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REINING IN THE HORSE RACING INDUSTRY: A PROPOSAL FOR FEDERAL REGULATION OF STEROID USE IN RACEHORSES

JENNIFER M. JABROSKI*

I. INTRODUCTION

Most Americans are familiar with one of the most controversial issues in sports today—the use of steroids. Over the past several years, 'steroid use' "has made headlines because of abuse in human athletes for the past decade, from Major League Baseball to track and field events."¹ Few can forget the heartbreaking story of WWE wrestler Chris Benoit. After post-mortem steroids were found in his body following the murder of his wife and young son, many questioned whether the drugs played a role in the tragedy.²

Nonetheless, Major League Baseball has seen the most news coverage connected with steroid use in the professional sports industry. Some of Major League Baseball's most infamous players, including "those involved in some of the sport's most celebrated record chases—Barry Bonds, Mark McGwire and Sammy Sosa—are among a small group of star players under suspicion for steroid use."³ In 2005, California House Representative Henry Waxman, Government Reform Committee Chairman Tom Davis, and Arizona Senator John McCain proposed "a bill to address the problem of performance enhancing drugs in sports."⁴ These legislators introduced the Clean Sports Act of 2005 (H.R. 2565), which "authorizes the Office of National Drug Control Policy to enact a tough, uniform standard for professional sports, and to require leagues to institute stringent testing policies and penalties for players with positive results."⁵

While the steroid controversy plagues the reputation of athletes in almost all professional sports, it did not reach the thoroughbred horse racing


⁵ Id.]
industry until recently. The steroid issue was brought to the forefront by another tragedy—the collapse and euthanization of the 2008 Kentucky Derby runner-up, Eight Belles, immediately following the race. Investigations conducted after this tragic incident "revealed that the May 3rd race winner, Big Brown, had been given a controversial—but legal—steroid a few weeks earlier.”

The National Thoroughbred Racing Association had already begun an investigation into the use of steroids in the industry earlier in 2008. The publicity surrounding the death of Eight Belles and the discovery of steroids in Derby-winner Big Brown, however, ignited the long-debated issue: "whether certain medications enhance performance, and whether they put horses at risk.” Currently, the horse racing industry is being prompted by Congressional attention to reform the regulation of performance-enhancing medications, or face federal regulation of the issue.

This Note will examine the effects of steroids on racehorses, and will analyze some of the regulations that states have implemented to combat the use of steroids in the horse racing industry. Additionally, this Note will look to the Racing Medication and Testing Consortium Model Rules as a guide to federal regulation of the matter. This Note will lastly explain the need for a uniform system regulating the industry on a national scale and why federal regulation of the use of steroids in the horse racing industry is the sole method of ensuring that the integrity of the horse racing industry is maintained and the welfare of racehorses protected.

II. UNDERSTANDING THE EFFECTS OF STEROIDS

The first step in determining the proper scope of steroid use regulation in the horse racing industry is to understand the effects steroids have on racehorses. It is important that legislators recognize the different types of steroids, and the range of effects they have, before implementing any regulation of the drug.

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8 Hall, supra note 6.


10 Hall, supra note 6.

11 Id.
There are two different types of steroids: corticosteroids and anabolic steroids. 12 Corticosteroids are primarily used to treat arthritic conditions and some joint conditions, 13 but they can also be used to reduce inflammation and lessen the effects of "allergic reactions, such as hives." 14 Furthermore, corticosteroids will not be detected in a test for anabolic steroids. 15

Anabolic steroids, on the other hand, are related to the hormone testosterone, 16 and "[t]hey increase protein synthesis in cells, which results in anabolism (build-up of tissue), especially in muscles." 17 Anabolic steroids are used to "stimulate growth and appetite, and treat chronic wasting conditions," 18 particularly in cases of marked tissue breakdown associated with disease, prolonged anorexia, stress, or surgery. 19 Anabolic steroids' noticeable effects on horses include "more stallion-like vocalization, stallion-like enthusiasm and energy for noticing and approaching other horses, some of the specific behaviors of sexual investigation and arousal, and some of the specific aggressive behaviors more common in stallions." 20

