EQUINE ANTI-DOPING PROGRAM

FAQS ABOUT THE PROPOSED EQUINE ANTI-DOPING AND MEDICATION CONTROL RULES

The Horseracing Integrity and Safety Act (HISA) became law in January 2021. The law established the Horseracing Integrity and Safety Authority (Authority), which was formed by an independent nominations committee and announced in May 2021.

The United States Anti-Doping Agency (USADA) first met with the newly formed Authority in July of 2021 and since that time, the Authority with USADA's consultation has been developing uniform anti-doping and medication control rules to present to the public for feedback and, eventually, to the Federal Trade Commission (FTC) for additional public feedback and FTC approval as contemplated by HISA.

On November 11, 2021, the Authority, following its Anti-Doping and Medication Control Committee's review and certain industry groups, review, released publicly a draft of the Proposed Equine Anti-Doping and Medication Control Protocol, the Proposed Equine Prohibited List, with the Equine Program Definitions.

Importantly, these rules have had significant input from the Authority Committee, which includes industry experts, as well as input from certain industry groups. The release of the rules publicly is an on-going effort to give the public - particularly those in the equine industry who want safe, healthy, and fair sport – the opportunity to provide input, expertise, and perspective through submission of comments at www.hisaus.org and other forums. This collaborative process will help ensure that the final rules approved by the FTC are fit for purpose to return racing to national prominence while ensuring the wellbeing of the horses and the long-term viability of the sport.

PROCESS OF DEVELOPMENT OF THE PROPOSED EQUINE PROTOCOL AND PROHIBITED LIST

Q. Is USADA happy with the current version of the Proposed Equine Protocol and will it achieve safe, healthy, and fair sport?

USADA has worked hard with the Authority and industry experts to draw on best practices in creation of the new Equine Protocol and we are excited that the rules as drafted to date will reward the industry that supports clean racing and will robustly but fairly deal with those who do not.

Q. Why do we need to change the rules regarding performance-enhancing drugs and therapeutics?

To maintain its social license to operate, and to protect the wellbeing of equine athletes and the integrity of competition, the sport must enact fair and uniform rules on performance-enhancing and therapeutic drugs. U.S. racing has made strides in progressive enforcement of drug rules, but we must now apply and build upon that progress uniformly across the country for the welfare of the sport's equine and human athletes.

Q. Have industry experts been involved in drafting the Proposed Equine Protocol and Prohibited List?

Yes, USADA has worked with the Authority's Anti-Doping and Medication Control Committee, which has several industry experts on it, in drafting the initial set of rules. Other industry groups have also been formally consulted prior to the release of these proposed rules.

Q. Are the Proposed Equine Protocol and Prohibited List final?

The rules are not final until additional rounds of feedback from the public have occurred and they are approved by the FTC. The earliest effective date for the new equine rules will be July 1, 2022.

Q. When will owners, trainers, and others have to follow these new rules?

Under HISA, the rules come into effect on July 1, 2022 assuming the FTC approves the rules with this effective date. Of course, once the rules are approved by the FTC, and in the lead up to their taking effect, USADA will be working hard to educate industry participants on the new rules.

SPECIFIC QUESTION ABOUT THE RULES

Q. I have been hearing the term responsible person used. Who is the responsible person?

The responsible person is the individual responsible under the rules in the event of a positive test on a horse. In most cases, the responsible person will be the trainer; however, if the horse is not in training, such as when it is resting, responsibility may be transferred back to the owner.

Q. What are the major differences under the Proposed Equine Protocol and Prohibited List and the current system?

One of the key differences between the Proposed Equine Protocol and Prohibited List and the current system is that the Proposed Equine Protocol and Prohibited List applies uniformly across the United States for all thoroughbred horse racing and changes the pathway for dealing with violations.

