

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005)\
3 **DE Admin. Code** 501

FINAL

ORDER

Pursuant to 29 **Del.C.** § 10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on December 16, 2008, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

The Commission posted public notice of the proposed amendments to DHRC Rule 7.1.6.1.2 and 10.2.8.3 in the November 1, 2008 and December 1, 2008 *Register of Regulations* (Volume 12, Issue 5 and Volume 12, Issue 6, respectively,) and for two consecutive weeks in November and December in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 7.1.6.1.2 (preference date) and insert the new Rule 10.2.8.3 (trainer transfers.)

The Commission received no written comments. The Commission held a public hearing on December 16, 2008, in which no public comments were made.

FINDINGS OF FACT AND CONCLUSIONS

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on February 1, 2009

IT IS SO ORDERED this 13th day of January, 2009.

Beverly H. (Beth) Steele, Chairman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Mary Ann Lambertson, Commissioner

Kenneth Williamson, Commissioner

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

7.0 Rules of the Race

7.1 Declarations and Drawing

7.1.1 Declarations

- 7.1.1.1 Declaration time shall be as specified in the Association's general conditions. The time when declarations close will be considered to be local time at the track where the race is being contested.
- 7.1.1.2 No horse shall be permitted to start in more than one race on any one racing day. Races decided by more than one heat are considered a single race.
- 7.1.1.3 The Association shall provide a locked box with an aperture through which declarations shall be deposited.
- 7.1.1.4 The Presiding Judge shall be in charge of the declaration box.
- 7.1.1.5 Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the Presiding Judge shall check with the racing secretary to ascertain if any declarations are in the office and not deposited in the entry box, and shall see that they are declared and drawn in the proper event.

7.1.2 Drawing

- 7.1.2.1 The entry box shall be opened at the advertised time by the Presiding Judge. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the Presiding Judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.
- 7.1.2.2 Subject to Commission approval, at non-extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges, or by a person designated by the Presiding Judge, for whose acts and conduct Presiding Judge shall be wholly responsible. If a substitution is made as herein provided, the name and address of the associate judge(s) or person so substituting shall be entered in the Judges' Book.

At extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges who shall have been designated by the Presiding Judge, prior to the start of the meeting, in the form of a written notice to the Commission and to the Association conducting the meeting. A record shall be kept in the Judges' Book showing the name of the individual who performed such functions on each day of the meeting.
- 7.1.2.3 In races of a duration of more than one dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.
- 7.1.2.4 Declarations by telephone or other means approved by the Association's race office that are actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Telephone declarations, or other means of declarations approved by the Association's race office must state the horse's name, the driver's name, the trainer's name, and the event in which the horse is to be entered.
- 7.1.2.5 Failure to declare as required shall be considered a withdrawal from the event.
- 7.1.2.6 After declaration to start has been made no horse shall be withdrawn except by permission of the judges. A fine, not to exceed \$2,000, or suspension may be imposed for withdrawing a horse without permission, the penalty to apply to both the horse and the party who violates the regulation.
- 7.1.2.7 Where the person making the declaration fails to honor it and there is no opportunity for a hearing by the judges, this penalty may be imposed by the commission representative.
- 7.1.2.8 Where a horse properly declared is omitted from the race by error of the Association, the omitted horse may take the post position of the incorrect horse included in the race. If two horses are incorrectly included in the event, one shall be drawn by lot and included in the

race, provided, however, that the error is discovered prior to the publication of the official program.

- 7.1.2.9 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy. When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.1.3 Qualifying Races

- 7.1.3.1 Qualifying races and starting gate schooling shall be held according to the demand as determined by the Presiding Judge.
- 7.1.3.2 Qualifying standards shall be set at each track by the racing secretary and the judges. These may vary at different times of the year to accommodate weather and the class of horse available. Standards for trotters will be two seconds slower than pacers.
- 7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:
- 7.1.3.3.1 Before racing at a chosen gait, a horse must go a qualifying race at that gait under the supervision of a licensed judge and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.
- 7.1.3.3.2 Any horse that fails to race within thirty (30) days of its last start must go a qualifying race as set forth in a) above. However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission. The time period allowed shall be calculated from the date of the last race to and including the date of declaration. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.
- 7.1.3.3.3 When a horse has raced at a charted meeting and then gone to meetings where the races are not charted the information from the uncharted lines may be summarized including each start and consolidated in favor of charted lines to include a charted line within the last thirty (30) days before the horse is permitted to race. The consolidated line shall carry date, place, time, driver, finish, track condition and distance.
- 7.1.3.3.4 The judges may permit a horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race.
- 7.1.3.3.5 When, for the purpose of qualifying the driver, a horse is declared in to race in a qualifying race, its performance shall be applicable to the horse's eligibility to race and the chart line shall be notated to indicate driver qualifying.
- 7.1.3.3.6 If a horse takes a win race record in either a qualifying race or a matinee race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the Presiding Judge to report the test on the Judges' Sheet.
- 7.1.3.4 Any horse regularly wearing hobbles shall not be permitted to be declared to race without them and any horse regularly racing without hobbles shall not be permitted to wear hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with hobbles in a subsequent event to which it is declared.

- 7.1.3.5 In their discretion the judges may require a horse to qualify for any reason; provided, however, that a horse making a break in each of two consecutive races may not be required to qualify if the breaks were solely equipment breaks and/or were caused solely by interference and/or track conditions.
- 7.1.3.6 A horse must qualify if:
 - 7.1.3.6.1 it does not finish for reasons other than interference or broken equipment.
- 7.1.3.7 A charted line containing only a break or breaks caused by interference or an equipment break shall be considered a satisfactory charted line.
- 7.1.3.8 The judges shall use the interference break mark only when they have reason to believe that the horse was interfered with by another horse or the equipment of another horse.