The four most common anabolic steroids administered to horses include stanozolol (Winstrol), boldenone (Equipose), nandrolone (Durabolin), and testosterone. 21 All four of these anabolic steroids can be regulated through blood and urine tests. 22 Currently, any screening of anabolic steroids that takes place in the horse industry is done through urine testing, although blood tests for anabolic steroids are continually being advanced. 23 Because urine samples take longer to administer than blood tests, one of the advantages of blood testing is that it allows a "spot screen," or random test. 24

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12 Brown, supra note 1.
14 Brown, supra note 1.
15 id.
16 id.
17 id.
22 id.
23 Brown, supra note 1.
24 id.
The debate in the horse racing industry related to performance-enhancing drugs currently concerns prohibiting and screening for anabolic steroids. This is because "non-medical uses for anabolic steroids are controversial, because of their adverse effects and their use to gain potential advantage in competitive sports."26

III. A LOOK AT STATE STEROID REGULATION

Most major racing states have adopted, or are in the process of adopting, regulations that ban the use of anabolic steroids in racehorses.27 Kentucky,28 California,29 Illinois,30 and New York31 are but a few of the states that have recently passed legislation aimed at regulating the use of steroids in the horse racing industry. The regulations that these states have implemented show both the similarities and the disparities in different jurisdictions’ approaches to the issue.

A. Kentucky

Kentucky is, arguably, the state most widely known for horse racing. People around the world are familiar with the Kentucky Derby and the less popular Kentucky Oaks. Therefore, it was no surprise when horse racing officials in Kentucky decided the time had come to regulate steroid use in the industry, beginning with the Kentucky Horse Racing Commission ("KHRC") voting unanimously on August 25, 2008, to ban the use of anabolic steroids in racehorses.32 Less than a month later, Kentucky Governor Steve Beshear signed an emergency regulation that called for testing for anabolic steroids in racehorses beginning with the Keeneland Fall 2008 meet.33

The Kentucky regulations provide that detection of anabolic androgenic steroids ("AAS"), or a metabolite of an AAS, after a horse has been entered into a race, or after the race has occurred, shall constitute a violation of the regulation.34 Detection occurs when the level of AAS in a

25 Id.
26 Id.
27 LaMarra, supra note 21.
30 ILL. ADM. CODE tit. 11, § 603 (2008).
horses "deviates from naturally-occurring physiological levels." The Kentucky regulation limits the steroids boldenone, nandrolone, and testosterone, and pertains to both thoroughbred and standardbred racing. Specifically, the Kentucky Administrative Regulations places the following limitations on the drugs:

(a) Boldenone (free and conjugated) in male horses other than geldings - 15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses;

(b) Nandrolone (free and conjugated):
   (1) In geldings - 1 ng/ml in urine;
   (2) In fillies and mares - 1 ng/ml in urine;
   (3) In male horses other than geldings - 45 ng/ml of metabolite,

(c) Testosterone (free and conjugated):
   (1) In geldings - 20 ng/ml in urine;
   (2) In fillies and mares - 55 ng/ml in urine . . .

The Kentucky regulation does allow for the therapeutic use of AAS in racehorses, but only if rigorous standards are met. First, the steroids can only be administered to treat an existing injury or illness that has been identified by a veterinarian. Furthermore, horses that have been treated with AAS for therapeutic purposes are ineligible to race until they have fulfilled a number of requirements, including: (1) a minimum sixty days have passed since the steroids were administered; (2) a biological sample is taken from the horse; (3) the sample is tested for anabolic steroids by a laboratory included on an approved list by the KHRC; and (4) the KHRC receives a laboratory report showing a negative finding. The requirement that a veterinarian diagnose a horse with an injury or illness prior to the administration of therapeutic steroids, along with the three other requirements set forth, will make it quite difficult for trainers to bypass the regulation of steroids by labeling the use "therapeutic."

