

# CHAPTER 3769-18 MEDICATION AND DRUG-RELATED RULES

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## 3769-18-01. 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 detection levels 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)(c) of this rule.

(12) Nasogastric tube shall mean any tube which can be inserted through the nose of a horse.

(13) "Retained specimens" 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 detection levels 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 non-steroidal anti-inflammatory drug authorized for use by the commission will be permitted at a test level not to exceed the detection level 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 authorized non-steroidal anti-inflammatory drugs or of any unapproved non-steroidal anti-inflammatory drug in the post-race serum or plasma sample is 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 veterinarian who is employed by the owner, authorized agent or trainer of the horse. Furosemide will only be administered in locations approved by the judges. 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 veterinarian or by the judges based upon either:

(i) A good cause showing of need for furosemide for said horse by the owner, trainer, and 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 judges.

(2) A written certificate issued by the judges 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 judges 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) Except for horses which become "furosemide eligible" in accordance with paragraph (B)(1)(b)(iii) of this rule, any horse issued a certificate of furosemide eligibility pursuant to paragraph (B)(2) of this rule must first observe a ten-day waiting period from the date of issuance of said certificate prior to entry of said horse to race.

(b) Once a horse has raced with furosemide, that horse must be administered furosemide every time it races for the next ninety days.

(c) 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 judges, cease the use of furosemide. That horse shall not race with furosemide for at least thirty days.

(d) After a horse races with furosemide for at least ninety days and is to be raced without furosemide at a commercial track, the horse must first race without furosemide in a charted qualifying or fair race. The charted line from the qualifying or fair race shall appear in the daily program when the horse first races without furosemide.

(e) 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.

(f) 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.

(g) Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these rules.

(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 100 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 100 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 37 millimoles per liter; or

(e) Should a test sample show a concentration of any non-steroidal anti-inflammatory drug in excess of the detection level established by the commission; or

(f) Should any licensee fail to comply with any part of the requirements of paragraphs (B)(3)(a), (B)(3)(b), (B)(3)(c), or (B)(3)(d) 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 30 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 3769-18-06, 3769-18-07 and 3769-18-09 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 presiding judge. 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 3769-18-06 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 presiding judge of possession, size of the hypodermic syringe or needle and the chemical substance to be administered.

(8) Following each 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 judges. In addition, judges 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.

(a) At all county and independent fairs, judges may order test samples be taken from horses for the purpose of analysis. Judges may select horses by lot or otherwise.

(9) 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 1 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 judges. 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) A finding by the chemist that a foreign substance other than 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 test 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) 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 sub-stances at abnormal levels, etiological agents and pathological lesions. Test samples may be procured prior to euthanasia.

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

(13) Should test sample analysis result in a violation of paragraphs (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 3769-17-43 of the Administrative Code and any licensee found in violation is subject to penalties contained in paragraph (B)(15) 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, judges 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 for such period of time as it may determine.

(14) It shall be the responsibility of the trainer of the winning horse or any other horse from which the judges 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.

(15) The judges may fine any licensee who violates paragraphs (B)(1)(b), (B)(3)(a), (B)(3)(b), (B)(3)(c), (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) 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) of this rule. Judges 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) Upon finding a violation of paragraph (B)(1) of this rule, and subject to the provisions of rule 3769-17-43 of the Administrative Code, the horse shall be disqualified. Judges 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 judges determine that mitigating circumstances require imposition of a lesser penalty, they may impose the lesser penalty. If a majority of judges 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) When imposing penalties for violations of paragraphs (B)(1) to (B)(14) of this rule, judges and the commission may consider, in addition to the considerations outlined in paragraph (B)(16), 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.

Judges 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) 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 judges 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 judges 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 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 a second time, within one year the judges shall issue an oral notice of said violation to

the licensee. Should confirmatory tests verify the validity of such preliminary report the judges 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 judges shall issue an oral notice of said violation to the licensee. Should confirmatory tests verify the validity of such preliminary report the judges 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)(18)(a), (b), and (c) hereinabove, the judges may consider the test levels reported by the commission laboratory in determining whether the licensee has violated paragraph (B)(3)(f) of this rule.

(e) In addition to the penalties set forth in paragraphs (B)(18)(a), (b) and (c) hereinabove, the judges 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 violation of other rules of racing, including but not limited to rules 3769-12-26 (A)(4) and (A)(10), of the Ohio administrative code.

(19)(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 judges, 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)(a) of this rule, the commission shall bear the expense of quarantine in such cases.