7.1.4 Coupled Entries

When the starters in a race include two or more horses owned by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry", and a wager on one horse in the entry shall be a wager on all horses in the "entry"; provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownership, such horses may, at the request of the Association, made through the Presiding Judge be permitted to race as separate entries. If the race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and their post positions shall be drawn by lots. The above provisions shall also apply to elimination heats. The person making the declaration of a horse that qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank. The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only; provided, however, that where this is done entries may not be rejected.

7.1.5 Also Eligibles

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved in to race by Scratch Time on the day of the race shall be released.

7.1.6 Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

- 7.1.6.1 The date of the horse's last previous start in a purse race is its preference date with the following exceptions:
 - 7.1.6.1.1 The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.
 - 7.1.6.1.2 When a horse is racing for the first time ~~in a calendar year after August 1st ever~~, the date of its first successful qualifying race within the DHRC standards shall be considered its preference date. ~~When a horse is racing for the first time ever, the date of its first successful qualifying race shall be considered its preference date.~~

- 7.1.6.1.3 Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by backdating, up to two starts, the horse having raced closest to the draw having the least preference. If no preference is determined, preference will be determined by lot.
 - 7.1.6.1.4 When an overnight race has been re-opened because it did not fill, all eligible horses declared into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.
 - 7.1.6.2 This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.
- 7.2 Timing and Records
 - 7.2.1 Timing
 - 7.2.1.1 The time of each heat or dash shall be accurately taken by two timers or an approved electric timing device, in which case there shall be one timer, and placed in the record in minutes, seconds and fifths of seconds, and upon the decision of each heat the time thereof shall be publicly announced or admitted to the record. When the timers fail to act, no time shall be announced or recorded.
 - 7.2.1.2 The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.
 - 7.2.1.3 The leading horse shall be timed and its time only shall be announced. No horse shall obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing.
 - 7.2.1.4 In the case of a dead heat, the time shall constitute a record for the horses making the dead heat and both shall be considered winners.
 - 7.2.2 Records
 - 7.2.2.1 In order that performances thereon may be recognized or published as official, every Association shall have filed with the Commission the certificate of a duly licensed civil engineer or land surveyor that the track has been measured from wire to wire three feet out from the inside hub rail or other fixed marker and certifying exactly the result of such measurement. Each track shall be measured and re-certified in the event of any changes or relocation of the hub rail or other fixed marker.
 - 7.2.2.2 A record will be the fastest time made by a horse in a heat or dash which it won, or in a performance against time.
 - 7.2.2.3 No time record shall be recognized as a world record if obtained on a track without an inside rail or other fixed marker.
 - 7.2.2.4 In any case of alleged error in the record, announcement or publication of the time made by a horse, the time so questioned shall not be changed to favor said horse or owner, except upon the sworn statement of the judges and timers who officiated in the race.
 - 7.2.2.5 If a horse takes a win-race record in a qualifying race or schooling race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where the horse was subjected to the collection of an test sample. The Presiding Judge shall note on the judges' official race reports each qualifying race from which test samples were collected.
 - 7.2.2.6 For horses bred in North America and subsequently exported, foreign earnings shall be converted to U.S. dollars and credited to the horse's official records. A winning performance at a mile or greater distance, expressed at a mile rate, shall receive recognition as the horse's record.
 - 7.2.2.7 Any person found guilty of fraudulent misrepresentation of time or the alteration of the record thereof, in any race, shall be fined, suspended, expelled or a combination thereof and time declared not a record.
- 7.3 Postponement and Cancellation

- 7.3.1 In case of unfavorable weather or other unavoidable cause, the Association upon notifying the Commission shall postpone or cancel races in accordance with the following rules.
- 7.3.2 Added money events shall be postponed to a definite hour on a scheduled race date when favorable conditions prevail.
- 7.3.3 An early closing event or a late closing event that cannot be raced during the scheduled meeting shall be declared off and the total of nomination, sustaining and starting payments divided equally among the owners of eligibles in proportion to the number of horses declared to start.
- 7.3.4 An early closing event or late closing event that has been started, but remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary.
- 7.3.5 Stakes and futurities should be raced where advertised and the meeting may be extended to accomplish this. Any stake or futurity that has been started, but which remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary, except where the Association elects to extend the meeting to complete the race. Horses that are scratched after a heat and before the race is declared finished shall not participate in purse distributions for subsequent heats in the event the race is called off and declared finished.
- 7.3.6 Unless otherwise provided in the conditions, in order to transfer stakes and futurities to another meeting, unanimous consent must be obtained from the Association and all those having eligibles in the event.
- 7.3.7 At extended meetings, overnight events may be postponed and rescheduled within two days, or may be canceled if circumstances or weather conditions warrant. Postponed overnight events not raced within two days shall then be canceled.
- 7.3.8 At non-extended meetings, overnight events shall be canceled, unless the Association is willing to add the postponed races to the advertised program for subsequent days of the meeting. At the option of the Association, any postponed races may be contested in single one-mile dashes. Where races are postponed under this rule, the Association shall have the privilege of selecting the order in which events will be raced in any combination program.
- 7.3.9 If the track conditions are questionable for the warming up or racing of horses, the Presiding Judges shall call a meeting consisting of a committee including himself/herself, an Agent of the track and a Representative of the Horsemen. The Agent of the track will notify the Track Superintendent to attempt to correct any problem with the racing surface as soon as possible. Once the Track Superintendent has addressed the problem, the Horsemen's Representative will physically review the areas in question. If all are in agreement that the problem has been corrected, racing will proceed. If the Representative of the Horsemen is not satisfied, the Track Superintendent will be given a final opportunity to rectify the problem.
- If after the second attempt to rectify the problem, the Horsemen's Representative is still not satisfied, there will be a vote of the Drivers and Trainers of horses participating in that night's program to determine if racing will be conducted. A secret vote will be taken of those participants and will be conducted and monitored by the Judges. The Judges will count the ballots and inform Track Management of the outcome. If a tally of the drivers and trainers determines that 25 percent or less vote to race, the card shall be canceled. If more than 25 percent and less than 75 percent vote to race, trainers will be allowed to withdraw horses without penalty. If 75 percent or more vote to race, the regular rules of withdrawal and scratching of horses will apply. The foregoing does not preclude race track management from canceling racing due to track or weather conditions without consultation with the Presiding Judges and the Horsemen's Representative upon notification of the Commission or its designee.
- 7.3.10 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.
- 7.3.11 Where a race is postponed pursuant to any of the foregoing provisions only those horses originally declared in to the postponed event shall to be eligible to race. Where a race is postponed and moved to another location, horses previously declared may withdraw without penalty.