Because the Kentucky regulations were passed very recently, it is appropriate to discuss the ninety-day "grace period" that has been implemented for the time period immediately following the passing of the regulations. For the first thirty days following the ban, no testing will be

35 Id.
36 Id.
37 Kentucky Governor Bans Steroids in Racehorses, supra note 33.
39 Id.
40 Id.
performed. For the next thirty days, post-race tests for steroids will be done, but no penalties will be given. During the last thirty days of the grace period, testing will be done, and an investigation will be conducted to determine when the steroids were administered. If it is determined that steroids were administered after the ban took effect, action will be taken against the owners and trainers.

B. California

California is another state where horse racing is very popular. Like Kentucky, California has also recently adopted regulations to combat the use of anabolic steroids in racehorses. The California Administrative Code vests jurisdiction and supervision over the horse racing industry in the California Horse Racing Board ("CHRB" or "the Board").

The California Administrative Code also allows the CHRB to adopt regulations pertaining to equine medications. This section of the Code permits the CHRB to control the use of anabolic steroids in racehorses, and to prohibit horses that test positive for forbidden substances from participating in a race. Furthermore, if a horse has been entered into a race, or has participated in a race, and is later found to have a prohibited drug in its system, the horse may be disqualified, and any purse, prize, award, or record will be forfeited.

The CHRB regulations concerning the use of anabolic steroids went into effect on July 1, 2008. These regulations are a modification of national Racing Medicine and Testing Consortium ("RMTC") Rules. Specifically, the Board amended § 1844, which is a rule that already regulates clenbuterol and several other drugs with specified threshold levels. The CHRB rule regulates the use of the same three anabolic

41 Kentucky Governor Bans Steroids in Racehorses, supra note 33.
42 Id.
43 Id.
44 Id.
48 Id.
49 Id.
52 CHRB Rule § 1844, http://www.chrb.ca.gov/rules_search.htm (follow “Rule Number” link; then follow “1844” link).
steroids as the Kentucky rule, nandrolone, boldenone, and testosterone, but adds a fourth regulated substance, stanozolol.\textsuperscript{53} The CHRB rule also sets threshold levels for these substances, which are identical to the threshold levels used in the Kentucky regulation.\textsuperscript{54} Section 1844(e) sets the following limits on the four substances it regulates:

(1) Stanozolol; 1 nanograms per milliliter

(2) Nandrolone; 1 nanograms per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings

(3) Boldenone; 15 nanograms per milliliter in males other than geldings

(4) Testosterone; 20 nanograms per milliliter in geldings, 55 nanograms per milliliter in fillies or mares. Testosterone at any level in males other than geldings is not a violation.\textsuperscript{55}

Although § 1844 does not specify an exception for therapeutic use, § 19581 of the California Administrative Code allows for substances to be administered to a horse subject to CHRB approval, and, in some instances, approval by a veterinarian in writing.\textsuperscript{56} Furthermore, even if steroids are administered to a horse for therapeutic purposes, the CHRB still regulates the "quantity and composition thereof."\textsuperscript{57} The CHRB standard for therapeutic use of anabolic steroids is more stringent than the Kentucky standard, which only requires a veterinarian diagnosis, and does not address threshold levels for the therapeutic use of steroids.

While nothing in the California Administrative Code or the CHRB Rules allows for a "phasing out" of anabolic steroids, Dr. Rick Arthur, the Equine Medical Director for the CHRB, submitted an Advisory Note on the matter.\textsuperscript{58} Specifically, Dr. Arthur pointed out that while there are no official withdrawal time recommendations for stanozolol, nandrolone, boldenone, or testosterone, there are predictable time frames for when these drugs would leave a horse's system.\textsuperscript{59} These time frames include a "minimum of 30 days for stanozolol and aqueous (water-based)
testosterone, and 45 days for nandrolone, boldenone, and non-aqueous testosterone.  

C. Illinois

The Illinois regulations setting forth threshold levels for anabolic steroids are found in the Illinois Administrative Code, as part of the Illinois Racing Board's regulatory scheme. These regulations became effective on May 1, 2008. Like the CHRB's regulations, the Illinois regulations pertain to four different types of anabolic steroids: stanozolol, boldenone, nandrolone, and testosterone. Testing is done through urine samples taken after a horse has raced. Like Kentucky and California, Illinois has set threshold levels for the four steroids:

1. Stanozolol (Winstrol) - 1 ng/ml in urine;
2. Boldenone (Equipoise) - in male horses other than geldings; including free boldenone and boldenone liberated from its conjugates - 15 ng/ml in urine;
3. Nandrolone - 1 ng/ml in urine; and
4. Testosterone - 20 ng/ml in urine in geldings and 55 ng/ml in urine in fillies and mares.

