More Challenges

Complicated obstacles await HISA medication regulations due to start Jan. 1

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The industry is bracing itself for a seismic shift in the regulation of medications in Thoroughbred racing as a major deadline quickly approaches. The long-awaited Horseracing Integrity and Safety Authority (HISA) standards for medication and anti-doping control as well as the adjudication process are expected to be in effect January 1, 2023.

HISA recently posted the version submitted to the Federal Trade Commission on its website, and clearly as much in-depth knowledge and understanding of racehorses and horsemanship went into this set of regulations as were put into the so-called racetrack safety regulations that went into effect July 1.

The rules and adjudication process are outlined in the "Equine Anti-Doping and Controlled Medication Protocol" (Series 3000), "Prohibited List" (Series 4000) and "Arbitration Procedures" (Series 7000). These rules were developed by HISA's Anti-Doping and Medication Control (ADMC) Committee, comprised of six members, of which no member is an equine pharmacologist and only one has ever been a veterinary practitioner with racetrack experience.

The mandate for the ADMCI section of the Horseracing Integrity and Safety Act (the Act) can be found in 15 U.S. Code §3055(b) and requires, among other things, that "(1) Covered horses should compete only when they are free from the influence of medications, other foreign substances, and methods that affect their performance; (2) Covered horses that are injured or unsound should not train or participate in covered races, and the use of medications, other foreign substances, and treatment methods that mask or deaden pain in order to allow injured or unsound horses to train or race should be prohibited."

The ADMC Committee far exceeded this mandate in crafting its regulations. Substances are banned well beyond their ability to "influence performance" or "allow unsound horses to train or race." The term "covered horse" includes all horses between their first published work and retirement. While many can read

the list of prohibited substances and agree that "yes, that shouldn't be in a racehorse," a covered horse includes not only racehorses but horses on layup, horses that have had surgery and horses in the recovery period after surgery. Many of the substances that really have no use in a horse actively training and racing have very important value in horses on layup. The many years that have gone into the development and modification of the Association of Racing Commissioners International (ARCI) medication standards, during which numerous veterinary pharmacologists and chemists provided input, have been completely ignored. In contrast, the ADMC Committee scrapped the ARCI standards in favor of a new program based on zero tolerance.

Substances are broadly divided into "banned"—or prohibited in horses at all times, both in and out of competition—and "controlled"—or permitted out of competition. Almost all substances are regulated at the limit of detection. Detection of banned substances are equine anti-doping rule violations, and detection of controlled substances are equine controlled medication rule violations. The assignment of any given substance into these categories is presumably based on several factors. The most important factor that the ADMC Committee considered was not the mandated "influence performance" or "allow unsound horses to train or race" but rather whether the substance is FDA-approved. A second factor was the possible effects of the various substances were they present in an animal at a level sufficient to produce a response. The actual amount of the substance found in the animal is irrelevant, with few exceptions.

The banned substances are further divided into S0 through S6 categories (although S3 substances are included in the S1 category). The S0 category was probably intended to be a catch-all category for designer drugs, possibly doping agents imported through covert channels. However, as written, it includes many substances that are in common use, such as vitamin C. In its attempt to close loopholes where true doping could occur, HISA has made the majority of medications currently in use for treating and managing conditions of racehorses illegal. Apparently, it was much simpler to ban everything, leaving a small, short list of legal substances. The subcategorization of banned substances into S0 through S6 is apparently intended for the penalty phase. Controlled therapeutic medications are included in the S7 category.

The key points of the 3000, 4000 and 7000 rule series are:

(1) Everything they can identify in a lab test and a lot of things they can't are considered a violation at any level in a post-race sample with few exceptions.

(2) The identification of any and all substances at any level (with a few exceptions) in a post-race sample results in disqualification of the horse.

(3) The most severe category of substances that are banned, the S0 category, includes vitamin C.

(4) In addition to potential trainer penalties, an S0 violation can make a horse ineligible to race for 14 months.

(5) All supplements are banned within 48 hours of racing or working.

(6) Any trace of corticosteroids or nonsteroidal anti-inflammatory drugs (subject to very low screening limits) are banned during works in addition to races, so horses cannot be worked within two to three weeks of most corticosteroid injections or within three to four days of any bute, banamine, Ketofen or DMSO.

(7) The HISA categorization of substances is considered valid regardless of any science to support their position and cannot be legally challenged.

(8) No withdrawal times are provided, only detection times based on as few as two horses.

(9) The defense of environmental contamination only will be accepted if the horseperson can prove where it came from, and there is no burden of proof on HISA;

(10) HISA has 10 years to charge a horseperson for anti-doping rule violations and two years to charge them with a controlled medication violation, but the horseperson has only 14 days to build their defense.

