

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

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

FINAL

ORDER

8.8 Prohibited Substances Protests; Testing

Pursuant to 29 *Del.C.* §10113(b) and 3 *Del.C.* §10027, the Delaware Harness Racing Commission ("the Commission") hereby issues this Order adopting a new Commission Rule 8.8; and,

Whereas, the General Assembly passed House Bill No. 282, 74 **Del. Laws** c. 236 (2004) which amended 28 *Del.C.* §706 and was signed by Governor Ruth Ann Minner on May 17, 2004; and,

Whereas, the enactment of House Bill No. 282 requires the Commission to amend its Regulations to conform to the provisions of the new law amending 28 *Del.C.* §706; and,

Whereas, the amendment to the Commission Regulations is required to make them consistent with a change in basic law and does not otherwise alter the substance of the regulations and is therefore exempt, under 29 *Del.C.* §10113(b)(5), from the standard notice and publication requirements;

IT IS SO ORDERED this 19th day of October, 2004:

1. The Commission finds that the new Rule 8.8 on Prohibited Substances Protests and Testing tracks the provisions of the amended version of 28 *Del.C.* §706. The new Rule 8.8.1 provides the procedure and requirements for Prohibited Substances Protests and requests for a "super test." Rule 8.8.2 provides the requirements and procedure for routine post race testing.

2. The Commission after consideration and discussion has adopted the amendment adopting Rule 8.8. A copy of the adopted Rule 8.8 is attached as Exhibit #1 and incorporated herein.

3. This Order is effective immediately and the Commission will be submitted to the *Register of Regulations* for publication.

Beth Steele, Chair
Robert Everett, Commissioner
Mary Ann Lambertson, Commissioner
George Staats, Commissioner
Kenneth Williamson, Commissioner

8.8 Prohibited Substances Protests; Testing

8.8.1 Protest-Request for Super Test

8.8.1.1 If a licensed owner, trainer, driver, or claimant has a reasonable belief that a competing or claimed horse has, or may have an unfair competitive advantage due to a violation of the Commission Rules, that owner, trainer, driver, or claimant may file a "Prohibited Substances Protest" with the Commission.

8.8.1.2 A "Prohibited Substances Protest" empowers the owner, trainer, driver, or claimant to request that any horse or horses he or she competes against or claims in a specified race have a blood and urine sample collected and then tested at an official Association of Racing Commissioners International (ARCI) approved laboratory of his or her choice. The designated laboratory shall employ state-of-the-art testing methods when testing these protested samples, which shall include, but not be limited to, Enzyme-Linked Immunosorbent Assay (ELISA), Thin Layer Chromatography (TLC), Gas Chromatography Mass Spectrometry (GCM-S), Liquid Chromatography Mass Spectrometry (LCMSMS), and Total Carbon Dioxide (TCO2) tests.

8.8.1.3 The owner, trainer, driver, or claimant must file a verbal protest with either the starter or paddock judge before the race has been made official. The starter or paddock judge must notify the Presiding Judge immediately, who shall order a veterinary assistant to escort and remain with the horse in accordance with established policy for obtaining a blood and urine sample. Within fifteen (15) minutes after the official sign has been posted for the race in which the protested horse competed, the protesting party shall file a written protest with the paddock judge and post a deposit of \$1,000 which shall be used to offset the following costs:

8.8.1.3.1 The collection of sufficient blood and urine samples, including the costs of the State veterinary assistant and State veterinarian and all necessary collection apparatus;

8.8.1.3.2 The packing of and transportation of these samples by bonded courier to the selected laboratory; and

8.8.1.3.3 All costs incurred by the state-of-the-art testing methods employed by the ARCI laboratory.

8.8.1.4 In the event the costs exceed the \$1,000 deposit, the protesting party shall be required to post additional monies to cover such costs.

8.8.1.5 The owner and/or trainer of the protested horse shall have the right to be present during the collection, packaging and shipping of these test samples.

8.8.1.6 Upon completion of all testing, the laboratory shall notify the Commission of the results. The Commission shall immediately notify the trainer of the protested horse as well as the protesting party of these test results.

8.8.1.7 If the test results substantiate a violation of the Commission rules in effect on the date of the race, the trainer of the tested horse shall be afforded the same rights every trainer receives when charged with any rules violation. This shall include the right to request a split sample test at a designated ARCI laboratory that has agreed to accept split samples from the Commission.

8.8.1.8 Penalties shall be assessed in accordance with the Commission penalty recommendations for a violation of the rules in effect on the date of the race. In no case, however, shall the penalty imposed for a medication violation be less than a \$500 fine. If the test results substantiate the presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues, in addition to any DHRC penalties, the horse shall immediately be placed on the Steward's List and shall not be permitted to enter a race until the horse tests negative for the presence of EPO, darbepoietin, or any EPO analogue antibody(ies) previously detected. All testing must be performed by the DHRC official lab.

8.8.1.9 If the test results substantiate a violation of the Commission rules in effect on the date of the race, a successful claimant may void the claim in accordance with Commission Rules.

8.8.1.10 Any monies remaining from the protest deposit after costs shall be returned to the protesting party even if a violation of the Commission Rules is not detected. If a violation is detected, costs shall be assessed against the trainer of the protested horse and the Commission shall reimburse the protesting party upon receipt thereof.

8.8.1.11 The owner, trainer, driver, or claimant who files a Prohibited Substances Protest pursuant to this Section shall be immune from civil liability for filing the protest.

8.8.2 Routine Post Race Testing

8.8.2.1 Routine Post Race Testing shall include but not be limited to screening for antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues.

8.8.2.2 Any claimed horse not otherwise selected for testing by the racing officials shall be tested if requested by the claimant at the time the claim form is submitted in accordance with the Commission Rules.

8.8.2.3 The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance, illegal level of a permitted medication, or presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues.

8.8.2.4 If the test results substantiate the presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues, in addition to assessing penalties in accordance with the DHRC rules, the horse shall immediately be placed on the steward's list and shall not be permitted to enter a race until the horse tests negative for the presence of EPO, darbepoietin, or any EPO analogue antibody(ies) previously detected and said horse is removed from the Steward's List. All testing must be performed by the DHRC official lab.

8.8.3 This Rule enacts the provisions of 74 Del. Laws c. 236 (2004) which amended 28 Del.C. § 706 in its entirety, and this Rule shall apply in the event these provisions conflict with or are otherwise inconsistent with any other Commission Rule.