Q. The Proposed Prohibited List does not tell trainers when to stop using a particular medication on a horse. Why not?

Guidance on the use of certain legitimate therapeutic medications is not part of the rules themselves. Research is being done to ensure as complete and robust of a guidance document as possible and will be publicized well in advance of the new rules effective date.

Q. Can covered persons still use Lasix?

As of July 1, 2022, according to HISA, Lasix will be prohibited on race day in all 2-year-old and stakes races and other races unless the Authority grants an exemption based on a State Racing Commission's request. Additionally, as required by HISA, the Authority will undertake a research study to determine a long-term policy on the use or not of Lasix in racing.

Q. What kind of samples will be collected from my horse?

The type of samples routinely collected will be similar to those collected, now with blood and urine samples forming the backbone of the testing program. In addition, hair samples and other matrix may be collected, particularly to accommodate analysis for substances prohibited at all times.

Q. When and where can my horse be tested?

Horses can be tested anywhere and at any time from the moment they become a covered horse, until they are permanently retired from racing. The ability to test a horse at any time with no advance notice provides significant deterrence value and is critical to a successful anti-doping program.

Q. What happens under these rules if someone is caught intentionally cheating?

For primary substances there is up to a 2-year sanction unless there are aggravating circumstances and then it can be up to 4 years. There is no place in racing for those who intentionally seek to gain an unfair advantage by using prohibited substances. Not only does this fly in the face of fair competition, but it is potentially detrimental to equine health and welfare.

> *Primary Substance:*
> Primary substance is a substance prohibited at all times.
>
> *Secondary Substance:*
> Generally, a secondary substance is a substance prohibited on race day.

Q. Do these rules apply the concept of 'strict liability'?

Yes, the principle of strict liability applies to both the presence (positive) and use of prohibited substances, meaning that the responsible person is accountable for any substance found in or on a horse, regardless of the circumstances.

Q. What about genuine contamination? It is not fair to punish an innocent positive the same as someone intentionally breaking the rule to get an advantage or in ways that might harm a horse?

Sanction lengths for covered persons (see Definitions on HISA page) are determined based on the degree of fault, so with contamination cases, the sanction length may generally be shorter or in certain circumstances eliminated. In these situations, consequences for a covered horse will be disqualification (if applicable), to ensure the integrity of the race.

Q. What if a registered veterinarian approved the drug that caused the positive test?

If a positive test is the result of a treatment prescribed by the veterinarian, these circumstances will be considered. A veterinarian is not subject to strict liability in the same way as the trainer (or owner), but a veterinarian can and will be held accountable.

INVESTIGATIONS AND RESULTS MANAGEMENT PROCESS

Q. How long will it take to get the test results back?

The time taken for routine test results to be turned around will be outlined in the Laboratory Standards and is dependent on the laboratory process. We want laboratory results reported instantly but we recognize that accurate results are critical, and that good science takes time. Turnaround times may be expedited for certain events such as the Triple Crown, and Breeders' Cup.

Q. Will someone with a positive test be able to race with the case pending?

When a covered horse tests positive for a primary substance, the responsible person will be provisionally suspended while their case is pending. There are other circumstances described in the rules when a person may also be provisionally suspended. Importantly, there is a provisional hearing process when a provisional suspension is in place. As well, a hearing for a violation may be expedited to reach resolution prior to a big race under certain circumstances.

Q. Do I get a B sample analysis if my horse tests positive?

Yes, if the A sample is positive, the responsible person and owner will be given the opportunity to have the B sample analyzed at their cost.

Q. Will intentional cheaters be held accountable even if there is not a positive test?

Absolutely, a positive test is only one of a number of anti-doping and medication control rule violations. Intelligence and Investigations are an important part of any anti-doping and medication control program. What we call "non-analytical" cases, where the evidence proves someone intentionally cheats or break the rules, are a fundamental part of the rules and program. Those that knowingly cheat must still be held accountable, even without a positive test.

