

Moving Ahead: Horse Racing Regulation In Ontario

Equine Drug Program Working Group Summary Report | February 8, 2018

Overview

In the spring of 2016, the AGCO launched *Moving Ahead: Horse Racing Regulation in Ontario*, a project directed at identifying and moving forward on reforms to the regulatory rules that govern horse racing. As part of this initiative, in spring 2017 the AGCO launched the establishment of three working groups to provide further input on a number of regulatory reform ideas to strengthen integrity, safety and public interest in horse racing.

The **Equine Drug Program Working Group** was announced in May 2017, in collaboration with the Canadian Pari-Mutual Agency (CPMA). The objective of this working group was to provide advice to the AGCO regarding the equine drug program process, including but not limited to the following:

- The 90-day automatic suspension of the horse;
- The designated decision-maker in the positive test process;
- Education, training and awareness initiatives pertaining to equine drug use; and
- Suspensions and monetary penalties.

The mandate of the working group was to focus on aspects of the AGCO's equine drug program and processes. Legislative and / or regulatory changes as well as changes to the CPMA's prohibited list of drugs and drug testing processes were outside the scope of the working group. Also out of scope were any changes to the procedures for the Horse Racing Appeal Panel (HRAP), as HRAP is an adjudicative body independent of the AGCO, with authority to set its own rules and procedures.

The working group met five times in seven months, and has played a valuable role in advising the AGCO on ways to meaningfully improve the equine drug process including the current penalty structure. The AGCO is pleased to provide you with a summary of the working group recommendations and follow-up actions the AGCO will be taking in the months ahead.

The AGCO would like to formally thank the participants of the working group. While the working group may have officially come to an end, the AGCO remains open to receiving feedback from the industry on regulatory matters and this can be done directly by emailing connect@agco.ca.

Equine Drug Program Working Group Recommendations / Next Steps

Based on consultations with the working group, the AGCO will revise the equine drug program process, which reflects its objectives of ensuring the integrity of horse racing and the protection of equine athletes. The AGCO's equine drug program is an important pillar of the AGCO's regulatory model and equine drug violations are considered significant violations.

The new processes outlined below are based primarily on advice from the working group and aim to introduce process efficiencies, while ensuring fairness.

The intent of the reforms is to streamline the positive test process and allow for Rulings, which include monetary penalties and suspensions, to be issued in a fair and more efficient and timely manner. This is expected to streamline the process for licensees and to allow the AGCO to focus on more complex equine drug cases or other high-risk activities.

The AGCO has based the reforms on evidence, and will continue to do so as it works on the detailed implementation / process plan for the model.

The reforms described below and any required corresponding changes to the AGCO *Rules of Racing* are anticipated to be implemented for April 2018, in time for the spring race season. Additional work will continue thereafter for the development of a new training, education and awareness component for licensees as part of the penalty framework.

Prior to implementation, the AGCO will undertake further awareness activities to educate the industry on the new equine drug program processes.

Recommendation #1

Remove the Rules which require the automatic 90-day suspension / ineligibility of a horse, for Class I, II, III and TCO₂ Drug Violations

The working group indicated that industry perceives that the rules have not been effective in achieving their original objective, and unfairly punishes horses and owners, who may be unaware of possible equine drug use.

The rules were originally implemented to ensure owners could not move horses between trainers who were inappropriately administering equine drugs, to avoid the consequences of a positive test.

AGCO Action

- The AGCO is continuously moving towards a more modern regulatory approach.
- The process will be changed, whereby for each Certificate of Positive Analysis issued by the CPMA, the AGCO will take the appropriate action towards a horse on a case-by-case basis. For example, AGCO actions toward the horse may include one or more of the following:
 - Immediate suspension;
 - Placement on the veterinarian's list;

- Requirement to re-qualify or be re-worked prior to re-entry; and/or
- Provide a clean urine/blood sample prior to re-entry.

→ The AGCO will take action within a day or two based on the type of drug and the circumstances of each case. Process details will be shared in the spring of 2018.

Recommendation #2

Introduce Offers of Settlement

AGCO Action

- Prior to issuing a Ruling for an equine drug violation, the AGCO will first provide the licensee with a package containing two options:
 - A monetary penalty and/or a suspension in accordance with the Penalty Guidelines; and
 - A settlement offer for a lesser monetary penalty and/or suspension.
- The licensee will have a set period of time to respond to the offer, after which the AGCO will formally issue the Ruling.
- When a licensee accepts a settlement, the licensee must admit to the violation and agree that it cannot appeal the Ruling to HRAP. If the settlement is not accepted, the licensee may appeal the Ruling to HRAP.
- The AGCO's standard process will be to offer settlements for most drug violations with early admission, however the AGCO retains the discretion to not offer a settlement for certain violations.
- This aligns with the approach taken by the AGCO when issuing Rulings for liquor and gaming violations.

Recommendation #3

Establish a faster / more efficient Ruling process with the objectives of:

- i. Reducing burden;**
- ii. Ensuring integrity; and**
- iii. Ensuring violations are more quickly addressed.**

Based on a sample of 14 cases over the last year and a half, on receipt of the Certificate of Positive Analysis for Class I, II and III drugs, it took the AGCO, on average, approximately five months to deliver Rulings to licensees who requested a residue sample.

