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**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

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July 11, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lois Graham  
Racing Commission  
106 Dee Drive  
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Thoroughbred Racing, 178CSR1

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency   /
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Racing Commission

**Subject:** Thoroughbred Racing, 178CSR1

OFFICE OF THE SECRETARY OF STATE  
STATE OF WEST VIRGINIA  
MAY 13 1999  
10:14 AM

PERTINENT DATES

Filed for public comment: April 23, 1999  
Public comment period ended: June 1, 1999  
Filed following public comment period: June 4, 1999  
Filed LRMRC: June 4, 1999  
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section-by-section synopsis of the substantive amendments made by the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms. Definitions have been added for the following terms: "Accredited thoroughbred horse", "Accredited West Virginia Sire", "Act", "Allowance race", "Appeal", "Applicant", "Association grounds", "Betting interest", "Bleeder", "Bleeder lists", "Breakage", "Breeders of an accredited West Virginia horse", "Chairman of the racing commission", "Code", "Complaint", "Conditions", "Construction permit holders", "Course", "Day", "Dead heat", "Draw", "Entry", "Executive secretary", "Flat Race", "Fund", "Handle", "Harness racing", "Horse racing", "Horse race meeting", "Inquiry", "Jockey", "Legitimate breakage", "License", "Licensee", "Maiden race", "Meet", "Meeting", "Month", "No contest", "Objection", "Official order of finish", "Official starter", "Official time", "Off time", "Outs", "Outstanding tickets", "Overnight", "Owner of an accredited West Virginia horse", "Owner of an accredited West Virginia sire", "Paddock", "Pari-mutuel", "Pari-mutuel clerk", "Patron", "Performance", "Permit holder", "Pool", "Post position", "Program", "Prospective licensees",

"Purse", "Racing association", "Raisers of an accredited West Virginia horse", "Random testing", "Reasonable cause/reasonable suspicion testing", "Restricted areas", "Result", "Scratch", "Scratch time", "Secretary", "Simulcast", "Stable name", "Stakes race", "Stewards", "To the dime", "Week", "Weigh in", "Weigh out", "Winner" and "Year".

Section 3 relating to the calculation of time has not been amended.

Section 4 contains administrative provisions and has not been amended.

Section 5 relates to financial responsibilities. It provides that a person's license or occupational permit may be suspended where the licensee or permittee fails to pay for goods or services purchased relating to racing. This section has been amended to provide that there must be a court judgment issued as to the amount of the debt prior to suspension by the stewards.

Section 6 relates to minors. The current rule provides that no minor under the age of 8 years may be permitted in a restricted area prior to 12 noon on any race day except in the case of an emergency. It also permits minors 8 years of age or older to be admitted to a restricted area with the permission of the stewards. This section has been amended to provide that no minor under the age of 16 years may be admitted in a restricted area without the written permission of the stewards except in the case of an emergency.

Section 7 relates to telephone, telegraph, radio and television. This section has been amended to require the association to provide an approved telephone or intercommunication system to maintain contact between the stewards and other designated stations.

Section 8 relates to the associations. The current rule requires each licensee to file a balance sheet and profit and loss statement each year. The proposed rule requires audited financial statements.

The current rule allows the shareholders of an association to transfer the association's license through the sale of association stock. The proposed rule requires the buyer of the assets to apply for a racing license.

The current rule requires racing associations to have at least one ambulance for the transportation of humans. The proposed rule

requires that the ambulance be staffed by paramedics or certified Emergency Medical Technicians during races. The association may not conduct a race while the ambulance is transporting an individual until another ambulance takes its place. It will also allow an ambulance to follow the mounted horses during the running of a race, if approved by the Racing Commission or the stewards.

New language has been added which requires (1) the maintenance of the grounds for the safety of the patrons and occupational permit holders and to insure that they are accessible to disabled persons (2) the provision of adequate restroom facilities (3) the provision of free drinking water (4) the exclusion of persons who have no immediate business with the horses from the paddock (5) the maintenance of a backup lighting system, if races are conducted at night, and (6) the provision of adequate lighting in the stable areas.

