

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION
Statutory Authority: 3 Delaware Code,
Section 10005 (3 Del.C. §10005)**

Rule 8.3.3.5-Erythropietin (EPO)

FINAL

ORDER

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting new rule 8.3.3.5 to be included in the Commission's Rules. Following notice and a public hearing on June 1, 2004, the Commission makes the following findings and conclusions:

Summary Of Evidence

1. The Commission posted public notice of a proposed new rule in the May 1, 2004 Register of Regulations and for two consecutive weeks in the Delaware Business Review and Delaware State News.
2. The Harness Racing Commission proposed to enact a new rule, Rule 8.3.3.5-Erythropietin (EPO), to provide that a horse that tests positive for EPO antibodies may be declared unfit to race, and may not resume racing until the owner or trainer submits a negative test for EPO antibodies. The proposed rule as published was as follows:

8.3.3.5 A finding by the official chemist that the antibody of Erythropietin (EPO) was present in a post-race test specimen of a horse shall be promptly reported in writing to the judges. The judges shall notify the owner and trainer of the positive test result for EPO antibodies. The judges shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 8.6.1.1, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission, provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of this Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that the antibody of Erythropietin was present in the sample taken from that horse.

3. The Commission held a public hearing on June 1, 2004. At the public hearing, the Commission received public comment from Frank Szczuka, Joe Strug, Official Chemist for Dalare Laboratories, and Salvatore DiMario, Executive Director of DSOA.
4. Frank Szczuka questioned how the proposed rule would serve to prohibit the use of EPO unless the terminology was modified to increase the penalty and proposed, as an example, a thirty (30) day suspension. Mr. Szczuka commented that EPO creates a higher antibody during the period it is in the horse's system and then the horse crashes. He stated that it would be possible for someone who claims a horse with EPO to end up with a horse that crashes. Mr. Szczuka commented that the rule should include a way to penalize the trainer until the horse tests negative for the antibodies. In his opinion, the rule only places the horse under scrutiny and not the trainer and only penalizes the horse and the owner.
5. Joe Strug, Official Chemist for Dalare Laboratories, stated that the test developed to test for the antibodies is currently the only way to monitor for EPO. EPO only stays in the system for a short period and it is not effective to test for EPO itself. The scientific community felt that the testing as proposed in the rule is the most effective way to monitor for use and misuse. There is currently no test for time and administration to enable determination of when the EPO was administered.
6. Salvatore DiMario, Executive Director of DSOA, commented that the proposed rule prohibits the horse from racing until that horse tests negative and commended the Commission for trying to do something to address the EPO problem. He stated that House Bill 282 is now valid law, is much more complete, and mirrors the rule. Mr. DiMario stated that the Commission's rule needed to be expanded to address the possibilities that there will likely be a time and administration test and EPO test in the near future. He proposed that the rule should be amended to

encompass any up to date testing and any positive test for EPO.

Findings Of Fact And Conclusions

7. 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 new rule. The Commission received no written comments on the proposed new rule 8.3.3.5.

8. The Commission finds that the comments received at the public hearing support adoption of the proposed rule. Although one commenter would like to see increased penalties for trainers, the Commission finds that there currently is no time and administration test to support the requested sanction against the trainer. Further any increase in the penalties beyond placing the horse on the Veterinarian's List and not permitting the horse to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission would be a substantive change that would require further hearing. While the Commission does not rule out future changes with regard to penalties as additional testing becomes available, the Commission finds that the request to increase the penalty provided in the rule in the context of this proceeding is not warranted and should not delay the adoption of the rule.

9. The Commission finds that the proposed rule mirrors the rule adopted in New York rule and, moreover, is consistent with the provisions of House Bill 282.

10. The Commission finds that proposed Rule 8.3.3.5 is necessary for the agency to achieve its statutory duty to effectively regulate harness racing in the public interest under 3 Del.C. §10005.

11. Based on the public comment received, the Commission does conclude that minor technical and non-substantive revisions to Rule 8.3.3.5 as proposed are necessary to encompass testing for darbopietin and the antibodies of Erythropietin and darbopietin. As a result, the final rule as adopted shall provide:

8.3.3.5 A finding by the official chemist that ~~the antibody of~~ Erythropietin (EPO), **darbopietin (DPO) or their antibodies** was present in a post-race test specimen of a horse shall be promptly reported in writing to the judges. The judges shall notify the owner and trainer of the positive test result for EPO, **DPO or their antibodies**. The judges shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 8.6.1.1, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO, **DPO or their antibodies** from a laboratory approved by the Commission, provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of this Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that ~~the antibody of Erythropietin,~~ **EPO, DPO or their antibodies** was present in the sample taken from that horse.

The Commission finds the above amendments are non-substantive under 29 Del.C. §10113(b)(4).

13. The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on August 1, 2004. A copy of the enacted Rule is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this 24th day of June, 2004.

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

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at

normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission Veterinarian and the racing secretary.

