

**LAW AND PUBLIC SAFETY
NEW JERSEY RACING COMMISSION**

Horse Racing

Anti-Recombinant Human EPO Antibody Testing Program

Proposed New Rule: N.J.A.C. 13:70-14A.12

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 2500-366

Submit written comments by December 2, 2005 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

Subchapter 14A, Medication and Testing Procedures, to Chapter 70, Horse Racing, of the New Jersey Administrative Code, sets forth the rules of the New Jersey Racing Commission concerning the administration of medication and foreign substances to thoroughbred racehorses. N.J.A.C. 13:70-14A.1 intends to protect the integrity of horseracing, 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.

The synthetic pharmaceutical products of human glycoproteins erythropoietin (EPO) and darbepoetin (DarbEPO) are prohibited drugs as defined in N.J.A.C. 13:70-2.1 and 14A.1. Research has indicated that these erythropoiesis stimulating proteins can provide improved performance effects on racehorses while dangerously increasing their blood viscosity during exercise or after exercise induced dehydration. Additionally, horses can exhibit an immune response from the administration of these human proteins, potentially damaging their ability to produce healthy red blood cell conditions. Production of antibodies in the horse, as a result of the administration of these human glycoproteins, can negatively effect the horse's own erythropoietin and lead to severe anemia and death.

Prior to 2003, no practical methods existed to detect when these blood doping agents were administered to racehorses. In an attempt to regulate this area, an Enzyme Linked Immunosorbent Assay (ELISA) test has been developed that can reliably detect elevated titers of anti-recombinant EPO antibody produced in the horse's blood due to the animal's immune response from repeated dosing of the synthetic forms of these human glycoproteins. The Racing Commission is therefore proposing new rule N.J.A.C. 13:70-14A.12 to implement a new testing procedure at New Jersey thoroughbred racetracks to detect the described antibodies. The Racing Commission refers to this test as the anti-recombinant human EPO antibody test. The proposed rule sets forth the parameters of the testing to be implemented, the consequences of a positive test and the related penalties.

Subsection (a) provides for the Racing Commission's taking of pre-race or

post-race blood samples from thoroughbred horses entered to start in a race, in order to test those blood sample for elevated titers of anti-recombinant EPO antibody, using the anti-recombinant human EPO antibody test. In the event a taken blood sample tests positive, as a result of post-race testing, subsections (a) and (b) impose certain duties upon the Racing Commission's Board of Stewards (Board of Stewards). The Board of Stewards, in the event of such an initial positive test, would be required to cause the horse to be placed on the Veterinarian's list pursuant to N.J.A.C. 13:70-19.36, thereby rendering the animal ineligible to enter races or to compete in races. The horse would be ineligible to enter a race or participate in a race until a blood sample of the horse is retested in accordance with subsection (b), and produces a negative result with the antibody test. In the event of an initial positive test, the Board of Stewards would authorize a search of the premises occupied by the stable involved pursuant to N.J.A.C. 13:70-14A.5. The Board of Stewards would further be required to provide written notice to the trainer and owner of a: positive test result concerning a horse that tests positive for elevated titers of anti-recombinant human EPO antibody; the right to a hearing, 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; the procedure to request a hearing; and of the procedure to have a blood sample of the horse retested in order to reestablish its eligibility to enter races and compete in races.

In order to receive a hearing, paragraph (a)4 requires that the owner and/or trainer of a horse which tests positive with the anti-recombinant human EPO

antibody test submit a written request to the Board of Stewards. If a hearing is requested, and it is determined at the hearing to the satisfaction of the Board of Stewards that the horse tested negative with the antibody test, the Board of Stewards shall cause the horse to be removed from the Veterinarian's list and the horse may be entered to start in races and compete in races.

Subsection (b) provides that a horse which tests positive with the anti-recombinant human EPO antibody test may, upon written request of the owner or trainer, be retested to establish that it is no longer positive for the antibody. Any written request must be accompanied by payment of \$50.00 to the Racing Commission for administrative and retesting costs. The owner or trainer must also make the horse available to the Racing Commission, for the purpose of taking a blood sample, at a permitted racetrack premise in this State approved by the Board of Stewards. Such a request for retesting may not be made until 21 days after the date of the initial positive test finding 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 the horse be retested until 21 days following the date of the last positive test as reported by the Racing Commission's Equine Testing Laboratory.

Subsection (c) provides that a horse claimed 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 of voiding the claim should the horse test positive. In the event a successful claimant elects not to void

the claim where the horse has tested positive, subsection (d) to the proposed rule provides that the horse shall be subject to the restrictions imposed by the rule. Additionally, the restrictions and penalty imposed by the rule shall continue to apply where a horse that tests positive with the anti-recombinant human EPO antibody test is otherwise sold or transferred.

