

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Racing Commission

Regulation/Package Title: Chapter 8 Amended Rules

Rule Number(s): 3769-8-01 & 3769-8-02

Date: May 2017

These are amended rules and may be found by accessing the Commission's website at www.racingohio.net or through LAWriter at <http://codes.ohio.gov/oac/3769-168>.

Rule Type:

New
 Amended

5-Year Review
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

3769-8-01 defines all of the terms utilized in horseracing for testing and medication procedures, including but not limited to: Hypodermic injection, Foreign substances, Veterinarian, State veterinarian, State testing barn, Chemist, Test sample, Race day, Daily program, Test level, Racing with furosemide for the first time, Nasogastric tube, and Retained specimen, among others.

3769-8-02 defines trainer responsibility for condition of horses.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 3769.03

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

No, the commission is the only entity that regulates horse racing in Ohio.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The Commission is the only entity that regulates horse racing in Ohio. The Commission is charged with ensuring the integrity of horse racing in this state. Administrative Rules are promulgated pursuant to the Commission's statutory obligation to regulate this industry.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These regulations protect race participants and the wagering public by outlining the requirements for claiming and the requirement for starting.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

These regulations have been in place for some time and while the Commission believes the success of the regulation has been demonstrated, it has become necessary to alter these rules based on comments from stakeholders and due to advances in technology and testing procedures.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The primary stakeholders are the seven commercial permit holders and the various horsemen's associations who are required to implement and/or follow these rules pertaining to claiming and starting. As these rules have been in existence, in their current form, for decades, the Commission voted to submit the rules at a public business meeting.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

This rule was provided to the industry and comments were received for suggested changes. This is the rule the commission chose to change.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Additional scientific data and technological updates were used to develop the rule.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

While this rule has been in existence for several years and no changes were found to be warranted.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

No, these regulations require permit holders, owners, trainers, drivers and veterinarians to follow a consistent set of rules for drugs and death of a horse.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

No measures were taken because no other agency regulate horse racing in Ohio, therefore no duplication will occur.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The regulations have been implemented for several years to all commercial tracks in Ohio.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The scope of the impacted business community includes permit holders who own the racetracks and licensees who participate in horse racing in Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

3769-8-01 The impacted community is the permit holders and the licensees, specifically trainers, owners, drivers and caretakers as well as the Ohio State Racing Commission. Testing and medication procedures and rules are the most important aspect in the policing of horse racing to ensure the integrity of the industry and to present a fair and honest sport to the wagering public and horseracing fans.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

3769-8-02 The trainer of record is the absolute insurer and protector of his or her horses, regardless of ownership and thus, responsible for their condition and well-being regardless of actions by an outside third party, or a destructive act of nature. Thus, the trainer shall be held responsible for all fines and/or suspensions should said horse test positive for a prohibited substance.

c. Quantify the expected adverse impact from the regulation.

3769-8-01 The adverse impact to the horse racing industry in Ohio is the cost and time of testing for prohibited substances in Thoroughbreds, Standardbreds and Quarter Horses. A number of licensed and qualified individuals have to be employed to conduct testing and chemical analysis, both by the permit holders and by the Ohio State Racing Commission. In some instances, samples must be tested by an independent lab which raises the initial costing tests put forth by the permit holders and the state. As well the cost to licensed participants whose horses require furosemide or “Lasix” (Salix) is an out of pocket expense required in order for their horses to perform at their peak. Detailed records must be kept by on-track Ohio State Racing Commission personnel as well as by track and state veterinarians, resulting in time and money for materials and salaries for qualified individuals.

3769-8-02 As the trainer of record is the absolute insurer and protector of his or her horses, said trainer shall be held responsible for all fines and/or suspensions should said horse test positive for a prohibited substance and thus risks not only monetary damages but with a suspension, could lose the ability to earn a living either temporarily or for possibly years at a time.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

3769-8-01 This impact is justified because this rule deters licensees and permit holders from violating the rules of this chapter. These rules are essential in preserving the fairness of racing for race participants and the wagering public.