(20) The commission, on its own motion or in addition to any penalty assessed by the judges, 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) Judges 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. Judges shall maintain a list of all horses they know have bled from their nostrils.

(E) Veterinarians' 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.

(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 presiding judge for use in a proceeding resulting from a positive test sample. Upon request, the veterinarian shall provide each 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 judges 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. *Effective: 1-1-85; 4-1-88; 3-16-90; 7-1-90; 8-1-91; 6-8-92; 7-1-99; 3-6-00; 1-1-02; 6-7-02; 1-1-03; 2-1-05; 1-8-07*

### **3769-18-02. Trainer responsible for condition of horses**

(A) The trainer shall be the absolute insurer of, and responsible for, the condition of the horses entered in a race, regardless of the acts of third parties. Should the chemical or other analysis of urine or blood specimens prove positive, showing the presence of any foreign substance not permitted by rule 3769-18-01 of the Administrative Code, the trainer of the horse, the foreman in charge of the horse, the groom, and any other person 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) of this rule. Permit holders, other than county or independent fairs, shall provide and maintain a state testing area to include a group of stalls for the accommodation of the horses as are designated in rule 3769-18-01 of the Administrative Code, and such horses shall remain in the state testing barn area until required specimens have been obtained by the veterinarian and until he shall have released said horses. All persons shall be excluded from said area except owner, trainers, or their representatives, horses from which the specimens are taken, the authorized veterinarian and his assistants and any representative of the commission.

(B) The judges 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 judges, 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. *Effective: 1-1-85; 1-1-91; 2-6-99;*

### **3769-18-03. Who must be present when sample is taken**

(A) The owner, trainer, groom or other representative must be present in the state testing barn when a test sample is taken from the horse, and must remain until the test sample is sealed. The official tag attached to a test sample shall be signed by the owner, trainer, groom or other representative as witness to the taking of such test sample. Willful failure to be present at, or a refusal to allow, or any act or threat to impede or prevent or otherwise interfere with, the taking of any such test sample shall subject the licensee guilty thereof to immediate suspension by the judges, and the matter shall be referred to the commission for its consideration.

(B) No owner or trainer who is not present either in person or by representative when a test sample is taken from his horse will be heard to claim at any future time that the test sample was not the one taken from his horse. *Effective: 1-1-85; 4-1-99*

### **3769-18-04. Nerved horses**

(A) All horses that have been nerved shall be so designated onto their electronic eligibility and all claim authorization forms for such horses. It is the responsibility of the owner of the horse at the time the horse is nerved to see that this information is placed on the registration certificate and the electronic eligibility. All horses that have been nerved prior to the adoption of this rule must also be certified and it will be the responsibility of the owner or the trainer of such horse to see that such information is carried on the registration certificate. No trainer or owner will be permitted to enter or start a horse that is high-nerved. It shall be the responsibility of the owner and/or trainer of a horse that has been low-nerved to post on the bulletin board in the racing office at each track where the horse competes the fact that the horse has been low-nerved, and it is the responsibility of each track to provide a space in the racing office where the fact of nerving can be posted in accordance with this rule. Where these requirements have been met, low-nerved horses will be permitted to start.

(B) Only the palmar (posterior) digital neurectomy (low nerving) by surgical or other physical (example: freezing) or chemical (example: injecting alcohol or snake venom) means will be permitted in horses to be raced. Only the posterior digital nerve and middle branches to the palmar (posterior/back) part of the foot may be desensitized. This procedure must be done below the fetlock. The dorsal (anterior/front) branches must be preserved so the horse has feeling at the coronary band at the front of the foot on both sides of the midline. Lack of feeling at the coronary band on the front of the foot is prima facie evidence that a horse has been nerved in contravention of this rule. Incisions over nerves at or above the fetlock may be evidence that the horse has been high-nerved, even if partial or complete feeling is present at the front of the coronary band of the foot. In horses racing or to be raced, no "high nerving" (at or above the fetlock, including volar, palmar or plantar nerves) is permitted by any means: surgical, physical, including but not limited to injection of alcohol or snake venom. Any offending party may be ruled off or otherwise penalized under the provisions of rule 3769-18-99 of the Administrative Code. *Effective: 5-7-01; 4-1-88; 9-5-86; 1-1-85*

#### **3769-18-05. Stimulation prohibited**

Repealed. *Effective: 1-1-85; 4-1-88; 7-1-99*

#### **3769-18-06. Controlled substances & narcotics prohibited**

Any person licensed by the Ohio state racing commission who shall be found with any controlled substance as defined by the Ohio state board of pharmacy or narcotic drug in his/her possession while on the premises of any permit holder shall be fined and/or suspended by the judges in accordance with rule 3769-18-99 of the Administrative Code. *Effective: 1-1-85; 3-19-87*

#### **3769-18-07. Possessions prohibited**

(A) No person shall have in his/her possession on the premises of a permit holder any nasogastric tube, drugs, chemicals which may be used as stimulants, hypodermic syringes or hypodermic needles or any other instrument which may be used for injection, or batteries or any other electrical or mechanical instrument which may be used to affect the speed or actions of a horse. Any offending party may be ruled off. This rule shall not be construed to apply to a veterinary surgeon licensed by the commission.