7.3.12 In the event the Judges declare a "No Contest", the designated purse for that contest shall be divided equally among those horses that were eligible to participate in that contest. The declaration date for those horses credited with earnings in this manner shall be the scheduled date of the "No Contest" race.

7.4 Horses Permitted to Race

7.4.1 A horse shall be eligible to be declared in to race provided the following conditions have been met:

7.4.1.1 the eligibility fee, which shall become due and payable when a horse makes its first start in any type of race in a calendar year, has been paid to the United States Trotting Association, or a current eligibility certificate has been granted for the horse by the United States Trotting Association or by the Canadian Trotting Association.

7.4.1.2 the horse has been registered in the current ownership with the Canadian Standardbred Horse Society or in the United States Trotting Association Register;

7.4.1.3 if leased, a copy of the lease is on file with, and is acceptable to the United States Trotting Association or Canadian Trotting Association, as appropriate. The horse must race in the name of the lessee;

7.4.1.4 for overnight races, the horse has qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations in accordance with the qualifying standards of the track presenting the race.

7.4.1.5 for added money events, the horse has qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations.

7.4.1.6 not more than 30 days prior to the time of closing of declarations, the horse was credited with a satisfactory charted past performance line obtained in a purse, qualifying or schooling race conducted at a charted meeting; provided, however, that with the permission of the Presiding Judge, a satisfactory charted past performance within 60 days prior to the time of closing of declarations may be used;

7.4.1.7 the horse is at least two years of age to race at any meeting but not older than 14 years of age;

7.4.1.8 the horse has not been denerved by any method above its pastern. The decision at any given time whether the horse has been denerved shall be the State veterinarian's.

7.4.1.9 if a mare has been spayed, the United States Trotting Association or Canadian Trotting Association, as appropriate, has been notified in writing by the owner, trainer or veterinarian;

7.4.1.10 the horse does not have a trachea tube or a hole in its throat for a trachea tube;

7.4.1.11 the horse has unimpaired vision in at least one eye; and

7.4.1.12 the horse has been lip tattooed or freeze-branded in accordance with the constitution and bylaws and regulations of the United States Trotting Association or Canadian Standardbred Horse Society.

7.4.2 Any participant who declares, or causes to be declared, an ineligible horse to start shall be guilty of a violation of the rules and subject to disciplinary action by the judges. If after declarations close, and prior to the race, the judges become aware that an ineligible horse has been declared, they shall immediately scratch the horse and starting fees, if applicable, shall be forfeited.

7.4.3 If the ownership of a horse changes, such horse may start under the new ownership not more than one time without reasonable evidence being given to the judges that the registration certificate has been forwarded to the United States Trotting Association.

7.4.4 Any participant skipping or omitting transfers of ownership of any horse shall be guilty of a violation.

7.4.5 For the purposes of these rules, the term eligibility certificate shall refer to a printed document or its electronically produced equivalent.

7.4.6 Horses not under lease must race in the name of the bona fide owner.

7.5 Equipment

- 7.5.1 Any owner or trainer who wishes to change any equipment or hobbles on a horse from one race to another shall apply to the judges for permission to do so, and no change shall be made without such permission. The judges shall assure themselves of the necessity for any change of equipment or hobbles before granting permission.
- 7.5.2 No horse will be permitted in a race to wear any type of equipment that covers, protrudes, or extends beyond its nose or that in any way could interfere with the true placing of the horse.
- 7.5.3 It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of each wheel of a type approved by the Commission. In his discretion, the Presiding Judge may order the use of mud guards.

7.6 Racing Rules

7.6.1 Under Supervision of Starter

- 7.6.1.1 Horses shall be under supervision of the starter from the time they arrive on the track until the start of the race.
- 7.6.1.2 All horses shall parade from the paddock to the starting post, and no driver shall dismount without the permission of the starter. Attendants may not care for the horses during the parade except by permission of the starter.
- 7.6.1.3 After entering the track not more than ten (10) minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay.
- 7.6.1.4 Horses awaiting post time may not be held on the backstretch in excess of five (5) minutes, except when delayed by an emergency.

7.6.2 Pre-Race Accidents

When, before a race starts:

- 7.6.2.1 A horse is a runaway or is otherwise involved in an accident, such horse shall be examined by the racing veterinarian and if the horse is not ordered scratched by the veterinarian, the judges may permit the horse to compete and have this decision announced.
- 7.6.2.2 A driver is unseated and appears to have been injured, the horse that was being driven by that driver may compete with a substitute driver.
- 7.6.2.3 If a horse is scratched in error and cannot be added back into the pari-mutuel system, the horse may race for purse only. The judges shall ensure that the race announcer informs the public that the horse will be racing without pari-mutuel wagering.

7.6.3 Fair Start

The starter shall give such orders and take such measures that do not conflict with the rules of racing, as are necessary to secure a fair start.

7.6.4 Starter's Duties

- 7.6.4.1 The starter shall be in the starting gate ten (10) minutes before the post time of the race.
- 7.6.4.2 The starter shall have control over the horses and authority to assess fines and/or suspend drivers for any violation of the rules from the formation of the parade until the word "go" is given.
- 7.6.4.3 The starter may assist in placing the horses when requested by the judges to do so.
- 7.6.4.4 The starter shall notify the judges and the drivers in writing of penalties imposed by him.