3769-8-02 The adverse impact is justified because this rule allows the responsibility to be in the hands of the trainer, who is responsible for the care and condition of his/her horses.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No, this regulation applies to only seven commercial race track permit holders; therefore an exemption for small businesses is not applicable.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

R.C. 119.14 is not applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

The Commission website at www.racing.ohio.gov

The Commission phone number at 614-466-2757

The Commission facsimile number at 614-466-1900

The Executive Director at bill.crawford@rc.state.oh.us

3769-8-01

Medication and testing.

(A) Definitions. The terms and words used in the following rules are defined as:

- (1) "Hypodermic injection" shall mean any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.
- (2) "Foreign substances" shall mean all classified substances except those which exist naturally in the untreated horse at normal physiological concentrations and include all narcotics, stimulants, depressants or other drugs. The commission may, by order, establish a system of classification of prohibited foreign substances, to include methods of detection and/or regulatory thresholds thereof, recommended penalties and disciplinary measures for the presence of said substances in test samples. In determining the substances to be so classified, the commission shall give due consideration to the uniform classification guidelines of foreign substances and recommended penalties and model rules as revised from time to time by the association of racing commissioners international inc.
- (3) "Veterinarian" shall mean a licensed veterinary practitioner who treats or prescribes for a horse entered in any race subject to the jurisdiction of the commission.
- (4) "State veterinarian" shall mean a veterinarian licensed in Ohio and designated as the state veterinarian by the commission.
- (5) "State testing barn" shall mean the facility provided by each commercial race track and approved by the commission as the location where all horses designated for testing shall be taken by the trainer or the trainer's representative so that test samples may be obtained.
- (6) "Chemist" shall mean any official racing chemist or qualified person or laboratory designated by the commission.
- (7) "Test sample" shall mean any body substance including blood or urine taken from a horse under the supervision of the state veterinarian for the purpose of analysis.
- (8) "Race day" shall mean the twenty-four hour period beginning at one minute after twelve a.m. and ending at twelve midnight of a day when horse racing is scheduled.

- (9) "Daily program" shall mean the daily race program made available for public purchase.
 - (10) "Test level" shall mean the concentration of a foreign substance found in the test sample.
 - (11) "Racing with furosemide for the first time" shall mean the very first time a horse races with furosemide or the first time a horse races with furosemide subsequent to any thirty-day period of racing without furosemide as set forth in paragraph (B)(3)(b) of this rule.
 - (12) Nasogastric tube shall mean any tube which can be inserted through the nose of a horse.
 - (13) "Retained specimen" means all or any portion of the blood or urine specimens collected from a horse by the commission veterinarian for testing by the official laboratory.
- (B) It shall be the intent of this rule to protect the integrity of horse racing, guard the health of the horse, and safeguard the interest of the public and racing participants through the prohibition or control of drugs, medications and substances foreign to the natural horse. In this context:
- (1) Except for regulatory thresholds of such non-steroidal anti-inflammatory drugs authorized for use by order of the commission, and except for those horses eligible for the use of furosemide as permitted by paragraph (B)(1)(b) of this rule, no horse entered to race shall carry in its body on race day any prohibited foreign substance.
 - (a) The presence of any one of the non-steroidal anti-inflammatory drugs approved for use by the commission will be permitted at a concentration not to exceed the respective regulatory threshold established by the commission. Administration of any non-steroidal anti-inflammatory drug is prohibited within the twenty-four hours before post time for the race in which the horse is entered. The presence of more than one of the approved non-steroidal anti-inflammatory drugs in serum or plasma is prohibited. The presence of any unapproved non-steroidal anti-inflammatory drug in the post-race serum, plasma, or urine sample is also prohibited. The use of all but one of the approved non-steroidal anti-inflammatory drugs shall be discontinued at least forty-eight hours before the post time for the race in which the horse is entered; and

