

DEPARTMENT OF AGRICULTURE
500 Harness Racing Commission
Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005) 3 DE Admin. Code
501

FINAL

ORDER

Rule 8.9 Prerace Testing By Blood Gas Analyzer or Similar Equipment, and 8.10 Quarantine Procedure for Carbon Dioxide Positive Tests (Prerace or Postrace)

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 22, 2004, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed amendments in the December 1, 2004 *Register of Regulations* and for two consecutive weeks in the *Delaware Capital Review* and *Delaware State News*. The Commission proposed to enact a new Regulation 8.9 detailing the procedures and possible penalties for prerace testing by blood gas analyzer or similar equipment. The Commission further proposed to enact a new Regulation 8.10 to detail the quarantine procedure for horses that test positive for excessive carbon dioxide levels as a result of either a prerace or postrace test.

2. The Commission received no written comments during December, 2004. The Commission held a public hearing on December 22, 2004 and received public comments from Salvatore DiMario, Executive Director of the Delaware Standardbred Breeders Association, Charles Lockhardt of Dover Downs, and Dr. Odor of the Commission. Mr. DiMario comments were as follows: i) Rules 8.9.2 and 8.9.5 should provide that the testing will be done at random; ii) Rule 8.9.8 should replace the word "upon" with the word "at"; iii) Rule 8.9.12 should add the word "not" after the word "but"; iv) Rule 8.9.16 should require that the results of the testing be sent to the horsemen; v) Rule 8.10.3.11 should allow for a sick horse in the quarantine to be treated by a veterinarian other than the Commission veterinarian in emergency situations.

3. Mr. Lockhardt questioned whether Rule 8.9.16 would be subject to challenge if the prerace sample is not taken at the time of the race. Dr. Odor questioned the requirement in Rule 8.9.2 that the Presiding Judge announce the selected horses for testing since this was contrary to current practice.

Findings of Fact and Conclusions

4. 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.

5. The Commission has considered the public comments at the December 22, 2004 hearing. The Commission does not find those comments require further revisions of the proposed rules. The Commission finds that Rules 8.9.2 and 8.9.5 properly provide discretion to the Presiding Judge to select horses for prerace testing. There will be times when the selection may not be at random if for example, the Presiding Judge received information that a particular horse has been tubed or dosed prior to the race. In addition, the provisions of Rule 8.9.2 and 8.9.5 do not differ from the language currently in Rule 8.4.1.2 regarding selection of horses for postrace testing. The Commission finds that the proposed wording of 8.9.8 is correct and no further revision is necessary. The Commission agrees that Rule 8.9.12 should be amended to add the word "not". Since this is a stylistic change, the Rule does not need to be republished. The Commission would require under Rule 8.9.16 that test results be sent to the horsemen involved with the horse in question. The Commission finds that Rule 8.10.3.11 as drafted is sufficient to require the Commission Veterinarian to determine that a horse is too sick to continue in the quarantine. The Rule should be amended to change the delete the current reference to "State" Veterinarian and replace it with "Commission" Veterinarian. This has been the procedure used by the Commission for many years and the Commission is satisfied the Rule should be adopted. Regarding Rule 8.9.16, there is no requirement that the horse test high for CO₂ at the time of the race. Under Rule 8.9.14, no horse on the grounds of the racetrack may carry a foreign substance in its body, which would include an excessive level of carbon dioxide. Finally, the Commission interprets Rule 8.9.2 to merely require the

Presiding Judge to give notice of the selected horses and races for testing to the Commission Veterinarian, not to the general public.

6. The Commission concludes that the proposed amendments to the Rules are necessary for this agency to achieve its statutory duty to effectively regulate harness racing in the public interest under 3 Del.C. §10005 and should be adopted. The Commission makes the following two stylistic changes to the rules as proposed:

8.9.12 *Trainer Observation of Testing*-The trainer or other designated representative is permitted to observe the testing procedure, but not to question the technician or otherwise disrupt the testing.

8.10.3.11 A sick horse must only be determined by the State Commission Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

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, 2005.

IT IS SO ORDERED this 4th day of January, 2005.

Beth Steele, Chair
Robert Everett, Commissioner
George Staats, Commissioner
Kenny Williamson, Commissioner

8.9 Prerace Testing by Blood Gas Analyzer or Similar Equipment

8.9.1 Notwithstanding any other provisions of these Rules to the contrary, the Commission may conduct prerace and postrace testing with the use of any accepted, reliable testing instrument, including but not limited to a blood gas analyzer for measuring excess carbon dioxide in blood samples.

8.9.2 The Presiding Judge shall announce the selected races or horses for testing and the appropriate time and location.

8.9.3 All horses shall be brought to the paddock or other secure, designated area for the prerace testing before its first warm up, based on the Commission published paddock times.

8.9.4 Each horse entered to compete in the racing program shall be present in his or her designated paddock stall with a groom for the purpose of having a blood sample drawn by the Commission Veterinarian.

