory. The Racing Commission believes these additional job responsibilities can be assumed by its existing staff, without the need to hire additional personnel.

Agriculture Industry Impact

The proposed amendment will have no impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

The proposed amendment does not impose any reporting or recordkeeping requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. The proposed amendment does however impose compliance responsibilities on racehorse veterinarians, owners and trainers, some of whom operate as small businesses, as discussed in the Summary above. Conditions are established that require timely filing procedures and production of medication slips associated with the use of these medications in horses. Costs are discussed in the Economic Impact statement. The proposed amendment, in order to achieve this purpose, must be applied uniformly to all parties. For this reason, the proposed amendment does not provide a differing or lesser compliance standard based upon business size. No additional professional services are required for compliance.

Smart Growth Impact

The proposed amendment will have no impact on the achievement of

smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

13:70-14A.9 Administering medication to respiratory bleeders; standards for the administration of [phenylbutazone] 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 [in animals that] under the following conditions:

1. At any time have been charted to have bled in the “Daily Racing Form”; or

2. At any time have received a comprehensive cardiopulmonary examination at an approved equine hospital or school of veterinary medicine and as a result thereof, are certified as bleeders and therefore are in need of medication in order to race; or

3. Are observed in New Jersey to bleed during the running or driving of a workout or race at a duly licensed New Jersey racetrack, or in the detention barn following such workout or race by a State or Associate State Veterinarian or by a licenced veterinarian at any time on the grounds of a racetrack and have been placed on a veterinarian’s list for at least 10 days; or

4. Have been certified as respiratory bleeders in other racing

jurisdictions by a veterinarian employed by the jurisdiction's regulatory body or have been placed on another racing jurisdiction's respiratory bleeder's list.

(b) All horses that are placed on the veterinarian's list shall be required to be treated by a licensed practicing veterinarian in the stall assigned to that horse on the grounds of the Racing Association or in the receiving barn. During this period the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. Furosemide, a diuretic medication that is intended to control respiratory bleeding, shall be administered by a licensed practicing veterinarian and shall be limited to an intravenous dose of 0.50 milligrams (mg) per pound of body weight (1.00 mg per kilogram) or 500 milligrams (10 cubic centimeters (cc)) in a 1,000 pound horse at least four hours prior to race time. Said practicing veterinarian shall make daily reports of all said treatments and file said reports with the State Veterinarian each day.]

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 milligram per horse (500 mg) nor be less than 150 milligram 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.

(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 as observed by the State Veterinarian. Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the

following time period: 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 its lifetime. 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.

[(c)] (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 may not exceed 100

nanograms of furosemide per milliliter of serum or plasma. In the event a post-race analysis of a blood sample reveals that the concentration of furosemide exceeds a level of [50] 100 nanograms per milliliter of serum or plasma ([50] 100 ng/mL), or in the event that a post-race analysis of a blood or urine sample reveals no detectable concentration of furosemide, the trainer and [/or the] other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall be liable to the penalties as set forth in (e) below.

[(d) Any horse having bled in any jurisdiction shall be placed on the veterinarian's list for bleeding and must remain on the list for 10 calendar days: a second time bleeder must remain on the respiratory list for 30 days; and a third time bleeder must remain on the respiratory list for 90 days. A bleeder in the above categories is automatically released from the veterinarian's list after these dates: however, a horse which evidences respiratory bleeding a fourth time is barred from further racing in New Jersey.]

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

1. A trainer and [/or] other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall receive a warning for the first [time a horse in his or her care shall show a test result in excess of 50 nanograms per milliliter of plasma] violation.

2. A trainer and [/or] other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall receive a fine not to exceed \$500.00 for a second [time the same horse shows a test result in excess of 50 nanograms per milliliter of plasma] violation.

3. [Should the same horse show a test result in excess of 50 nanograms per milliliter of plasma for a third time the] A trainer and [/or] 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 [(c)] (d) above by a trainer and [/or] other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, for any horse under their care may subject said trainer and [/or] 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 herein 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 [phenylbutazone, as a result of an administration prior to the day of the race, in a quantity of 2.5 micrograms per milliliter or less as determined by post-race testing.] either Phenylbutazone or Flunixin, both NSAID(s), under the following conditions:

1. The NSAID level does not exceed the following permitted serum or plasma threshold concentrations 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:

i. Phenylbutazone (or its metabolite oxphenylbutazone) - five micrograms per milliliter (five mg/ml);

ii. Flunixin -20 nanograms per milliliter (20 ng/mL);

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 two approved NSAID 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 NSAID shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

[(g) Should the judges or stewards, as appropriate, determine that any trainer or persons have violated (f) above, as a result of an administration prior to the day of the race, they shall punish the offending party as follows.

1. In the event post-race testing determines that any horse

carried in its body on the day of the race phenylbutazone in a quantity above 2.5 micrograms per milliliter up to and including 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

i. First Violation of N.J.A.C. 13:70-14A9(g)1 - \$250.00 fine;

ii. Second violation of N.J.A.C. 13:70-14A.9(g)1 - \$500.00 fine and seven days suspension;

iii. Third violation of N.J.A.C. 13:70-14a.9(G)1 - \$500.00 fine, loss of any purse and suspension; and

iv. Fourth or subsequent violation of N.J.A.C. 13:70-14A.9(g)1 - such fines, suspensions and/or other penalties allowed by this chapter.

2. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in quantities exceeding 3.0 micrograms per milliliter up to but not including 5.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

i. First violation of N.J.A.C. 13:70-14A.9(g) 2 - \$500.00 fine;

ii. Second violation of N.J.A.C. 13:70-14A.9(g) 2 - \$500.00 fine, loss of any purse and 15 days suspensions:

iii. Third violation of N.J.A.C. 13:70-14A.9(g) 2 - \$500.00 fine, loss of any purse and suspension; and

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

[v.] (g) In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity equal to or exceeding 5.0 micrograms per milliliter the threshold levels set forth for the two permitted NSAID(s) were exceeded, there is evidence of more than one of the two permitted NSAID(s) present or there is evidence of an unapproved NSAID the stewards shall penalize the trainer and [any other responsible party shall be subject to the following penalties] other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, as follows regardless of whether or not the same horse is involved:

[i.] 1. First violation of N.J.A.C. 13:70-14A.9(g)[3] (f)- \$500.00 fine, loss of purse and 15 days suspension; and

[ii.] 2. Second or subsequent violation of N.J.A.C. 13:70-14A.9(g)[3] (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 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.