The Category S0:
The Most Egregious of Doping

The S0 substances are defined in HISA Rule 4111 as:

Any pharmacological substance that (i) is not addressed by Rules 4112 through 4117, (ii) has no current approval by any governmental regulatory health authority for veterinary or human use, and (iii) is not universally recognized by veterinary regulatory authorities as a valid veterinary use is prohibited at all times.

The entire S0 category of substances reflects a gross misunderstanding of what is legal to administer to an animal. FDA approval does not indicate whether a drug is legal to use, dispense or administer but rather indicates only the marketing status of the drug and whether the labeling can indicate a drug claim. Drugs are legal to be purchased, dispensed and administered if they are manufactured in facilities registered with the FDA and listed with the FDA or compounded and labeled according to the pharmacy board regulations of the state in which they are sold. This was determined by the Drug Listing Act of 1972. All FDA-approved and FDA-listed products are produced in FDA-inspected manufacturing facilities, and their labels are reviewed by the FDA, guaranteeing the strength, quality, purity and potency. By the inclusion of FDA-listed products in the S0 category, almost all vitamins and many drug products in common use are suddenly categorized alongside some of the most egregious forms of doping imaginable. Substances that are common components of feed and many contaminants of hay also fall into this category.

Despite the emphasis on FDA approval, 109 FDA-approved substances are in the HISA S0 category. Of these, 15 FDA-approved substances are in therapeutic use in equine practice. A brief review of the veterinary literature and published equine formularies reflects the use of these substances. Based on the severe proposed penalty of up to a 14-month ineligibility period (suspension) for any horse demonstrated to have been administered an S0 substance, no substances with a valid therapeutic use should ever be in the S0 category. A short layup could inadvertently turn into the retirement of an otherwise sound and healthy horse.

Several primary metabolites of controlled therapeutic substances from the S7 category are included in the S0 list. If the S7 substance does not warrant an S0 penalty, there is no place for its primary metabolites on the S0 list. Why these have been included may be from lack of true pharmacological knowledge on the part of the ADMC Committee or intentional entrapment.

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The scheduling of many substances as S0 that are commonly used in the breeding process is troubling. Female racehorses are commonly bred and then continue to race up to four months of pregnancy. The scheduling of all breeding-associated medications, such as deslorelin, into the S0 category would effectively bring this practice to a halt.

Many preanesthetic and anesthesia induction agents and other medications used during anesthesia and surgery are in the S0 category. Further, all long-acting sedatives in use to keep horses safe during the perioperative period are effectively banned. A simple surgery to remove a chip fracture, usually accompanied by a six- to eight-week respite from racing, could readily be turned into a 14-month ineligibility period because of an innocuous administration of a therapeutic medication for the purpose of maintaining the health and welfare of the animal.

The 14-month racing ineligibility period for a horse administered any substances in this category is particularly severe. This provision adversely impacts the health and welfare of the horse by either preventing the horse from receiving the most appropriate therapy or preventing a horse from being in training for 14 months after being inadvertently administered one of these common, legal substances. Training during the critical 2- and 3-year-old years of a horse is essential to build the proper bone density and strength to withstand the rigors of racing. Even if an owner is willing to lay up a horse for 14 months, this time frame will place that horse at higher risk of catastrophic injury by at least preventing training with fast workouts for a protracted period and possibly even delaying the horse's starting age to 4 years or older. Further, there is no evidence that any doping substances have any effects that persist beyond, at most, about four months. A 14-month period of ineligibility for a horse is simply excessive beyond any wild theory of safeguarding integrity.

Specified Substances

The National Horsemen's Benevolent and Protective Association and North American Association of Racetrack Veterinarians have perennially lobbied the ARCI Model Rules Committee for rational thresholds and adjudication of dietary and endogenous substances. It is encouraging that HISA recognizes the existence of substances that may be present in forage or otherwise may contaminate the environment of the horse by establishing the category of "Specified Substances."

This designation and the characteristics that place a substance into this category are not defined or explained in any approved or draft HISA regulation but are comprised of substances that are "subject to more flexible sanctions" (Rule 4010). The governing body of international horse showing, Fédération Equestre Internationale, defines specified substances as "substances which are more likely to have been ingested by horses for a purpose other than the enhancement of sport performance, for example, through a contaminated food substance."

