

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: RACING COMMISSION TITLE NUMBER: 178

RULE TYPE: PROCEDURAL; CITE AUTHORITY W. VA. CODE § 19-23-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: DISPUTE RESOLUTIONS PROCEDURES

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON AUGUST 22, 1991 AT 5:00 P.M.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WEST VIRGINIA RACING COMMISSION

P. O. BOX 3327

CHARLESTON, WV 25333-3327

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



LOIS J. GRAHAM
EXECUTIVE SECRETARY

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



COMMISSIONERS
ROBERT J. BURKE
CHAIRMAN
ROGER RAMEY
MEMBER
ALBERT SCHWABE, II
MEMBER

STATE OF WEST VIRGINIA
Department of Tax and Revenue
WEST VIRGINIA RACING COMMISSION

GASTON CAPERTON
GOVERNOR

MAILING ADDRESS:
P. O. BOX 3327
CHARLESTON, WV 25333-3327
PHONE (304) 348-2150
FAX (304) 348-6319
LOIS J. GRAHAM
EXECUTIVE SECRETARY

NOTICE OF HEARING

TO: ROBERT J. BURKE
ALBERT SCHWABE
ROGER R. RAMEY
JOSEPH F. CUOMO

FROM: LOIS J. GRAHAM

DATE: JULY 19, 1991

SUBJECT: DISPUTE RESOLUTION PROCEDURE
TITLE NUMBER 178 SERIES NUMBER 4

YOU ARE HEREBY ADVISED THAT THE WEST VIRGINIA RACING COMMISSION IN LIEU OF A PUBLIC HEARING, HAS ESTABLISHED A COMMENT PERIOD WHICH ANY INTERESTED PARTY MAY SEND COMMENTS CONCERNING THE PROPOSED RULE (DISPUTE RESOLUTIONS PROCEDURES). THIS COMMENT PERIOD WILL END ON AUGUST 22, 1991 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE WEST VIRGINIA RACING COMMISSION P.O. BOX 3327, CHARLESTON, WEST VIRGINIA 25333-3327.



State of West Virginia
Department of Tax and Revenue

Charleston 25305

GASTON CAPERTON
GOVERNOR

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L. FREDERICK WILLIAMS, JR.
SECRETARY

CONSENT TO FILE RULE

July 1, 1991

To Whom It May Concern:

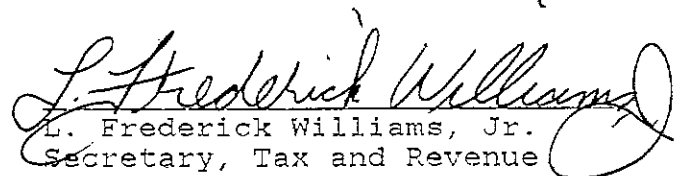
Title of Rule: Dispute Resolution Procedure

Title Number: 178

Series Number: 4

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

Signed this 1st day of July, 1991.


L. Frederick Williams, Jr.
Secretary, Tax and Revenue



**State of West Virginia
Department of Tax and Revenue**

Charleston 25305

GASTON CAPERTON
GOVERNOR

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SECRETARY

STATEMENT OF CIRCUMSTANCES

The rule is necessary to provide a more appropriate hearing procedure for the hearing of contested cases.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: _____

Type of Rule: X Legislative Interpretive Procedural

Agency: Racing Commission Address: P. O. Box 3327, Charleston, WV 25333-3327

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1. Effect of Proposed Rule	ANNUAL		SECRETARY OF STATE YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

Because the rule establishes procedures to be utilized when resolving disputes involving the Racing Commission, the fiscal impact, if any, cannot be calculated.

3. Objectives of these rules:

The objective of the rule is to provide the administrative hearing procedure to be used when resolving policy disputes and issues and deciding all other controversies between the Racing Commission and licensees, prospective licensees and persons whose applications have been denied.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There should be no economic impact.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

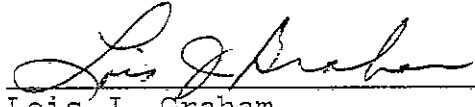
There should be no economic impact.

C. Economic Impact on Citizens/Public at Large.

There should be no economic impact.

