

**LAW AND PUBLIC SAFETY**

**NEW JERSEY RACING COMMISSION**

**Harness Racing**

**Anabolic Steroids**

**Proposed New Rule: N.J.A.C. 13:71-23.16**

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 2009-287

Submit written comments by November 20, 2009 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. 13:71-23, Medication and Testing Procedures, sets forth the rules of the New Jersey Racing Commission (Commission) concerning the administration of medication, drugs and foreign substances to standardbred race horses. The proposed new rule, N.J.A.C. 13:71-23.16, establishes a testing program for the presence of androgenic-anabolic steroids in these horses. An identical new rule,

which establishes a testing program for the presence of androgenic-anabolic steroids in thoroughbred race horses, is simultaneously being proposed at N.J.A.C. 13:70-14A.17.

Androgenic-anabolic steroids (anabolic steroids) are substances related to the hormone testosterone that increase muscle size, strength and promote the development of other masculine characteristics. Random population sampling of racing and non-racing horses in several states has indicated that exogenous anabolic steroid use has been commonplace at racetracks, training centers and breeding farms. Strict regulation is both necessary and warranted as the administration of these substances can induce uncontrolled behavior in horses such as biting, kicking and aggressiveness toward horses and humans who come into contact with them. It has also been reported that the administration of anabolic steroids has caused stallion-like behavior in some female horses. The health and safety issues caused by steroid use clearly establish the necessity of testing and regulation.

The proposed new rule prohibits the administration of anabolic steroids to standardbred race horses except for the four permitted anabolic steroids under the circumstances set forth in subsection (c) of the proposed rule. The trainer of any horse who tests positive for the presence of these steroids shall be subject to the penalties enumerated in subsection (f) of the rule. In addition to the liability of the trainer, subsection (g) provides that any person licensed in any capacity by the Commission who is involved in the administration of anabolic steroids to a

horse which tests in violation of this rule shall be subject to penalties up to or equal to the penalties enumerated in subsection (f) for trainers. Subsection (g) also provides that 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 rule shall be subject to penalties as determined by the Commission.

Notwithstanding the foregoing, subsection (c) provides that the presence of residues of one of the four anabolic steroids approved for use in horses, boldenone, nandrolone, stanozolol and testosterone, in the blood plasma shall not constitute a violation of this rule if the level of these anabolic steroids tests at or below 200 picograms/milliliter for fillies, mares and geldings. For intact male horses which have not been gelded, the presence of residues of boldenone and stanozolol in the blood plasma shall not constitute a violation of this rule if the level of these anabolic steroids tests at or below 200 picograms/milliliter, nandrolone tests at or below 500 picograms/milliliter and testosterone tests at or below 2000 picograms/milliliter. The use of one of these four anabolic steroids is permitted in all horses, to the extent that residues do not test above the threshold established by the rule, because it is well-established that each of these steroids can provide recognized therapeutic benefits to the horse. The threshold levels established in this rule are able to clearly distinguish between endogenous and exogenously-administered anabolics.

It is important to note, however, that pursuant to subsection (d), it shall be a violation of this rule if a horse testing below the threshold level for one of the

four permitted anabolic steroids listed in subsection (c) also tests positive, regardless of level, for the presence of any of these other permitted anabolic steroids. It would also constitute a violation of this rule if in addition to testing at or below the threshold level for one of the four permitted anabolic steroids, the sample also indicates the presence of any prohibited steroid.

Subsection (e) of the proposed rule extends the split sample testing procedures set forth in N.J.A.C. 13:71-23.4 for urine samples to apply to blood samples taken in connection with testing for anabolic steroids. When the initial split sample testing regulation was proposed, experts recommended that such testing be restricted to urine specimens due to the limited volume of residual blood remaining for split sample testing. However, with the initiation of threshold testing associated with blood and the development of more sensitive testing methodologies that use smaller sample volumes, split sample testing of blood for anabolic steroids is now possible. Therefore, split sample testing will be permitted, consistent with the provisions of N.J.A.C. 13:71-23.4. These provisions provide for the appropriate handling of the sample, establish a time frame for requesting a split sample, specify the cost of split sample testing and identify laboratories that are authorized to provide this service.