- (b) A horse eligible for furosemide will be permitted a dose equal to a minimum of one hundred milligrams and a maximum of five hundred milligrams. Horses must be administered furosemide, ~~and, if prescribed and administered by a veterinarian, may be administered aminocaproic acid~~ intravenously four hours or more prior to the post time of its race by a licensed veterinarian, ~~who is employed by the owner, authorized agent or trainer of the horse.~~ Furosemide will only be administered in locations approved by the stewards. For commercial tracks furosemide must be administered at the commercial track. At county or independent fairs, furosemide may be administered at the fair or another location. Furosemide may only be administered when an attendant is present. The attendant must sign documentation indicating he or she was present during the administration of furosemide. In order to be eligible for furosemide, ~~and/or aminocaproic acid~~ on race day, a horse must be certified as "furosemide eligible" by the state veterinarian, another commission licensed veterinarian or by the stewards based upon either:
- (i) A good cause showing of need for furosemide for said horse by the owner, trainer, veterinarian or authorized agent. For purposes of this rule, prima facie evidence of a "good cause showing" shall include but not be limited to the personal observation of the state veterinarian, by scope or otherwise, of exercise-induced pulmonary hemorrhage (E.I.P.H.) in the horse; or
 - (ii) A statement issued in writing by a veterinarian attesting to his personal observation, by scope or otherwise, of E.I.P.H. in the horse; or
 - (iii) Based upon evidence the horse raced on furosemide in its preceding start, a horse shall be deemed "furosemide eligible" in writing by the stewards.
- (2) A written certificate issued by the stewards or a written sworn statement of certification executed by the state veterinarian or another veterinarian declaring that a horse is "furosemide eligible" must be deposited with the stewards at commercial tracks at least forty-eight hours prior to post time when a horse first races using furosemide. At county or independent fairs, the written certificate must be deposited with the racing secretary prior to post time of the first race on the day that horse first races using furosemide.
- (3) Any horse racing with furosemide shall be governed by the following requirements in addition to those set forth in paragraph (B)(1)(b) of this rule:

- (a) Once a horse has raced with furosemide, that horse must be administered furosemide every time it races for the next ninety days.
- (b) After a horse races with furosemide for at least ninety days and the owner or trainer decides the horse no longer needs furosemide, the owner or trainer may, upon written notice to the stewards, cease the use of furosemide. That horse shall not race with furosemide for at least thirty days.
- (c) Any time a veterinarian administers furosemide to a horse scheduled to race, said veterinarian shall confirm that horse is entered to race on furosemide, according to the overnight entries published by the racing secretary, and fill out and sign a form approved by the commission. Said form shall be delivered to the security officer at the main gate to the back side of commercial tracks or to the office of the racing secretary at county or independent fairs at least one hour prior to post time of the race in which the horse is scheduled to race. For furosemide-treated horses which ship in to race, the completed furosemide form must be delivered to the security officer at the main gate to the back side of commercial tracks or to the office of the racing secretary at county or independent fairs when the furosemide-treated horse arrives. In no case shall this be less than two hours prior to post time of the race in which the horse is scheduled to race.
- (d) Other than furosemide ~~and aminocaproic acid~~ as permitted in this rule or except in the case of emergency, no foreign substance may be administered to a horse on a race day before the conclusion of the race that horse has been entered in or until the horse has been released by the state veterinarian from the state testing barn or the retention area at a county or independent fair.
- ~~(e) Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of this chapter.~~

(4) It shall be deemed a violation of this rule:

- (a) Should a test sample taken from a horse not reported to the racing secretary as racing on furosemide and listed as such in the daily program test positive for furosemide; or
- (b) Should a test sample of urine taken from a horse show a urine specific gravity less than 1.010 and a test sample of blood taken from a horse

show a level of furosemide greater than one hundred nanograms per milliliter of plasma; or, in the event no urine sample is collected from a horse, should a test sample of blood taken from a horse show a level of furosemide greater than one hundred nanograms per milliliter of plasma; or,