The Illinois regulations provide for post-race urine samples to detect the use of steroids. If any of the four regulated steroids are found within a horse's system, the trainer is subject to penalties set forth within the section. The penalties for violation of any of the Illinois Racing Board's rules include a fine, license suspension, or revocation of any purse money won. When determining what the proper penalty is for violation of a rule, the Illinois Racing Board will look to the following criteria:

1. The nature of the foreign substance; e.g., cough medicine, steroid, narcotic, stimulant, depressant, etc.;

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60 Id.
62 Id.
63 Id.
64 Id.
65 Id.
66 Id.
(2) The accessibility of the drug; e.g., can be purchased over the counter, only with a prescription, only with a license for controlled substances, cannot be purchased in this country;

(3) The age and experience of the violator;

(4) Whether the violator has ever been the subject of a medication ruling in this or any other racing jurisdiction;

(5) What action, if any, was taken by the violator of the rules to avoid such violation;

(6) The purse of the race.\textsuperscript{68}

In \textit{Ellison v. Illinois Racing Board},\textsuperscript{69} the Illinois Appellate Court examined the nature of the Illinois Racing Board’s regulatory scheme and the penalties that are imposed for a violation of the regulations.\textsuperscript{70} While this case was decided prior to the effective date of the Illinois Racing Board’s regulations targeting the use of anabolic steroids, it still offers insight into the Board’s decision-making process regarding the penalties imposed for violation of the regulations, as well as the proper standard of review for the Board’s decisions. In \textit{Ellison}, the court stated:

We next address whether the penalties assessed by the Board were improper. As addressed above, the Board is charged with maintaining the integrity of horse racing in Illinois . . . [and] where the Board finds just cause, it may exclude and suspend its licensees. However, plaintiff notes that it is well established that a reviewing court may overturn sanctions imposed by the Board if they are overly harsh . . . a reviewing court will only overturn a penalty that is arbitrary, unreasonable and contrary to the goals of the Board.\textsuperscript{71}

The court in \textit{Ellison} also examined the public policy behind regulating the use of foreign substances in racehorses.\textsuperscript{72} The court stated

\textsuperscript{68} Id.
\textsuperscript{69} Ellison v. Illinois Racing Board, 878 N.E.2d 740 (Ill. App. 2007).
\textsuperscript{70} See Ellison, 878 N.E.2d 740.
\textsuperscript{71} Id. at 750 (citing Feliciano v. Illinois Racing Board, 445 N.E.2d 261 (Ill. 1982)).
\textsuperscript{72} Id.
that the goal in regulating the horse industry with regards to Section 603 is to maintain public confidence in the reputation and integrity of horse racing.\textsuperscript{73}

Like Kentucky and California, the Illinois regulatory scheme provides for therapeutic use of steroids in racehorses. Section 603.210(e) allows for the continued monitoring of concentrations of steroids in the urine of racehorses that have been administered the drugs for recovery from illness or injury.\textsuperscript{74} These horses must be placed on the State Veterinarian's List; once the concentration is below the designated threshold, they may be removed from the List.\textsuperscript{75} Because the Illinois rule mandates the continued monitoring of the levels of steroids being used for therapeutic uses, it is arguably a stricter standard than that put forth by Kentucky or California.