Subsection (f) of the proposed new rule establishes penalties for violation of this rule by trainers, who are required to be the absolute insurer of the condition of all horses within their care and custody. For a first violation, the trainer's

license shall be suspended for a 45-day period, the trainer shall 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 of this rule, 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 rule, 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 .

In addition to the penalties mandated for trainers, subsection (g) of the proposed rule imposes liability on any person, whether licensed by the Commission or not, involved in the administration of anabolic steroids to a race horse in violation of this rule. Persons licensed by the Commission, who are determined to have violated this rule, may receive penalties up to or equal to the penalties enumerated in subsection (f) for trainers. Persons not licensed by the Commission who have acted in violation of this rule shall be subject to penalties as determined by the Commission.

Subsections (h) and (i) of the proposed new rule mandate in all cases that the race horse who tested in violation to this rule shall be disqualified and any purse money won shall be returned and redistributed in accordance with N.J.A.C. 13:71-23.7(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 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 rule. 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.

Subsection (j) of the proposed new rule permits the trainer of any horse claimed outside the State of New Jersey or purchased in a private sale in any state to request at any time, including during the 120-day “wash out” period, that the horse be tested by the New Jersey Racing Commission for the presence of anabolic steroids prior to entering that horse to race in this State. Any trainer who requests this testing shall bear all costs, as determined by the Executive Director, that are related to the collection and testing of the samples. Consistent with subsections (h) and (i), a horse that tests in violation of the proposed rules even when the testing is requested by the trainer, 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 enter a race until such time as the trainer makes the horse available to the Commission for retesting and the samples taken are in compliance with this proposed rule. Any trainer who fails to request this testing prior to entering the horse to race shall be liable for all penalties set forth herein if the horse tests positive for the presence of anabolic steroids in violation of this rule.

The regulation of anabolic steroids, which have been routinely used and abused in horse racing for many years, was not possible because of inadequate research data, cost of testing and the inability of racing to admit to any long term adverse effects of anabolic steroids have on horses. To date, these issues have been thoroughly examined and regulation of the use of anabolic steroids in racing horses is reliable, feasible and warranted.

In recognition of the past routine use of anabolic steroids in race horses, industry experts recommend an 120-day "wash out" period in which the administration of anabolic steroids is ceased to allow the horse to return to a steroid-free condition and to ensure that the levels of anabolic steroids in the body of a horse on race day do not violate the proposed rule. Subsection (i) of the proposed rule makes provisions for this "wash out" period. Testing for anabolic steroids will begin upon adoption of the new rules. However, in recognition of the

amount of time that horsemen may need to return their horses' metabolisms to the range of normal, subsection (i) provides that the Commission's imposition of the penalties set forth in subsections (f) and (g) will begin on the 121<sup>st</sup> day after the effective date of the adoption of the proposed rule with one exception. Any horse who tests in violation of the terms of this rule as a result of a sample taken between the date of adoption and the end of the 120-day "wash out" period will be disqualified from the race and denied the purse money, which shall be redistributed consistent with N.J.A.C. 13:71-23.7(b).

In addition, pursuant to subsections (h) and (i), a horse that tests in violation of this rule 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 rule. 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.

The Racing Commission has provided for a 60-day comment period on this notice of proposal; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this proposal is excepted from the rulemaking calendar requirements.

### **Social Impact**



The proposed new rule will have a positive social impact. The presence of anabolic steroids in horses who race is considered by the Racing Commission as adverse to the best interest of the race horse in that such condition alters its normal physiological state. The proposed rule will establish threshold levels for stanozolol, nandrolone, boldenone and testosterone, and testing above these levels shall constitute a violation of this rule.

The penalties authorized by this rule will have a positive deterrent effect on the use of anabolic steroids and decrease the number of horses that compete in pari-mutuel races with anabolic steroids in their systems. This decrease will be positive as it will help promote racing by ensuring an added fairness that will benefit those who wager. Thus, the Commission believes that the regulation of anabolic steroids will promote public confidence in the sport and may result in an increase in racetrack attendance and wagering.

### **Economic Impact**

It is anticipated that the proposed new rule will have a limited but significant impact on horsemen found to be in violation thereof. The rule imposes significant, but warranted, penalties which include a 45-day suspension and \$1,000 fine for the first violation, a 90-day suspension and \$2,500 fine for the second violation and license revocation for the third violation. These penalties would result in a significant economic impact on a licensee who has been determined to have violated the rule.