8.9.5 The order and number of horses which shall have blood drawn for prerace testing shall be at the discretion of the Commission and the presiding judge.

8.9.6 The Commission Veterinarian will be responsible to verify with the testing machine technician that the blood gas analyzer test is completed for the specific horse in question. The Commission Veterinarian or his designee will inform the trainer or groom if their horse will be retested or can be given permission to leave the paddock.

8.9.7 Refusal-Failure or refusal by a licensee to present a selected horse under his care, custody, or control for blood gas analyzer testing, or who refuses in any other way, shall result in an automatic scratch of the horse from the racing program, and any other appropriate disciplinary action in the discretion of the judges. The Commission Veterinarian shall document the name of the trainer or person who refuses to have blood drawn from the horse, and shall file a report with the Commission.

8.9.8 Exercise Prior to Testing-In the event that the horse has exercised prior to testing and the horse tests below the Commission standard for a high blood gas test, the horse can be retested upon the discretion of the Commission Veterinarian or presiding judge, or tested post race.

8.9.10 Post Race Testing-The blood gas analyzer machine or similar testing equipment may be used for the post-race blood gas testing on selected horses. The collection of samples will be pursuant to Rule 8.4.3 and testing of split samples will be pursuant to Rule 8.4.3.5.10.

8.9.11 The Commission Veterinarian will provide documentation reflecting the tattoo or name of the horse from which the blood was drawn, the date and time the blood was drawn, and any other identifying information.

8.9.12 *Trainer Observation of Testing*-The trainer or other designated representative is permitted to observe the testing procedure, but **[not]** to question the technician or otherwise disrupt the testing.

8.9.13 The Presiding Judge, Commission Veterinarian, and blood gas technician will ensure that the blood gas analyzer or other testing equipment is calibrated in compliance with the recommended calibration and maintenance procedures for the machine, and that the testing machine is in proper working order.

8.9.14 In addition to the provisions of Rule 8.3 and unless otherwise permitted by these Rules, no foreign

substance shall be carried in the body of a horse when the horse is on the grounds of the licensed racetrack; it shall be a violation of this rule for a horse to test positive in a pre-race test result using a blood gas analyzer or other testing equipment.

8.9.15 The penalties for post-race positive tests contained in Rule 8.3.2, may apply to pre-race test samples that are positive for a prohibited substance.

8.9.15.1 A positive test result from a pre-race sample tested on the blood gas analyzer machine is subject to the recommended penalty in Rules 8.3.2 and 8.3.3.3. For pre-race testing the Commission may use a testing machine that uses the Commission standard in Rule 8.3.3.3--substances present in a 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.

8.9.15.2 The Commission may alternatively use a testing machine that measures carbon dioxide levels in pre-race samples using a Base Excess testing protocol.

8.9.15.2.1 Under this alternative protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse. The level of uncertainty will be included before it is considered a violation of these Rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a Base Excess (BE) level of 10.4 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horse and Base Excess (BE) level of 12.4 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse, in order for a violation to be reported under this Rule.

A commission representative will notify the trainer or licensed designee and the horse in question shall be immediately retested. In the event that a second blood gas analyzer test is necessary, the Commission Veterinarian or his designee will take a rectal temperature of said horse. The horse's temperature will be recorded on the veterinarian's control sheet.

8.9.16 With respect to a finding of a prohibited level of carbon dioxide in a blood sample obtained from a prerace blood gas analyzer test result, there shall be no right to testing of the "secondary sample" by the licensee, provided that a "secondary sample" shall be transported to the designated Commission laboratory on an anonymous basis for confirmatory testing. In the event that the initial blood gas analyzer test result is confirmed by the test result of the official Commission laboratory, such test results shall be *prima facie* evidence that the prohibited drug was present in the horse at the time it was scheduled to participate in a race and is *prima facie* evidence.

8.10 Quarantine Procedure For Carbon Dioxide Positive Tests (Prerace Or Postrace)

8.10.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the presiding judge within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Judges and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DHRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

8.10.2 Procedure: The owner or trainer will be responsible for providing the DHRC with a minimum check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

8.10.3 The quarantine of a horse is subject to the following mandatory requirements:

8.10.3.1 The owner or trainer will be required to deposit sufficient funds with the DHRC Presiding Judge to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

8.10.3.2 The expected period of the quarantine will be seventy-two hours.

8.10.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

8.10.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

8.10.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DHRC.

8.10.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's expense. Feed for the horse will be purchased by DHRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DHRC designated official.

8.10.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DHRC designated official.

8.10.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

8.10.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

8.10.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the track except to return to the quarantine stall.

8.10.3.11 A sick horse must only be determined ill by the [State Commission] Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

8.10.3.12 Stalls for the quarantine of horses are designated by the Presiding Judge of the DHRC, in cooperation with the racetrack.

8.10.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

8.10.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

8.10.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

8.10.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DHRC. The trainer may present such evidence at a hearing before the Judges if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at: <http://www.state.de.us/research/AdminCode/title3/500/501/index.shtml>**

8 DE Reg 1108 (2/1/05)