

Explanatory paragraph: This is an amendment to 15.2.6 NMAC, Sections 9 and 10, effective July 1, 2017. In 15.2.6.9 NMAC Subsections A, Paragraphs (1), (3) through (7) in Subsection B, Subsections D through F, Paragraphs (2) through (5) in Subsection G, Subsections H and I, and Subsections K through N were not published as there were no changes. In 15.2.6.10 NMAC, Paragraphs (2) through (4) of Subsection A, Subsection B, C, E, and E were not published as there were no changes.

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", [~~April 8, 2016, version 12.0~~] December 9, 2016, version 13.01 and "association of racing commissioners international inc. controlled therapeutic medication schedule for horses", [~~version 3.0, revised March 25, 2016~~] version 3.2, revised December 9, 2016 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.

B. Penalty recommendations:

(2) Category B penalties will be assessed for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraphs (3) and (4) of [Subsection P] <u>Subsection N</u> of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:
Licensed trainer:
1st offense: A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A minimum fine of \$500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a \$1,000 fine.
2nd Lifetime offense in any jurisdiction: A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum fine of \$1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$2,500.
3rd Lifetime offense in any jurisdiction: A 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of \$2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum \$5,000 fine or five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.
Licensed owner:
1st offense: Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
2nd Lifetime offense in stable in any jurisdiction: Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
3rd Lifetime offense in stable in any jurisdiction: Disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine* and horse must pass a commission-approved examination before becoming eligible to be entered.

C. Medication restrictions:

(1) A finding by the commission approved laboratory of a prohibited ~~[drug, chemical or other substance in a test specimen]~~ substance in an official sample of a horse is prima facie evidence that the prohibited ~~[drug, chemical or other]~~ substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. ~~[Prohibited substances include: drugs or medications for which no acceptable levels have been established; therapeutic medications in excess of established acceptable levels; substances present in the horse in excess of levels at which such substances could occur naturally; substances foreign to a horse at levels that cause interference with testing procedures.]~~

(2) Nothing in this part shall prevent a racing association from setting eligibility conditions, as agreed to with the acknowledged horsemen's organization, for individual races, or for its entire race meet, that prohibit the use or the presence of drug substances or medications in biological test samples collected from participating horses are detection levels lower than what is authorized by the commission. Such conditions if established in accordance with 1.2.3.5 NMAC shall not be deemed in conflict with the rules and regulations of the commission.

(3) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited ~~[drug, medication, chemical or other]~~ substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

~~[(3)]~~ (4) There is no permissible concentration of clenbuterol that is allowed to appear in any official sample.

~~[(4)]~~ (5) The restrictions set forth in Paragraph ~~[(2)]~~ (3) above do not apply to the following substances:

(a) Topical applications, such as antiseptics, ointments, salves, leg rubs and leg paints which may contain antibiotics (excluding procaine, penicillin and chloramphenicol) but which shall not contain ethanol, benzocaine, dimethylsulfoxide, lidocaine, steroids or other medications.

(b) Vitamins and electrolytes, provided the vitamins and electrolytes are administered orally and do not contain any medications.

(c) Mentholated products designed to be used and administered topically to the nostril areas.

~~[(5)]~~ (6) Commission personnel may at any time confiscate any material or devices used for the administration of any substance identified in Paragraph ~~[(4)]~~ (5) above and submit it to the official laboratory for testing in order to ensure the contents are accurately identified.

~~[(6)]~~ (7) The use of a nebulizer or any similar device used to administer a drug or other substance by inhalation is not permitted on the day a horse is entered to race.

~~[(7)]~~ (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 or other beta-agonist drugs with significant anabolic effects that are not currently penalty class A drugs;

(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 of 15.2.6.9 NMAC.

~~[(8)]~~ (9) Horses placed on the steward's list for a positive test for any of the substances listed in Paragraph ~~[(7)]~~ (8) of Subsection C above shall remain on the steward's list for 60 days. The first day shall be considered the day following the date of the signed report from the official laboratory.

~~[(9)]~~ (10) In order to be removed from the steward's list and prior to entry, the following conditions shall be met:

(a) a minimum of 60 days must have elapsed;

(b) the horse must be presented to the test barn on or after day 60 for the official veterinarian to obtain ~~[blood and urine]~~ blood, urine or hair samples;

(c) the collected samples must test negative for any substance identified in Paragraph ~~[(7)]~~ (8) of Subsection C above;

(d) the cost of the testing, including applicable shipping costs, shall be borne by the licensed owner and must be paid in full at the time of shipment.

~~[(40)]~~ (11) If a split sample obtained under Subsection D of 15.2.6.10 NMAC does not confirm the original finding of the official laboratory of a positive test, the horse shall be removed from the steward's list.

