WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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7/18/2019 4:39:35 PM

Office of West Virginia
Secretary Of State

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Racing Commission TITLE-SERIES: 178-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 178-01 Thoroughbred Racing

PRIMARY CONTACT

NAME: Kelli Talbott

ADDRESS: 812 Quarrier Street Second Floor

Charleston, WestVirginia 25301

EMAIL: kelli.d.talbott@wvago.gov

PHONE NUMBER: 304-558-8989

CITE STATUTORY AUTHORITY: WV Code 19-23-2(a), 19-23-3(17), 19-23-6, 19-23-8, 19-23-9, 19-23-13, 19-23-13b, 19-23-15

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Racing Commission has broad authority under 19-23-2(a), 19-23-3(17), 19-23-6, 19-23-8, 19-23-9, 19-23-13, 19-23-13b and 19-23-15 to promulgate rules to regulate thoroughbred racing. All of the proposed amendments are Association of Racing Commissioners International (RCI) Model Rules. They include adoption of the most recent version of the RCI Endogenous, Dietary or Environmental Substances Schedule; the adoption of the most recent version of the RCI Uniform Classification Guidelines for Foreign Substances; adoption of the most recent version of the RCI Penalty Guidelines for medication rule violations; adoption of RCI's void claim rule; adoption of RCI's Out of Competition Testing and Veterinary Practices Model Rule; adoption of RCI's Veterinarian's List Model Rule; adoption of RCI's Model Rule pertaining to Furosemide; and adoption of RCI's Model Rule relating to jockey physical examinations. A detailed summary of each of these rule changes is included in the Response To Public Comments that has been filed in connection with this rule. That summary explains the effect of each of these provisions and the reasons for the proposed adoption of the rules.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/10/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2019

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

There was no hearing, but the public comment period was noticed on the Racing Commission's website and an email was sent to racing constituent groups.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule regulates all aspects of thoroughbred racing in West Virginia. The purpose of the rule is to ensure the integrity of racing, the safety of racing participants, and the welfare of thoroughbred racehorses. The proposed changes are all RCI Model Rules that West Virginia seeks to adopt. A detailed description of each of the rule changes and the reasons for those changes are included on the Response to Public Comments documents filed in connection with this rule.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The reason that the Racing Commission seeks to make these RCI Model Rules a part of West Virginia's rule is to keep West Virginia's rule current with national and regional industry standards; to ensure that thoroughbred racing in West Virginia is conducted with the highest level of integrity and safety; to allow West Virginia's racetracks to gain NTRA Safety and Integrity Accreditation; and to ensure that West Virginia is not a regulatory outlier compared to other states that conduct thoroughbred racing.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

It is not anticipated that the proposed amendments to the rule will have any measurable impact on the revenues to State Government. It is hoped that keeping West Virginia's rules current with industry standards will allow West Virginia to continue to compete and to continue to derive revenue from thoroughbred racing.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

It is not anticipated that the proposed amendments to the rule will have any measurable economic impact on the state or its residents. But, it is hoped that keeping West Virginia's rules current with industry standards will allow racing constituents who derive income from thoroughbred racing to continue to do so.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

It is not anticipated that the proposed amendments will have any measurable impact on state revenues.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 178
LEGISLATIVE RULE
RACING COMMISSION

SERIES 1
THOROUGHBRED RACING

§178-1-1. General.

1.1. Scope. -- This rule regulates the conduct of thoroughbred racing in this state and the administration of the West Virginia Thoroughbred Development Fund.

1.2. Authority. -- W. Va. Code §§19-23-2(a), 19-23-3(17), 19-23-6, 19-23-8, 19-23-9, 19-23-13, 19-23-13b and 19-23-15.

1.3. Filing Date. – ~~May 3, 2019~~.

1.4. Effective Date. – ~~August 1, 2019~~.

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on ~~August 1, 2029~~ _____, 2030.

PART 1. DEFINITIONS.

§178-1-2. Definitions.

As used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed in this section.

2.1. "Accredited thoroughbred horse" means a horse that is registered with the West Virginia Thoroughbred Breeders Association and that is foaled in West Virginia or sired by an accredited West Virginia sire or, prior to the expiration of the raiser program set forth in West Virginia Code § 19-23-3(27), finished twelve consecutive months of verifiable residence in West Virginia as a yearling, except for the thirty days' grace period.

2.2. "Accredited West Virginia sire" means a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia, and is registered with the West Virginia Thoroughbred Breeders Association.

2.3. "Age" means the age of a thoroughbred, which is reckoned as beginning on the first day of January in the year in which it is foaled.

2.4. "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions, which include age, sex, earnings and number of wins.

2.5. "Also-Eligible" pertains to:

2.5.a. a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

2.5.b. in a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

2.6. "Appeal" means a request for the Racing Commission or its designee to hold a hearing and review any decisions or rulings of the stewards or to consider and review the ejection of an occupational permit holder by an association as authorized by West Virginia Code § 19-23-6 and subsection 6.1. of this rule.

