

This is an amendment to 15.2.6 NMAC, Sections 6, 9 and 12, effective date of December 19, 2019.

**Explanatory Paragraph:** In 15.2.6.9 NMAC, Paragraphs (1) through (12) of Subsection A, Subsection B, Paragraphs (1) through (7) and Paragraphs (9) through 12 of Subsection C, and Subsections D through K, Paragraphs (1) and (2) of Subsection L, Subsection M and N were not published as there were no changes. Throughout 15.2.6 NMAC, number and rule citations have been changed to conform to correct legislative style.

**15.2.6.6 OBJECTIVE:** ~~[The objective of Part 6 of Chapter 2 is]~~ To describe requirements and procedures used to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

[15.2.6.6 NMAC - Rp, 15 NMAC 2.6.6, 4/13/2001; A, 7/31/2012; A, 12/19/2019]

**15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:** The classification guidelines contained within the "uniform classification guidelines for foreign substances and recommended penalties and model rule", January 2019 version 14.0 and "association of racing commissioners international inc. controlled therapeutic medication schedule for horses", version 4.0, revised April 20, 2017 by the association of racing commissioners international, are incorporated by reference. Any threshold herein incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission as specified by this section.

**A. Penalties:**

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**(13) Aggravating and Mitigating Factors:**

**(a)** In reaching a decision on a penalty for a violation for the New Mexico horse racing act or New Mexico racing commission rules and regulations, the commission, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in paragraph (2) of this subsection and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors for which a greater penalty is appropriate.

**(b)** Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to:

**(1)** The past record of the licensee regarding violations of the New Mexico horse racing act or New Mexico racing commission rules;

**(2)** the potential of the drug(s) to influence a horse's racing performance and the amount of the drug present;

**(3)** the legal availability of the drug and whether the drug was prescribed to the horse by a New Mexico racing commission licensed veterinarian;

**(4)** whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

**(5)** the steps taken by the trainer to safeguard the horse;

**(6)** the steps taken by an owner to safeguard against subsequent medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer.

An "unaffiliated trainer" means a trainer or an assistant trainer who is not related by blood, marriage or domestic partnership, or who is not or was never employed to the trainer from whose case such horse(s) were transferred.;

**(7)** the probability of environmental contamination or inadvertent exposure due to human drug use or other facts;

**(8)** the purse of the race;

**(9)** whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined and documented by an New Mexico racing commission licensed veterinarian;

**(10)** whether there was any suspicious wagering pattern on the race; or

**(11)** whether the licensed trainer was acting under the advice of an New Mexico racing commission veterinarian.

(c) The stewards shall consider the classification of a drug substance and the "uniform classification guidelines for foreign substances" if a determination is made that an official test sample from a horse contained;

(1) Any drug substance, medication, metabolites or analogues thereof foreign to the horse, whose use is not expressly authorized in this section, or

(2) any drug substance, medication or chemical authorized by this section in excess of the authorized level or other restrictions as set forth in this section.

(d) Penalties for violation of each classification level are listed in Subsection B of 15.2.6.9 NMAC.

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**C. Medication restrictions:**

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(8) Any horse that is the subject of a positive test report from the official laboratory for a drug in one of the following categories shall be placed immediately on the steward's list:

(a) any drug categorized by the association of racing commissioner's international "uniform classification guidelines for foreign substance and recommended penalties and model rule" incorporated by reference under 15.2.6.9 NMAC as a penalty class A substance;

(b) any prohibited anabolic androgenic steroid or any anabolic androgenic steroid in excess of the permitted concentrations listed in Subsection G of 15.2.6.9 NMAC;

(c) clenbuterol, albuterol, or other beta-agonist drugs with significant anabolic effects that are not currently penalty class A drugs (specifically Quarter Horses or Thoroughbreds);

(d) other drugs designed to promote growth or muscle including, but not limited to, growth hormones, somatotropins, insulin growth factors and gene modifying agents;

(e) cobalt in excess of the allowable concentration specified pursuant to Subsection [M] L of 15.2.6.9 NMAC.