The recognition that contamination of a horse with dietary and endogenous substances reflects no fault on the part of the horseperson is forward progress in the regulation of horse racing. Unfortunately, this category remains problematic. The Specified Substance Rule (3224) requires that, for the horseperson to bear "no significant fault" for the presence of a specified substance in the horse, it is the horseperson's responsibility to identify the source of the specified substance. This is concerning because by the time that a positive is called, there is often no hay, feed or supplement left to test and employees may have moved on. In particular, the HISA enforcement agency may call a positive on a banned substance for up to 10 years after the race and on a controlled substance for up to two years after the race (Rule 3090). This provision precludes the horseperson from conducting a meaningful investigation. Further, even when notified in a reasonable time frame, the source of the exposure to the substance remains unidentified.

In every case in which a substance is identified in a horse, the horse is disqualified, irrespective of the amount that might be found in the horse (Rule 3221). A simple weed in the hay incapable of causing levels in the animal that might "influence performance" or "allow unsound horses to train or race" will represent an automatic disqualification. Any legal challenge to such a disqualification is not permitted (Rule 3113) because the validity of the prohibited list is not subject to any legal challenge. This is particularly concerning because of the considerable number of errors, omissions and inconsistencies in the first draft of the Prohibited List Technical Document (dated July 21, 2022).

Endogenous Substances

Substances that are both produced by the animal's own body (endogenous) and can be exogenously adminstered must be regulated by thresholds that are determined by widespread testing of normal populations. Two substances included on the S0 Prohibited List (diisopropylamine and dimethyltryptamine) and one substance on the S1 Prohibited List (dihydrotestosterone) are produced by the animal's own body. One S4 substance (levothyroxine, or thyroid hormone) is on the prohibited list without a screening limit. Three substances included on the S7 Controlled list (morphine, hydrocortisone and prednisolone) are produced by the animal's own body and are associated with a threshold, although the scientific data underlying those thresholds are not provided by HISA. The presumption of scientific validity applies in the case of endogenous substances (Rule 3113), preventing the horseperson from providing evidence that the presence of one of these substances stems from endogenous production by the horse.

The presence of thyroxine on the prohibited list is particularly concerning for the health and welfare of the horse. This substance has been brought up for consideration repeatedly as a prohibited substance at the World Anti-Doping Agency (WADA) and been turned down. It is simply not considered to be a performance-enhancing substance. In human sports, studies have shown that thyroxine supplementation into the abnormally high range impairs athletic performance.

Thyroxine has long been used as a therapeutic medication in equine medicine for anemia, anhidrosis and tying up, all conditions described in peer-reviewed papers. Thyroxine is also a key hormone required for normal bone remodeling in response to exercise. Restricting the use of thyroxine in horses may increase the risk of musculoskeletal injury. Regulators have pushed such a ban for several years because of a paper that showed an increased rate of cardiac arrhythmias in horses receiving 10 times the usual dose. This dosing rate, which is not in regular use among horsepersons, is clearly excessive and increases the resting thyroxine level above the normal range. The usual veterinary practice of testing thyroxine levels after instituting treatment to make sure supplementation is not excessive is sufficient to protect against this risk. Any alternative regulation of thyroxine threatens the musculoskeletal health of the horse.

Dietary Substances:

The Specified Substances Conundrum

Dietary substances are those that can be detected in the animal's blood or urine from their natural presence in hay or feed. The HISA S0 category includes 13 dietary substances, of which only two are associated with screening limits and eight are listed as specified substances. The HISA S1 category has


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two dietary substances, neither of which have screening limits or are specified substances. The HISA S7 category has 16 dietary substances, of which 10 are associated with a threshold and 10 are included as specified substances. This means that simply by feeding hay or grain, a horse may be disqualified and a horseperson penalized.

The screening limits adopted by HISA are taken from the International Federation of Horseracing Authorities, but additional screening limits could have been adopted from jurisdictions in the U.S. For example, Pennsylvania provides in-house screening limits for well-recognized plant-sourced glaucine and lobeline. Provisional screening limit recommendations exist in the scientific literature for others, including aminorex (75 ng/mL urine), synephrine (50 ng/mL urine) and cathinone (10 ng/mL urine).

Environmental Substances

The federal government has long recognized that environmental exposure to illegal substances must be handled through screening limits, which are determined by the Substance Abuse and Mental Health Services Administration and published in the Federal Register as the "HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs." For example, these guidelines provide screening limits for substances like morphine and methamphetamine below which an airline pilot is permitted to fly. The concept of zero tolerance is simply impossible to embrace because low levels of cocaine and methamphetamine are present on currency in circulation. Horses are subject to contamination of their environment, including veterinary pharmaceuticals, human pharmaceuticals, human recreational drugs and even by-products of manufacturing. Drugs or medicines taken or administered to humans or animals that are eliminated in the urine at a high level, remain stable in the environment and are readily absorbed by the mucus membranes or gastrointestinal tract are environmental substances. Substances in human or animal topical products or administered by mouth to horses also are highly susceptible to being taken up by horses in trace amounts close to racing because of their presence on feed tubs, hay nets and even the cobwebs of the barn.