- (c) Should a test sample taken from a horse reported to the racing secretary as racing on furosemide and listed as such in the daily program test negative for furosemide; or
 - (d) Should a test sample of blood taken from a horse show a concentration of total carbon dioxide in the plasma and/or serum in excess of thirty-seven millimoles per liter; or
 - (e) Should a test sample show a concentration of any non-steroidal anti-inflammatory drug in excess of the regulatory threshold established by the commission; or
 - (f) Should any licensee fail to comply with any part of the requirements of paragraph (B)(3)(a) or (B)(3)(b) of this rule.
- (5) On premises under the jurisdiction of the commission, no licensees other than veterinarians shall possess a nasogastric tube, equipment, including bottles designed for hypodermic administration, any foreign substance considered a prescription drug unless it is for an existing condition and is prescribed by a veterinarian, any quantity of sodium bicarbonate (baking soda) or any preparation containing more than thirty grams (one ounce) of sodium bicarbonate. When prescribed by a veterinarian, the supply of any foreign substance shall be limited by ethical practice consistent with the purposes of this rule. This rule shall not affect any prohibition of drugs, narcotics, stimulants, substances and other items listed in rules 3769-8-06, 3769-8-07 and 3769-8-09 of the Administrative Code.
- (6) Notwithstanding the provisions of paragraph (B)(5) of this rule, any licensee may possess within a race track enclosure any chemical substance for personal use provided that, if the chemical substance is prohibited from being dispensed by any federal or state law without a prescription, the person is in possession of documentary evidence that a valid prescription for the chemical substance has been issued to the person and a sworn statement clearly describing the chemical substance and its intended use has been filed with the state steward. Under no circumstances shall this rule be deemed to authorize the possession on the premises of any permit holder of any substance

prohibited by rule 3769-8-06 of the Administrative Code.

- (7) Notwithstanding the provisions of paragraph (B)(5) of this rule, any licensee may possess within any race track enclosure a hypodermic syringe or needle for the purpose of self administering a medically-prescribed chemical substance provided the licensee has notified the state steward of possession, size of the hypodermic syringe or needle and the chemical substance to be administered.
- (8) Following each ~~pari-mutuel~~[pari-mutuel](#) race at a commercial track, a test sample shall be taken for the purpose of analysis from at least one participating horse designated by the stewards. In addition, stewards may designate by lot or otherwise one or more horses from which a test sample shall be taken for the purpose of analysis. The state veterinarian, the executive director or any commission member may also order the collection of a test sample from any horse for the purpose of analysis.

At all county and independent fairs, stewards may order test samples be taken from horses for the purpose of analysis. Stewards may select horses by lot or otherwise.

[\(9\) Any horse which fails to provide a test sample as required by this rule shall be disqualified in accordance with rule 3769-7-45 unless expressly excused by the veterinarian.](#)

- ~~(9)~~[\(10\)](#) The commission shall appoint, at its cost, a veterinarian to take test samples or supervise the collection of them, approve a laboratory for test sample analysis and require the analysis of all test samples collected. The cost of analysis of the blood and urine samples taken from one horse in each race shall be deducted from the purse for that race and forwarded to the commission. The commission shall determine the average cost of a test sample analysis during the prior calendar year and adjust the cost deduction annually to be effective on July first of each fiscal year. The cost of analysis of all other samples shall be paid by the commission.

At each commercial race track the permit holder shall provide, at its cost and subject to the approval of the state veterinarian or commission, an adequate number of assistants, as determined by the commission, to aid in securing such test samples. Under the supervision of the state veterinarian, assistants shall have free access to the state testing barn. The commission may also appoint, at its cost, veterinarians or other persons to supervise the practice of veterinary medicine at all premises under the jurisdiction of the commission and all activities involving the securing, handling and analysis of test samples.

No veterinarian appointed by the commission or employed by a permit holder shall be permitted to treat or prescribe for any horse on the grounds, except in case of emergency, when a full and complete report shall be made to the stewards. No licensee shall employ or compensate a veterinarian or the assistants of a veterinarian appointed by the commission or hired by a permit holder.