2.7. "Applicant" means any racing association making application for a license or any person making application for a permit.

2.8. "Arrears" means all moneys due for entrance fees (including jockeys' fees), fines, subscriptions for stakes, purchase money in claiming or selling races and also any default in money incident to the rules.

2.9. "Association" or "racing association" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description licensed by the Racing Commission to conduct horse racing and pari-mutuel wagering.

2.10. "Association grounds" means all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities and parking lots and any other areas under the jurisdiction of the Racing Commission.

2.11. "Authorized agent" means a person appointed by an owner or a partnership to act as his or her representative by the execution of a notarized document signed by the owner and filed with the Racing Commission.

2.12. "Beneficial interest" means all direct or indirect forms of ownership or control, voting power, or investment power, held through any contract, lien, lease, partnership, stockholding syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

2.13. "Betting interest" means one or more horses in a pari-mutuel wagering contest which is identified by a single program number for wagering purposes.

2.14. "Bleeder" means a horse, which has demonstrated external evidence of exercise induced pulmonary hemorrhage (epistaxis, or bleeding from one or both nostrils) and/or the existence of hemorrhage into the trachea post-exercise as observed upon endoscopic examination or determined by laboratory methods.

2.15. "Bleeder list" means a tabulation of all horses designated as bleeders to be maintained by the Racing Commission veterinarian(s).

2.16. "Bookmaking" means a form of gambling that is not authorized by law in which chances are sold to individuals who may win a part or all of the pool depending on the outcome of the event for which the pool is made.

2.17. "Breakage" means the net pool minus payout.

2.18. "Bred" means the place of a horse's birth.

2.19. "Breeder" means the owner of the horse's dam at the time of foaling.

2.20. "Breeder of an accredited West Virginia horse" means the owner of the foal at the time it was born in West Virginia.

2.21. "Chairman" means the chairman of the Racing Commission.

2.22. "Claiming race" means a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with this rule.

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

2.24. "Commissioner" means a member of the West Virginia Racing Commission.

2.25. "Complaint" means all signed, written complaints made to the Racing Commission or any of its representatives.

2.26. "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

2.27. "Course" means the track over which horses race.

2.28. "Day" means a twenty-four (24) hour period ending at midnight.

2.29. "Dead heat" means the finish of a race in which the noses of two or more horses reach the finish line at the same time.

2.30. "Declaration" means the act of withdrawing an entered horse from a race prior to the closing of entries.

2.31. "Draw" means the process of selecting thoroughbreds and determining by lot their post or starting gate positions for a race in a manner to ensure compliance with the conditions of the rules of racing.

2.32. "Entry" means:

2.32.a. a horse eligible for and entered in a race; or

2.32.b. two (2) or more horses entered in the same race, which have common ties of ownership, lease or training.

2.33. "False Start" is when a horse(s) exits prematurely through the front of the gates prior to the

starter officially dispatching the field regardless of cause. This does not include a horse which exits through the front of the gates and is subsequently reloaded.

2.34. "Flat Race" means races in which horses mounted by jockeys run over a course on which no jumps or other obstacles are placed.

2.35. "Fund" means the West Virginia Thoroughbred Development Fund established under the provisions of W. Va. Code §19-23-13b.

2.36. A "Handicap" means a race in which the weights to be carried by the horses are assigned by the racing secretary for the purpose of equalizing their chances of winning for all horses entered.

2.37. "Handle" means the total amount of all pari-mutuel wagering sales less refunds and cancellations.

2.38. "Horse" means an equine registered to race including and designated as a mare, filly, stallion, colt, ridgeling or gelding.

2.39. "Horse racing" means any type of equine racing, including, but not limited to thoroughbred racing and harness racing, involving pari-mutuel wagering.

2.40. "Horse race meeting" means the whole period of time ending on December 31st for which the Racing Commission requires a license.

2.41. "Inquiry" means an investigation by the stewards of potential interference in a contest prior to declaring the result of that contest official.

2.42. "Jockey" means a professional rider issued an occupational permit to ride in races.

2.43. "Legitimate breakage" means the percentage left over in the division of a pool.

2.44. "License" means an authorization by the Racing Commission to an association to conduct horse racing with pari-mutuel wagering at a specified location.

2.45. "Licensee" means any racing association holding a license required by the provisions of W. Va. Code §19-23-1 *et seq.* and this rule.

2.46. "Maiden" means a horse, which has never, in any country, won an official flat race published in the reports, records and/or statistics of the Daily Racing Form, Equibase or other recognized publications, other than in a match or private sweepstakes. A maiden which has been disqualified after having finished first is still to be considered a maiden.

2.47. "Maiden race" means a contest restricted to nonwinners.