7.6.5 Starting

- 7.6.5.1 The starter shall have control of the formation of the parade until giving the word "go".
- 7.6.5.2 After warming up scores, the starter shall notify the drivers to come to the starting gate.
- 7.6.5.3 The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.
- 7.6.5.4 Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained:
 - 7.6.5.4.1 For the first one-eighth of a mile, not less than 11 miles per hour.

- 7.6.5.4.2 For the next one-sixteenth of a mile, not less than 18 miles per hour.
- 7.6.5.4.3 From that point to the starting point, the speed will be gradually increased to maximum speed.
- 7.6.5.5 The starting point will be a point marked at a designated spot not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.
- 7.6.5.6 When a speed has been reached in the course of a start there shall be no decrease except in the case of a recall.
- 7.6.6 Recall Rules
 - 7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his discretion to close the wings of the gate.
 - 7.6.6.2 There shall be no recall after the word "go" has been give unless there is a mechanical failure of the starting gate.
 - 7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse.
 - 7.6.6.4 In the event a horse causes two recalls, it may be scratched by the judges.
 - 7.6.6.5 The starter may sound a recall for the following reasons:
 - 7.6.6.5.1 A horse scores ahead of the gate;
 - 7.6.6.5.2 There is interference;
 - 7.6.6.5.3 A horse has broken equipment;
 - 7.6.6.5.4 A horse falls before the word "go" is given; or
 - 7.6.6.5.5 A mechanical failure of the starting gate;
 - 7.6.6.5.6 A horse comes to the gate out of position.
 - 7.6.6.7 A fine and/or suspension may be applied to any driver for:
 - 7.6.6.7.1 Delaying the start;
 - 7.6.6.7.2 Failure to obey the starter's instructions;
 - 7.6.6.7.3 Rushing ahead of the inside or outside wing of the gate;
 - 7.6.6.7.4 Coming to the starting gate out of position;
 - 7.6.6.7.5 Crossing over before reaching the starting point;
 - 7.6.6.7.6 Interference with another driver during the start; or
 - 7.6.6.7.7 Failure to come up into position.
- 7.6.7 Starting Gate
 - 7.6.7.1 No persons shall be allowed to ride in the starting gate except the starter and the driver or operator and a patrol judge, unless permission has been granted by the Presiding Judge.
 - 7.6.7.2 Use of the mechanical loudspeaker for any purpose other than to give instructions to the drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.
 - 7.6.7.3 The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse.
 - 7.6.7.4 The official starter must ensure that the starting gate is in good working order prior to the beginning of each race program.
 - 7.6.7.5 The official starter and starting gate driver shall operate the starting gate in a manner consistent with the safe conduct of the race, the safety of the race participants and the safety of the patrons.
- 7.6.8 Two-Tiered Races

- 7.6.8.1 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the positions of horses that have drawn or entered positions in the second tier.
 - 7.6.8.2 Whenever a horse is drawn from any tier, horses on the outside move in to fill the vacancy. Where a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the front tier so long as it does not interfere with another trailing horse or deprive another trailing horse of a drawn position.
 - 7.6.8.3 When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.
- 7.6.9 Starting Without a Gate
- 7.6.9.1 When horses are started without a gate the starter shall have control of the horses from the formation of the parade until giving the word "go". The starter shall be located at the wire or other point of start of the race at which point as nearly as possible the word "go" shall be given. No driver shall cause unnecessary delay after the horses are called. After two preliminary warming-up scores, the starter shall notify the drivers to form in parade.
 - 7.6.9.2 The driver of any horse refusing or failing to follow the instructions of the starter as to the parade or scoring ahead of the pole horse may be set down for the heat in which the offense occurs, or for such other period as the starter shall determine, and may be fined. Whenever a driver is taken down, the substitute shall be permitted to score the horse once. A horse delaying the race may be started regardless of its position or gait and there shall not be a recall because of a bad acting horse. If the word "go" is not given, all the horses in the race shall immediately turn on signal, and jog back to their parade positions for a fresh start. There shall be no recall after the starting word is given.
- 7.6.10 Horse Deemed a Starter
- Horses shall be deemed to have started when the word "go" is given by the starter and all horses must go the course except in the case of an accident in which it is the opinion of the judges that it is impossible to go the course.
- 7.6.11 Unmanageable/Bad Acting Horses
- 7.6.11.1 If, in the opinion(s) of the judges and/or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the judges who will in turn notify the public and order any refunds as may be required in Rule 10 of these rules.
 - 7.6.11.2 The starter may place a bad acting horse on the outside at his discretion. Such action may be taken only where there is time for the starter to notify the judges who will in turn notify the public prior to any pari-mutuel wagering on the race. If pari-mutuel wagering has already begun on the race, the horse must be scratched as stipulated in subdivision 1 above.
- 7.6.12 Post Positions, Heat Racing
- 7.6.12.1 The horse winning a heat shall take the inside position in the succeeding heat, unless otherwise specified in the published conditions of the race, and all others shall take their positions in the order they were placed in the prior heat.
 - 7.6.12.2 When two or more horses dead heat, their positions shall be determined by lot.
- 7.6.13 Conduct of the Race
- 7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving rules:
 - 7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his horse back, or pull his horse out of its stride.
 - 7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.
 - 7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.
 - 7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'

- 7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.
- 7.6.13.1.6 Carry another horse out.
- 7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.
- 7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his overall position.
- 7.6.13.1.9 Strike or hook wheels with another sulky.
- 7.6.13.1.10 Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.
- 7.6.13.1.11 Drive in a careless or reckless manner.
- 7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.
- 7.6.13.1.13 Riding 'half-in' or 'half-out'.
- 7.6.13.1.14 Kicking a horse.
- 7.6.13.1.15 Excessive and/or unnecessary conversation between and among drivers while on the racetrack during the time when colors are required is prohibited. Any violation of this rule may be punished by a fine, suspension or combination thereof.
- 7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. Any driver who is involved in an objection or inquiry shall proceed immediately to the paddock telephone to communicate with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.
- 7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.
- 7.6.13.4 In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.
- 7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.
- 7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.
- 7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.
- 7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.
- 7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in his conduct and endangers the safety of horses or other drivers in a race, he shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.