New language has been added which requires the association to maintain an approved depository for the amounts deducted from the pari-mutuel handles for purse distribution. It requires an association and its officers to insure that all purse moneys, disbursements and appropriate nomination race moneys are available for timely distribution. Provisions have also been added requiring an applicant for a license to furnish evidence of his or her ability to pay all amounts relating to the pari-mutuel commission deductions, salaries of officials and other expenses incident to the horse meeting for which a license is sought.

Section 9 relates to officials. New language has been added requiring all officials appointed by or under the jurisdiction of the Racing Commission to attend and participate in any continuing education courses and training directed by the Racing Commission.

Section 10 relates to stewards. The current rule allows stewards to fine persons under their jurisdiction up to \$500. The proposed rule increases the possible fine to \$1,000.

Language has been deleted requiring that horses be inspected by the paddock judge and veterinarian before they leave the paddock. Language has also been deleted which stated that the rulings of the stewards or the Commission regarding the order of finish or award of purse money made after the result has been declared official do not affect the pari-mutuel payoff.

New language has been added requiring the racing commission steward to maintain a detailed log of the stewards' official activities. It provides that the stewards may interpret this rule

and decide all questions of racing not specifically covered by this rule.

Section 11 relates to the Racing Secretary. The current rule prohibits advertising in the program pertaining to wagering facilities outside the enclosure, selections or recommendations by tipsters or those sponsoring offtrack daily selection cards. The proposed rule prohibits this type of advertising unless approved by the Racing Commission.

Language has been deleted regarding the duties of the horseman's bookkeeper.

Section 12 relating to the horseman's bookkeeper is new. The horseman's bookkeeper is to maintain various records and accounts required by this section.

Section 13 of the current rule relating to patrol judges has been deleted. Section 13 of the proposed rule relates to placing judges and has not been amended.

Section 14 relating to paddock judges has not been amended.

Section 15 relating to timers has not been amended.

Section 16 relating to starters has not been amended.

Section 17 relates to the clerk of scales. Language has been added giving the clerk of scales various new duties including the verification of the record of winning races on the applicable apprentice certificates at the meeting and the supervision of the custodian of the jockey's room. The current rule provides for a 5-pound limit on the overweight any horse may carry. The proposed rule would raise that limit to 7 pounds.

Section 18 relating to the jockey room custodian is new. It requires the jockey room custodian to maintain order, decorum and cleanliness in the jockey and scales room. The jockey room custodian also is required to oversee the care and storage of all racing colors and report any irregularities occurring in the jockey room to the stewards. It prohibits a jockey room custodian from lending money to any jockey or any person in the jockey room and from selling or exchanging raffle tickets.

Section 19 relating to the handicapper has not been amended.

Section 20 relates to the identifier. It has been amended to be more specific regarding the horse identifier's inspection of the starters to verify the horse's identity.

Section 21 relates to state veterinarians and has not been amended.

Section 22 relates to bleeders and has not been amended.

Section 23 relates to practicing veterinarians and has not been amended.

Section 24 relates to the test barn. New language has been added specifying equipment for the test barn. The persons authorized to have keys have been extended to include the senior veterinarian assistant. Language has also been added requiring the Racing Association to pay all laboratory expenses for sample analysis.

Section 25 relates to the chemist and has not been amended.

Section 26 relating to split sample testing is new. It requires that a Racing Commission veterinarian split a blood or urine sample from a horse into two parts prior to sending a sample to the primary testing laboratory. The Racing Commission veterinarian is to retain and store the part of the specimen that is not sent to the primary testing laboratory. If the results on the initial test of the specimen is negative, the Racing Commission veterinarian may discard the retained part of the specimen. If the results are positive, the Racing Commission veterinarian may discard the retained part of the specimen after the expiration of the period during which an owner or trainer may request that the retained part be sent for split testing.

Section 27 relating to administrative procedures prior to split sample testing is new. It provides that the results of the laboratory tests performed by the primary testing laboratory are confidential and may only be communicated to the Racing Commission, stewards, the owner and the trainer. It allows the trainer or owner of a horse, upon receiving a positive result, to request that the stewards submit the retained part of the specimen for testing to a laboratory approved by the Racing Commission.

Section 28 relates to administration procedures to a subsequent sample. It requires that the split sample laboratory to send a confidential written report of the results to a Racing Commission steward. The owner or trainer is to be notified of the results of the test by both laboratories in the case of confirmed

positives and of the time and place of any administrative hearings resulting from the findings.