Subsection (e) provides that the split sample testing provision of N.J.A.C. 13:70-14A.4(d) shall not apply to this rule. This is because the anti-recombinant human EPO antibody test requires testing of a blood sample, and the split sample testing provisions of N.J.A.C. 13:70-14A.4(d) are applicable only where testing is conducted on a horse's urine sample.

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 rule, by establishing a testing procedure to detect elevated titers of anti-recombinant human EPO antibody, will have a positive social impact. The ability of the Racing Commission to detect these antibodies in thoroughbred racehorses will deter the administration of foreign substances to the animal. This deterrent impact is beneficial because, in addition to impacting the performance of the horse in a race, scientific evidence suggests that the administration of the foreign substances erythropoietin or darbepoetin can have negative health consequences to the animal. Further, where the antibody is detected in the blood sample of a thoroughbred racehorse, the animal will not be able to enter a race or

compete in a race until it is retested as negative with the antibody test in accordance with the rule. The Racing Commission believes that this will promote the discontinuance of these substances to racehorses and benefit the wagering public by prohibiting a horse, which tests positive with the antibody test, from being entered to race or from competing in a race.

Economic Impact

The proposed rule will have negative economic impacts on horse owners and trainers whose horse tests positive for elevated titers of anti-recombinant human EPO antibody. First, until the horse is retested and tests negative, the horse will be ineligible to be entered in any race and ineligible to compete in any race. Accordingly, the owner and trainer will not be able to utilize the animal to compete for the purse monies that can be won as a result of participation in such races. A negative impact also arises to the trainer or owner who requests that a horse that has tested positive be retested in order to reestablish its eligibility to enter races or compete in races. This is because the rule requires that an administrative and testing fee of \$50.00 be provided to the Racing Commission before any retest is conducted.

A negative economic impact can also result to a horse owner who enters a horse in a claiming race, and in connection with such race the horse tests positive for elevated titers of anti-recombinant human EPO antibody. This is because the claimant of the horse would in such case, at his or her option, be entitled to void the claim. In the event the claim is voided, the owner would by consequence not receive the claim price for the horse. In such a case, however, the owner of the

horse where the claim was voided would retain his or her ownership interest in the horse.

The Racing Commission believes that the proposed rule will also have a positive economic impact on owners and trainers of racehorses because the rule is anticipated to have a deterrent effect on the administration to the animal of EPO and DarbEPO. This will curtail the expenditure of medical costs associated with the potential health complications of such administrations, thus achieving an economic benefit. By enhancing the health of the horse, the proposed rule will also promote the horse's ability to compete in racing for purse monies.

The proposed rule may have an economic impact on permitted racetracks. A horse testing positive with the antibody test will not be able to participate in racing, and a potential negative economic impact to the racetrack could result as the horse would not be available as a wagering interest in an offered race. However, the inability of a positive horse to compete may also benefit the economic interests of a racetrack. This arises from the fact that testing for elevated titers of anti-recombinant human EPO antibody will likely instill confidence in the wagering public that horses in competition at that racetrack are competing without foreign substances in their bodies. This may result in increased overall wagering, which may offset any economic loss to the racetrack resulting from the inability of a particular horse to compete. Further, because the testing program is expected to deter EPO and DarbEPO administrations to racehorses, the proposed rule should economically benefit racetracks by insuring that a healthy contingency of racehorses are available.

Federal Standards Statement

A Federal standards statement is not necessary as there are no Federal standards or requirements applicable to the proposed new rule. The Racing 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 not result in the generation or loss of jobs. The proposed rule 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 new rule will have no impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

The proposed new rule 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 rule does however impose compliance responsibilities, described in the Summary above, on racehorse owners and trainers, some of whom operate as small businesses. Costs are discussed in the Economic Impact above. The proposed rule is intended to implement a testing procedure to detect elevated titers of anti-recombinant human EPO antibody, to deter the use of the described prohibited foreign substances in racehorses, and to thereby enhance the wagering

publics confidence in the integrity of the sport of thoroughbred racing. The proposed new rule imposes no requirement for outside professional services. While the proposed new rule requires the taking of blood samples from horses, and the chemical testing of those samples, Racing Commission personnel perform these functions. The proposed new rule, in order to achieve this purpose, must be applied uniformly to all parties. For this reason, the proposed rule does not provide a differing or lesser compliance standard based upon 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.

Full text of the proposed new rule follows:

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.