(B) No veterinarian shall leave a container of any prohibited drug on the premises of a permit holder nor shall he leave or dispose of hypodermic syringes or hypodermic needles or any other instrument which may be used for injection on the premises of the permit holder whether used or unused. Any violation of this rule shall be subject to the penalties as outlined in rule 3769-8-99 of the Administrative Code. *Effective 1-1-85; 10-4-92; 2-6-99; 8-1-09*

#### **3769-18-08. Anesthetics prohibited**

Repealed. *Effective: 1-1-85; 7-1-99*

#### **3769-18-09. Use of drugs prohibited**

(A) In order to ensure the public safety and protect the integrity of horse racing in the state of Ohio, the commission intends to regulate the use of any drug of abuse, as governed by division (A) of section 3719.011 of the Revised Code, by any licensee who is responsible for the conduct of a race or whose duties include the training, exercising, driving or caring for a horse. It shall also include all track employees who, while at work operate mechanical devices of any type which could cause injury to the operator of such device or to others. Mechanical devices include but are not limited to motor vehicles, tractors and mowers.

(B) For purposes of this rule, "licensee" means any person licensed by the commission whose duties include any of the following: training, exercising, driving or caring for a horse or any licensed racing official who is involved in the conduct of a race, including but not limited to:

- (1) Assistant starter;
- (2) Assistant trainer;
- (3) Dentist;
- (4) Driver;
- (5) Driver-Trainer;
- (6) Groom;
- (7) Horseshoer;
- (8) Judge;
- (9) Maintenance and track conditioning employees;
- (10) Any official whose appointment must be approved by the Ohio state racing commission as identified in rule 3769-12-10 of the Administrative Code;
- (11) Owner;
- (12) Paddock judge;

- (13) Starter;
- (14) Starting gate driver;
- (15) Trainer;
- (16) Veterinarian;
- (17) Veterinarian's assistant.

(C) The personal use of any drug of abuse, as defined in division (A) of section 3719.011 of the Revised Code, is prohibited without a legal prescription. Acting with reasonable cause or through random selection by lottery, the presiding judge, secretary of the commission, any member of commission, any investigator employed by the commission, or the chief of security at the track may direct any licensee, as defined in paragraph (B) of this rule, to submit a sample of their urine to the track physician or other representative of the commission. The urine sample shall be provided in the manner prescribed by the commission. Any random selection by lottery may be witnessed by a representative of the licensee group involved. The commission may alter the number of names to be drawn each day and for each race.

(D) Such samples or tests pursuant to the requirements in paragraph (C) of this rule may be requested at any time a licensee is acting within the scope of his or her license while on the premises of an Ohio state racing commission permit holder. When a licensee has been given notice by the presiding judge, any member of the commission, the secretary of the commission, commission investigator or inspector or the chief of security at the race track, it shall be considered a failure and/or refusal if the licensee does not provide a valid urine sample prior to the end of the last race on that day.

(E) Failure or refusal of any licensee to supply a valid urine sample when requested to do so by one or more of the persons designated in paragraph (C) of this rule shall subject the licensee to an immediate fine of two hundred fifty dollars and a suspension of sixty days for a first offense. A second and all subsequent failures or refusals to provide a requested urine sample shall subject the individual to a fine of one thousand dollars and a suspension of one year, and in addition, the individual shall be referred to the Ohio state racing commission for any further action deemed necessary.

(F) In the event that the urine analysis results should disclose the presence of any drug of abuse prohibited in paragraph (C) of this rule, the following action shall be taken:

(1) For a first offense, an official ruling will be issued notifying the licensee that his or her sample or test was positive for a prohibited substance and that he or she will be subject to future mandatory drug testing. In addition, upon the delivery of such official ruling, the individual shall be immediately suspended for ten days and fined two hundred fifty dollars.