This is reflective of the delays caused by the time required for the return of the residue sample results from independent testing laboratories. AGCO currently does not issue a Ruling without these sample results.

During this time, the licensee is able to continue to participate in racing and there is a perception that at times licensees end up fulfilling their suspension in the off-season.

AGCO Action

- The Race Official's review will be replaced by a more efficient process.
- When a licensee is notified of a Certificate of Positive Analysis, they will be asked to provide details of any mitigating circumstances to the AGCO within a set period of time, for example:
 - 7 days for Class III, IV & V drugs; and
 - 20 days for Class I, II, TCO₂ and any second violation of any class of drug within 3 years.
- The licensee may provide details of mitigating circumstances in writing, email, by telephone and in some circumstances in person at a racetrack.
- While the licensee is collecting information, the AGCO will be doing the same.
 - For Class I, II, TCO₂ and most second violations, once the licensee is notified of the Certificate of Positive Analysis, the licensee should expect that the AGCO will immediately begin collecting information (investigating).
- The AGCO will consider all information and will in most cases provide a settlement package within a set period of time. The licensee will have a set period of time to respond to the AGCO, after which the AGCO will issue a Ruling. The time period will reflect the complexity of the case (for example 7 days for a Class III, IV and V).
- This process will largely be mail / email based.

Residue Samples

- Given the time it takes for licensees to request and then receive results from independent testing laboratories for residue samples, under the settlement process the AGCO expects that in most circumstances it will be offering settlements and issuing Rulings without the results of a residue sample.
- Under these circumstances, if the licensee does not accept a settlement offer and chooses to appeal the Ruling to HRAP, the residue sample can be considered through the appeal process. Upon receiving the results of a residue sample, the AGCO may also reconsider its Ruling (if the licensee did not accept the settlement).

Recommendation #4

Establish a specialized AGCO Panel responsible for reviewing equine positive drug cases and issuing Rulings

AGCO Action

- To meet the intent and desire of the working group's recommendation for consistency, transparency and objectivity, the AGCO will create specialized internal processes as follows:

Model for Class III, IV and V Equine Drug Violations (First Violation)

- Class III, IV and V Rulings will be managed at the racetrack by three delegated decision makers (e.g. Race Officials).
- The delegated decision makers will:
 - Request that the licensee provide details of the mitigating circumstances and will receive this information; and
 - Based on all information considered, the three delegated decision makers will come to a consensus on an appropriate settlement package and will issue a Ruling based on the response of the licensee.

This process will largely be mail / email based.

Model for Class I, II and TCO2 and Second Offence Equine Drug Violations

- The process for managing more complex and serious equine drug violations will be based out of AGCO Head Office.
- To enhance consistency, a delegated decision maker will be responsible for reviewing and considering all Class I, II and TCO2 cases. The decision maker will review all licensee and AGCO information to develop an appropriate settlement package and issue a Ruling based on the response of the licensee.
- Either the delegated decision maker or another senior-level AGCO representative will be assigned to coordinate the process at Head Office, essentially acting as the “one-window access” for licensees and compiling all relevant information for decision making. Responsibilities would include:
 - Liaising with the licensees on the submission of their information on mitigating circumstances;
 - Supporting / working with the AGCO Inspectors as needed to help ensure inspections can move as quickly as possible, as well as working with Legal Services;
 - Collect any information they feel is necessary which could include consulting with internal and external experts; and
 - Ensuring the AGCO remains current on trends in equine drugs around the world.
- The AGCO will maintain the discretion to manage any violations using either process stream. For example, for certain Class III drug violations the AGCO may think it is necessary for Head Office to manage the case and for more information to be collected.

Recommendation #5

Enhance the Penalty Guidelines for Equine Drug Violations

AGCO Action

- The AGCO will increase the current range of penalties to align them more closely with the Association of Racing Commissions International Inc. (ARCI) recommended penalties and those of other North American jurisdictions.
- Enhancements are expected to include:
 - Increasing the upper limit monetary penalties and suspensions for equine drug violations;
 - Creating a separate category for TCO₂ violations;
 - Removing the distinction between Class I and II drugs for the purposes of a 2nd violation; and
 - The introduction of an educational component.
- The AGCO will continue to take action towards any licensee determined to be involved in the equine drug violation (e.g. trainer, owner, veterinarian or groom) and will apply the Penalty Guidelines as appropriate.

Education, Training and Awareness (ETA), Transparency and Other Measures

Education Training and Awareness

- The working group was:
 - Supportive of the AGCO introducing an education component to the Penalty Guidelines;
 - Suggested the CPMA and AGCO partner to continuously educate the industry on equine drug matters; and
 - Suggested that education should eventually become a licensing requirement, starting with new licensees.

Increasing Transparency

- The working group was supportive of the AGCO:
 - Establishing an online equine drug portal, where all positive test information would be located along with the education, training and awareness tools.
 - Expanding the publication of Race Reports (currently only available at a limited number of race tracks) to identify which trainers/horses received a Certificate of Positive Analysis, so that the industry is notified of such results as soon as possible.

Other Measures

- The AGCO and working group discussed the need for the AGCO to continue to:
 - Explore methods of selecting horses for drug testing, including the introduction of analytical modelling; and
 - Explore the introduction of nest cameras at racetracks, as an investigative tool for managing equine drug and equine health matters.