A determined violation would also have a further negative economic impact on the owner of any horse which tested in violation of this rule due to the mandatory loss and redistribution of any purse money won. In addition, an insignificant economic impact may be realized when a trainer of a horse claimed in another jurisdiction or purchased in a private sale asks the Commission to test the horse for anabolic steroids prior to entering it to race in New Jersey.

A potential, negative economic impact could arise from the implementation of this rule if horsemen who administer anabolic steroids to race horses choose to leave New Jersey and compete in a state where their use is not banned. However, the Commission believes that any such potential, negative effect will be offset by the benefit of deterring the use of illicit foreign substances in racing, the fostering of public confidence in the sport and increasing attendance at and wagering on New Jersey races.

Finally, the proposed rule may have a negative economic impact on racetracks and horsemen who are required to finance any necessary increases in scientific personnel or new equipment related to testing. Pursuant to requirements of law, the racetracks and horsemen must provide the additional, necessary funding to implement steroid testing. It is estimated that such testing will require the purchase of new equipment and supplies at a cost of \$500,000 and require two additional chemists at an annual cost of approximately \$200,000 including fringe benefits. Racetracks will be assessed 75 percent of these

additional cost and the horsemen will be assessed the remaining 25 percent to be deducted from the purse account.

### **Federal Standards Statement**

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

### **Jobs Impact**

The proposed new rule will result in the generation of jobs to the extent that additional scientific personnel will be needed to implement the testing program. The proposed rule imposes additional responsibilities on Commission staff and its equine testing laboratory. It is expected that the employment of additional staff will have to be sought in connection with the implementation of testing.

### **Agriculture Industry Impact**

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

### **Regulatory Flexibility Analysis**

The proposed new rule does not impose reporting or recordkeeping requirements. Compliance requirements are imposed on Commission personnel and the testing laboratory, both of which are not small businesses pursuant to the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The rule, as proposed,

imposes financially-related requirements on licensed owners, trainers and veterinarians, some of which may be small businesses, through the imposition of fines, suspensions and license revocations. It is anticipated that none of these small businesses will have to hire professional services in order to comply with the proposed new rule. Since the purpose of this rule is to advance the integrity of the State's racing industry and to protect the health of the horses that compete, uniform application of this rule is necessary to meet its objectives. As a result, no exemption or differentiation in the rule's requirements can be provided based on business size.

#### **Smart Growth Impact**

The proposed new rule will have no impact on the achievement of smart growth or the implementation of the State development and redevelopment plan.

#### **Housing Affordability Impact**

The proposed amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing because the proposed new rule establishes a testing program for the presence of androgenic-anabolic steroids in standardbred horses.

#### **Smart Growth Development Impact**

The proposed new rule will have an insignificant impact on smart growth and it is unlikely that the rule would evoke a change in housing production in Planning

areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed new rule establishes a testing program for the presence of androgenic-anabolic steroids in standardbred race horses.

the proposed new rule follows:

## **5 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) Tests results identifying the presence of boldenone, nandrolone, stanozolol and testosterone shall not constitute a violation of this section if the level of these permitted anabolic steroids test at or below the following level 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  | (500 pg/mL);  |
| Stanozolol -        | 200 picograms/milliliter  | (200 pg/mL);  |
| Testosterone-       |                           |               |
| Intact Male Horses: | 2000 picograms/milliliter | (2000 pg/mL); |
| All Other Horses:   | 200 picograms/milliliter  | (200 pg/mL).  |

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

- (d) Any blood samples containing one of the four anabolic steroids listed in (c) above that quantitatively measures above the threshold levels shall constitute a violation of this section. Any samples identifying the presence of more than one of the four permitted anabolic steroids shall constitute a violation of this section regardless of the levels identified in the sample. Any samples identifying the presence of one of the four permitted anabolic steroids, even if it tests at or 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. 13:71-23.4 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 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 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 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. 13:71-23.7(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 upon the effective date of adoption. 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 the 121<sup>st</sup> day after the effective date of the adoption of the proposed rule with the following exception. Any horse which tests in violation of the terms of this section between the date of adoption and the end of the 120-day “wash out” period shall be disqualified from the race and denied the purse money, which shall be redistributed consistent with N.J.A.C. 13:71-23.7(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.