2.48. "Match" means a race between two or more horses under conditions agreed to by their owners.

2.49. "Meet" means the specified periods and dates within a race meeting, during which an association is authorized by the Racing Commission to conduct racing and/or pari-mutuel wagering.

2.50. "Meeting" means the specified periods and dates each year during which an association is authorized by the Racing Commission to conduct racing and/or pari-mutuel wagering.

2.51. "Milkshaking" or "biocarbonate loading" means a bicarbonate or other alkalinizing substance administered to a horse that elevates the horse's bicarbonate level or pH level above those existing naturally in the untreated horse at normal physiological concentrations as determined by the Commission, regardless of the means of administration.

2.52. "Month" means a calendar month.

2.53. "Mutuel Field" means a single betting interest involving more than one (1) horse which is formed when the number of horses starting a race exceeds the numbering capacity of the totalisator and where all horses of a higher number are grouped in the mutuel field.

2.54. "Nerved" means any horse on which a neurectomy has been performed.

2.55. "No contest" means a race canceled for any reason by the stewards.

2.56. "Nominator" means the person in whose name the horse is entered for a race.

2.57. "Objection" means a verbal claim of foul in a race lodged with the stewards or their designee by the horse's jockey, trainer, owner or the owner's authorized agent before the stewards declare the race official.

2.58. "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards.

2.59. "Official starter" means the official responsible for dispatching the horses for a race.

2.60. "Official running time" means the elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line.

2.61. "Off time" means the moment at which, on the signal of the official starter, the doors of the starting gate are opened, officially dispatching the horses in each race.

2.62. "Outstanding ticket" means a winning or a refundable pari-mutuel ticket, which was not cashed during the performance for which it was issued; also known as "outs".

2.63. "Overnight" means a contest for which the entries are closed at a time set by the association's racing secretary.

2.64. "Owner" means a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse. An interest in the winnings only of a horse shall not constitute ownership.

2.65. "Owner of an accredited West Virginia horse" means the owner at the time the horse earned designated purses to qualify for a restricted purse supplement.

2.66. "Owner of an accredited West Virginia sire" means the owner of record at the time the offspring is conceived.

2.67. "Paddock" means an enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

2.68. "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central pool. The odds of these wagers are to be reckoned in accordance with the collective amounts wagered upon each horse running in a horse race relative to the amount wagered on each horse in each pool with the total to be divided among the first three (3) contestants on the basis of the number of wagers.

2.69. "Pari-mutuel clerk" means any employee of a licensed racing association, who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds.

2.70. "Patron" means a member of the public present on the grounds of an association during a meeting for the purpose of wagering or to observe racing.

2.71. "Performance" means a schedule of races run consecutively as one program.

2.72. "Permit" or "occupational permit" means a permit required by W. Va. Code §19-23-2(a) and this rule for those who are involved in or employed by those involved in racing or operating a licensed racetrack or those operating concessions for or under authority from any association.

2.73. "Permit holder" or "occupational permit holder" means any individual holding a permit or occupational permit required by W. Va. Code §19-23-2(a) and this rule.

2.74. "Person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description.

2.75. "Pool" means a combination of interests in a joint wagering enterprise or a stake in the enterprise.

2.76. "Post position" means the pre-assigned position from which a horse will leave the starting gate.

2.77. "Post time" means the time set for the arrival at the starting point of the horses in a contest. Post time shall be shown at a reasonable time before the race on a clock device provided specifically for this purpose, and shall be prominently displayed and clearly readable from the grandstand.

2.78. "Preponderance of evidence" means evidence which is of a greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

2.79. "Primary Testing Laboratory" means a laboratory selected by the Racing Commission that is accredited by the Racing Medication Testing Consortium (RMTC).

2.80. "Private sweepstake" means a contest to which no money or other prize is added and which

has not at any time been advertised either by publication, or by circular, or entry blank, or in any other way.

2.81. "Program" means the published listing of all contests and contestants for a specific performance.

2.82. "Prospective licensee" means any association which has applied or intends to apply to become a "licensee" as defined under the provisions of W. Va. Code §§19-23-1 *et seq.*

2.83. "Protest" means a written complaint made to the stewards concerning a horse entered in a race in which the questioned horse is entered.

2.84. "Purse" means the total cash amount for which a race is contested.

2.85. "Purse race" means a race for money or other prize to which the owners of the horses engaged do not contribute.

2.86. "Race" means a stake, a purse, a sweepstake, a private sweepstakes, a match or overnight event, but does not include a steeplechase or hurdle race.

2.87. "Race day" means a calendar day during a race meeting in which pari-mutuel wagering is conducted on live racing.

2.88. "Racing official" means the officials of a race meeting set forth in section 7 of this rule and any other person and/or position designated by the Racing Commission.