Date: July 1, 1991

Signature of Agency Head or Authorized Representative


Lois J. Graham
Executive Secretary

WEST VIRGINIA PROCEDURAL REGULATIONS
RACING COMMISSION
TITLE 178
SERIES 4
1991

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DISPUTE RESOLUTION PROCEDURES

Filed: July 1, 1991

§ 178-3-1. General.

1.1 **Scope.** - The purpose of this rule is to provide the administrative hearing procedure to be used when resolving policy disputes and issues and deciding all other controversies between the Racing Commission and licensees, prospective licensees and persons whose applications have been denied.

1.2 **Authority.** - W. Va. Code § 19-23-6.

1.3 **Filing date.** - July 1, 1991.

1.4 **Effective date.** -

§ 178-3-2. **Definitions.** - As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1 "Chairman of the Commission" means the Chairman of the West Virginia Racing Commission, or his delegate.

2.2 "Code" means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

2.3 "Executive Secretary" means the secretary of the West Virginia Racing Commission, or his delegate.

2.4 "Licensee" means any racing association holding a license required by and issued under the provisions of W. Va. Code article 19-23.

2.5 "Prospective licensee" means any association which has applied or intends to apply to become a "licensee" as defined above.

2.6 "Racing association" means any individual, partnership, firm, association, corporation, or other entity or organization of whatever character or description licensed in accordance with W. Va. Code article 19-23 to hold a horse or dog racing meeting.

2.7 "Racing commission" or "commission" means the West Virginia Racing Commission, or its delegates.

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2.8 "Secretary" means the Secretary of the West Virginia Department of Tax and Revenue, or his delegate.

§ 178-3-3. Hearing and Appeal Procedure. - Whenever there is a policy dispute or issue involving the Racing Commission and any licensee, or there is any other dispute between the Racing Commission and a licensee, or a third party such as prospective licensee or applicant, including a dispute in which declaratory relief is sought or is necessary, the following procedure shall be utilized.

3.1 Issuance of notice requiring compliance. - Within thirty (30) days from the date the Racing Commission determines that a licensee, or a third party subject to the Racing Commission's jurisdiction, is not complying with a Commission policy or decision, the Commission shall by personal service, substituted service or certified mail, serve upon the licensee or third party appropriate notice mandating that compliance be accomplished by a specified date and, where necessary, the method of compliance required. Service by personal or substituted service shall be valid if made by any method authorized by Rule 4 of the West Virginia Rules of Civil Procedure. Service of notice by certified mail shall be valid if accepted by the licensee or third party, or if addressed to and mailed to such person's usual place of business and accepted by any officer, partner or employee of the licensee or third party. Any notice so mailed and accepted shall be presumed accepted by the licensee or third party. Any notice so addressed and mailed and subsequently refused or not claimed may be served by regular mail which is mailed, postage paid, to the same address and the date of posting in the mail shall be the date of service.

3.2 Petition for hearing. - A licensee or third party which disputes the requirement to comply with the notice must petition in writing for a hearing thereon, such petition to be personally or by certified mail filed with the Commission. The petition for a hearing must be served upon the Commission within twenty (20) days following the receipt by the licensee or third party of the notice in question.

3.3 Petition requirements. - The petition for a hearing is to be in writing, verified under oath by the licensee or third party, or its duly authorized representative having knowledge of the facts, with an original and one (1) copy. It shall be complete in itself so as to fully state the issues. No telegram, fax, telephone call, letter or similar communication will be regarded as a petition. The petition must contain all of the following:

3.3.1 ... A jurisdictional statement.

3.3.2 ... A clear and concise assignment of each item of error of the notice which the taxpayer alleges to have been committed by the Commission in its determination of noncompliance with a Commission policy or decision, with each assignment of error being shown in separately stated.

3.3.3 ... A clear and concise statement of fact upon which the petitioner relies as sustaining each assignment of error.

3.3.4 ... A prayer setting forth the relief sought.

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3.3.5 The signature of the petitioner or its officers.

3.3.6 A verification by the petitioner.

3.4 Hearings procedure. - When a petition for hearing is requested pursuant to the provisions of these regulations, the Racing Commission shall assign a time and place for a hearing and shall by certified mail notify the petitioner of such hearing by written notice at least twenty (20) days in advance thereof. Such hearing shall be held within ninety (90) days from the date of filing the petition for hearing unless continued by agreement of the parties or by the Racing Commission for good cause.