Q. Will these rules protect whistleblowers who come forward to help clean up racing?

Yes. The horse community must stand up and take ownership to ensure horse racing is clean and their rights are protected. Similar to the human side of the program, it is a violation to intimidate, harass, or retaliate against a whistleblower.

Q. Is it USADA that determines the sanction for a violation?

Under the Proposed Equine Protocol, if USADA and the covered person do not mutually agree on a resolution and sanction terms, the case is submitted to an impartial arbitrator or steward panel, depending on the seriousness of the potential violation, to determine the final outcome.

OTHER MATTERS

Q. Some say there has been industry resistance and apprehension regarding the new rules and even HISA itself. Is this accurate?

Of course, there are some who remain opposed to the changes brought forth under HISA and, particularly, to enforcement of the rules from those independent of sport. We saw similar resistance when we first took over the Olympic and Paralympic program and our professional UFC program. Some are more comfortable with the status quo. That said, we have heard from many that fully support and embrace the opportunity this legislation brings for the sport. The details of the rules are important, but we also can never lose sight of the common goal we all have in this process: to protect the welfare of the horses and restore fairness and the integrity of the sport.

Q. The rules seem overly complex with a lot of legal words. Why were the rules created from scratch rather than taking the best of what existed already and building on it?

The rules were created with the intention of reinforcing the highest anti-doping and medication control standards. While the rules are likely in a different format than what people are used to seeing in most of the states, the principles and many of the components are the same.

These are the Proposed rules, and they must be robust and legally sound. Education on the rules once final is essential and will be the key to empowering those to fully embrace the new rules.

While the rules provide a great deal of detail, it is simple to embrace clean sport under them by doing the following three basic things:

1. Do not use prohibited drugs;
2. If your horse needs a legitimate medication, check the list or with USADA;
3. File Whereabouts when that part of the program is effective.

Q. Some say that USADA does not have the horse racing experience to be involved with equine testing and medication control.

Of course, equine sport is different than human sport in many respects. However, cheaters and the cheating mentality are the same. And, while maybe not to the same extent as it affects equine sport currently, we do deal with the use, misuse, and abuse of medications in our human sport programs.

We have also brought in Dr. Tessa Muir, Director of USADA's Equine Program, who is a 20-year horse racing industry veteran who has held high-level jobs in numerous areas within the sport and is passionate about and intimately familiar with animal welfare and the best rules and practices to protect equine athletes and the integrity of horse racing. As needed, we will hire additional personnel, including those with equine specific expertise, to ensure the professional, innovative, fair, and effective enforcement of the rules.

Q. But isn't there a fundamental difference in human vs. horse sport regulation?

There are some key differences mainly with respect to medication control, including the risk that therapeutic medications may lead to serious injuries and concerns about the long-term soundness of the horse. There is a special duty of care on the racing industry to provide for the safety and welfare of its horses, which leads to more stringent rules with regards to medications compared to human sport.

However, the human psychology and incentive to find an advantage to win is undeniable regardless of the sport, as we've seen throughout our 21-year history, and there is plenty of evidence that similar motivations exist in equine sport as seen by the recent Navarro indictments and pleas. It's for this reason that uniform rules and independent enforcement must exist to ensure the bad actors do not win the day.

Q. Some are concerned with how Whereabouts will work for trainers with numerous horses to keep track of. How will you make things easy for trainers?

We recognize that filing Whereabouts can be a burden. However, the benefit of accurate, up-to-date Whereabouts in order to ensure no-advanced notice, out-of-competition testing is essential for an effective testing program and makes the burden of filing Whereabouts worth it. Of course, the mechanics of filing Whereabouts must be simple, easy, and as convenient as possible. If we are implementing these rules, we will phase this portion of the program in so that proper technology can be developed to facilitate, and make as consistent as possible, this important aspect of the program.

Q. U.S. Racing is different from the UK. Isn't this just a European set of rules?

These are definitely not European rules. This set of rules was formulated from best practices in anti-doping and medication control, provisions set out in the Act, and in consideration of other best equine practices, with feedback incorporated from the Authority's Anti-Doping and Medication Control Committee.