2.89. "Raiser of an accredited West Virginia horse" means the owner of the yearling at the time it finished twelve (12) consecutive months of verifiable residence in the state. During the period, the raiser shall be granted one (1) month of grace for his or her horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. Prior to the horse being shipped out of the state for sales, the raiser shall notify the Racing Commission of his or her intentions.

2.90. "Random testing" means testing permit holders for alcohol or controlled substances, or collecting specimens or samples from thoroughbreds, in a manner that assures that all affected individuals or horses have an equal probability of being selected for testing.

2.91. "Reasonable cause/reasonable suspicion testing" means testing permit holders for alcohol or controlled substances, or collecting specimens or samples from thoroughbreds, based on the reasonable belief of the stewards that a permit holder has alcohol or a controlled substance in his or her system, or that a thoroughbred has a drug, medication or other prohibited substance in its system that may constitute a violation of this rule.

2.92. "Recognized meeting" means:

2.92.a. a meeting held under license of the Racing Commission; or

2.92.b. a meeting held in this or any other country under the sanction of a Commission or turf authority whose jurisdiction over the Racing Commission recognizes racing of any nature, and which

gives effect to sentences imposed by the Racing Commission upon those guilty of racing rule violations.

2.93. "Restricted area" means an enclosed portion of the association's ground where access is limited to an occupational permit holder.

2.94. "Result" means that part of the official order of finish used to determine the pari-mutuel payout of pools for each individual contest.

2.95. "Ruled-off" means the act of the stewards disallowing a person to enter or remain upon the premises of any or all licensed racetracks and/or simulcast facilities.

2.96. "Scratch" means the act of withdrawing an entered horse from a contest after the closing of entries.

2.97. "Scratch time" means the deadline for withdrawal of entries from a scheduled performance.

2.98. "Simulcast" means the transmission and/or reception for pari-mutuel wagering purposes of a live horse racing contest conducted at a licensed racetrack other than where the pari-mutuel wager is placed.

2.99. "Simulcast race day" means a day during a race meeting in which pari-mutuel wagering is conducted on races being conducted at a location other than the racetrack where the wager is placed.

2.100. "Sponging" means the use of a sponge or other objects that are used to interfere with the respiratory system of a horse.

2.101. "Stable Name" means a name used other than the actual legal name of an owner or lessee and registered with the Racing Commission.

2.102. "Stakes race" means a contest in which nomination, entry and/or starting fees are assessed and contribute to the purse, unless it is a guaranteed purse or an invitational. No overnight race shall be considered a stakes race.

2.103. "Starter" means a horse which becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

2.104. "Steward" means a duly appointed racing official with powers and duties specified by W. Va. Code §19-23-1 *et seq.* and/or this rule.

2.105. "Sweepstake" means a race in which the entrance fee, subscription and/or other contribution of three (3) or more owners are distributed according to the conditions of the race. The race is still a sweepstake when money or any other prize is added, but no overnight race, whatever its conditions, shall be considered to be a sweepstake.

2.016. "Tailed" means the restraining of an unruly horse in the starting gate by manually raising his tail.

2.017. "Tonged" means the restraining of an unruly horse in the starting gate by clamping his ear with a set of tongs.

2.108. "Thoroughbred race or thoroughbred racing" means that form of horse racing in which each horse participating in that race is a thoroughbred (i.e., meeting the requirements of and registered with "The Jockey Club") and is mounted by a jockey.

2.109. "To the dime" means that wagers will be figured and paid to the dime.

2.110. "Touting" means soliciting or providing unauthorized wagering tips on horses for a profit in races under the jurisdiction of the Racing Commission. Touting is not authorized or permitted with the exception that this will not apply to authorized tip sheets specified in the rule.

2.111. "Walkover" means a race in which only one (1) horse starts or in which all the starters are owned by the same interest.

2.112. "Week" means a calendar week.

2.113. "Weigh in" means the act of a jockey weighing himself or herself in the presence of the clerk of scales after a race.

2.114. "Weigh out" means the act of a jockey weighing himself or herself in the presence of the clerk of scales prior to a race.

2.115. "Weight for Age" means a race in which a fixed scale is used to assign the weight to be carried by individual horses according to age, sex, distance of the race, and season of the year without penalties or allowances.

2.116. "Winner" means the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

2.117. "Year" means a calendar year.

PART 2. GENERAL AUTHORITY.

§178-1-3. General Authority of the Racing Commission.

3.1. This rule and any amendments or additions to this rule apply to all persons, firms, associations, partnerships, or corporations holding, conducting, participating in or observing a meeting.

3.2. The laws of the state of West Virginia and this rule promulgated by the Racing Commission supersede the conditions of a race or the regulations of a racing association.

3.3. The jurisdiction of the Racing Commission over matters related to subjects covered by the laws of this state governing racing or the rules of the Racing Commission is continuous throughout the year.

3.4. Members of the Racing Commission and Racing Commission employees shall not directly or indirectly wager on the outcome of any race under the jurisdiction of the Racing Commission.