Based on the establishment of the Specified Substances category by HISA, the ADMC program recognizes that inadvertent environmental exposure can and does occur, resulting in positive tests. Substances that qualify as environmental, like methocarbamol, methamphetamine and atenolol, are overlooked in the brief HISA Specified Substances list. Some human medications may be identified in groundwater at levels in the nanogram per milliliter range, exceeding the levels at which a positive may be called in a racehorse. These substances cut across all of the HISA Schedules (S0–S7) and include equine therapeutics, human therapeutics and human recreational substances. With the ever-increasing sensitivity of drug testing in racing, all environmental substances that are readily detected in water, reflect stability in the environment or commonly present in human topical products should be included as specified substances. Evidence supports that adverse analytical findings are randomly occurring, have no impact on the performance of the horse and serve only to fuel bad publicity for the industry.

Dr. Scott Stanley, a member of the ADMC Committee, suggested recently that a "non-prosecutorial 'initial review' first take place before any regulatory action occurs, if indeed environmental contamination appears a genuine possibility," which is the only possible way to address all such adverse analytical findings.

In very few cases have stalls been swabbed or tested for contamination with environmental substances, a procedure that should be conducted in every case in which a positive for an environmental substance is identified. There should be forensic investigation of laboratory findings, such as the identification of the parent esters of substances in the case of steroids, the co-identification of other plant alkaloids in the case of alkaloid identification and the determination of the presence of both glucuronidated and non-glucuronidated metabolites in urine. Drug testing of barn employees of the trainer, racetrack and test barn as well as the swabbing of stalls for drug testing all should be standard procedures in the investigation of adverse analytical findings. Integrity in racing should not mean a conviction at any cost but rather a good-faith effort to determine the facts and truth.

As with dietary substances, screening limits consistent with environmental contamination should be considered for all environmental substances. HISA could have adopted interim limits from existing equine drug testing laboratories that have in-house screening limits for some environmental substances. Further, the scientific literature provides screening limit recommendations, including cocaine (as benzoylecgonine), methamphetamine, dextromethorphan (as dextrorphan) and dexamethasone.

Periods of Ineligibility: In the Interest of Health and Welfare?

The period of ineligibility, or suspension, of a horse includes that horse not being allowed to participate in high-speed workouts. These workouts are required for the development and maintenance of appropriate bone density. Both cartilage and bone respond to the mechanical stimulus of exercise, and forced layup periods in sound, healthy horses will cause atrophy of the cartilage and demineralization of bone. Layup periods as short as two months are associated with a higher rate of injury when the horse returns to training. Despite these well-recognized facts, HISA imposes periods of ineligibility on a horse of up to 14 months for medication violations. Since all S0 substances are banned and this category includes many therapeutic medications used in horses, innocent medication administrations could result in ineligibility periods of up to 14

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months, placing horses at increased risk of injury. Rule 3233 goes even further; while the ineligible horse cannot participate in a workout during the suspension, for reinstatement purposes, it can participate in a timed workout in order to be removed from the veterinarian's list. Since most horses would ordinarily work as many as five or six times at increasing speed and distance increments before any trainer would schedule a vet's list workout, this provision places horses at even higher risk of injury. Not only do they provide for the covered horse's first workout off a layoff to be a fast workout over a long distance but HISA encourages it.

Hay, Feed and Water Only During the 48 Hours Before Racing

HISA goes beyond what any sports regulatory body imposes on its participants. There are thousands of pages of scientific literature in the fields of optimal sports supplements and nutrition for the health and welfare of the athlete, and WADA includes only a few ingredients on its banned list. The maintenance of health in the absence of medications always has been attained through nutrition. Rule 4211 restricts the administration of all substances other than "feed, hay, and water" (which are undefined) within the "race period," or 48 hours before racing, with only a few exceptions. The exceptions up to 24 hours before racing are orally administered vitamins, anti-ulcer medications, licensed vaccines, unsupplemented isotonic electrolyte solutions (electrolyte pastes prohibited), antimicrobials, antiparasitics and altrenogest (Regu-Mate) in fillies.

HISA recognizes the importance of controlling the horse's reproductive behavior by permitting altrenogest in fillies and mares up to 24 hours before racing. It fails to recognize that sexual behavior on the part of the male horse is equally disruptive and even dangerous in the racing environment. The application of menthol (Vicks VapoRub) to a stallion's nares is a commonplace practice of good horsemanship to prevent him from detecting and reacting to pheromones from mares. This practice is banned in the HISA regulations.