~~(10)~~(11) A finding by the chemist that a foreign substance other than furosemide, the a test level of furosemide, or any non-steroidal anti-inflammatory drug authorized for use by order of the commission, as permitted in paragraph (B)(1)(a) of this rule, is present in the urine or blood sample shall be considered a positive test and a violation of this rule. Also, it shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race and that the trainer and his agents responsible for the care and custody of the horse have been negligent in the handling or care of the horse.

~~(11)~~(12) Every horse which suffers a breakdown while training or racing and is destroyed and every horse which expires under suspicious or unusual circumstances while under the jurisdiction of the commission may be required by the state veterinarian to undergo a post-mortem examination at a time and place determined by the state veterinarian in an attempt to ascertain the injury or disease which resulted in euthanasia or caused death.

(a) The commission shall pay all costs involved in a post-mortem examination conducted by a veterinarian approved by the commission.

(b) A written record of all information normally contained in a post-mortem report, and other information specifically requested, shall be provided to the state veterinarian.

(c) Test samples specified by the state veterinarian shall be obtained from the carcass upon which the post-mortem examination is conducted, sent to a laboratory approved by the commission and analyzed for foreign substances, natural substances at abnormal levels, etiological agents and pathological lesions. Test samples may be procured prior to euthanasia.

(d) If a post mortem examination is to be conducted, the commission shall take possession of the horse upon death. The owner or trainer shall no longer have any claim to the horse.

~~(12)~~(13) The commission has the authority to direct the approved laboratory to retain and preserve, by freezing, any samples for future analysis.

~~(13)~~(14) Should test sample analysis result in a violation of paragraph (B)(1), (B)(1)(b), (B)(4)(b), (B)(4)(c), or (B)(4)(d) of this rule, the horse shall be disqualified in accordance with rule 3769-7-45 of the Administrative Code and any licensee found in violation is subject to penalties contained in paragraph (B)(~~15~~16) of this rule.

In situations where penalties include a forfeiture of the purse and any trophy or award, until the purse, as well as any trophy or award, is returned, the owner and trainer of the horse shall stand suspended. The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no foreign substance has been administered to the horse earning the purse money.

No redistribution of such purse shall be required until a permit holder is refunded the purse money. The horse designated the winner shall be awarded any purse money following the disqualification if there are not enough non-offending horses to share such purse.

When required by the penalty section of this rule, stewards shall disqualify the horse from which the positive test sample was obtained and advance finish positions of the remaining horses accordingly. The commission may continue any suspension made pursuant to the above provision listed in this paragraph for such period of time as it may determine.

~~(14)~~(15) It shall be the responsibility of the trainer or any other licensee shown to have the care and attendance of the horse of the winning horse and/or any other horse from which the stewards, state veterinarian, the executive director or any commission member order a test sample to be taken, to see that horse is taken directly after the race to the state testing barn at a commercial track or to the retention area at a county and independent fair. It is the responsibility of the trainer or any other licensee shown to have the care and attendance of the horse to have the horse remain at the state testing barn at a commercial track or the retention area at a county and/or independent fair until all required test samples are taken for purposes of analysis unless expressly excused by the veterinarian.

~~(15)~~(16) The stewards may fine any licensee who violates paragraphs (B)(1)(b), (B)(3)(a), (B)(3)(b), (B)(4)(a), (B)(4)(b), (B)(4)(c), (B)(4)(d), (B)(4)(f) and/or (B)(5) of this rule an amount not in excess of one thousand dollars, suspend such licensee for a period not to exceed one year and refer the matter to the commission for its consideration. The penalties for the violation of paragraph (B)(1) of this rule shall be determined in accordance with the provisions of paragraph (B)(~~16~~17) of this rule. The penalties for violation of paragraphs (B)(1)(a) and (B)(4)(e) of this rule are identified in paragraph (B)(~~19~~20) of

this rule. Stewards may fine any licensee who violates any other requirements in paragraph (B) of this rule an amount not in excess of one thousand dollars, suspend such licensee for a period not to exceed one year and refer the matter to the commission for further consideration.