Q. There are several regulated substances commonly used in the U.S. that aren't on the IFHA's controlled therapeutic substances lists for blood and urine. Do you anticipate a scenario where the Authority's controlled therapeutic substances list will look like the IFHA's list, but with additional substances commonly used in the U.S.?

A significant part of the work we're doing now centers around the creation of the Protocol, Prohibited List, and USADA Policies. We are actively considering the U.S. controlled therapeutic substances, the IFHA's control measures, and other equine relevant policies that might be incorporated into HISA policies and standards. We are also actively working with the Authority and other regulatory stakeholders to create a consistent and thorough policy. Current differences between the U.S. and IFHA are not so much a difference in the substances themselves, but rather application through thresholds and screening limits. Guidance on use of therapeutic substances prohibited on race day is being developed and will be published well in advance to the new list of prohibited substances going into effect.

Q. Do you anticipate a scenario where the Authority's controlled therapeutic substances list will be all screening limits (as is used under the IFHA), or a scenario where it's a hybrid of screening limits and thresholds (thresholds being commonly used in the U.S.). If the former, how far along are you in determining screening limits for the additional substances commonly used in the U.S.?

This is one of the important areas being developed. Whatever that looks like in its final form, the key is to enable trainers or owners and their veterinarians to use legitimate therapeutic substances responsibly in training. The Act considers screening limits, with thresholds for endogenous substances. In line with this consideration, we are going to develop appropriate guidance. During the transition period, one solution might be a hybrid approach to ensure trainers and owners can continue to responsibly use certain therapeutic substances. Creation of additional guidance on substances, whether in the form of withdrawal or detection times, would come through scientific discovery and research is an approach already in place in the U.S. and other parts of the world.

Q. What's next? When will you sign a contract the enforcement agency?

We are working our way around the track, so to speak. The first step in the process was the passing of HISA. We're rounding the bend on getting the rules finalized. The final step would be finalizing the deal that will make USADA the enforcement agency. We hope to do this as soon as possible in order to get work implemented in the program. Of course, our full program will take 18-24 months to roll out at the level we expect.

As with the formation of the rules, we are glad to work with our stakeholders to do what's best for the sport while also upholding the gold standard that we deliver to all those we serve.

Testing and Investigations

Q. How will the Agency decide who to test and what type of test to conduct?

Testing is conducted on race day and out of competition. Selection for testing can be based on several factors, including performance (e.g., winners, placed horses, or under-performers), intelligence, level of racing (e.g., stakes racing) or prior anti-doping and medication control violations. Intelligent testing may be used in combination with random selection. Typically, blood and/or urine are collected on race day, while in addition, hair may be collected out of competition. Other biological samples, such as saliva, can be collected as required.

Q. What does target testing mean?

Target testing is testing where selection of the horse is based on intelligence-based risk assessment of doping or (for race day) medication use. This strategy allows the most effective use of resources to optimize detection and deterrence. Selection based on risk assessment does not necessarily infer doping or medication use, but rather enables use of any information that allows the testing agency to better utilize testing resources.

Q. How long can samples be stored and further analyzed?

The general range of storage is three months to 10 years. Further analysis can occur at any stage during storage.

Q. What are the key differences between race day and out-of-competition testing?

Out-of-competition testing is used principally to deter and detect the use of substances and methods that are prohibited at all times.

Race day testing aims to deter and detect use of all substances, including those prohibited on race day (e.g., therapeutic substances). This is in line with the International Federation of Horseracing Authorities Agreement that states racehorses should not race with any prohibited substance in their bodies.

Q. I've heard the term "no-advanced-notice testing" used. What does that mean and why is it important?

No-advanced-notice testing means the responsible person isn't given warning in advance that their horse has been selected for testing. Allowing a horse to complete exercise or cool down is not categorized as advanced notice, as they are being observed by sample collection personnel after notification.