§178-1-4. Power Of Entry.

4.1. Members of the Racing Commission, the stewards, and the Racing Commission's designated employees and representatives have the right of full and complete entry to any and all parts of the grounds of a racing association licensed to conduct thoroughbred racing.

4.2. Members of the Racing Commission, the stewards, and the Racing Commission's designated employees and representatives may permit and direct any individual to enter in or upon the stables, rooms, trailers, vehicles or any other place within the grounds of a racing association licensed to conduct thoroughbred racing.

§178-1-5. Racing Commission personnel.

The following provisions apply to the employment of certain personnel by the Racing Commission to assist it, the stewards, the Racing Commission veterinarians and other Racing Commission employees and representatives in fulfilling their regulatory duties and obligations:

5.1. Security Officer. The Racing Commission shall employ a security officer at each licensed racetrack. The security officer's duties shall include:

5.1.a. working with and/or at the direction of the stewards and/or the Racing Commission veterinarian(s) and/or the Racing Commission to investigate and inquire into any alleged violations of this rule or the laws of this state governing racing;

5.1.b. working with and/or at the direction of the stewards and/or the Racing Commission to review and evaluate applications for occupational permits or licenses, and any information submitted or gathered in connection with such applications;

5.1.c. determining, or assisting the Racing Commission and/or the stewards in determining, that all persons participating in racing that are required to hold an occupational permit have such a permit;

5.1.d. inspecting the association's restricted areas, including, but not limited to, the test barn, the barn/stable area, the wagering area, the paddock, and the jockeys' room, to determine if proper security measures are in effect, to ensure that the integrity of these areas are preserved and protected, and to ensure that all personnel having access to the restricted areas hold occupational permits or other proper credentials;

5.1.e. working with and assisting all Racing Commission employees and representatives in the performance of their duties to ensure the enforcement of this rule and the laws of this state governing racing, and to ensure that the integrity of racing is preserved and protected; and

5.1.f. any other duties that may be assigned by the Racing Commission.

5.2. Investigator(s). The Racing Commission may employ one (1) or more persons as investigators at each licensed racetrack. The duties and responsibilities of the investigator(s) shall be fixed by the Racing Commission, but may include working in connection with the Racing Commission security officer in the performance of his or her duties.

5.3. License Clerks. The Racing Commission shall employ a minimum of two (2) persons as license clerks at each licensed racetrack. The license clerks' duties shall include:

5.3.a. distributing applications for occupational permits;

5.3.b. assisting in the review of applications for occupational permits;

5.3.c. maintaining records and data on each individual who applies for and/or is issued an occupational permit;

5.3.d. collecting fees and fines imposed by the stewards and/or the Racing Commission and reporting to the Racing Commission the amount of such fines and fees collected;

5.3.e. depositing fines and fees collected in accordance with Racing Commission policy and procedure;

5.3.f. assisting the stewards in the performance of their duties and responsibilities; and

5.3.g. any other duties that may be assigned by the Racing Commission.

5.4. Director of Audit and Auditors of Pari-Mutuel Wagering. The Racing Commission shall employ a director of audit in accordance with W. Va. Code §19-23-5(b) and a minimum of one (1) auditor of pari-mutuel wagering to be stationed at each licensed racetrack. The director of audit and the auditors of pari-mutuel wagering shall be certified public accountants or experienced accountants. The duties and responsibilities of the director of audit and the auditors of pari-mutuel wagering shall be fixed by the Racing Commission. The following provisions apply to the director of audit and the auditors of pari-mutuel wagering:

5.4.a. The director of audit and the auditors of pari-mutuel wagering shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a pari-mutuel commission as provided in the West Virginia Code, and is otherwise complying with the other provisions of the West Virginia Code relating to the pari-mutuel system.

5.4.b. The director of audit and the auditors of pari-mutuel wagering shall have full and free access to all records and papers maintained or generated pertaining to the pari-mutuel system of wagering at licensed racetracks and shall make a written report to the Racing Commission as to whether or not the licensee has deducted and retained any pari-mutuel commission in excess of that permitted under the West Virginia Code or has otherwise failed to comply with the provisions of those sections of the Code pertaining to the pari-mutuel system.

5.4.c. Copies of all pari-mutuel work sheets are to be turned over by the association to the auditor of pari-mutuel wagering immediately after each race.

5.4.d. At the end of each race day, the association shall produce a consolidated report showing detailed figures of the pari-mutuel handle, pari-mutuel commission and breakage to the auditor of pari-mutuel wagering. The association shall also provide the auditor of pari-mutuel wagering a report of pari-mutuel tickets paid at the end of each race day.

5.4.e. At the end of each race day, every signed complaint made by any patron, with reference to transactions with the association's pari-mutuel clerks, shall be reported by the association on printed complaint forms and furnished to the auditor of pari-mutuel wagering.