- 7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.
- 7.6.13.11 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.
- 7.6.13.12 Shouting or other improper conduct in a race is forbidden.
- 7.6.13.13 Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.
- 7.6.13.14 Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. Provided further that the following actions shall be considered as excessive or an indiscriminate use of the whip: a) Causing visible injury. b) Whipping a horse after a race. c) Whipping under the arch or shafts of the sulky. The use of the whip shall be confined to an area above and between the sulky shafts, to include the sulky shafts and the outside wheel discs. Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply. The Judges shall have the authority to order and/or conduct such visual inspections at their discretion.
- 7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.
- 7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an Association shall constitute a violation.
- 7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.
- 7.6.13.18 Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such visual inspections at their discretion.
- 7.6.13.19 Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.
- 7.6.13.20 When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:
- 7.6.13.20.1 Failure to take the horse to the outside of other horses where clearance exists.
 - 7.6.13.20.2 Failure to properly attempt to pull the horse to its gait.
 - 7.6.13.20.3 Failure to lose ground while on a break.
 - 7.6.13.20.4 If no violation has been committed, the horse shall not be set back unless a contending horse on his gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be penalized.
 - 7.6.13.20.5 Any horse making a break which causes interference to other horses may be placed behind all offended horses. If there has been no failure on the part of the driver of the breaking horse in complying with Rule 7.6.13.20, no fine or suspension shall be imposed on the driver as a consequence.

- 7.6.13.21 If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.
 - 7.6.13.22 It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.
 - 7.6.13.23 The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.
 - 7.6.13.24 The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.
 - 7.6.13.25 If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the Presiding Judge or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.
 - 7.6.13.26 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.
- 7.6.14 Harness Race Track Without a Hubrail
- 7.6.14.1 If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by running over or going inside the pylons or other demarcation which constitutes the inside limits of the course, the offending horse may be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse's sulky to run over or go inside the pylons or other demarcation which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.
 - 7.6.14.2 In the event a horse or part of a horse's sulky leaves the course for any reason, it shall be the driver's responsibility to take all reasonable steps to safely reenter the race course as soon as possible.
- 7.6.15 Extended Homestretch
- 7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.
 - 7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:
 - 7.6.15.2.1 When entering or while going through the homestretch for the first time in a race, no horse shall use the expanded inside lane in an attempt to pass other horses or improve its position. Any horse, which does so shall be disqualified and placed last in the order of finish.
 - 7.6.15.2.2 the lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane.
If, in the opinion of the judges, the lead horse changes course in the homestretch in an attempt to prevent a trailing horse from passing, said horse shall be placed accordingly.
 - 7.6.15.2.3 Horses using the expanded inside lane during the homestretch drive for the finish of the race, must first have complete clearance of the pylons marking the inside boundary of the racecourse. Any horse or sulky running over one or more of the

pylons or going inside the pylons while attempting to use the expanded inside lane, may be disqualified or placed back one or more positions.

- 7.6.15.2.4 A horse may only be driven into the expanded homestretch lane for the purpose of passing another horse and may not be driven into the expanded homestretch lane for the purpose of blocking a trailing horse. If, in the opinion of the judges, a horse is driven into the expanded homestretch lane for the purpose of blocking a trailing horse, the driver of the blocking horse may be fined and/or suspended and the horse may be placed accordingly.

1 DE Reg. 923 (1/1/98)

2 DE Reg. 684 (10/01/98)

2 DE Reg. 1764 (4/1/99)

3 DE Reg. 432 (9/1/99)

3 DE Reg 1520 (5/1/00)

4 DE Reg 336 (8/1/00)

5 DE Reg. 832 (10/1/01)

7 DE Reg. 42 (7/1/03)

11 DE Reg. 1050 (02/01/08)

(Break in Continuity of Sections)

10.0 Due Process and Disciplinary Action

10.1 General Provisions

This chapter contains the rules of procedure for State Steward and judges' hearings, and for Commission proceedings.

10.2 Proceedings by State Steward or Judges

10.2.1 Rights of the Licensee

A person who is the subject of the disciplinary hearing conducted by the State Steward or judges is entitled to:

10.2.1.1 Proper notice of all charges;

10.2.1.2 Confront the evidence presented, including:

10.2.1.2.1 the right to counsel at the person's expense;

10.2.1.2.2 the right to examine all evidence to be presented against him;

10.2.1.2.3 the right to present a defense;

10.2.1.2.4 the right to call witnesses; and

10.2.1.2.5 the right to cross examine witnesses.

10.2.1.3 Waive any of the above rights.

10.2.2 Complaints

10.2.2.1 A complaint must be in writing and filed with the State Steward or judges within 30 days after the action that is the subject of the complaint.

10.2.2.2 On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the State Steward or judges may conduct an inquiry and disciplinary hearing regarding a licensee's actions.

10.2.3 Summary Suspension

10.2.3.1 If the State Steward or judges determine that a licensee's actions, other than those of a licensed association, constitute an immediate danger to the public health, safety or welfare, the State Steward or judges the Commission Investigator, may summarily suspend the license pending a hearing.

10.2.3.2 A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third racing day after the license was summarily suspended. The licensee may waive his right to a hearing on the summary suspension within the three-day limit.

10.2.3.3 The State Steward or judges shall conduct a hearing on a summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

10.2.4 Notice

10.2.4.1 Except as provided by these rules regarding summary suspensions, the State Steward or judges shall provide written notice at least 24 hours before the hearing to a person who is the subject of a disciplinary hearing. The person may waive his right to 24-hour notice by executing a written waiver.

10.2.4.2 Notice given under this section must include:

10.2.4.2.1 a statement of the time, place and nature of the hearing;

10.2.4.2.2 a reference to the particular sections of the statutes or rules involved; and

10.2.4.2.3 a short, plain description of the alleged conduct that has given rise to the disciplinary hearing.