Section 29 relating to the cost of split sample testing is new. It requires laboratories which wish to be on the approved list to establish reasonable fees for split sample testing based upon the actual cost of testing. It requires the trainer or owner requesting the testing to pay the cost of transportation and of the tests.

Section 30 relating to the storage and shipment of split samples is new. It requires that split samples be secured in a freezer in the test barn. A split sample must be requested within 48 hours of receipt of the findings of the primary laboratory and the split sample must be shipped within an additional 48 hours. Prior to opening the split sample freezer, a split sample chain of custody verification form must be completed. This section specifies what must be included in that form. This section also contains requirements for packing and shipping the samples.

Section 31 relating to trainer responsibility is new. It sets forth the duties of a trainer and provides that the trainer is the absolute ensurer of and responsible for the condition of the horse entered in a race or workout. It sets forth penalties for the trainer as well as any person shown to have care of the horse.

Section 32 relates to the camera and film patrol and has not been amended.

Section 33 relates to policing. Language which prohibited policing staff from being employed by the association has been deleted.

Section 34 relates to sanitation and has not been amended.

Section 35 relates to colors and equipment. New language has been added prohibiting over-sized horseshoes on which the trailing portion of the shoe is turned down.

Section 36 relates to declarations and scratches and has not been amended.

Section 37 relates to disciplinary action and has been amended to prohibit representatives of a licensee or occupational permit holder from having a firearm or other deadly weapon in a vehicle under his or her control.

Section 38 relates to engagements and transfer and has not been amended.

Section 39 relates to entries, declarations and subscriptions.

Subsection 39.6 has been amended to remove any exception to the requirement that a horse must be lip tattooed in order to race.

Subsection 39.8 has been amended to allow entries and declarations to be made through an electronic device.

Subsection 39.18 of the current rule provides that no maiden horse six years or older may start in West Virginia. It has been amended to provide that 2 year-old and up maidens may start in West Virginia.

Subdivision 39.29.2 has new language providing that in a stake futurity or other special event, any two or more horses entered that are owned in whole or in part by the same owner or trained by the same trainer, shall be given an equal draw according to the eligibility conditions of the race. The horses are to be coupled as provided for in Subsection 10.15 of the rule.

Subsection 39.30 has been amended by deleting language which provides that simulcast races entries and/or field rules shall be those used at the host track. New language has been added allowing coupled entries in a stake, futurity or any special event with the approval of the Racing Commission.

Subsection 39.40 has been amended to limit to thirty days the time during which a horse whose Coggins test has expired may run from the time blood is drawn.

Section 40 relates to also eligible and has not been amended.

Section 41 relates to preferred lists and has not been amended.

Section 42 relates to penalties and allowances and has not been amended.

Section 43 relates to occupational permits and permit holders.

Subsection 43.7 contains the fees for occupational permits. Almost all the fees have been raised, and several new fees have been added.

Subsection 43.19 is new. It states that it is the responsibility of the person mounted on the horse to wear the approved safety equipment.

Language has been deleted from this section which relates to tip sheet vendors.

Section 44 relating to tip sheet vendors is a new section; however, it contains language contained in the current rule relating to tip sheet vendors and has not been amended.

Section 45 relates to jockeys and apprentice jockeys. Language has been deleted stating that no person who has never ridden in a race shall be granted a license.

The current rule provides that no jockey or his or her spouse shall be the owner of any race horse or own an interest in one. The proposed rule deletes reference to the spouse and ownership of an interest. The proposed rule also provides that a jockey may not compete in any race against a horse which is owned or trained by the jockey's spouse.

Paragraph 45.33.1.4 is new. It provides that if after one year from the date of the fifth winning mount the apprentice jockey has not ridden 40 winners, the applicable weight allowance continues for one more year or until the fortieth win, whichever come first. It also provides for that in no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount unless an extension has been granted.

Subsections 45.35, .36 and .37 are all new. They relate to the extension of the weight allowance including the qualifications for the allowance and required documentation.

Section 46 relates to jockey agents. It has been amended to provide that a jockey agent's spouse may not be the owner or trainer of any race horse or have any interest in the ownership of one.