5.4.f. A totalisator report shall be maintained by the association that reflects all errors, commonly called shorts or overs, made by the association's pari-mutuel clerks. The report shall detail the name of the clerk, his or her working place, and the amount involved. At the end of each meet, this report shall be provided to the auditor of pari-mutuel wagering.

5.4.g. In accordance with W. Va. Code §19-23-13, all moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety (90) days after the close of the horse race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the director of audit within fifteen (15) days after the expiration of the ninety (90) day period. The licensee shall give any information requested by the Racing Commission and/or the director of audit concerning outstanding and unredeemed tickets including, but not limited to:

5.4.g.1. the "outs" ledger enumerating all outstanding pari-mutuel tickets at the end of the ninety (90) day period;

5.4.g.2. a statement accompanying the "outs" ledger setting forth the dollar amount of the redeemed tickets in the ninety (90) day period;

5.4.g.3. a statement accompanying the "outs" ledger setting forth the quantity and amount of each denomination redeemed during the ninety (90) day period; and

5.4.g.4. a statement verifying that the redeemed amount was subtracted from the "outs" balance which existed at the close of the meeting with the remaining balance to be included in the remittance of the association in settlement of the "outs" account for the meeting.

5.4.h. The association shall provide a work area for the exclusive use of the auditor of pari-mutuel wagering that is subject to the approval of the Racing Commission. This work area shall:

5.4.h.1. be located within or adjacent to the totalisator room with desk and chair facilities;

5.4.h.2. permit direct view or view by closed circuit television of the totalisator facilities within the totalisator room, such as control desk consoles, inside totalisator board or closed circuit television monitors of the outside totalisator board whichever is used, and printers;

5.4.h.3. include space for locking file cabinets within the work area or other proper storage facilities to be supplied by the association;

5.4.h.4. include an audio listening device for the public address system being used by the association so that announcements made on the address system can be heard intelligibly in the work area; and

5.4.h.5. include power outlets to operate electronic equipment.

5.4.i. Purging of pari-mutuel tickets shall be done in the presence of the auditor of pari-mutuel wagering, a totalisator representative, and an association representative and may only be done after the association provides two (2) weeks' prior notice to the director of audit.

§178-1-6. Ejection/Exclusion.

6.1. Any person ejected by the stewards or the association from the grounds of an association shall be denied admission to the grounds until permission for his or her reentry has been obtained from the association and the Racing Commission. However, all occupational permit holders who are ejected have the right of appeal to the Racing Commission.

6.2. The stewards or the association have the power to suspend or exclude from the stands and grounds persons acting improperly or whose behavior is otherwise objectionable. The stewards shall enforce the suspension or exclusion.

6.3. When a person is excluded from a racetrack or is suspended, he or she is not qualified, whether acting as agent or otherwise, to subscribe for, to enter, or run any horse in any race either in his or her own name or in that of any other person until the stewards rescind their penalty.

PART 3. RACING OFFICIALS.

§178-1-7. General Provisions.

7.1. Racing Officials. Officials of a race meeting, unless otherwise approved by the Racing Commission, are as follows: Three (3) stewards, three (3) placing judges, clerk of scales, starter, timer, paddock judge, Racing Commission veterinarian(s), association's racing secretary and assistants, horse identifier, clocker and jockey room custodian.

7.2. Eligibility. To qualify as a racing official, the appointee shall be:

7.2.a. of good character and reputation;

7.2.b. experienced in thoroughbred racing;

7.2.c. familiar with the duties of the position and with the Commission's rules of thoroughbred racing;

7.2.d. mentally and physically able to perform the duties of the job; and

7.2.e. in good standing and not under suspension or ineligible in any racing jurisdiction.

7.3. Approval and Issuance of Permits. The following provisions apply to the approval and issuance of permits to racing officials:

7.3.a. The Racing Commission, in its sole discretion, may determine the eligibility of a racing official and, in its discretion, may approve or disapprove any racing official for an occupational permit.

7.3.b. The association may designate persons to fill the positions of racing officials and request that they be approved for the positions by the Racing Commission. No person shall be approved by the Racing Commission as a steward, placing judge, or other racing official unless he or she has taken and satisfactorily passed a yearly optical examination.

7.3.c. Unless prior written approval is obtained from the Racing Commission, no person shall be

approved as a racing official of any racetrack who is an officer of that racetrack or who has any financial interest in that track, or who has any financial interest in any jockey or horses running on the track except that a racing official may have an interest in one or more horses as a breeder.

7.4. Prohibited Practices. While serving in an official capacity, racing officials and their assistants shall not:

7.4.a. participate in the sale or purchase, or ownership of any thoroughbred racing at the meeting;

7.4.b. sell or solicit horse insurance on any thoroughbred racing at the meeting;

7.4.c. be the holder of an occupational permit in any other capacity without permission of the Racing Commission, or in case of an emergency, the permission of the stewards;

7.4.d. directly or indirectly wager on the outcome of any race under the jurisdiction of the Racing Commission; or

7.4.e. consume or be under the influence of alcohol or any prohibited substances while performing official duties.