8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

- 8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;
- 8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- 8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);
- 8.3.1.2.4 Drugs with prominent CNS depressant action;
- 8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- 8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;
- 8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and
- 8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

- 8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);
- 8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);
- 8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;
- 8.3.1.3.4 Primary vasodilating/hypotensive agents; and
- 8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

- 8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;
- 8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects
 - 8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants
 - 8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics
 - 8.3.1.4.2.3 Drugs used to void the urinary bladder
 - 8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.
- 8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);
- 8.3.1.4.4 Mineralocorticoid drugs;
- 8.3.1.4.5 Skeletal muscle relaxants;
- 8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:
 - 8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;
 - 8.3.1.4.6.2 Corticosteroids (glucocorticoids); and
 - 8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.
- 8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;
- 8.3.1.4.8 Less potent diuretics;
- 8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:
 - 8.3.1.4.9.1 Cardiac glycosides;
 - 8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and
 - 8.3.1.4.9.3 Miscellaneous cardiotoxic drugs.
- 8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;
- 8.3.1.4.11 Antidiarrheal agents; and
- 8.3.1.4.12 Miscellaneous drugs including:
 - 8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;
 - 8.3.1.4.12.2 Stomachics; and
 - 8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

8.3.2 Penalty Recommendations

The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1- in the absence of extraordinary circumstances, a minimum license revocation of eighteen months and a minimum fine of \$5,000, and a maximum fine up to the amount of the purse money for the race in which the infraction occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.2 Class 2- in the absence of extraordinary circumstances, a minimum license revocation of nine months and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3- in the absence of extraordinary circumstances, a minimum license revocation of ninety days, and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.4 Class 4 - in the absence of extraordinary circumstances, a minimum license revocation of thirty days, and a minimum fine of \$2,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for the cost of the drug testing.

8.3.2.5 Class 5 - Zero to 15 days suspension with a possible loss of purse and/or fine and assessment for the cost of the drug testing.

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the State Veterinarian, the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Aggravating or mitigating

circumstances in any case should be considered and greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the State Steward or other designee of the Commission determine that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the State Steward or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

8.3.2.6.1 Repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse;

8.3.2.6.2 Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or

8.3.2.6.3 Violations which endanger the life or health of the horse.

8.3.2.6.4 Violations that mislead the wagering public and those desiring to claim a horse as to the condition and ability of the horse;

8.3.2.6.5 Violations that undermine or corrupt the integrity of the sport of harness racing.

8.3.2.7 Any person whose license is reinstated after a prior violation involving class 1 or class 2 drugs and who commits a subsequent violation within five years of the prior violation, shall absent extraordinary circumstances, be subject to a minimum revocation of license for five years, and a minimum fine in the amount of the purse money of the race in which the infraction occurred, along with any other penalty just and reasonable under the circumstances.

8.3.2.7.1 With respect to Class 1, 2 and 3 drugs detect in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take in consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in these Rules or otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission.

8.3.3.3.2 therapeutic medications in excess of acceptable limits established in these rules or otherwise approved and published by the Commission.

8.3.3.3.3 Substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in

compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

8.3.3.5 A finding by the official chemist that ~~[the antibody of]~~ Erythropoietin (EPO) **[darbopoietin (DPO) or their antibodies]** was present in a post-race test specimen of a horse shall be promptly reported in writing to the judges. The judges shall notify the owner and trainer of the positive test result for EPO[, **DPO or their antibodies]**. The judges shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 8.6.1.1, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO, **[DPO or their antibodies]** from a laboratory approved by the Commission, provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of this Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that ~~[the antibody of Erythropoietin, EPO, DPO or their antibodies]~~ was present in the sample taken from that horse.

8.3.4 Medical Labeling

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide (Lasix)

8.3.5.1 General

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the Commission Veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List.

8.3.5.2 Method of Administration

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the Commission Veterinarian determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

8.3.5.3 Dosage

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 If less than 500 milligrams is administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of administration, then the trainer shall be subject to a fine or other disciplinary action;

8.3.5.3.2 Not more than 750 milligrams may be administered if (1) the State veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.3 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

8.3.5.6 Restrictions

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (Lasix) in oral form.

8.3.5.7 Post-Race Quantification

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Lasix per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Lasix:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

8.3.5.9 Bleeder List

8.3.5.9.1 The Commission Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.5.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area,

confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian or Lasix veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission Veterinarian.

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian or the Lasix veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and Lasix must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Lasix symbol in the program shall appropriately reflect that the horse did not receive Lasix its last time out. Such an election by the owner or trainer shall not preclude the Commission Veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

8.3.5.9.9 The State Steward or Presiding Judge, in consultation with the State veterinarian, will rule on any questions relating to the Bleeder List.

8.3.5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per

milliliter of blood plasma. Phenylbutazone or oxyphenbutazone is not permissible at any level in horses two years of age and if phenylbutazone or oxyphenbutazone is present in any post-race sample from a two year old horse, said horse shall be disqualified, shall forfeit any purse money, and the trainer shall be subject to penalties including up to a \$1,000 fine and up to a fifty day suspension.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then warnings shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an average between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period:
Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period:
Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period:
Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.1.4 For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 5-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8 DE Reg. 329 (8/1/04)