10.2.4.3 If possible, the State Steward or his designee, or the judges or their designee, shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the State Steward or judges shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the State Steward shall provide written or oral notice of the hearing to the owner, managing owner or lessee of the horse. Oral notice of any hearing shall suffice upon attestation by the State Steward that such notice was given the person who is the subject of the hearing.

10.2.4.4 Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the State Steward or judges. The State Steward or judges may suspend the license of a person who fails to appear at a disciplinary hearing after written or oral notice of the hearing has been sent or delivered in compliance with this subsection.

10.2.5 Continuances

10.2.5.1 Upon receipt of a notice, a person may request a continuance of the hearing.

10.2.5.2 The State Steward or judges may grant a continuance of any hearing for good cause shown.

10.2.5.3 The State Steward or judges may at any time order a continuance on their own motion.

10.2.6 Evidence

10.2.6.1 Each witness at a disciplinary hearing conducted by the State Steward or judges must be sworn by the State Steward or presiding judge.

10.2.6.2 The State Steward or judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the State Steward or judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The State Steward or judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The State Steward or judges may admit hearsay evidence if the State Steward or judges determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Delaware law apply in hearings before the State Steward or judges.

10.2.6.3 The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.

10.2.6.4 The State Steward or judges shall make a tape recording of a disciplinary hearing. A copy or a transcript of the recording may be made available at the expense of the requesting person.

10.2.7 Ruling

10.2.7.1 The issues at a disciplinary hearing shall be decided by the State Steward or by a majority vote of the judges.

10.2.7.2 A ruling by the State Steward or judges must be on a form prescribed by the Commission and include:

10.2.7.2.1 the full name, social security number, date of birth, last record address, license type and license number of the person who is the subject of the hearing;

10.2.7.2.2 a statement of the charges against the person, including a reference to the specific section of the Act or rules of the Commission that the licensee is found to have violated;

10.2.7.2.3 the date of the hearing and the date the ruling was issued;

10.2.7.2.4 the penalty imposed;

10.2.7.2.5 any changes in the order of finish or purse distribution;

10.2.7.2.6 other information required by the Commission; and

10.2.7.2.7 the right to appeal to the Commission.

10.2.7.3 A ruling must be signed by the State Steward or by a majority of the judges, as the case may be.

10.2.7.4 Upon request, the State Steward or his designee, or the judges or their designee, shall hand deliver or mail a copy of the ruling to the person who is the subject of the ruling. If hand delivery is not possible, the State Steward or judges shall mail the ruling to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. A copy of the ruling shall be sent to the Association of Racing Commissioners International, and if the ruling includes the disqualification of a horse, the State Steward or judges shall provide a copy of the ruling to the horsemen's bookkeeper, breed registry(ies) and other regulatory agencies, and shall notify the United States Trotting Association, in the manner provided by this subsection.

10.2.7.5 At the time the State Steward or judges inform a person who is the subject of the proceeding of the ruling, the State Steward or judges shall inform the person of the person's right to appeal the ruling to the Commission.

10.2.7.6 All fines imposed by the State Steward or judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

10.2.8 Effect of Rulings

10.2.8.1 Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.

10.2.8.2 The transfer of a horse to avoid application of a Commission rule or ruling is prohibited.

10.2.8.3 The horses of a trainer issued a full suspension (or under appeal of a full suspension) shall not be transferred for the purposes of training to a spouse, family member, assistant, current employee/employer, or household member. All trainer and owner transfers of horses from parties under a full suspension (or parties under appeal of a full suspension) to other owners or trainers must be approved by the DHRC judges or the DHRC Administrator.

10.2.9 Appeals

- 10.2.9.1 A person aggrieved by a ruling of the State Steward, judges, or the Administrator of the Breeder's Program may appeal to the Commission except as provided in subdivision 10.2.9.6 of this subsection. A person who fails to file an appeal by the deadline in the form required by this section waives the right to appeal. Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals under these Rules. For purposes of appeals from decisions of the Administrator of the Breeder's Program, the Commission will take official notice of the rules and regulations enacted by the Delaware Standardbred Breeders' Fund.
 - 10.2.9.2 An appeal under this section must be filed with the State Steward not later than 48 hours after the ruling. The appeal must be accompanied by a deposit in the amount of \$250, plus an amount to be determined from time to time by the Commission for the cost of the court reporter's attendance. Unless the Commission determines the appeal to be meritorious, either by reversing the decision of the State Steward or judges or by reducing the penalty imposed, the appeal deposit shall not be repaid to the appellant. In no event shall the advance payment of the court reporters fee be refunded.
 - 10.2.9.3 An appeal must be in writing on a form prescribed by the Commission. The appeal must include:
 - 10.2.9.3.1 the name, address, telephone number and signature of the person making the appeal; and
 - 10.2.9.3.2 a statement of the basis for the appeal.
 - 10.2.9.4 On notification by the Commission that an appeal has been filed, the State Steward or judges shall forward to the Commission the record of the proceeding on which the appeal is based.
 - 10.2.9.5 If a person against whom a fine has been assessed timely files an appeal of the ruling that assesses the fine, the person need not immediately pay the fine in accordance with these rules.
 - 10.2.9.6 A notice of appeal filed with the Commission pursuant to these rules may be accompanied by a request for a stay pending a final decision by the Commission. In his discretion the State Steward may approve such stay requests unless he determines that granting the stay would be adverse to the best interests of racing or inimical to the integrity of the sport. If the State Steward denies a stay request, the appellant may submit a written request to the Commission, in which case the Chairman of the Commission in his discretion may grant or deny the request.
- 10.3 Proceedings by the Commission
- 10.3.1 Party Designations
 - 10.3.1.1 A person who is the subject of a disciplinary hearing, who filed an appeal from a State Steward's or judges' ruling, or who otherwise seeks relief from the Commission, is a party to that proceeding.
 - 10.3.1.2 A party to a proceeding has the right to present a direct case, cross-examine each witness, submit legal arguments and otherwise participate fully in the proceeding.
 - 10.3.1.3 A party summoned to appear at a hearing must appear unless he is excused by the Commission presiding officer. Parties may appear with counsel licensed to practice law in Delaware, or, with the Commission's approval, counsel licensed to practice law in another jurisdiction provided that such out-of-state counsel associates with a Delaware attorney.
 - 10.3.1.4 A non-party to a proceeding who wishes to appear in a contested case pending before the Commission must prove that he has an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.
 - 10.3.2 Notice