(2) For a second offense, an official ruling will be issued indicating the licensee has tested positive for a prohibited substance on two occasions. Upon delivery of such official ruling, said individual's license shall be immediately suspended for a period of twenty days and the licensee shall be fined the sum of two hundred fifty dollars. The licensee will be prohibited from participating in racing in the state of Ohio until he or she presents the presiding judge with proof that he or she has voluntarily enrolled in a rehabilitation program approved by the commission, and a report from said program indicating the licensee's satisfactory attendance and participation in the program.

(3) For a third or subsequent offense, the licensee shall immediately be fined one thousand dollars and suspended for one year. In addition, his or her case will be referred to the commission for further action. The licensee shall also be required to provide proof that he or she has satisfactorily completed a commission approved substance abuse program prior to the commission considering his or her application for any type of a license.

(G) In the event any licensee subject to this rule is taking a substance pursuant to a valid prescription on order from a licensed physician or dentist, it shall be that licensee's responsibility to give written notice of same to the presiding judge prior to participating in any racing activities. The written notice shall contain the following:

- (1) Name of the substance;
- (2) The quantity and dosage of the substance prescribed.

(H) Any work product resulting from an investigation pursuant to this rule shall be a confidential law enforcement investigatory record as defined in section 149.43 of the Revised Code.

(I) All urine analyses shall be conducted at the expense of the commission by the Ohio state university testing laboratory or other testing laboratory approved by the commission.

(J) Any licensee receiving an official ruling alleging a violation of this rule may request a hearing in accordance with the provisions of Chapter 119. of the Revised Code and rule 3769-17-41 of the Administrative Code.

(K) Information concerning positive test results will be released only in accordance with section 149.43, of the Revised Code, the public records statute. *Effective: 0-15-85; 2-1-86; 3-19-87; 4-1-88; 9-16-88; 10-6-89; 8-1-91; 1-1-92; 8-1-94; 2-6-99*

### **3769-18-10. Trainer and veterinarian responsible for reporting notice of disease or death**

(A) The trainer shall be absolutely responsible for reporting to the judges and/or to the commission veterinarian the death of any horse in the care of said trainer, which horse is currently stabled on the premises of the permit holder. Said report must be filed in writing on forms furnished by the commission and delivered to the judges and/or the commission veterinarian within twenty-four hours of the death of the horse.

(B) The trainer shall be absolutely responsible for reporting to the judges and/or to the commission veterinarian a notice in writing on forms furnished by the commission, the name of any veterinarian who treats a horse in the care of said trainer, which horse is currently stabled on the premises of the permit holder, when said treatment is diagnosed as being for a contagious or infectious disease.

(C) It shall be the responsibility of both the trainer and any veterinarian who has reason to suspect the existence of a contagious or infectious disease in any horse to give notice, in writing, on forms furnished by the commission, to the commission, or to the judges when said horse is stabled on the premises of a permit holder. Said notice shall be given to the commission veterinarian or the judges as quickly as possible, but in no event shall the time period be more than seventy-two hours after said veterinarian has examined said horse and/or treated said horse for such disease.

(D) For purposes of this rule "contagious or infectious disease" means any disease which is capable of transmission by any means from a carrier animal to a human or to any other animal. *Effective: 5-5-86; 10-4-92*

### **3769-18-11. Disposal of dead horse; autopsy**

In the event that a horse should die on the premises of a permit holder or elsewhere, the commission veterinarian or the state judge may order an autopsy to be performed on said horse for the purpose of ascertaining the cause of death. In the event that such autopsy is ordered, the cost thereof shall be borne by the commission.

In the event that a horse should die on the premises of a permit holder, said horse may not be removed from the premises without first obtaining permission to remove the horse, either from the commission veterinarian or the state judge. *Effective: 5-5-86; 10-4-92*

### **3769-18-12 Independent analysis of official specimen**

(A) The commission veterinarian shall, whenever physically possible, collect a minimum of fifty milliliters of urine and a minimum of thirty milliliters of blood specimens from each horse selected for testing by the judges.

(1) The official laboratory shall retain all portions of each specimen in secure, limited access, frozen storage at a site approved by the commission for the time period required by this section;

(2) If the results of tests on a specimen are negative, the official laboratory may discard all portions of said specimen;

(3) If the results of tests on a specimen are positive, the official laboratory shall retain all portions of said specimen until the matter has been finally adjudicated or until directed to forward the specimen or a portion thereof to another laboratory for independent analysis;

(4) The trainer and/or owner shall not be entitled to a retained specimen in those instances where the official laboratory deems it necessary to consume the entirety of an official specimen for official laboratory testing purposes.