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**L. Environmental contaminants and substances of human use:**

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(3) If the preponderance of evidence presented in the hearing shows that a positive test is the result of environmental contamination, including inadvertent exposure due to human drug use, or dietary intake, or is endogenous to the horse, those factors should be considered in mitigation of any disciplinary action taken against the affected trainer. Disciplinary action shall only be taken if test sample results exceed the regulatory thresholds listed below:

(a) Arsenic - 0.3 micrograms per milliliter total arsenic in urine;

(b) Benzoylcegonine - 150 nanograms per milliliter in urine;

(c) Caffeine - 100 nanograms per milliliter of plasma or serum;

(d) Cathinone - 10 nanograms per milliliter in urine;

(e) Cobalt - 25 ppb in blood plasma or serum (penalties for cobalt vary depending on the concentration; see uniform classification guidelines for foreign substances for recommended penalty for concentrations of 25 parts per billion or greater of blood plasma or serum). ~~[and for concentrations of 50 parts per billion of blood plasma or serum];~~

(f) Estradiol - 0.045 micrograms per milliliter, free + conjugated 5 $\alpha$ -estradiol-3 $\beta$ , 17 $\alpha$ -diol, in the urine of male horses other than geldings;

(g) Gamma Aminobutyric Acid - 110 nanograms per milliliter of plasma or serum;

(h) Hydrocortisone - 1 microgram per milliliter of urine;

(i) Methoxytyramine - 4 micrograms per milliliter, free + conjugated in urine;

(j) Morphine/morphine glucuronides - 100 nanograms per milliliter in urine;

(k) Salicylate/Salicylic Acid - 750 micrograms per milliliter of urine or 6.5 micrograms per milliliter of serum or plasma;

(l) Scopolamine - 75 nanograms per milliliter of urine;

(m) Strychnine - 100 nanograms per milliliter of urine;

(n) Theobromine - 2 micrograms per milliliter of urine or 0.3 micrograms per milliliter of serum or plasma; and

(o) Theophylline - 400 nanograms per milliliter of urine.

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**O. Multiple Medication Violations (MMV):**

(1) A trainer who receives a penalty for a medication violation based upon a horse testing positive for a class 1-5 medication with penalty class A-C, as provided in the version of the ARCI "uniform classification guidelines for foreign substances" listed in 15.2.6.9 NMAC, or similar state regulatory guidelines, shall be assigned points as follows:

<u>Penalty Class</u>	<u>Points If Controlled Therapeutic Substance</u>	<u>Points if Non-Controlled Substance</u>
<u>Class A</u>	<u>N/A</u>	<u>6</u>
<u>Class B</u>	<u>2</u>	<u>4</u>
<u>Class C</u>	<u>1/2 point for first violation with an additional 1/2 for each additional violation within 365 days</u>	<u>1 for first violation with an additional 1/2 point for each additional violation with 365 days</u>
<u>Class D</u>	<u>0</u>	<u>0</u>

Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation. If the stewards or the commission determine that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

(2) The points assigned to a medication violation by the stewards or commission shall be included in the ARCI official database. The ARCI shall record points consistent with Paragraph (1) of this Subsection including when appropriate, a designation that points have been suspended for the medication violation. Points assigned by such commission ruling shall reflect, in the case of multiple positive tests as described in Paragraph (4), whether they constitute a single violation. The stewards or commission ruling shall be posted on the official website of the commission and within the official database of the ARCI. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

(3) A trainer's cumulative points for violations in all racing jurisdictions shall be maintained by the ARCI. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall be considered by the commission in its determination to subject the trainer to the mandatory enhanced penalties by the stewards or commission as provided in this rule.

(4) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the commission may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the stewards may treat each substance found as an individual violation for which points will be assigned, depending upon the facts and circumstances of the case.

(5) The official ARCI record shall be used to advise the stewards or commission of a trainer's past record of violations and cumulative points. Nothing in this administrative regulation shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

(6) The stewards or commission shall consider all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.

(7) In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in their official ARCI record:

<u>POINTS</u>	<u>SUSPENSION IN DAYS</u>
<u>5 - 5.5</u>	<u>15 to 30</u>
<u>6 - 8.5</u>	<u>30 to 60</u>
<u>9 - 10.5</u>	<u>90 to 180</u>
<u>11 or more</u>	<u>180 to 360</u>

MMV penalties are not a substitute for the current penalty system and are intended to be an additional uniform penalty when the licensee:

- (a) Has more than one medication violation for the relevant time period, and
- (b) exceeds the permissible number of points.