7.5. Report of Violations. Racing officials and their assistants shall report immediately to the stewards every violation of these rules and of the laws of this state governing racing.

7.6. Observations and Notifications. Any racing official shall report to the stewards as soon as possible any perceived issues with a horse based on its condition prior to the race which may significantly affect the running of the race. Upon notification to the stewards, they shall conduct an immediate investigation.

7.7. Complaints Against Racing Officials. The following provisions apply to the filing and disposition of complaints against racing officials:

7.7.a. Complaints against any steward shall be made in writing to the Racing Commission and shall be signed by the complainant.

7.7.b. Any complaint against a racing official other than a steward shall be made to the stewards in writing and shall be signed by the complainant. All such complaints shall be reported to the Racing Commission by the stewards, together with a report of the action taken or the recommendation of the stewards.

7.7.c. A racing official may be held responsible by the stewards or the Racing Commission for the actions of their assistants.

7.8. Appointment of Racing Officials. All racing officials shall be appointed by the association holding the meeting, with the exception of the Racing Commission veterinarian(s) and the stewards, who shall be appointed by the Racing Commission. All association appointments, however, are subject to the approval of the Racing Commission, which reserves the right to demand a change of personnel for what the Racing Commission, in its sole discretion, considers sufficient reason. The successor to the replaced official is also subject to the approval of the Racing Commission.

7.9. Appointment of Substitute Racing Officials. When a vacancy occurs among the racing officials other than the stewards and the Racing Commission veterinarian(s), and when the association has not or is unable to fill a vacancy before the post time of the first race of the day, or when a vacancy occurs during the running of the races, the stewards shall fill the vacancy immediately.

§178-1-8. Stewards.

8.1. Appointment. There shall be three (3) stewards appointed by the Racing Commission for each race meeting. One (1) of the three (3) stewards shall be appointed by the Racing Commission to the position of chief steward. In the event that a steward is temporarily incapacitated or for some reason cannot serve, the Racing Commission or chief steward shall deputize someone experienced in thoroughbred racing to serve for him or her in his or her absence.

8.2. Accreditation and Continuing Education. The following provisions apply to the accreditation and continuing education requirements of the stewards:

8.2.a. To qualify for appointment as a steward, the appointee shall meet the experience, education and examination requirements necessary to be accredited by the Racing Officials Accreditation Program (ROAP) in association with, but not limited to, the University of Arizona and the University of Louisville, and shall be in good standing with all racing jurisdictions.

8.2.b. The stewards shall attend and participate in any continuing education courses and training related to thoroughbred racing directed by the Racing Commission.

8.3. General Authority. The following provisions pertain to the general authority of the stewards:

8.3.a. The stewards are strictly responsible to the Racing Commission for the conduct of all meetings in every detail, directly or indirectly, pertaining to the racing law and rules of the Racing Commission.

8.3.b. The stewards have general supervision and authority over all occupational permit holders or licensees and other persons attendant to horses and/or on the association grounds.

8.3.c. In their discretion and where fraud is suspected, the stewards shall have the authority to mandate the selection of another jockey to ride a thoroughbred.

8.3.d. A majority vote of the stewards shall decide any question to which the authority of the stewards extends.

8.3.e. When the stewards determine, after conferring with the association's management, representatives of the horsemen, jockeys, and the track superintendent, that races cannot be run, then the stewards shall cancel such races.

8.3.f. The stewards may demand for inspection any permit holder's papers, and documents with respect to a contract between a jockey and his or her employer or employers, and all documents of an agreement, or the credentials of an authorized agent.

8.3.g. The stewards may call on any person in whose name a horse is entered to produce proof

that the horse entered is not the property, either wholly or in part, of any person who is disqualified, and to produce proof of the extent of his or her interest or property in the horse. If proof is not given to their satisfaction, the stewards may declare or eliminate the horse from the race.

8.3.h. The stewards may interpret this rule and decide all questions of racing not specifically covered by this rule.

8.4. Period of Authority. The stewards' jurisdiction to act in any matter occurring during the race meeting extends after the conclusion of the meeting.

8.5. Disciplinary action. The following provisions pertain to disciplinary action by the stewards:

8.5.a. The stewards shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

8.5.b. The stewards shall have authority to issue a ruling citing any permit holder for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with this rule.

8.5.c. The stewards may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of documents or other evidence related to any investigation or hearing.

8.5.d. The stewards may at any time inspect permit documents, license documents, registration papers, and any other documents related to racing.

8.5.e. The stewards have the power to administer oaths and examine witnesses.