Supplements or feed additives during the 48 hours pre-race are prohibited unless the covered person establishes that the supplement is incapable of having an action or effect on one or more of the following:

(1) the blood system [unsure if this means the hematopoietic system]
(2) the urinary system
(3) the cardiovascular system
(4) the digestive system
(5) the endocrine system
(6) the immune system
(7) the musculoskeletal system
(8) the nervous system
(9) the reproductive system
(10) the respiratory system

Since feed is undefined in the HISA regulations, this provision may or may not make complete feed illegal in the last 24 to 48 hours. Vitamins are permitted to be fed up to 24 hours before racing, but a quick glance at the label of any complete horse feed, such as Purina Race Ready, reveals added vitamins E, A and D; thiamine; and beet pulp, purported to "enhance performance" right on the Purina website. A simple Google search on oats reveals that oats are a great source of vitamins, minerals and antioxidants. Technically, even oats within 24 hours of a race are a HISA violation.

Health conditions of horses that are managed through nutrition include anhidrosis, tying up, allergies and even exercise-induced pulmonary hemorrhage. Preventing the management of a horse's health in the last 48 hours before racing does nothing to protect the integrity of racing or the health and welfare of the horse. More than one researcher and more than one feed company have dedicated years of research to identifying how nutrition can manage certain conditions such as inflammatory airway disease and recurrent tying up in the absence of medications. With a single stroke of the pen, HISA has wiped out years of research progress on understanding these conditions in horses. The ultimate disposition of those horses will be understood only when these regulations go into effect.


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Series 7000: Completely New Arbitration Procedure

HISA's new medication rules and how violations are adjudicated represent a radical departure from the current system.

Currently, the first hearing is before the stewards. These findings can be appealed to a hearing on the merits of the case by a state-appointed administrative law judge and then appealed to the commission. Finally, a horseperson has the right to appeal to a district court. This system is abandoned in favor of a far more costly system of adjudication for the covered person without a guaranteed right to, in some instances, a hearing on the merits or a review by the ultimate administrative authority, the Federal Trade Commission (FTC).

This new adjudication system is based on arbitration, which is the process of submitting, for determination, a disputed matter to a person selected in a matter provided by law or agreement. The arbitrator should be a "disinterested person, chosen by the parties to the dispute in question, for the purpose of hearing their contentions and giving judgment between them."

The arbitration process set forth in Rule Series 7000 does not follow this generally accepted definition of the arbitration process because the parties involved don't select the arbitrator. Instead, the arbitrator is selected and appointed by HISA without any input by the covered persons. The arbitrator is not disinterested. Despite the unilateral election and appointment of the arbitrator, the covered person is required to pay half the cost of arbitration.

The adjudication of equine anti-doping (EAD) and equine controlled medication (ECM) rule violations follow parallel paths. Alleged EAD violations will be adjudicated by the arbitral body while allegations of ECM and alleged violations of Rule 3329 (Status during Provisional Suspension or Ineligibility) and Rule 3510 (Other violations under the Protocol) will be adjudicated by a member of the internal adjudication panel (Rule 7020[a][b]).

HISA and its Horseracing Integrity and Welfare Unit (the agency) control the selection and appointment of arbitration and internal adjudication panel members, and the covered person has no right to object to the selection of the arbitrator. In matters of EAD violations, the arbitrator is appointed by the arbitral body and in ECM and other violations by the internal adjudication panel. The qualifications for a HISA arbitrator or internal adjudication panel member are surprising. There is no minimum education, training or experience. They are required to complete only two hours of HISA-approved continuing education annually. By contrast, certified arbitrators are required to complete an online program created annually for the arbitrator continuing education training requirement or attend any American Arbitration Association International Centre for Dispute Resolution-sponsored conference and must have extensive experience and higher education. HISA arbitrators, who are appointed for four-year terms, are not required to have completed any formal arbitration training or education before being appointed nor are they required to have membership in an arbitration body or association such as the American Arbitration Association or the National Academy of Arbitrators. They are not required to have any arbitration experience. This same lack of education, training and experience applies to those on the internal adjudication panel. However, panel members are not precluded from serving on the panel concomitantly with their service as an association or state steward. Yet, one serving in both capacities has an inherent conflict of interest.