D. \textit{New York}

Like Kentucky, New York, as the home of the final leg of the Triple Crown, the Belmont Stakes, has an incentive to lead the country in the regulation of anabolic steroid use in racehorses.\textsuperscript{76} On May 29, 2008, the New York State Racing and Wagering Board (“NYSRWB”) passed regulations on the use of anabolic steroids for racehorses in thoroughbred and standardbred racing.\textsuperscript{77} The NYSRWB regulates the use of stanozolol, boldenone, nandrolone, and testosterone, and like the other states' regulations, sets out threshold levels for these substances.\textsuperscript{78} The threshold levels are:

1. Hydroxystanozolol (metabolite of stanozolol Winstrol) – 1 ng/ml in urine

2. Boldenone – in male horses other than geldings, including free boldenone and boldenone liberated from its conjugates - 15 ng/ml in urine

3. Nandrolone – 1 ng/ml in urine

\textsuperscript{73} Id. at 750-51.
\textsuperscript{74} ILL. ADM. CODE tit. 11, § 603.210(e) (2008).
\textsuperscript{75} Id.
\textsuperscript{76} "Belmont Stakes," http://www.belmont-stakes.info/ (last visited Feb. 8, 2009).
\textsuperscript{78} N.Y. COMP. CODES R. & REGS. tit. 9, § 4043.15 (2009).
(4) Testosterone
   (a) In geldings—20 ng/ml in urine
   (b) In fillies and mares—55 ng/ml in urine .... 79

New York's regulations call for testing to be done through either urine or plasma samples, 80 and the penalty for violation of Part 4043 of the NYSRWB includes disqualification. 81 Rule 4043.5 provides that a horse that has exceeded the threshold levels set forth may be disqualified, and any share of the purse of the race shall be "redistributed among the remaining horses in the race." 82

Like the Illinois regulatory scheme, the New York regulations provide that a horse that has been administered anabolic steroids for therapeutic use shall be placed on a veterinarian's list to monitor the concentration of the drug. 83 When the concentration is lower than threshold levels, the horse may be removed from the list. 84 Because horses treated with steroids for therapeutic purposes must be placed on a list for monitoring, the New York regulation, like Illinois, is a stricter standard than that of Kentucky or California.

Furthermore, the New York regulations impose a strict responsibility on the trainer to ensure that a horse in his or her care does not receive any drug or other restricted substance within specified periods prior to a race. 85 If a trainer knows or suspects that a horse in his custody will test positive for any drug or restricted substance, he must not permit that horse to start a race. 86 A trainer must meet a "substantial evidence" evidentiary standard to avoid being held responsible for a positive steroid test. 87 In other words, a trainer must provide substantial evidence to demonstrate he is in no way responsible for "administering" a steroid to the horse. 88 Rule 4043.4 goes on to say:

Every trainer must guard each horse trained by him in such manner and for such period of time prior to racing the horse so as to prevent any person, whether or not employed by or connected with the owner or trainer, from administering

79 Id.
80 Id.
81 N.Y. COMP. CODES R. & REGS. tit. 9, §4043.5 (2009).
82 Id.
84 Id.
85 Id.
86 Id.
87 Id.
88 Id.
any drug or other restricted substance to such horse contrary to this Part.\textsuperscript{89}

In \textit{In re Mark Shuman}, the New York Supreme Court, Appellate Division, construed the preceding Rule to hold that a trainer had violated the NYSRWB's medication rules by injecting a horse with a regulated drug within five days of a race.\textsuperscript{90} The court upheld the NYSRWB's decision to suspend the trainer's license for thirty days.\textsuperscript{91}

Furthermore, even though the regulation pertaining to anabolic steroids has recently been enacted, other case law in New York construing the NYSRWB's regulation proves insightful. For example, in \textit{DeBonis v. Corbisiero}, the New York Supreme Court, Appellate Division, was faced with a situation in which the NYSRWB had failed to preserve a sufficient blood sample to permit an independent test after a horse trainer's license was suspended upon finding that a horse he had trained had raced with a drug in its system.\textsuperscript{92} The court held the trainer's allegation to be meritless absent an allegation and proof of bad faith, in this case a showing of the NYSRWB's intentional failure to preserve a sample.\textsuperscript{93} \textit{Debonis} illustrates the court's deferential attitude towards NYSRWB determinations.\textsuperscript{94}