~~(16)~~(17) Upon finding a violation of paragraph (B)(1) of this rule, and subject to the provisions of rule 3769-7-45 of the Administrative Code, the horse shall be disqualified. Stewards shall consider the classification level of the violation as established by the system of classification of prohibited foreign substances adopted by the commission and impose penalties and disciplinary measures consistent with the recommendations contained therein. If a majority of stewards determine that mitigating circumstances require imposition of a lesser penalty, they may impose the lesser penalty. If a majority of stewards wish to impose a penalty in excess of the authority granted them, they shall impose the maximum penalty authorized and refer the matter to the commission with a specific recommendation for further action.

~~(17)~~(18) When imposing penalties for violations of paragraphs (B)(1) to (B)(~~14~~15) of this rule, stewards and the commission may consider, in addition to the considerations outlined in paragraph (B)(~~16~~17) of this rule, the following factors:

- (a) The accessibility of the drug, considering whether it can be purchased over the counter, only with a prescription, only with a license for controlled substances, or cannot be purchased in this country;
- (b) The experience of the violator;
- (c) Whether the violator has ever been the subject of a medication ruling in any racing jurisdiction;
- (d) What action, if any, was taken by the licensee to avoid the violation.

Stewards and the commission shall not be required to articulate any of the foregoing in any ruling issued. Ignorance of the rules shall not be deemed a mitigating factor.

~~(18)~~(19) In the event the violation that occurs is solely a violation of an excessive test level of a non-steroidal anti-inflammatory drug pursuant to paragraphs (B)(1)(a) and (B)(4)(e) of this rule, the penalties imposed by the stewards shall be as follows:

- (a) For a first violation, upon receipt of a preliminary report of a positive test

finding by the commission laboratory, the stewards shall issue an oral notice of said violation to the licensee. All preliminary reports of violation of paragraphs (B)(1)(a) and (B)(4)(e) of this rule are subject to verification by confirmatory tests by the commission laboratory.

- (b) Upon receipts of a preliminary report by the commission laboratory that a licensee has violated paragraphs (B)(1)(a) and (B)(4)(e) of this rule a second time, within one year the stewards shall issue an oral notice of said violation to the licensee. Should confirmatory tests verify the validity of such preliminary report the stewards shall fine said licensee one hundred dollars.
- (c) Upon receipt of a preliminary report by the commission laboratory that a licensee has violated paragraphs (B)(1)(a) and (B)(4)(e) of this rule more than twice, within one year the stewards shall issue an oral notice of said violation to the licensee. Should confirmatory reports verify the validity of such preliminary report the stewards may fine the licensee up to one thousand dollars and shall refer the matter to the commission for its consideration.
- (d) In addition to the penalties set forth in paragraphs (B)(~~1819~~)(a), (B)(~~1819~~)(b), and (B)(~~1819~~)(c) of this rule, the stewards may consider the test levels reported by the commission laboratory in determining whether the licensee has violated paragraph (B)(3)(d) of this rule.
- (e) In addition to the penalties set forth in paragraphs (B)(~~1819~~)(a), (B)(~~1819~~)(b), and (B)(~~1819~~)(c) of this rule, the stewards may consider the licensee's history of violations of paragraphs (B)(1)(a) and (B)(4)(e) of this rule in determining whether to cite the licensee for violations of other rules of racing, including but not limited to paragraphs (A)(4) and (A)(~~1011~~) of rule 3769-2-26 of the Administrative Code.