~~[(41)]~~ (12) A practicing veterinarian that is licensed by the commission may prescribe a drug identified by Paragraph ~~[(7)]~~ (8) of Subsection C above under the following conditions:

(a) the diagnosis justifying the prescribed drug, the dosage, the expected duration of treatment, the name of the horse and the name of the trainer must be submitted to the official veterinarian on a form prescribed by the commission;

(b) only FDA label-approved drugs for use in the horse may be prescribed;

(c) the horse shall be placed on the veterinarian's list for a period of time not less than 30 days after the last administration of the drug as prescribed;

(d) the horse must be presented to the test barn once eligible to be removed from the list for the official veterinarian to obtain ~~[blood and urine]~~ blood or urine samples;

(e) the collected samples must test negative for the prescribed substance and any other substance identified in Paragraph ~~[(7)]~~ (8) of Subsection C above;

(f) the cost of testing, including applicable shipping costs shall be borne by the licensed owner and must be paid in full at the time of shipment;

(g) horses placed on the veterinarian's list for the therapeutic use of any substance identified in Paragraph ~~[(7)]~~ (8) of Subsection C above will be exempt from hair sampling for a six-month period following the last day of the reported treatment. Horses will be subject to out of competition blood and urine sampling during the treatment period pursuant to Subsection J of 15.2.6.9 NMAC to ensure that the concentration of drug found is within the range expected for the recognized therapeutic dose of the drug and will be subject to enhanced out of competition blood and urine sampling during the period exempt from hair sampling.

G. Androgenic-anabolic steroids:

(1) No AAS shall be permitted in ~~[test sample]~~ official samples collected from racing horses except for residues of the major metabolite of **nandrolone**, and the naturally occurring substances **boldenone** and testosterone at concentrations less than the indicated thresholds.

J. Out of competition testing:

(1) A horse may be subject to out of competition testing without advance notice if the horse is:

(a) on the grounds of a racetrack or training center under the jurisdiction of the commission;

(b) under the care or control of a trainer or owner licensed by the commission; or

(c) any horse whose papers are filed in the racing office; or

(d) has been nominated to a stakes race; or

(e) on the steward's list pursuant to Subsection C of 15.2.6.9 NMAC.

(2) This rule applies to ~~[prohibited substances, practices and procedures as follows:]~~ the detection of prohibited substances in out of competition official samples as follows:

(a) penalty class A drugs as listed with the association of racing commissioners international "uniform classification guidelines for foreign substances and recommended penalties and model rule" and incorporated by reference under 15.2.6.9 NMAC;

(b) blood doping agents including, but not limited to, erythropoietin (EP), darbepoetin, oxylglobin, ~~[hemopure,]~~ hemopure, aranasep or any substance that abnormally enhances the oxygenation of body tissues;

(c) gene doping agents or the non-therapeutic use of genes, genetic elements, or cells that have the capacity to enhance athletic performance or produce analgesia

(d) clenbuterol present in ~~[a sample]~~ any official sample in a horse not previously placed on the veterinarian's list pursuant to Paragraph ~~[(9)]~~ (10) of Subsection C of 15.2.6.9 NMAC; and

(e) androgenic-anabolic steroids present in ~~[a sample]~~ any official sample in a horse not previously placed on the veterinarian's list pursuant to Paragraph ~~[(9)]~~ (10) of Subsection C of 15.2.6.9 NMAC.

(3) The penalty for a positive test resulting from an out of competition blood or urine sample will be determined by the penalty class of the drug listed in the association of racing commissioners international "uniform classification guidelines for foreign substances and recommended penalties and model rule" and incorporated by reference under 15.2.6.9 NMAC. ~~[Positive tests for substances identified under Paragraph (5) of Subsection C of 15.2.6.9 NMAC will be placed on the steward's list as per the conditions set forth in that subsection. Horses already on the steward's list for violations of Subsection C of 15.2.6.9 NMAC that have a positive out of competition test for one of the substances identified in the referenced paragraph shall be placed on the steward's list for an additional, consecutive 60-day period.]~~

(4) A horse with a positive test in an out of competition official sample for any substance identified under Paragraph (6) of Subsection C of 15.2.6.9 NMAC will be placed on the steward's list as per the conditions set forth in that subsection. Horses already on the steward's list for violations of Subsection C of 15.2.6.9 NMAC that have a positive out of competition test in a blood or urine sample for one of the substances identified in the referenced paragraph shall be placed on the steward's list for an additional, consecutive 60-day period.

~~[(4)]~~ (5) Horses to be tested may be selected at random, with probable cause or as determined by the commission or an agent of the commission.

~~[(5)]~~ (6) The commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time take ~~[a urine, blood or hair]~~ an official sample from a horse for this purpose.

~~[(6)]~~ (7) Split samples shall be collected in accordance with Subsection B of 15.2.6.10 NMAC and shall be secured and made available for further testing in accordance with Subsection D of 15.2.6.10 NMAC.

~~[(7)]~~ (8) All horses selected for testing must be presented to the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, at the time designated, unless the trainer or owner provides verification of an extenuating circumstance that makes it impossible. Penalties for violations of this subsection include:

(a) any horse not presented for testing upon notification absent extenuating circumstances will be placed immediately on the steward's list for a minimum of 60 days and shall be subject to all the requirements set forth in Paragraph ~~[(7)]~~ (8) of Subsection C of 15.2.6.9 NMAC; and

(b) the licensed trainer of a horse not presented for testing upon notification and absent extenuating circumstances is a maximum suspension of 180 days.