The stewards and commission shall consider aggravating and mitigating circumstances, including the trainer's prior record for medication violations, when determining the appropriate penalty for the underlying offense. The multiple medication penalty is intended to be a separate and additional penalty for a pattern of violations.

(8) The suspension periods as provided in this subsection shall run consecutive to any suspension imposed for the underlying offense.

(9) The stewards or commission ruling shall distinguish between the penalty for the underlying offense and any enhancement based upon a stewards or commission review of the trainer's cumulative points and regulatory record, which may be considered an aggravating factor in a case.

(10) Points shall expire as follows:

<u>Penalty Classification</u>	<u>Time to Expire</u>
<u>A</u>	<u>3 years</u>
<u>B</u>	<u>2 years</u>
<u>C</u>	<u>1 year</u>

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 4/13/2001; A, 8/30/2001; A, 7/15/2002; A, 8/15/2002; A, 9/29/2006; A, 10/31/2006; A, 8/30/2007; A, 1/31/2008; A, 3/01/2009; A, 6/15/2009; A, 6/30/2009; A, 9/15/2009; A, 12/15/2009; A, 3/16/2010; A, 7/05/2010; A, 9/1/2010; A, 12/1/2010; A, 11/1/2011; A, 2/15/2012; A, 4/30/2012; A, 7/31/2012; A, 12/14/2012; A, 5/1/2013; A/E, 5/2/2013; A, 9/30/2013; A, 4/01/2014; A, 5/16/2014; A, 8/15/2014; A, 9/15/2014; A, 3/16/2015; A, 9/16/15; A, 3/15/2016; A, 6/15/2016; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 10/31/17; A, 03/14/2018; A, 9/26/2018; A, 5/1/2019; A, 12/19/2019]

#### **15.2.6.12 PHYSICAL INSPECTION OF HORSES:**

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##### **B. Veterinarian's list:**

(1) The official veterinarian or racing veterinarian shall maintain [a] the veterinarian list of all horses which are determined to be unfit to compete in a race due to ~~[physical distress, unsoundness, infirmity or medical condition]~~ illness, unsoundness, injury, infirmity, voluntary administration of a medication invoking a mandatory stand down time, administration of shock-wave therapy or any other assessment or determination by the official veterinarian or racing veterinarian that the horse is unfit to race.

(2) Horses so listed are ineligible to enter to race in any jurisdiction until released by the official veterinarian or racing veterinarian except when there is an administrative issue in releasing the horse from a veterinarian's list of another racing jurisdiction. [A horse may be removed from the veterinarian's list when, in the opinion of the racing veterinarian, the horse has satisfactorily recovered the capability of competing in a race.]

(3) A horse placed on the veterinarian's list due to illness, injury or infirmity unrelated to the racing soundness of the horse maybe released from the list when a minimum of seven calendar days has passed from the time the horse was placed on the list.

(4) A horse placed on the veterinarian's list for unsoundness or lameness shall be released from the list only after the following has been met:

(a) A minimum of seven calendar days has elapsed;  
(b) the horse demonstrates to the satisfaction of the official veterinarian or racing veterinarian that the horse is serviceably sound and in fit physical condition to exert its best effort in a race;  
(c) the horse completes a published work after the seven calendar days has elapsed of four furlongs at 0:52 seconds or better for thoroughbreds; or 220 yards at 13.3 seconds or better for quarter horses while being observed the official veterinarian or racing veterinarian, and;

(d) the horse submits to a post work official sample collection for laboratory confirmation for compliance with 15.2.6.9 NMAC at the expense of the current owner. Samples shall be subjected to the same testing as conducted for post race official samples. The presence of a prohibited substance in the post work sample shall result in the horse remaining on the veterinarian's list.

(5) A horse placed on the veterinarian's list for voluntary administration of a medication invoking a mandatory stand down time shall be released from the list subject to the provisions and restrictions set forth in Paragraph (1) of C of 15.2.6.9 NMAC.

(6) A horse placed on the veterinarian's list for administration of shock-wave therapy shall be released from the list subject to the provisions and restrictions set forth in Subsection C. of 15.2.6.8.

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[15.2.6.12 NMAC - Rp, 15 NMAC 2.6.12, 4/13/2001; A, 9/1/2010; A, 12/1/2010; A, 11/1/2011; A, 2/15/2012; A, 7/31/2012; A, 12/19/2019]