~~(19)~~(20)

- (a) If a test sample of blood from a horse shows a concentration of total carbon dioxide in excess of the level authorized in paragraph (B)(4)(d) of this rule, the owner or trainer of that horse contending that such level is physiologically normal for that specific horse may request the horse be held in approved quarantine at a location designated by the commission. Such quarantine shall be in accordance with policies and procedures adopted by the commission and shall be for a period determined by the executive director or the stewards, but not greater

than five days, and is at the sole expense of the owner or trainer requesting the quarantine. During the quarantine, the horse shall be retested periodically, but it shall not be permitted to race. Removal of a horse from quarantine without the permission of the judges shall constitute a waiver of any claim of normally high levels for that specific horse. A request for quarantine shall be made within seventy-two hours of notification of violation of this rule.

- (b) Subsequent to the horse being quarantined and retested, if the commission is satisfied on the basis of clear and convincing evidence derived from the testing of the horse's blood that such horse has physiologically normal levels in excess of the level authorized in paragraph (B)(4)(d) of this rule then no disciplinary action will be taken against the owner or trainer of that horse. In addition, notwithstanding the provisions of paragraph (B)(~~19~~20)(a) of this rule, the commission shall bear the expense of quarantine in such cases.

~~(20)~~(21) The commission, on its own motion or in addition to any penalty assessed by the stewards, may revoke, suspend or refuse to grant any commission license held or applied for by any person who violates this rule.

(C) Notice of the use of medication:

- (1) In order to inform the public of those horses racing with permitted medication, it shall be the responsibility of the permit holders to indicate in daily programs any horse racing with furosemide and if a horse is racing with furosemide for the first time.
- (2) When entering a horse, it shall be the responsibility of the trainer to indicate on the entry form that he intends to race the horse with furosemide and to indicate if the horse is racing with furosemide for the first time, as defined in this rule. It shall be the responsibility of the racing secretary to check each daily program to make sure the use of furosemide reported to his office for each horse is correctly shown.
- (3) When an entry is made by telephone the trainer shall provide the information otherwise required on a written entry and obtain the name of the person who accepts the entry. The person who accepts a telephone entry shall obtain the name of the person making the entry.
- (4) Stewards may fine any licensee who violates paragraph (C) of this rule an amount not in excess of one thousand dollars, suspend the licensee for a

period not to exceed one year and refer the matter to the commission for further consideration.

- (D) Any horse known to have bled externally the first time from its nostrils during a race or workout may not be entered or raced for a period of ten days without prior approval by the state veterinarian. In the event a horse bleeds a second time within one year of when the horse bled the first time, such horse shall be placed on the veterinarian's list and prohibited from racing for a period of thirty days. In the event a horse bleeds a third time within one year of when the horse bled the first time, such horse shall be placed on the veterinarian's list and prohibited from racing a minimum of ninety days. The horse may thereafter be removed from the veterinarian's list by the state veterinarian after a satisfactory workout witnessed by the state veterinarian. In the event a horse bleeds a fourth time within one year of when the horse bled the first time, such horse shall thereafter be prohibited from racing in this state. Stewards shall maintain a list of all horses they know have bled from their nostrils.

- (E) ~~Veterinarians'~~Veterinarian's report

- (1) Any veterinarian who treats a racing horse or administers, prescribes, provides or sells any medication or foreign substance for use by a racing horse shall keep a complete written record of this event.
- (2) ~~Each record shall contain the name of the horse, its owner or trainer, dates and times of treatments, any tentative diagnosis, and the name, doses and method of administration of the medications or foreign substances administered or prescribed.~~Each medical record shall contain all pertinent medical data including the registered name of the horse, its owner and/or trainer, findings of a physical examination, a diagnosis, dates and times of treatments and the name, dose and methods of administration of the medications or foreign substances administered or prescribed. A veterinarian may prescribe, administer or dispense drugs or biologics only in those cases in which he or she has a valid veterinary-client patient relationship. A veterinarian must comply with all applicable state and federal rules and regulations in the prescribing, administering and dispensing of drugs. All prescription medications must have a label which is securely attached and clearly ascribed to show the following: the name of the product, the name, address and telephone number of the veterinarian prescribing or dispensing the product, the name of each horse for whom the product is intended and prescribed, the dose, duration of treatment and the expiration date of the prescribed or dispensed product, and the name of the person to whom the product was dispensed. Compounded medication shall be dispensed only by prescription issued by a licensed veterinarian to meet the medical needs of a specific horse

and for the use only in that horse.