(B) The results of all tests performed by the official laboratory shall remain confidential until the time of the judges' hearing, if any, and shall be communicated only to the executive director of the commission, the presiding judge, and the trainer. The trainer shall be responsible for notifying the owner of a horse of a positive test result as reported by the official laboratory.

(1) The trainer or owner of a horse for which a positive test result was reported may request that the retained specimen or a portion thereof be retested in accordance with this section. A commission approved independent laboratory or the official laboratory must perform the retest;

(2) Approved independent laboratories are identified on a list maintained by the commission;

(3) Approved independent laboratories must establish reasonable fees for testing that may include the costs of testing negative control specimens if requested by the trainer or owner;

(4) The request for retesting shall be in writing and shall be delivered to the judges not more than forty-eight hours after the issuance of the ruling of the judges. Notice of a positive test result shall be communicated in writing to the trainer and may also be communicated orally to the trainer. Failure to request retesting of the retained specimen within forty-eight hours of issuance of the ruling of the judges shall constitute a waiver of this right.

(5) The laboratory selected by the trainer or owner for independent testing of the retained specimen shall be contacted by a representative of the commission to request acceptance of the specimen for testing;

(6) The owner or trainer is entitled to be present at the retest if they have requested retesting of the retained specimen by the official laboratory;

(7) The results of testing by an approved independent laboratory shall be furnished to the commission and may be introduced as evidence in any hearing;

(8) If a retained specimen is sent to an independent laboratory for retesting, the official laboratory shall arrange for shipment of the specimen in a manner that ensures the integrity of the sample. Costs of shipping and handling will be paid by the owner or trainer requesting the retest;

(9) The identity of the drug or drug metabolite(s) identified by the official laboratory shall be communicated to the independent laboratory in writing;

(10) Should the independent laboratory determine that there is insufficient sample volume to retest the sample, or if an act of god, power failure, accident, labor strike or any other event beyond the control of the commission or its

representatives prevents the retained sample from being tested, then the results of tests performed by the official laboratory shall be prima facie evidence of the presence of the substance(s) identified by the official laboratory.

(11) The trainer or owner may request that negative control samples be tested with the retained sample. The relative identities of the negative control samples and the retained sample shall be known only to the official laboratory.

(C) The independent laboratory shall send a confidential written report of the results of its tests to the commission, which in turn shall send a confidential report to the trainer and owner forthwith.

(1) No action shall be taken against the trainer or owner if the results of the retesting are negative.

(2) Should the results of retesting prove negative, the owner or trainer shall be reimbursed by the commission for all costs of retesting. *Effective: 3-6-00*

### **3769-18-99. Penalties commission may impose**

(A) For a violation of any rule in this chapter and unless a rule specifically precludes the judges from doing so, the judges, upon the concurrence of two such officials, may fine a licensee an amount not in excess of the amount permitted by section 3769.091 of the Revised Code and/or suspend licenses, upon the concurrence of two such officials, for a period not to exceed the length of time permitted by section 3769.091 of the Revised Code and/or refer the licensee to the commission for further action.

Any fine or suspension may be appealed to the commission. Such appeal shall stay the fine or suspension until further action by the commission.

(B) In addition to any other penalty provided, or in the event no penalty has been provided, the commission, may, upon finding a licensee has violated a rule of this chapter, fine the licensee an amount not in excess of the amount prescribed by law and/or deny, suspend or revoke any Ohio state racing commission license held by the licensee and/or rule off any such licensee from all Ohio race tracks.

(C) Should the commission find a permit holder, or a representative of the permit holder has violated a rule in this chapter, they may fine said permit holder or the representative of the permit holder an amount not in excess of the amount prescribed by law and/or deny, suspend or revoke any license and/or permit held by said permit holder or representative of the permit holder and/or rule off any such permit holder's representative.

(D) Each day during which any violation of a rule in this chapter continues to occur shall be considered a separate offense and any person and/or permit holder continuing to violate said rule or rules may be penalized separately for each day the violation occurs.

(E) Any person who violates any provisions of the Horse Racing Act or any of the Ohio rules of racing for which no penalty is otherwise provided, may be denied a license under such rules. A licensee under such rules may be fined, may have his/her license suspended or revoked or may be ruled off. Any permit holder who violates any of the provisions of the Horse Racing Act or any of the Ohio rules of racing for which a penalty is not otherwise provided, may have the permit suspended or revoked, or may be denied a permit upon subsequent application therefor. *Effective: 1-1-85; 5-1-85*