\section*{IV. A CALL FOR FEDERAL REGULATION}

\subsection*{A. \textit{The Racing Medication and Testing Consortium—A History}}

The Racing Medication and Testing Consortium ("RMTC") is a group whose mission is "to develop, promote and coordinate, at the national level, policies, research, and educational programs that seek to ensure the fairness and integrity of racing and the health and welfare of racehorses and participants, and to protect the interests of the racing public."\textsuperscript{95} The formation of the RMTC dates back to August of 2000, when the "National Thoroughbred Racing Association's Task Force on Racing Integrity and Drug Testing released the initial results of its Supertest project at The Jockey Club Roundtable meeting."\textsuperscript{96} The report emphasized some of the problems with prohibited substances that plagued the horse racing industry,

\begin{itemize}
\item \textsuperscript{89} \textit{Id.}
\item \textsuperscript{91} \textit{Id.} at 385.
\item \textsuperscript{93} \textit{Id.}
\item \textsuperscript{94} \textit{See id.; see also Matter of Finger Lakes Racing Ass'n., Inc. v. State of N.Y. Racing and Wagering Bd.}, 34 A.D.3d 895, 897 (N.Y. App. Div. 2006) (holding that great deference is to be accorded to the New York State Racing and Wagering Board in overseeing horse racing).
\end{itemize}
and was the result of "three years of research into the state of post-race testing in the United States, including results from over 1,000 cleared split samples that were put through an additional rigorous battery of tests."\(^9\)

In response to the report from the Supertest project, the American Association of Equine Practitioners hosted the "Racehorse Medication Summit" during the Annual Symposium on Racing in Tucson, Arizona.\(^9\) During the Summit, individuals representing twenty-three industry stakeholder groups came together "for a facilitated closed-door meeting . . . to determine potential consensus points on the most basic elements of a uniform national medication policy for racehorses."\(^9\) Although the Summit only lasted a few days, those involved vowed to continue their efforts to provide a uniform policy, which led to the creation of the RMTC.\(^10\)

**B. RMTC Model Rules – A Guide to Federal Regulation**

One of the goals of the RMTC is to:

Develop and recommend uniform model policies, prohibited practices, disciplinary procedures and penalties regarding the use of medications and methods in connection with selling, training and racing horses, while respecting the autonomy and authority of individual state racing commissions and the work of national regulatory organizations.\(^10\)

To implement these goals, the RMTC endorsed a December 31, 2008, deadline for nationwide adoption of a model rule, which has yet to be implemented.\(^10\) Both Illinois and New York have explicitly adopted the RMTC model rule.\(^10\) The RMTC proposes that the following rule be wholly and explicitly adopted by each state:

The use of one of four approved anabolic steroids shall be permitted under the following conditions:

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\(^9\) Id.  
\(^9\) Id.  
\(^9\) Id.  
\(^10\) Id.  
\(^10\) Id.  
\(^10\) RMTC, Goals & Objectives, supra note 95.  
\(^10\) LaMarra, supra note 21.  
(1) Not to exceed the following permitted urine or plasma threshold concentrations:
   (a) 16β-hydroxystanozolol (metabolite of stanozolol (Winstrol)) – 1 ng/ml in urine
   (b) Boldenone ((Equipoise) In male horses other than geldings; including free boldenone and boldenone liberated from its conjugates) – 15 ng/ml in urine
   (c) Nandrolone – 1 ng/ml in urine
   (d) Testosterone
      (A) In geldings – 20 ng/ml in urine
      (B) In fillies and mares – 55 ng/ml

The model rule goes on to state that the presence of more than one of the four approved steroids listed above, at any concentration, is not permitted. The presence of any anabolic steroid not listed is also prohibited. Under the model rule, testing is conducted through post-race urine or blood samples. Lastly, horses which have been administered steroids for therapeutic use are placed on a “veterinarian’s list” to monitor the concentration of the drug. Once the horse’s steroid level is below the “designated thresholds,” the horse can be removed from the list.