Section 47 relates to the naming of riders and has not been amended.

Section 48 relating to blacksmiths contains the provisions of Section 63 of the current rule.

Section 49 which relates to owners-trainers has not been amended.

Section 50 which relates to authorized agents has not been amended.

Section 51 relates to licensing requirements for multiple owners and replaces a section in the current rule relating to corporations. It requires each shareholder member or partner who is the legal owner of any horse through a partnership, corporation, limited liability company, etc., to be licensed.

Section 52 relating to partnerships has been amended to allow the Racing Commission the authority to sign declaration of partnerships by fax in the case of an emergency.

Section 53 relates to stable names. Language has been deleted which prohibited the use of a stable name for advertising purposes.

Section 54 relates to trainers. Language has been deleted requiring a trainer to obtain another licensed trainer in his absence. Language has also been deleted stating that a trainer shall be responsible for the condition of a horse trained by him.

Section 55 of the proposed rule relates to claiming. The section in the current rule relating to jockey room custodian has been deleted.

Language has been deleted prohibiting a claimed horse from starting in a selling or claiming race for a period of 30 days from the date of claim for less than 25 percent more than the amount for which it was claimed or entering in a race in which the determining eligibility price is less than 25 percent more than the price at which the horse was claimed.

Language has been added providing that if a horse is required to go to the test barn, delivery to the claimant is to take place at the test barn after the sample is taken.

Section 56 relating to the postponement and cancellation of races has not been amended.

Section 57 relating to dead heats has not been amended.

Section 58 relating to the paddock to starting gate has not been amended.

Section 59 relates to the starting gate to finish. Language has been added providing that if a horse leaves the racing strip after the start, the horse shall be disqualified.

Section 60 relates to illegal and corrupt practices. The current rule provides that a convicted felon or a person convicted of a crime involving moral turpitude may be denied an occupational permit or excluded from an association's grounds. Under the proposed rule, such a person is not eligible for a permit and is required to be excluded from the grounds.

Section 61 relates to objection from protest. The current rule provides that a jockey who wishes to protest a happening in a race must notify the clerk of scales immediately upon his or her arrival at the scales for weighing in. The proposed rule adds additional language requiring a jockey, when the "quick official" is being used, to notify the outrider that he or she wishes to claim foul or put a hold on the race.

Section 62 relating to scales of weights for age has been amended to reduce from 112 to 110 pounds the minimum in all overnight races for 2, 3, 4 year-olds and upward.

Section 63 relates to weighing out. It has been amended to increase the allowable overweight from 5 to 7 pounds.

Section 64 relates to weighing in and has not been amended.

Section 65 relates to workouts and has not been amended.

Section 66 relates to medication. Language has been deleted regarding the cleaning and sterilizing of surgical instruments. Language has also been deleted which prohibits a person from running a horse that has been administered phenothiazine within two weeks of administration of the drug.

Language has been added requiring the trainer to prevent the administration of any drug or medication or other prohibited substances.

The current rule allows a horse to be treated with furosemide (lasix) no later than four hours before post time. The proposed rule limits the amount administered to 500 mg. by intravenous route only. The provisions in the current rule regarding vendors of horse feed or medicine have been deleted.

Section 67 relating to vendors of horse feed or medicine contains provisions of the current rule and has not been amended.

Section 68 relating to appeal and review has been completely rewritten. The current rule references a procedural rule of the

appeals process. The proposed rule sets forth a sketchy appeals procedure.

Section 69 relating to the auditor of pari-mutuels has not been amended.

Section 70 relating to the state security officer has not been amended.

Section 71 relating to state breeder awards has not been amended.

Section 72 relating to the West Virginia thoroughbred development fund has not been amended.

Section 73 relating to alcohol and drug testing has not been amended.

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#### AUTHORITY

Statutory authority: W.Va. Code, §19-23-6, which provides, in part, as follows:

#### **§19-23-6.**

The racing commission has full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings and, in this regard, it has plenary power and authority:

...(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in

accordance with the provisions of article three, chapter twenty-nine-a of this code...

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

No. It did not contain a summary of the proposed rule or a statement of the circumstances requiring the proposed rule as required by statute, nor did it contain strike-throughs and underscoring.

VIII. OTHER.

Counsel has technical modifications to suggest.