

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Racing Commission TITLE NUMBER: 178

CITE AUTHORITY: W. Va. Code § 19-23-6

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 1(P)1

TITLE OF RULE BEING ADOPTED: Determining The Organizations To Represent
The Horsemen In The State

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS March 4, 1996



Lois J. Graham
Authorized Signature



FILED

FEB 2 11 24 AM '96

GASTON CAPERTON
GOVERNOR

State of West Virginia
Department of Tax and Revenue

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

CONSENT TO FILE RULE

February 2, 1996

To Whom It May Concern:

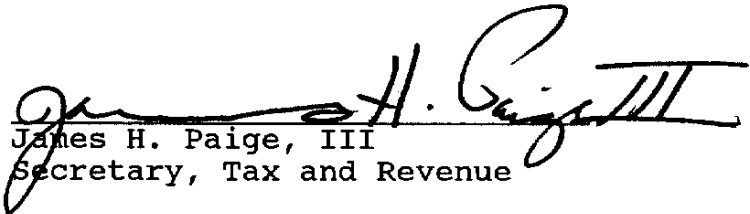
Title of Rule: Determining The Organization To Represent The
Horsemen In The State

Title Number: 178

Series Number: 1(P)1

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 2nd day of February, 1996.


James H. Paige, III
Secretary, Tax and Revenue

WEST VIRGINIA PROCEDURAL RULE
DEPARTMENT OF TAX AND REVENUE
TITLE 178
SERIES 1(P) 1
1996

DETERMINING THE ORGANIZATION TO REPRESENT THE
HORSEMEN IN THE STATE.

§ 178-1(P)1-1. General.

1.1 Type of Rule. - This rule is a procedural rule as defined in West Virginia Code § 29A-1-2.

1.2 Scope. - This procedural rule provides the procedure to be followed when determining the organization that represents the majority of the horsemen at a racetrack in West Virginia.

1.3 Authority. - This procedural rule is promulgated under the authority of West Virginia Code § 19-23-6.

1.4 Filing Date. -

1.5 Effective Date. -

§ 178-1(P)1-2. Interpretative Note.

This procedural rule shall be read in pari materia with the Thoroughbred Racing legislative rule (178 C.S.R. 1, § 1 et seq.) previously promulgated by the West Virginia Racing Commission pursuant to authority granted by the Legislature. The definitions, policies and procedures provided in 110 C.S.R. 1, § 1 et seq. are equally applicable to this procedural rule. Should there be any inconsistency between the promulgated legislative rule and this procedural rule, the legislative rule shall control, except to the extent the legislative rule does not reflect an amendment to the West Virginia Code which is addressed in this or another procedural rule promulgated by the West Virginia Racing Commission.

§ 178-1(P)1-3. Definitions. - Unless a specific definition is provided in this section, terms used in this rule are defined as provided in legislative rule 178 C.S.R. 1, § 1 et seq. unless the context in which the term is used clearly requires a different meaning. Additionally, the following terms shall have the meaning ascribed herein, and shall apply in the singular as well as in the plural.

3.1 "Horsemen" means those owners and trainers who have a permit issued pursuant to West Virginia Code § 19-23-2.

3.2 "Trainer" means the person who is responsible for the condition of the horse trained by him or her.

§ 178-1(P)1-4. Petition.

4.1 An organization may petition the Commission to hold an election for the purpose of obtaining recognition as the organization that represents the interests of a majority of the horsemen at a racetrack in West Virginia. The same procedure shall apply for any organization seeking to challenge the organization designated as the representative of a majority of the horsemen who hold the required permit at the track.

4.2 The petition shall be accompanied by the signature, printed name and license number of at least two hundred fifty (250) horsemen who are at the time the petition is signed licensed by the Commission and are eligible to vote pursuant to Section 178-1P1-8 of this rule. Each horseman who signs the petition shall do so no more than ninety (90) days prior to the petition being submitted to the Commission.

§ 178-1(P)1-5. Notification of election.

5.1 Upon receipt of the petition, the Commission shall immediately notify the petitioner, the organization recognized as representing a majority of the horsemen at the racetrack which is the subject of the petition, and any other interested party that a petition has been filed and of the date when the Commission will meet to determine if and when an election will be held.

5.2 Before the date set for the determination of the election, the Commission staff shall verify the license status of all persons who signed the petition.

§ 178-1(P)1-6. Organizational funds.

6.1 If an election is announced, those funds which accrue to the organization currently recognized as representing the majority of the horsemen at the racetrack requesting the election, and which accrue after the Commission meeting at which the election is announced, shall be placed in an escrow account established by the Commission and held there until the result of the election is officially determined by the Commission, and the Commission releases the funds.

§ 178-1(P)1-7. Ballots.

7.1 Ballots shall be prepared and mailed by the Commission.

7.1.1 Each ballot shall be sequentially numbered and shall state in alphabetical order the names of the respective organizations seeking recognition as the horsemen's representative.

7.2 Each ballot shall clearly inform the addressee that the ballot will not be counted if the voter's application for license renewal and the appropriate fees have not been received by the Commission, and that such receipt must occur at any time prior to, and including, the cut-off return date.