~~[(8)]~~ (9) Any licensee who does not comply with the rule or the commission veterinarian for a sample may be subject to disciplinary action.

~~[(9)]~~ (10) Cooperation with the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, includes:

(a) assisting in the immediate location and identification of the horse selected for out of competition testing; and

(b) assisting the veterinarian in properly procuring the samples.

~~[(10)]~~ (11) Out of competition samples will be sent to the official laboratory of the commission, or another laboratory as designated by the commission, with reports made in accordance with the provisions of the medication rules and the penalty provisions therefore.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012; A, 12/14/2012; A, 05/01/2013; A/E, 05/02/2013; A, 09/30/2013; A, 04/01/2014; A, 05/16/2014; A, 08/15/2014; A, 09/15/2014; A, 03/16/2015; A, 09/16/15; A, 03/15/2016; A, 06/15/2016; A/E, 06/28/2016; A, 09/15/2016; A, 12/16/2016; A, 07/01/2017]

15.2.6.10 TESTING:

A. Reporting to the test barn:

(1) The official winning horse, or any other horses ordered by the commission or the stewards shall be taken to the test barn to have a ~~[blood sample or a urine sample or both]~~ an official sample taken at the direction of the official veterinarian.

D. Storage and shipment of split samples:

(1) Split samples obtained in accordance with Paragraphs (3) and (4) Subsection B, of 15.2.6.10 NMAC above shall be secured and made available for further testing. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location as provided by state statute or approved by the commission.

(2) A trainer, owner or designee of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another testing laboratory that is accredited by ISO 17025 and approved by the commission. The ISO 17025 requirement may only be waived by the commission for the purpose of a split sample test involving a hair sample. The request must be made and confirmed with the commission not later than 48 hours excluding weekends and holidays after the trainer of the horse receives notice of the findings of the primary laboratory. The trainer's first choice, second choice and third choice of laboratories, for the split sample to be sent to, shall be listed within that 48 hours and kept on file with the horsemen's association. Any request not received within the specified deadline shall be considered a positive test. Any split sample so requested must be shipped within seven working days after the trainer's 48 hour deadline or the New Mexico horsemen's association may be subject to disciplinary action.

(3) The owner, trainer or designee requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the commission or the commission's designee shall constitute a waiver of all rights to split sample testing. Prior to shipment, ~~[the New Mexico horsemen's association]~~ the owner, trainer or designee shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to send results to both the person requesting the testing and the commission, and arrangements for payment satisfactory to the split sample laboratory. ~~[A split sample testing laboratory must be accredited by ISO 17025 and approved by the commission. If a reference laboratory will accept split samples, that laboratory must be included among the laboratories approved for split sample testing.]~~

(4) ~~[Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and such other information as the commission may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample.]~~ Prior to opening the split sample freezer or any other secure split sample storage mechanism, the commission shall ensure that the standard operating procedure for the handling and shipping of the split sample are followed and documented. Standard operating procedure for the handling and shipping of a split sample shall include documentation of the following at a minimum:

(a) the date and time the sample is removed from the split sample freezer or other secured mechanism;

(b) the sample number;

(c) the address where the split sample is to be sent;

(d) the name of the carrier and the address where the sample is to be taken for shipment;

(e) verification the owner, trainer or designee received the split sample from the freezer or other secured mechanism;

(f) verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and,

(g) the date and time custody of the sample is transferred to the carrier.

~~[(5) Split sample chain of custody form requirements: the date and time the sample is removed from the split sample freeze; the sample number; the address where the split sample is to be sent; the name of the carrier and the address where the sample is to be taken for shipment; verification of retrieval of the split sample from the freezer; verification of each specific step of the split sample packaging in accordance with the recommended procedure verification of the address of the split sample laboratory on the split sample package; verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; the date and time custody of the sample is transferred to the carrier.]~~

~~[(6)]~~ (5) A split sample shall be removed from the split sample freezer or other secured mechanism by a commission representative in the presence of ~~[a representative of the horsemen's association.]~~ the owner, trainer or designee.

~~[(7)]~~ (6) The owner, trainer or designee shall pack the split sample for shipment in the presence of the representative of the commission, in accordance with the packaging procedures recommended by the commission. A form shall be signed by both the horsemen's representative and the commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

~~[(8)]~~ (7) The package containing the split sample shall be transported in a manner prescribed by the commission to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission-approved laboratory selected by the owner or trainer.

~~[(9)]~~ (8) The owner, trainer or designee and the commission representative shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

~~[(10)]~~ (9) ~~[The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner or trainer. A commission representative shall keep the original and provide a copy for the owner or trainer.]~~ All documents verifying the handling and shipping of the split sample chain of custody shall be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative shall keep all original documents and provide copies for the owner, trainer or designee.

[15.2.6.10 NMAC - Rp, 15 NMAC 2.6.10, 04/13/2001; A, 03/30/2007; A, 09/01/2010; A, 07/31/2012; A, 05/01/2013; A, 05/16/2014; A, 06/15/2016; A, 07/01/2017]