The hearing shall be informal and shall be conducted in an impartial manner by the Racing Commission or a designated hearing examiner. General principals of the West Virginia Rules of Evidence shall be observed. The burden of proof shall be upon the petitioner to show the matter in dispute is incorrect and contrary to law, either in whole or in part.

After any hearing as above provided for, the Racing Commission shall, within a reasonable time, give notice in writing of its decision. Unless an appeal from the decision of the Racing Commission rendered in any such hearing is taken within sixty (60) days after service of such notice, the Racing Commission's decision shall be final.

3.5 Subpoenas and subpoenas duces tecum. - For the efficient administration of the powers vested in the Racing Commission, in all hearings held under these regulations, the evidence of witnesses and the production of documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. Such subpoenas or subpoenas duces tecum may be issued at the request of the Racing Commission, the same to be issued by either the Commission or its duly appointed hearing examiner.

3.5.1 Every such subpoena and/or subpoena duces tecum shall be served at least five (5) days before the return date thereof, either by personal service made by any person eighteen (18) years of age or older or by registered or certified mail, but a return acknowledgement signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail.

3.5.2 All subpoenas and subpoenas duces tecum will be issued in the name of the Racing Commission, but any party requesting their issuance must see that they are properly served. Service of subpoenas and subpoenas duces tecum issued at the insistence of the Racing Commission are to be the responsibility of such Commission. Any person who serves any such subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this State, and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of West Virginia.

3.5.3 All such fees shall be paid by the Racing Commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the Commission.

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3.5.4 All such fees related to any subpoenas or subpoena duces tecum issued at the insistence of a licensee or third party shall be paid by the licensee or third party who requests the issuance of such subpoena or subpoena duces tecum.

3.5.5 All requests by the licensee, third party or the Commission for subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

3.5.6 Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it was issued by a circuit court of the State, and shall appear as witness and/or produce such books, records or papers in response to such subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by the Commission, shall compel obedience by attachment proceeds for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.

3.6 Continuances. - Hearings will not be delayed by a motion for continuance, unless it is made no later than ten (10) days before the date set for the hearing and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as good ground for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the Commission deems adequate.

3.7 Absence of petitioner, counsel or his representative. - The absence of the petitioner, his legal counsel or his representative at a hearing, after service of notice of time, place and date, shall not be the occasion for delay or continuance. The hearing shall proceed and the case be regarded as having been submitted for decision on the part of the absent petitioner or petitioners.

3.8 Hearing. - The Racing Commission may designate an examiner to conduct the hearing.

3.8.1 The petitioner may appear individually, or by legal counsel, or by duly authorized representative. In the absence of the petitioner, written evidence of a representatives' authority must be presented to the satisfaction of the Commission or its designated hearing examiner.

3.8.2 The petitioner, or his duly authorized representative, may, with the approval of the Commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Such waivers and agreements are to be in writing or upon the record.

3.9 Argument and briefs. - Petitioners will be given an opportunity for argument within the time limits fixed by the Commission or its designated hearing examiner following submission of evidence. The Commission, upon request of the petitioner, will accept briefs in lieu of argument.

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3.10 Evidence admissible at hearing. - The Commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law relating to communications and topics. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs. The Commission may exclude any evidence which is irrelevant, unduly repetitious, or lacking in substantial probative effect. The general principals of the West Virginia Rules of Evidence shall be observed.

3.11 Record of proceedings. - An appropriate record shall be made of all hearings held pursuant to these regulations.

3.12 Commission's decision. - After the conclusion and within a reasonable time after such hearing, the Commission or its designated hearing examiner shall give notice in writing of its decision. The decision shall set forth conclusions of both fact and law; be signed by the Chairman of the Commission, and be final unless vacated or modified upon judicial review thereof.

3.13 Appeal to circuit court. - An appeal by the applicant or licensee may be taken to the circuit court of the county wherein the licensee or third party is located or to the Circuit Court of Kanawha County, West Virginia, or with the judge thereof in vacation, if filed no later than thirty (30) days after the date upon which the petitioner received notice of the final order of the Racing Commission. The record for the appellate action shall be the record compiled before the Commission. The party requesting a transcript of the record shall be responsible for payment of all expenses incurred for the preparation thereof.

3.14 Supreme Court of Appeals. - An appeal may be taken by the licensee, third party or the Racing Commission from the final judgment of the circuit court to which the matter was appealed, the same to be taken in the manner and within the time provided by law for civil appeals generally.

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