- 10.3.2.1 Not less than seven (7) days before the date set for a hearing, the Commission shall serve written or oral notice on each party of record to the proceeding. The person may waive his right to said notice by executing a written waiver. Oral notice shall suffice upon attestation by the State Steward that he personally gave such notice to the person who is the subject of the hearing.
- 10.3.2.2 If hand delivery or oral notice by the State Steward is not possible, the Commission shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by personal service or certified mail, return receipt requested.
- 10.3.2.3 A notice of the hearing must include:
 - 10.3.2.3.1 a statement of time, place and nature of the hearing;
 - 10.3.2.3.2 a reference to the particular sections of the statutes and rules involved; and
 - 10.3.2.3.3 a short, plain statement of the matters asserted.
- 10.3.2.4 If the Commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued, the Commission shall issue a revised notice.
- 10.3.2.5 A party to a proceeding may move to postpone the proceeding. Unless waived by the Commission, the motion must be in writing, set forth the specific grounds on which it is sought and be filed with the Commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the Commission shall cause new notice to be issued.
- 10.3.2.6 After a hearing has begun, the presiding officer may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time and place for reconvening the hearing before recessing the hearing.

10.3.3 Subpoenas

- 10.3.3.1 A member of the Commission, the Director of Poultry and Animal Health, the State Steward or judges, the Commission Investigator the presiding officer of a Commission proceeding or other person authorized to perform duties under the Act may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.
- 10.3.3.2 The presiding officer of a Commission proceeding or other person authorized by the Commission may administer an oath or affirmation to a witness appearing before the Commission or a person authorized by the Commission.
- 10.3.3.3 Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by Delaware law.
- 10.3.3.4 On written request by a party, the presiding officer may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary and proper for the purposes of a proceeding. A motion for a subpoena to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.

10.3.4 Conferences

- 10.3.4.1 On written notice, the presiding officer may, on the officer's own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following:
 - 10.3.4.1.1 simplifying issues;
 - 10.3.4.1.2 amending the pleadings;
 - 10.3.4.1.3 making admissions of fact or stipulations to avoid the unnecessary introduction of proof;
 - 10.3.4.1.4 designating parties;

- 10.3.4.1.5 setting the order of procedure at a hearing;
 - 10.3.4.1.6 identifying and limiting the number of witnesses;
 - 10.3.4.1.7 resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute; and
 - 10.3.4.1.8 identifying provisions and mandates of statute or rules relating to the issues.
- 10.3.4.2 The presiding officer shall record the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The presiding officer may enter appropriate orders concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry.
- 10.3.4.3 During a hearing, on written notice or notice stated into the record, the presiding officer may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The presiding officer shall prepare a written statement regarding the action taken at the conference and the statement must be signed by each party and made a part of the record.
- 10.3.5 Reporters and Transcripts
- 10.3.5.1 If necessary, the Commission shall engage a court reporter to make a stenographic record of a hearing. The Commission may allocate the cost of the reporter and transcript among the parties.
- 10.3.5.2 If a person requests a transcript of the stenographic record, the Commission may assess the cost of preparing the transcript to the person.
- 10.3.5.3 A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the Commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the tenth day after the date the corrections were filed with the Commission, the presiding officer may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.
- 10.3.6 Nature of Hearings
- 10.3.6.1 An appeal from a decision of the State Steward or judges shall be de novo.
- 10.3.6.2 A hearing in a Commission proceeding is open to the public, provided, however, that witnesses may be sequestered.
- 10.3.6.3 Unless precluded by law or objected to by a party, the Commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes disposition by stipulation, agreed settlement, consent order and default.
- 10.3.7 Presiding Officers
- 10.3.7.1 A member of the Commission, the Director of Poultry and Animal Health or a Commission appointee may serve as the presiding officer for a Commission proceeding.
- 10.3.7.2 The presiding officer may:
- 10.3.7.2.1 issue subpoenas to compel the attendance of witnesses and the production of papers and documents;
 - 10.3.7.2.2 administer oaths;
 - 10.3.7.2.3 receive evidence;
 - 10.3.7.2.4 rule on the admissibility of evidence;
 - 10.3.7.2.5 examine witnesses;
 - 10.3.7.2.6 set reasonable times within which a party may present evidence and within which a witness may testify;
 - 10.3.7.2.7 permit and limit oral argument;
 - 10.3.7.2.8 issue interim orders;

- 10.3.7.2.9 recess a hearing from day to day and place to place;
 - 10.3.7.2.10 request briefs before or after the presiding officer files a report or proposal for decision;
 - 10.3.7.2.11 propose findings of fact and conclusions of law;
 - 10.3.7.2.12 propose orders and decisions; and
 - 10.3.7.2.13 perform other duties necessary to a fair and proper hearing.
- 10.3.7.3 A person serving as the presiding officer of a proceeding must be a disinterested party to the proceeding.

10.3.8 Order of Hearing

- 10.3.8.1 The presiding officer shall open the hearing, make a concise statement of its scope and purposes and announce that a record of the hearing is being made.
- 10.3.8.2 When a hearing has begun, a party or a party's representative may make statements off the record only as permitted by the presiding officer. If a discussion off the record is pertinent, the presiding officer shall summarize the discussion for the record.
- 10.3.8.3 Each appearance by a party, a party's representative or a person who may testify must be entered on the record.
- 10.3.8.4 The presiding officer shall receive motions and afford each party of record an opportunity to make an opening statement.
- 10.3.8.5 Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The presiding officer shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the Commission or if several proceedings are heard on a consolidated record.
- 10.3.8.6 After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross examine each witness.
- 10.3.8.7 After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct case and their witnesses will be subject to cross examination.
- 10.3.8.8 The members of the Commission and/or the presiding officer may examine any witnesses.
- 10.3.8.9 At the conclusion of all evidence and cross examination, the presiding officer shall allow closing statements.
- 10.3.8.10 Before issuing a decision, the Commission or the presiding officer may call on a party for further relevant and material evidence on a issue. The Commission or the presiding officer may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence.