7.3 Each ballot will be accompanied by two (2) envelopes, one (1) of which shall be blank, except to have the word "ballot" printed on it. The other envelope shall be stamped with return postage and have the return address of the Racing Commission printed on it and a line for the horseman's signature. When the horseman completes the ballot, he shall place it in the envelope marked "ballot", seal that envelope and place it in the mailing envelope upon which is the address of the Commission, sign the mailing envelope at the place marked for his signature, seal the mailing envelope and mail the mailing envelope to the Commission. Unsigned envelopes, and envelopes signed by an individual other than the horseman whose name appears on the list of permit holders, are invalid.

§ 178-1(P)1-8. Who may receive ballots.

8.1 A ballot shall be sent to each horseman who holds the permit required by West Virginia Code § 19-23-2 at the racetrack requesting the election, or holds the permit as set forth in the immediately succeeding Subsection 8.2 of this Section, and has started a horse at the track requesting the election. The permit must have been issued on or before the day the Commission announced the election would be held.

8.2 If the election is announced before June 30, a ballot shall be sent to each horseman who was licensed in West Virginia on December 31st of the immediately preceding calendar year, even if that individual has not been issued a permit for the current year. A ballot may not be counted unless an application for renewal and the appropriate fees are received by the Commission by the end of the ballot return cut-off date established by the Commission.

§ 178-1(P)1-9. Mailing ballots.

9.1 At the time the election is announced, the Commission shall announce the date the ballots will be mailed to those eligible to vote, and a cut-off date for completed ballots to be received at the Commission's office and after which no ballots may be received at said Office. Completed ballots may be received only at the Commission's Office and only during normal business hours (8:30 am to 4:30 pm, Monday through Friday).

9.2 The date for mailing the ballots may be changed if notice is given to the organizations involved.

9.3 The date established for mailing ballots may not be more than thirty (30) days after the election is announced.

9.4 The ballot return cut-off date shall be at least fifteen (15) days but no more than thirty (30) days after the date the ballots are actually mailed to the horsemen.

§ 178-1(P)1-10. Receipt and counting ballots.

10.1 A list of horsemen to whom ballots are mailed shall be made available to the public.

10.2 The votes of individual horsemen shall be kept confidential, and may not be made available to any person. However, a current list of those horsemen who have voted shall be available for inspection.

10.3 Incoming ballots shall be verified against a master list of horsemen and ballot numbers.

10.4 Only ballots postmarked on or before the ballot return cut-off date shall be counted by the Commission staff. The Commission shall set a date and time for counting the ballots, such date to be no sooner than ten (10) days nor longer than fifteen (15) days after the ballot return cut-off date, and the Commission shall notify the competing organizations of such date and time. Representatives from the competing organizations may be present for the counting, but such representatives may neither participate in the counting nor see any completed ballots. The organization receiving a majority of the votes counted by the Commission shall be designated the organization representing the majority of the horsemen at the racetrack for all purposes.

§ 178-1(P)1-11. Challenges.

11.1 A person wishing to challenge any aspect of the election procedure must file all objection(s) in writing with the Commission within three (3) business days after the Commission has completed counting the ballots and announced the results of the election.

11.1.1 Upon receipt of the written objection(s), the Commission shall set a day and time for a hearing on the objection(s) and shall cause notice of the hearing to be given to all parties.

11.1.2 All evidence and testimony offered at the hearing shall be retained by the Commission. All testimony shall be sworn, and shall be recorded and transcribed by a court reporter authorized to perform court reporting services in this State, the cost of which shall be borne by the person who filed the objection(s). If more than one (1) party files an objection, the costs for the services of the court reporter shall be shared equally among such parties.

11.1.3 The validity of the objection(s) shall be determined by the Commission in its sole discretion. The Commission may, in its discretion, stay the results of the election until after the challenge is decided.

11.2 If no objection has been received within three (3) business days after the Commission completed counting the ballots and announced the results, the Commission shall order the funds held in escrow be released to the organization determined as representing

the majority of the horsemen. If timely objection(s) are received, the Commission may order that the funds continue to be held in escrow pending a decision on the objection(s). The Commission shall release the funds held in escrow when the objection(s) have been ruled upon and the election results have become final.

COMMENTS RECEIVED TO PROPOSED PROCEDURAL RULE

Determining The Organization To Represent The Horsemen In The State

1. No Filing Date was provided in Section 1.4.

Section 1.4 is normally left incomplete when a rule is filed because the rule is stamped when filed. This Rule was filed on the date indicated by the stamp from the Secretary of State.

2. The "current permit" as stated in Section 3.1 should be further defined.

The Racing Commission agrees that there could result a misinterpretation between Sections 3.1 and 8.1. Because the necessary information is included in Section 8.1, Section 3.1 was reworded to omit the term "current."

3. Use of the phrase "organization currently designated" or "currently recognized" should be deleted in Sections 4.1, 5.1 and 6.1.

The Racing Commission agrees and has deleted the term "currently."

4. How much time does a petitioner have to obtain the 250 signatures?

Section 4.2 was amended to state that the petitioner must obtain at least 250 signatures within the 90 days prior to submitting the petition to the Racing Commission.

5. Sections 6.1 and 11.2 refer to the moneys held in an escrow account by the Racing Commission as being only those that accrue after the election is announced and before the results are determined. Is that money separated from money already held in escrow by Court Order?

While the Rule is prospective in nature, it does have a retroactive effect in that the moneys currently held in escrow under a court order, as well as those moneys which accrue after the election is announced, will be released to the organization which prevails in the election.