The RMTC also establishes possible penalties for violations of the model rules. The “Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International” shall be considered in determining the classification level of the violation, as well as deciding the proper penalty and disciplinary measure to be imposed. The rule also allows for consultation with veterinarians to determine whether or not the drugs were being used therapeutically, and to inquire with the laboratory technician into the

105 Id.
106 Id.
108 Id. at ARCI-011.
109 Id.
110 EQUINE VETERINARY PRACTICES, HEALTH AND MEDIATION – CHAPTER 11 ARC-011-010(B) (Racing Med. & Testing Consortium 2008).
111 Id.
seriousness of the violation. The rule states that determinations are to be made on a case-by-case basis, and extenuating factors include, but are not limited to:

1. The past record of the trainer, veterinarian and owner in drug cases;
2. The potential of the drug(s) to influence a horse's racing performance;
3. The legal availability of the drug;
4. Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;
5. The steps taken by the trainer to safeguard the horse;
6. The probability of environmental contamination or inadvertent exposure due to human drug use;
7. The purse of the race;
8. Whether the drug found was one for which the horse was receiving a treatment as determined by the Medication Report Form;
9. Whether there was any suspicious betting pattern in the race, and;
10. Whether the licensed trainer was acting under the advice of a licensed veterinarian.

According to the RMTC, only twenty-five states have adopted the model rules that the Consortium proposed. Eleven states have begun the process of adopting the model rules, and three states have not yet started the process. Even in states that the RMTC considers to have adopted its model rules, regulations may not be in exact accordance with the language

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112 Id.
113 Id.
115 Id.
of the model rules. For instance, the RMTC considers Kentucky to have adopted the model rules. However, an examination of Kentucky’s regulation reveals that Kentucky has completely omitted stanozolol from the regulations. This inconsistency is but one illustration of the lack of uniformity in states’ regulatory schemes pertaining to anabolic steroids, despite RMTC’s claim that the rules have been uniformly adopted.

C. Concerns Related to Federal Regulation

Although adoption of the RMTC guidelines would seem to cure the problem of jurisdictional non-uniformity in the regulation of steroids in racehorses, some argue that these regulations are best left up to each state. There are federalism concerns related to regulating the horse industry, and an issue may exist as to whether or not the federal government has the constitutional basis for such legislation.

Proponents of reserving regulation of steroids in the horse industry to each individual state would argue that this allows each state to tailor regulations to fit local preferences. However, this argument loses its merit when one considers the fact that horses race in numerous states and jurisdictions, and, as stated previously, a lack of uniformity would only cause confusion and an arguable inability to comply with each state’s rules. Proponents of state regulation may also argue that allowing each state to regulate the industry gives the citizens of that state greater influence over the public policy surrounding the legislation. While this may hold true as far as broad concepts, such as whether or not regulating the industry is proper in the first place, the general citizenry should not be given the task of setting the threshold levels for these steroids. This should instead be left to legislators working closely with experts in the fields of veterinary medicine.

Another issue surrounding the implementation of federal regulations for the use of steroids in the horse industry is whether or not the federal government has a constitutional basis for such legislation. It is likely that the federal government would justify federal regulation of the use of steroids in the horse industry through the Commerce Clause found within Article I of the United States Constitution. The Commerce Clause allows the federal government to regulate commerce among the states, and has been interpreted both broadly and narrowly over the course of our nation’s history. However, keeping in mind the progeny of Supreme

\(^{116}\) Id.

\(^{117}\) 810 KY. ADMIN. REGS. § 1:018E(9) (2009).

\(^{118}\) U.S. Const., art. I, § 8, cl. 3.

\(^{119}\) See generally Lochner v. New York, 198 U.S. 45 (1905) (holding that limiting a bakers’ working hours did not constitute a legitimate exercise of police power), NLRB v. Jones and Laughlin
Court case law interpreting the Commerce Clause, it is likely that federal regulation of steroid use in the horse industry would be found to be subject to Congressional authority. Horse racing is most certainly an economic activity, and it occurs across state boundaries on a national level. In drafting federal legislation regulating steroid use, Congress should be cautioned to follow the Supreme Court's holding in \textit{United States v. Lopez},\textsuperscript{120} and place a "jurisdictional hook" linking the statutory language to interstate commerce.