The agency initiates an EAD action via the arbitral body (Rule 7060[a]) and initiates an ECM action via the internal adjudication panel (Rule 7060[b]). In the case of an alleged EAD violation, the matter proceeds to a merits hearing described below. ECM violations are handled considerably differently (Rule 7060[b]). In the case of an alleged ECM violation, although the covered person may request a hearing, the internal adjudication panel does not have to grant a hearing. It may decide, in its sole discretion, to determine the matter based solely on the written submissions without a hearing if the panel considers itself sufficiently well-informed to render a decision on written submissions alone (Rule 7060[b]). Should the panel member, in their sole discretion, decide not to conduct a hearing, the covered person's path forward is an unguaranteed request for review to the FTC. The covered person may face an alleged ECM violation and not be afforded a hearing until they are before a U.S. Court of Appeals at a cost of $30,000 to $50,000. (Rule 7060[b] and Rule 7110[b]).

Rule 7070 provides that the agency, after charging a covered person with a violation, may bring new, different or additional charges. In such cases, the arbitrator or internal adjudication panel member has the discretion and authority to decide (1) if the additional charges will be consolidated with the pending alleged allegations, or (2) heard separately. If the arbitrator or internal adjudication panel selects the latter, the covered person faces exponentially higher costs of arbitration, experts, discovery, appeal, etc. Rule 7070 does not provide for the covered person to object to the arbitrator or the internal adjudication panel member's decision in this regard. This is another example of the evisceration of the covered person's right to due process.

Adjudication Process

The agency initiates proceedings in both alleged EAD and ECM violations (Rules 7170 and 7180). The arbitral body or the internal adjudication panel then appoints an arbitrator, or the panel assigns an arbitrator or panel member. The appointed representative is required to communicate with the parties within 72 hours of being appointed (Rule 7130).

EAD Violations

In matters involving alleged EAD violations, when the agency determines that a violation has occurred, the covered person will be notified in writing with an EAD notice (Rule 3245). The agency has 10 years from the date of the alleged violation to make this determination (Rule 3090). When the EAD notice involves an adverse analytical finding, the covered person is afforded an opportunity to provide an explanation within a "short deadline set by the Agency."

If, after the agency receives the covered person's explanation, it still believes that an anti-doping rule violation has taken place, it issues a charge letter (Rule 3248). Upon receipt of the charge letter, the covered person has up to seven days to request a hearing. After the hearing has been requested, the covered person has 14 days to file a prehearing submission with the arbitral body. This two-week period is the time allotted for the covered person to find a lawyer, identify experts and conduct whatever investigation is necessary for the identification of the source if a specified substance is involved.

The written submission is limited to 30 pages, which arguably will include all of the documentation and evidence that the covered person intends to use in

their defense. By comparison, the written submission provided to an administrative law judge under the current system could exceed 200 pages. For further comparison, a party to an action in federal court typically is provided several months to secure an expert and submit that expert's report. If evidence is not included in that 30-page submission, it cannot be introduced into evidence later.

The agency's prehearing submission is due 14 days later. The covered person is not entitled to file a reply submission. If there is not an adverse analytical finding, the agency files first, doing so within 14 days of the requested hearing, followed by the covered person's prehearing submission being due within 14 days thereafter. There is, however, a distinction: In cases involving EAD violations that involve a non-analytical violation or a violation of Rule 3229, the agency is entitled to file a reply, and the covered person is not.

The hearing must take place within 60 days from the request for hearing. Therefore, the covered person has a very limited and compressed timeline to conduct discovery, which would include serving interrogatories, making requests for production of documents and scheduling depositions. However, the arbitrator may extend the deadlines in exceptional circumstances or if agreed to by both parties.

