

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #5

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2014 JUN 11 P 3:16

OFFICE OF THE  
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: WV Code 19-23-6(3)

RULE TYPE: PROCEDURAL  INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE \_\_\_\_\_

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW  
\_\_\_\_\_

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 RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Reimbursement of Capital Reinvestment Projects  
\_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS July 11, 2014



Authorized Signature

TITLE 178  
PROCEDURAL RULE  
WEST VIRGINIA RACING COMMISSION

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SERIES 9  
REIMBURSEMENT OF CAPITAL REINVESTMENT PROJECTS

WEST VIRGINIA  
SECRETARY OF STATE

**§ 178-9-1. General.**

1.1. Scope. -- This rule specifies the procedures for the disbursement of funds by the Racing Commission to thoroughbred and greyhound racetracks for expenditure upon capital improvements as authorized in West Virginia Code §§ 19-23-13c(b)(3)(A), (B) and (C) and 19-23-13c(c).

1.2. Authority. -- W. Va. Code § 19-23-6(3).

1.3. Filing Date. -- June 11, 2014.

1.4. Effective Date. -- July 11, 2014.

**§ 178-9-2. Definitions.**

2.1. "Capital improvement" means amounts paid or incurred to add to the value, or substantially prolong the useful life, of property owned by a racetrack or to adapt such property to a new or different use, as defined by the Internal Revenue Code, 26 U.S.C. § 263.

2.2. "Commission" means the West Virginia Racing Commission.

2.3. "Director of Audit" means the person employed by the West Virginia Racing Commission in accordance with West Virginia Code § 19-23-5(b), 178 W. Va. C.S.R. 1, § 5.4., and 178 W. Va. C.S.R. 2, § 4.4.

2.4. "Executive Director" means the person employed by the West Virginia Racing Commission in accordance with West Virginia Code § 19-23-5(a).

2.5. "Racetrack" means a thoroughbred or greyhound racetrack licensed by the West Virginia Racing Commission to conduct horse or dog racing for a purse where the pari-mutuel system of wagering is permitted.

**§ 178-9-3. Segregation of Funds.**

3.1. The Racing Commission shall maintain a segregated accounting of the funds available to each racetrack for capital improvements.

3.2. The balance of each segregated fund shall be reported to the Commission and to each of the racetracks by the Director of Audit at least once per calendar quarter.

**§ 178-9-4. Request for Reimbursement of Funds.**

4.1. A racetrack seeking reimbursement for funds expended upon a capital improvement shall make a written request to the Director of Audit which shall contain:

4.1.a. a detailed description of the capital improvement and its purpose;

4.1.b. a detailed description of how the capital improvement provides for the betterment of racing;

4.1.c. a detailed description of how the capital improvement benefits those engaged in racing activities;

4.1.d. an estimate of the capital improvement cost;

4.1.e. copies of the bids solicited by the racetrack from potential vendors; and,

4.1.f. a deduction for the salvage value received from any old asset.

4.2. Upon receipt of a written request from a racetrack seeking reimbursement for funds expended upon a capital improvement, the Director of Audit shall:

4.2.a. Include the reimbursement request information in the reports provided for in subsection 3.2. of this rule.

4.2.b. Submit the application to the Commission for approval, denial, or other action deemed appropriate by the Commission.

4.2.c. Provide notice to the racetrack that the request has been approved, denied, or otherwise acted upon by the Commission.

4.3. Any increase in the anticipated cost of a capital improvement project shall be submitted to and approved by the Commission.

**§ 178-9-5. Use of Funds.**

5.1. A racetrack may submit invoices for partial reimbursements as a capital improvement project progresses or may submit invoices for full reimbursement at the conclusion of a project.

5.2. Invoices, cancelled checks and other supporting documentation submitted in connection with a partial or full reimbursement request shall be provided by the racetrack for review by the Director of Audit. The Director of Audit shall instruct an employee of the Commission stationed at the racetrack to perform a site visit to ensure that the status of the capital improvement project supports the request.

5.3. Thereafter, the Director of Audit shall perform a site visit or desk review, whichever is appropriate, to ensure that the request submitted for reimbursement has been completed and that it is in conformance with the request approved by the Commission.

5.4. Thereafter, the Director of Audit shall obtain the approval of the Executive Director to process the request for payment out of the racetrack's segregated capital improvement account.

5.5. A request for partial or full reimbursement that includes the final ten percent of the amount of funds approved by the Commission shall not be reimbursed to the racetrack until a project-end audit has been completed. The audit shall be performed by an employee of the Commission, or an entity or person selected by the Commission.

5.6. Upon completion of a capital improvement project, the racetrack shall submit a letter certifying completion to the Director of Audit.

**Comments to proposed Title 178 Procedural Rule West Virginia Racing Commission Series 9**  
**Reimbursement of Capital Reinvestment Projects**

On behalf of Wheeling Island Race Track, I submit the following suggested additions to the Rule as currently proposed in order to ensure that this rule is entirely procedural and does not affect previous actions taken by the Racing Commission:

Add 4.4 to § 178-9-4 to read as follows:

4.4 Any capital improvements that have been previously approved by the Commission for reimbursements prior to the adoption of this rule shall not be subject to the requirements of this rule. All previously approved reimbursements for capital improvements shall be reimbursed in the manner that such reimbursements were approved of prior to adoption of this rule.

4.5 If a racetrack has received approval for reimbursement of a capital improvement and the cost of the capital improvement exceeds the balance of such racetrack's segregated fund, the racetrack shall be entitled to receive reimbursement for the remainder of the amount expended on such capital improvement in future years until the racetrack is fully reimbursed for such capital improvement.

**REIMBURSEMENT OF CAPITAL REINVESTMENT PROJECTS**

**RESPONSE TO THE COMMENTS**

The Racing Commission received one public comment on the rule from Wheeling Island Racetrack. Wheeling Island commented that the Commission should include language in the rule that clarifies that the rule does not apply to projects pre-dating the effective date of the rule and should include language that provides that if the Commission approves reimbursement for a project that exceeds the current balance of the racetrack's account, the Commission shall make installment payments out of future account balances until the total project is paid off.

The Commission appreciates Wheeling Island's comment and gave it consideration at its public meeting on May 20, 2014. After considering the comment, the Commission determined to leave the rule in the form that it was proposed and not to make any amendments. The Commission has only one approved project that is still ongoing that pre-dates the proposal of this procedural rule, and that is a project approved for Wheeling Island. The Commission has previously established the process for Wheeling Island to receive reimbursement out of its capital reinvestment account for that particular project and will continue to follow that process. The Commission sees no need to amend the rule to address or acknowledge one outstanding capital improvement project at Wheeling Island.

Further, the Commission has concern that Wheeling Island's proposal to amend the rule to have the Commission grant installment payments for capital improvement projects when a racetrack's current account will not cover the project is more substantive than procedural. In addition, the Commission is concerned about the public policy and fiscal implications of approving a rule that would bind the Commission to make future payments out of a racetrack's capital reinvestment account in future years.

**AMENDMENTS MADE TO THE RULE AS A RESULT OF PUBLIC COMMENT**

Consistent with the Commission's response to the only public comment received, no amendments were made to the rule as a result of that public comment.