D. Why Federal Regulation is Needed

Although arguments may be made that regulation of steroid use in the horse racing industry should be left to each state, there is a much stronger argument that federal regulation of the issue is both valid and necessary. The lack of consistency throughout states that have adopted regulations pertaining to the use of anabolic steroids in racehorses is but one reason why federal regulation of the issue is proper. As stated previously, several states have not even begun the process of implementing standards for steroid use in racehorses at all, while only a fraction more are in the process of implementing standards.\textsuperscript{121} Because "racing has 38 jurisdictions, each with its own rules, and a host of industry trade groups . . . that have varying degrees of influence but little or no power,"\textsuperscript{122} there is little uniformity in the regulation of anabolic steroid use in racehorses.

One issue that the RMTC has been confronted with is that "jurisdictions are tweaking the rule to suit their interests."\textsuperscript{123} This may be the case with Kentucky's rule; although the RMTC recognizes Kentucky as a state that has adopted the model rule, Kentucky does not regulate stanozolol,\textsuperscript{124} which is one of the four anabolic steroids regulated under the RMTC model rules.\textsuperscript{125} Another issue is that some jurisdictions, because of

\textsuperscript{121} RMTC Model Rules Home, \textit{supra} note 114.
\textsuperscript{122} Hall, \textit{supra} note 6.
\textsuperscript{124} See KY. ADMIN. REGS. tit. 810, § 1:090E(9) (2009).
\textsuperscript{125} LaMarra, \textit{supra} note 21.
finances, will have their laboratories test for steroids in urine, rather than plasma, which is the most effective method of testing.  

Because of the lack of regulation in some jurisdictions, and the inconsistencies in those that have chosen to regulate, a federal rule regulating the use of anabolic steroids in racehorses would create a uniform system that offers more predictability to trainers who may be potentially liable for violating a jurisdiction's rule. Some trainers have complained that when they have a horse run out-of-state, they are "in a position where [they] have to know what that state's rules are, compared to the ones [in state] . . . they can be totally different." Piecemeal adoption of regulations accordingly creates problems for horse trainers who regularly ship their racehorses from state to state. A central oversight authority in racing, much like those found in other major sports, is the most effective way to achieve such unity.

Another reason that it is proper to have regulation of anabolic steroids on the federal level is to achieve the mission of the RMTC: to maintain the integrity of the horse industry. Some sports, like Major League Baseball, have been tainted by the use of performance-enhancing drugs in its athletes. If the horseracing industry is to avoid the same negative image, uniform regulation must be sought. This issue came to the forefront with the death of Eight Belles during the Kentucky Derby, when the public's perception of the sport was brought into question. If a uniform federal system were implemented to regulate the use of anabolic steroids in racehorses, the public would perceive the sport as controlled and organized, and, therefore, inherently more fair to all competitors. A federal rule would also "level the playing field," so that all horses, regardless of what jurisdiction they originate in, would be running on solely their natural ability, and not on any performance-enhancing medication.

Finally, and arguably most importantly, a uniform federal rule is needed to maintain the welfare of the horses that may be harmed by foreign substances being injected into their bodies. For example, "bigger, heavier-muscled horses, stronger horses putting more stress (on their legs) might have a consequence in that the horses might have a tendency to break down easier." Furthermore, "overuse of medications can contribute to improved performance that enhances a horse’s value as breeding stock.

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126 Id.
127 Hall, supra note 6.
130 Hall, supra note 6.
allowing it to pass on its infirmities." Without federal regulation, each jurisdiction is left to regulate steroid use on its own, and this will lead to some jurisdictions not regulating at all, while others will under-regulate. A uniform, federal system would ensure that each racehorse across the United States will not be harmed by anabolic steroid injections.

V. CONCLUSION

Now is the time for federal regulation of the use of anabolic steroids in racehorses. Many jurisdictions have begun to implement regulations of the use of steroids, but these regulations differ from state to state and provide little predictability for those who could potentially violate those regulations. The federal government should take a role in regulating steroid use in racehorses before more jurisdictions implement rules that do not coincide with those of their neighbors and only de-unify and confuse the system. Only then will the integrity of the sport be ensured, and the welfare of all racehorses be maintained.

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131 Id.