ECM Violations

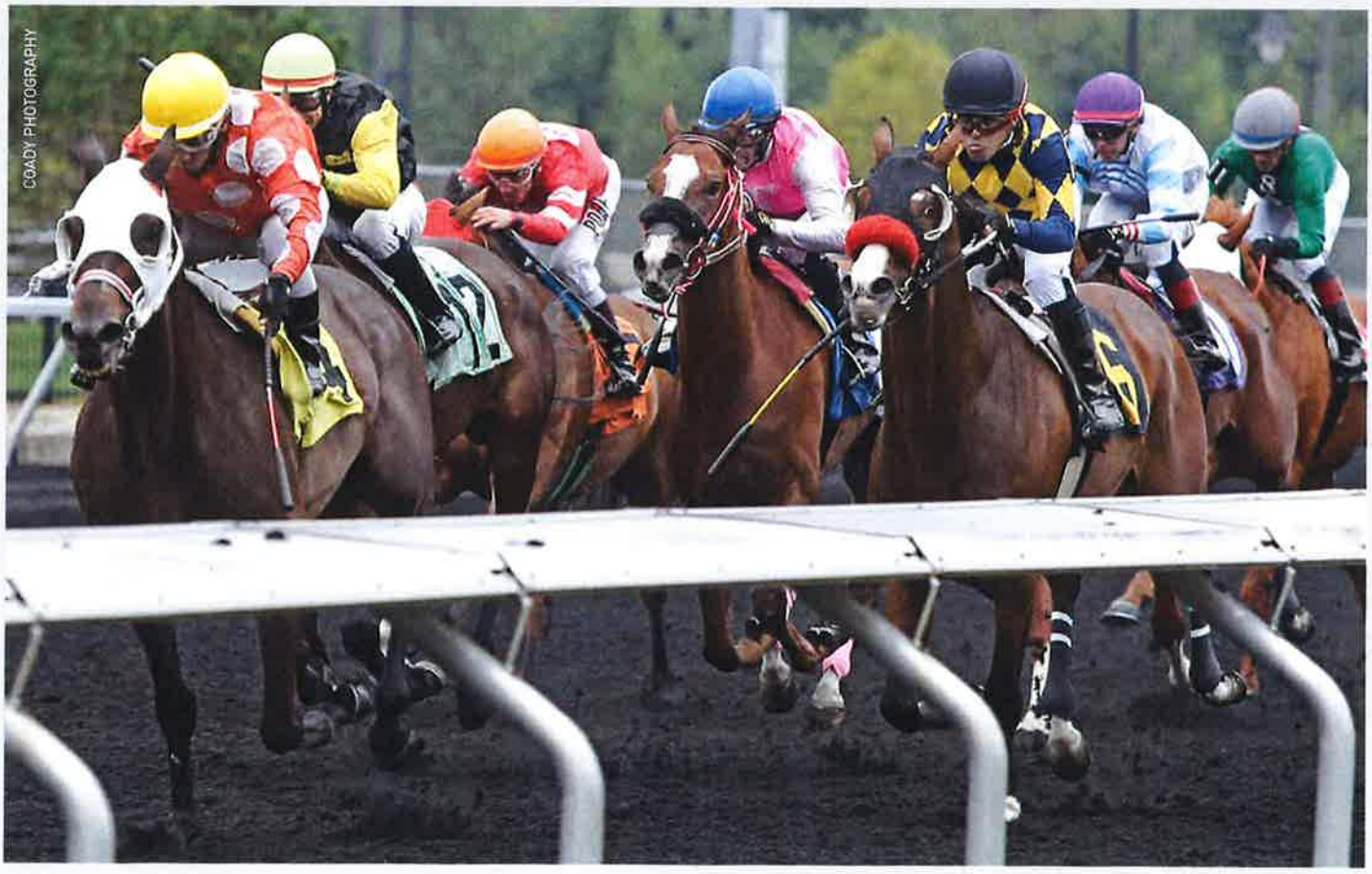
The process for adjudication of alleged ECM violations differs. Rather than 10 years, in the case of an EAD, the agency has two years to charge the horseperson. Another significant difference is that a hearing on the merits is not guaranteed. Instead, the internal adjudication panel member may decide the case on written submissions exclusively. If the panel member orders written submissions and the matter involves ECM or other violations arising from an adverse analytical finding, the covered person's written submission is required to be filed within seven days of the requested hearing, which is now an even more compressed timeline to hire an attorney, identify experts and potentially conduct a full investigation of the possible source of a specified substance.