- (3) ~~Each record shall remain confidential and be retained by the veterinarian unless a disclosure of its content is requested by the commission or its state steward for use in a proceeding resulting from a positive test sample. Upon request, the veterinarian shall provide each record to the commission or state steward within twenty-four hours.~~ Each record shall remain confidential and be retained by the veterinarian. Disclosure of the content of a complete medical record may be requested by the commission for review after the death of a horse or for use in a proceeding resulting from a positive test sample. When requested, it is the responsibility of the owner and/or trainer to provide medical records from every veterinarian that treated the horse during the previous six months or for however long the trainer has trained the horse if that time period is less than six months. Upon request of the owner, trainer or the commission, a veterinarian shall provide the medical record to the commission or presiding judge within twenty-four hours.

- (4) Veterinarians may use standard abbreviations for any medications administered or prescribed.
- (5) Except in an emergency, it shall be the duty of a veterinarian to inquire of the owner, trainer or their representative, prior to treating any horse, whether the horse is or will be entered to race during the period of time any medication administered by the veterinarian may affect any test sample and result in a positive finding. If such shall be the case, it is the veterinarian's duty to advise the owner, trainer or their representative of this.

If the owner or trainer certifies in writing to the veterinarian that the horse to be treated will not race within fifteen days of the time of treatment, then said veterinarian shall not be required to complete the report pursuant to paragraph (E)(1) of this rule.

A veterinarian may be held wholly or partially responsible for such positive finding if the veterinarian failed to perform the duties of inquiry and advice as set forth in this rule.

- (6) The stewards may fine any licensee who violates paragraph (E) of this rule an amount not in excess of one thousand dollars, suspend the licensee for a period not to exceed one year and refer the matter to the commission for further consideration.

3769-8-02

Trainer responsible for condition of horses.

(A) The trainer shall be the absolute insurer of, and responsible for, the condition of the horse entered in a race, regardless of the acts of third parties. ~~Should the chemical or other~~ If the analysis of urine or blood ~~specimens test samples prove positive, showing~~ show the presence of any foreign substance not permitted by rule 3769-8-01 of the Administrative Code, the trainer of the horse, ~~the foreman in charge of the horse, the groom,~~ and any other person licensee shown to have had the care ~~or attendance~~ of the horse may, in the discretion of the commission, be subjected to penalties provided in paragraph ~~(B)~~ (C) of this rule. The trainer of the horse and any other licensee shown to have had the care of the horse shall be responsible to have ~~Permit holders, other than county or independent fairs, shall provide and maintain a state testing area to include a group of stalls for the accomodation of the horses as are designated in rule 3769 8 01 of the Administrative Code, and~~ such horses ~~shall~~ remain in the state testing barn area or the retention area at county or independent fairs until all required ~~specimens test samples~~ have been obtained by the state veterinarian and until ~~he~~ the state veterinarian shall have released said horses. All persons shall be excluded from said area ~~except owners, trainers, or their~~ except representatives, of the horses from which the ~~specimens test samples~~ are taken, and the ~~authorized state~~ veterinarian and ~~his~~ the veterinarian's assistants and any representative of the commission.

(B) Permit holders, other than county or independent fairs, shall provide and maintain a state testing area approved by the commission to include a group of stalls for the accommodation of the horses as designated in rule 3769-8-01 of the Administrative Code.

~~(B)~~(C) The stewards may fine any licensee who violates this rule an amount not in excess of one thousand dollars and/or suspend any commission license held by such licensee for a period not to exceed one year and/or refer the matter to the commission for its consideration. The commission may on its own motion, or in addition to any penalty assessed by stewards, revoke or suspend any commission license held by any person who violates this rule and/or rule off and/or refuse to grant a license to any person who violates this rule.