No-advanced notice testing underpins an effective program by ensuring that a covered horse can be tested at any time, 365 days of the year.

Q. How do I submit a tip about possible doping or medication abuse?

Whistleblowing is one of the most effective means of protecting the integrity of sport and supporting enforcement of the rules. The USADA Play Clean Tip Center makes available several ways to report anti-doping and medication control issues to protect equine welfare and promote clean horse racing. You can text, call, mail, or e-mail tips. Someone from the USADA investigative team will get back to you and gather more information. For more, visit USADA.org/playclean.

Arbitration Procedures

Q. What's the difference between an arbitrator and a steward? What criteria are used to select them?

Both arbitrators and stewards review evidence and arguments and draft reasoned awards to resolve cases under the rules. Stewards will resolve minor infractions based on written submissions from the parties, and arbitrators will resolve major infractions after briefing and a hearing. Respected individuals with experience as stewards will be selected to sit on a national panel to hear minor infraction anti-doping or medication control cases. Individuals with experience as arbitrators will be selected to sit on a national panel of arbitrators to hear anti-doping cases involving major infractions.

Q. Who pays for the legal fees associated with arbitration?

For minor infractions, arbitration costs are paid by the Authority. The covered person remains responsible for costs associated with their defense. For major infractions, arbitration costs are split equally between the parties, with the Authority covering the Agency's portion.

Q. How is the arbitration process any different than what's already in place at the state level?

The Act creates a uniform process to challenge an alleged anti-doping or medication control rule violation. The first instance adjudication retains familiar elements from the state process, such as a steward making the initial decision in a majority of the cases.

Unlike cases at the state level that previously allowed appeals to be made by to a State Commission, the Act permits an appeal of a first instance adjudication to a Federal Trade Commission administrative law judge and then a second appeal to the Federal Trade Commission itself.

Q. How long does the arbitration process take, and can that be expedited if a race is approaching?

For minor infractions, the standard time frame set forth in the rules is four weeks from the time an alleged violation is challenged until a steward issues the reasoned award.

For major infractions, the standard time frame set forth in the rules is eight weeks from the time an alleged violation is challenged until an arbitrator issues the reasoned award.

Outside of these standard time frames, either party may request that the case be handled in an expedited manner if, for example, there is an upcoming race.

Laboratory Standard

Q. How will labs receive accreditation and how will this be different than what's in place now?

Laboratory accreditation is required to ensure that laboratories report valid test results based on reliable evidentiary data and to facilitate harmonization in analytical testing of samples by laboratories. As detailed in the Equine Laboratory Standard, obtaining and maintaining HISA Equine Analytical Laboratory (HEAL) accreditation will involve components already adopted by RMTC accredited laboratories, as well as use mandatory criteria and processes from other anti-doping laboratory accreditation systems around the world, like ISO/IEC 17025, ILAC-G7, Association of Official Racing Chemists (AORC), and World Anti-Doping Agency (WADA). Accreditation will be mandatory for any laboratory wishing to analyze samples under HISA.

Q. Will the labs be accredited when this program launches in July 2022?

New laboratory accreditation requirements will be phased in once the new laboratory standards are finalized and the full program launches in July 2022. The Act allows for the current RMTC accreditation to be used during the transition period in helping labs become HISA compliant.

Q. There has been talk about the gold-standard program requiring an 18–24-month ramp up to allow labs to get up to speed. Why this period of time and what do labs need to get in place?

Building laboratory compliance and capacity under the new HEAL accreditation system will take time and all laboratories will be eligible should they wish to obtain accreditation. Confidence in independent laboratories that are accountable to harmonized standards is essential for an effective anti-doping and medication control program. Effective, evidence-based scientific practices and laboratory protocols cost money and require highly-skilled personnel to analyze samples and interpret results. Investment in instrumentation and development of analytical methods take time and careful implementation and monitoring of proficiency is necessary to ensure that the best science is applied.