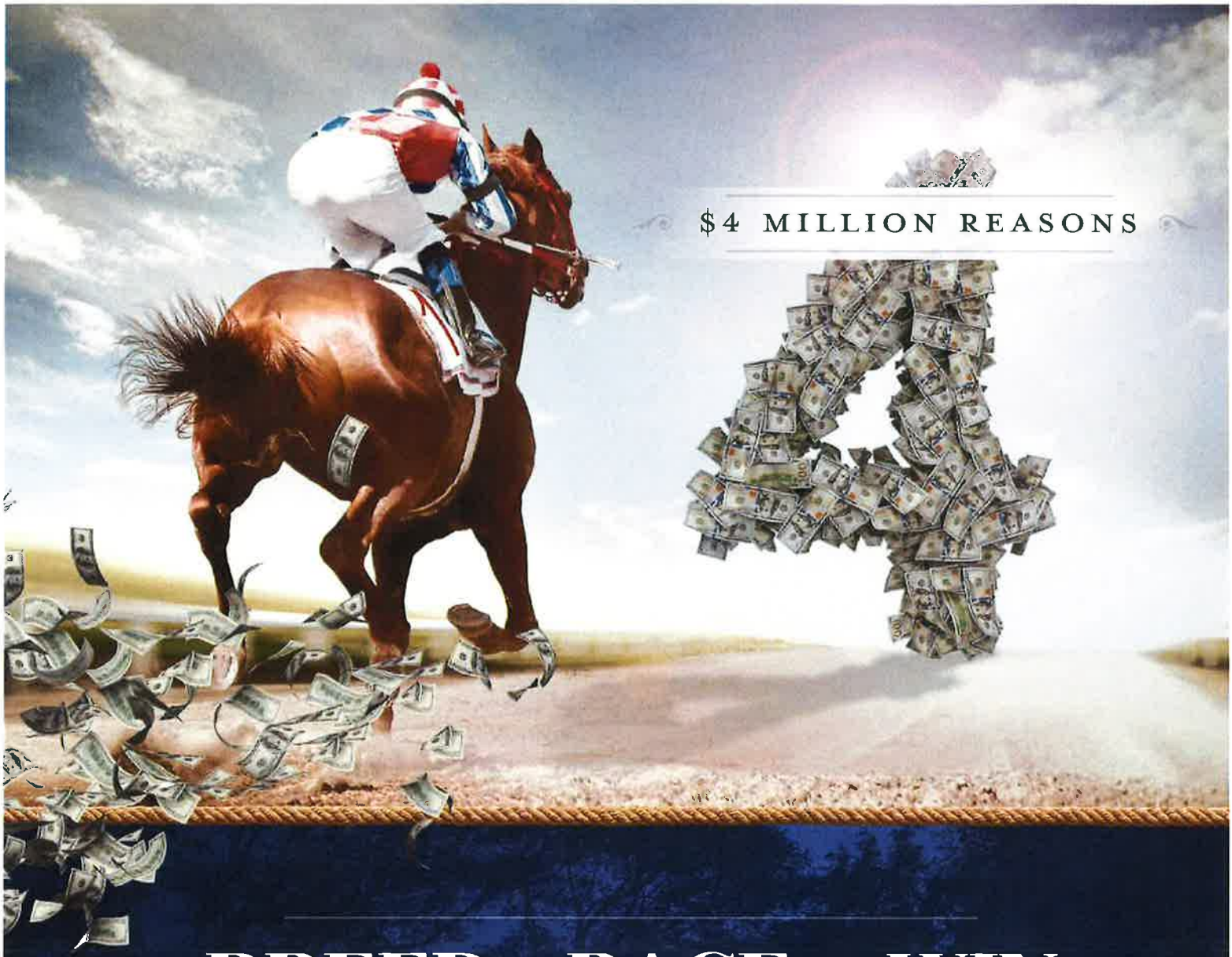
The agency's written submission is due seven days thereafter. In the event the matter does not involve an adverse analytical finding, the agency files its written submission first, within seven days of the request for hearing, and the covered person's written submission is due seven days thereafter.

Rule 7250 provides that the HISA arbitrator or internal adjudication panel member has wide discretion in conducting the hearing. For example, the arbitrator or internal adjudication panel member determines the relevancy of evidence and whether requested documents must be provided. In addition to determining the admissibility, relevance and materiality of evidence offered, including hearsay evidence, they may exclude evidence they deem irrelevant (Rule 7260). The arbitrator or internal adjudication panel member may issue subpoenas for witnesses and documents (Rule 7260). They may not issue subpoenas for depositions because "depositions are not in keeping with the expedited nature of the Arbitration Procedures." Again note that the arbitrator or internal adjudication panel member is empowered under Rule Series 7000 without any minimum requirements of education, training or experience.

Cost of Adjudication

For the Thoroughbred trainer, Rule Series 7000 creates a financial mountain that is high and steep. In addition to a trainer needing to retain counsel to defend and represent their interests, and to locate an expert witness to testify, this series of rules presents new and additional costs. Most significant is the





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cost of arbitration, of which the covered person must pay half. The average hourly rate for an arbitrator is $500 per hour. Therefore, the combined cost of defending a Series 7000 violation may well be in excess of $1,000 per hour.

Rule Series 7000 does not include any provision for mediation. Mediation is an informal process in which an independent neutral mediator assists the parties in resolving their differences. Mediation is generally a far less expensive and more expedient method of resolution. Mediation, like arbitration, is a method of alternative dispute resolution. Most federal and state courts require mediation in all civil disputes.

Finally, there is the issue of the record in the arbitration process under Rule Series 7000. Rule 7230 states that if the covered person or the agency wants a stenographic record, a request for the same must be made no later than seven days prior to the hearing. If the covered person makes this request, they are responsible for the cost. This means the covered person has the additional and necessary cost of the reporter's service, which is selected by the agency, and the cost of the transcript. The court reporter will charge an hourly rate that may well exceed $100 per hour, and there is an additional cost per page for the transcript. These rules are silent as to how the covered person would effectuate an appeal to the U.S. Court of Appeals without a transcript. Yet, given the lack of consideration of the constitutional rights of the covered person under HISA, that may be the precise reason for this rule. **HJ**

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