10.3.9 Behavior

- 10.3.9.1 Each party, witness, attorney or other representative shall behave in all Commission proceedings with dignity, courtesy and respect for the Commission, the presiding officer and all other parties and participants.
- 10.3.9.2 An individual who violates this section may be excluded from a hearing by the presiding officer.

10.3.10 Evidence

- 10.3.10.1 All testimony must be given under oath administered by the presiding officer. The presiding officer may limit the number of witnesses and shall exclude all irrelevant, immaterial or unduly repetitious evidence.
- 10.3.10.2 The presiding officer is not bound by the Rules of Evidence, but the rules of privilege recognized by law in Delaware apply in Commission proceedings.
- 10.3.10.3 A party may object to offered evidence and the objection shall be noted in the record. A party, at the time an objection is made or sought, shall make known to the presiding officer the action the party desires. Formal exceptions to rulings by the presiding officer during a hearing are unnecessary.

- 10.3.10.4 When the presiding officer rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. The offer of proof preserves the point for review. The presiding officer may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross examination is preserved without making an offer of proof.
- 10.3.10.5 The presiding officer may take official notice of judicially cognizable facts and of facts generally recognized within the area of the Commission's specialized knowledge. The Commission shall notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.
- 10.3.10.6 The special skills and knowledge of the Commission, the Commission staff, and the officials of the Commission may be used in evaluating the evidence.
- 10.3.10.7 The presiding officer may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the presiding officer shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the presiding officer may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the presiding officer requires an abstract, the presiding officer shall allow each party or the party's representative to examine the documents from which the abstracts are made.
- 10.3.10.8 The presiding officer may require prepared testimony in a hearing if the presiding officer determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the Commission on the date set by the presiding officer and shall serve a copy of the prepared testimony on each party of record. The presiding officer may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the witness being sworn and identifying the writing as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination and the prepared testimony is subject to a motion to strike either in whole or in part.
- 10.3.10.9 The party offering an exhibit shall tender the original of the exhibit to the presiding officer for identification. The party shall furnish one copy to the presiding officer and one copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the presiding officer. If an exhibit has been offered, objected to and excluded and the party offering the exhibit withdraws the offer, the presiding officer shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the presiding officer with the ruling on the exhibit and included in the record to preserve the exception.
- 10.3.10.10 The presiding officer may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record.
- 10.3.11 Findings of Fact and Conclusions of Law
- 10.3.11.1 The presiding officer may direct any party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision. The presiding officer may limit the request for proposed findings to a particular issue of fact.

- 10.3.11.2 Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.
- 10.3.11.3 Only if the presiding officer requires the filing of proposed findings of fact or a proposal for decision is the Commission required to rule on the proposed findings of fact. If a party is permitted but not required to submit proposed findings or a proposal for decision, the Commission is not required to rule on the party's proposed findings.

10.3.12 Dismissal

On its own motion or a motion by a party, the presiding officer may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including:

- 10.3.12.1 failure to timely pay all required fees to the Commission;
- 10.3.12.2 unnecessary duplication of proceedings;
- 10.3.12.3 withdrawal;
- 10.3.12.4 moot questions or obsolete petitions; and
- 10.3.12.5 lack of jurisdiction.

10.3.13 Orders

- 10.3.13.1 Except as otherwise provided by these rules, the Commission shall issue a final order not later than thirty days after the conclusion of the hearing. A final order of the Commission must be in writing and be signed by a majority of the members of the Commission who voted in favor of the action taken by the Commission. A final order must comply with the requirements of §10128 of the Administrative Procedures Act, and include a brief summary of the evidence, findings of fact based upon the evidence, conclusions of law, and other conclusions required by the Act or by these Rules, and a concise statement of the Commission's determination or action on the matter.
- 10.3.13.2 The Commission staff shall mail or deliver a copy of the order to each party or the party's representative.
- 10.3.13.3 A final order of the Commission takes effect on the date the order is issued, unless otherwise stated in the order.
- 10.3.13.4 If the Commission finds that an imminent peril to the public health, safety or welfare requires an immediate final order in a proceeding, the Commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal.

10.3.14 Ex Parte Communications

- 10.3.14.1 No Commission member may discuss the merits of a matter which is pending before the Commission prior to a formal hearing, or between the hearing and announcement of the Commission's final decision.
- 10.3.14.2 The Administrative Procedure Act, Title 29 of the **Delaware Code**, Section 10129, pertaining to ex parte communications, is hereby incorporated by reference.

10.3.15 Appeals

Within fifteen (15) days after service of a final adjudication or order of the Commission, or the imposing of a monetary fine, or of an order of the Commission refusing a petition for rehearing or reconsideration, or of an order following a rehearing or reconsideration, any party shall have the right to appeal therefrom to the Superior Court of the State of Delaware, in the manner provided by law and the Rules of that Court.

10.4 Rulings in Other Jurisdictions

10.4.1 Reciprocity

The State Steward and judges shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses.

10.4.2 Appeals of Reciprocal Rulings

10.4.2.1 Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the Commission to show cause why such ruling should not be enforced in Delaware.

10.4.2.2 Any request for such hearing must clearly set forth in writing the reasons for the appeal.

1 DE Reg. 507 (11/01/97)

2 DE Reg. 1243 (01/01/99)

5 DE Reg. 1903 (4/1/02)

12 DE Reg. 1074 (02/01/09) (Final)