

## LAW AND PUBLIC SAFETY

### NEW JERSEY RACING COMMISSION

#### Harness Racing

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

Adopted Amendment: N.J.A.C. 13:71-23.15

Proposed: 39 N.J.R. 2603

Adopted: September 17, 2007 by the New Jersey Racing Commission,  
Frank Zanzuccki, Executive Director

Filed: September 20, 2007 as R. 2007 d.334, without change.

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

Effective Date: October 15, 2007

Expiration Date: June 17, 2010

#### Summary of Public Comments and Agency Responses:

**COMMENT:** The SBOA, by letter dated September 13, 2007, filed comments to the proposed rule. The SBOA supports the effort to stop the use of Epogen. It believes, however, that the horses tested should be qualified to race and expected to compete within 10 days of the sampling. The SBOA also comments that the test should not be used to punish trainers who are not in good graces with the

Racing Commission. The SBOA also expresses a concern that the rule will encourage trainers using drugs to stable out-of-state, thus hurting the business of New Jersey training centers and decreasing the availability of race horses for New Jersey racetracks.

**RESPONSE:** The Racing Commission commends the SBOA to the extent that the SBOA supports the rule as an objective thereof is to stop the use of Epogen and related foreign substances. The Racing Commission does not accept the SBOA's comment that the rule should apply to limited race horses, and to race horses expected to compete within 10 days of the sampling. The objective of the rule, to enhance the integrity of racing, can, in the Racing Commission's estimation, best be accomplished by the procedures set forth in the proposed rule. Further, to limit sampling to race horses expected to compete in ten days, as suggested by the SBOA, would have a negative impact because it would be inconsistent with the unannounced sampling feature of the rule, a major component of out-of-competition testing, and would therefore potentially jeopardize the effectiveness of the rule. The Racing Commission does not believe that the proposed rule will discourage honest trainers, who do not administer Epogen to their horses in violation of Racing Commission regulations, to relocate out-of-state. In the event the implementation of the rule causes

trainers who engage in such practices to relocate to another state, and to stop competing with their horses in New Jersey, the Racing Commission is of the view that the benefits to New Jersey racing industry would clearly outweigh the negative impacts. With regard to the SBOA's comment that the rule should not be used to single-out trainers, the Racing Commission notes that it does not engage in discriminatory practices and the SBOA's concerns in this regard are not supported by any factual offering.

**COMMENT:** Comments were received from Ms. Barbara Sachau. Ms. Sachau appears to be in favor of the proposed rule and appears to believe that the rule should be more expansive. For example, she questions what is being tested for and whether the rule covers sponges in horses noses. Ms. Sachau comments that the Commission should test every race horse every day on a mandatory basis. She states that the penalties in the rule proposal should be higher, and that suspensions should be immediate. She questions why separate rules were proposed for thoroughbred (PRN 2007-239) and harness race horses.

**RESPONSE:** As noted in the proposed rule, it is aimed toward detecting blood doping agents such as Erythropoietin (EPO) and DarbEPO. The Commission believes that its present post-race testing protocol is sufficient to detect other prohibited foreign substances in the horse. The

proposed rule does not encompass sponges in noses, unless such devices are used to administer the described agents to a horse. The proposed rule is directed to these specific prohibited substances because of the unique situation and challenge they present to the integrity of racing. The direct test for Epogen, administered on race day post-race, cannot consistently capture the illicit use of blood doping agents due to the calculated method of administration being utilized by persons with knowledge of the drug. These individuals administer the drug well in advance of race day, so that the drug is not detectable post-race. Since Epogen has the impact of increasing the red blood cell production of the horse, thereby increasing the oxygen intake ability of the animal, the performance enhancing effect of the drug continues through race day notwithstanding the discontinuance of the drugs administration. The Racing Commission believes that the penalties set forth in the proposed rule are adequate to deter violations, and to sanction those determined to have violated the rule. In fact, the Commission believes that the implementation of the proposed rule, with its stringent penalties, will have a significant deterrent effect on the described method of administration. The Commission therefore believes that the positive impact to racing, to the animal involved, and to the well-being of the race participants, will be immediate. It would not be practical,

administratively or from a cost perspective, to sample horses every day on a mandatory basis as Ms. Sachau suggests. A substantially similar rule was proposed for thoroughbred racing because the Racing Commission has separate regulations for thoroughbred racing, which appear at Title 13, Chapter 70 to the New Jersey Administrative Code.

### **Federal Standard Statement**

A Federal standards analysis is not required because the rules of racing are dictated by State statute, N.J.S.A. 5:5-22, et seq., and the adopted amendment is not subject to any Federal requirements or standards.

The rule text of the adopted rule can be found in the New Jersey Register at 39 N.J.R. 2603.