8.5.f. The stewards shall consult with the Racing Commission veterinarian(s) to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

8.5.g. The stewards may impose one of the following penalties or any combination of two or more of the following penalties on a permit holder for a violation of these rules:

8.5.g.1. issue a reprimand;

8.5.g.2. assess a fine not to exceed one hundred thousand dollars ($100,000.00) or an amount equal to 100% of the purse per violation;

8.5.g.3. require forfeiture or redistribution of a purse or award;

8.5.g.4. place a permit holder on probation;

8.5.g.5. suspend a permit or racing privileges for an indefinite or fixed period;

8.5.g.6. revoke a permit; or

8.5.g.7. exclude from grounds under the jurisdiction of the Racing Commission.

8.5.h. No racing official other than the stewards may impose disciplinary action against a permit holder. The starter may recommend disciplinary action to the stewards.

8.5.i. The stewards shall submit a copy of every ruling to the Racing Commission.

8.5.j. If the stewards determine that a ruling was issued in error, any disciplinary action imposed in connection with such ruling may be rescinded by the stewards.

8.5.k. A stewards' ruling shall not prevent the Racing Commission from modifying the penalty or penalties imposed.

8.5.l. The stewards may refer any matter to the Racing Commission and may include recommendations for disposition. The absence of a stewards' referral shall not preclude Racing Commission action in any matter.

8.5.m. Purses, prizes, awards, and trophies shall be redistributed if the stewards or Racing Commission order a change in the official order of finish.

8.5.n. All fines imposed by the stewards shall be paid to the Racing Commission within seven (7) calendar days after the ruling is issued, unless otherwise ordered by the stewards.

8.5.o. No person shall assume or pay, directly or indirectly, a fine imposed by the stewards or the Racing Commission upon another person.

8.5.p. The stewards have the authority to fine or suspend persons guilty of violating the written policies, rules or regulations of the association. Such written policies must be filed with the stewards and displayed in the association's racing secretary's office. Any written policies, rules or regulations of the association that conflict with this rule or the laws of this state governing racing are null and void.

8.6. Stewards' Presence. The following provisions apply to the presence of the stewards:

8.6.a. On each racing day, and those days when there is no racing but where entries are being taken for the next succeeding day of racing, one (1) or more stewards shall be on duty from the time the association's racing secretary's office opens until the entries are closed. Provided that, if the stewards depart from association grounds prior to the time that entries are closed, then at least one (1) steward shall be available by phone until close of entries.

8.6.b. Three (3) stewards shall be present in the stewards' stand during the running of each race.

8.7. Order of Finish for Pari-Mutuel Wagering. The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.

8.8. Cancel Wagering. The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

8.9. Records and Reports. The stewards shall maintain a log of the stewards' official activities. The log shall describe all questions, disputes, protests, complaints, or objections brought to the attention of the stewards on all interviews, investigations and rulings made by the stewards. The log shall be available at all times for inspection by the Racing Commission or its designees and by anyone appealing a

stewards' ruling to the Racing Commission.

8.10. Stewards' List. The following provisions apply to the stewards' list:

8.10.a. The stewards shall maintain a stewards' list which shall be posted in the office of the association's racing secretary. The stewards' list shall contain a list of the thoroughbreds which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that endangers the health or safety of other participants in racing.

8.10.b. The stewards may place a thoroughbred on the stewards' list when there exists a question as to the exact identification or ownership of the thoroughbred.

8.10.c. A thoroughbred which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the thoroughbred can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing.

8.10.d. A thoroughbred which has been placed on the stewards' list because of questions as to the exact identification or ownership of the thoroughbred, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

§178-1-9. Racing Secretary.

9.1. General Authority. The following provisions apply to the general authority of the association's racing secretary:

9.1.a. The association's racing secretary or his or her assistants, shall discharge all the duties of his or her office, expressed or implied that are required by this rule, and he or she shall report to the stewards in writing all violations of this rule.

9.1.b. The association's racing secretary shall maintain a complete record of all races.

9.1.c. The association's racing secretary shall receive all entries and declarations, and he or she, or any other person designated by the association, shall receive all stakes, entrance moneys and fees incident to the meeting within fourteen (14) days after the conclusion of the meeting, and shall disburse all receipts of money to any person that is to receive any money.

9.2. Certificates. The racing secretary or his or her designees shall be responsible for receiving, inspecting and safeguarding the foal and health certificates, current negative Coggins test for equine infectious anemia (EIA), and other documents of eligibility, for all horses competing at the track or stabled on the grounds.

9.3. Allocation of Stalls. The racing secretary or his or her designee shall assign stall applicants such stabling as is deemed proper and maintain a record of arrivals and departures of all horses stabled on association grounds.

9.4. Conditions. The following provisions apply to the association's racing secretary's authority over the conditions of races:

9.4.a. The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the Racing Commission and posted in the racing secretary's office.

9.4.b. The racing secretary shall be responsible for making reasonable interpretations of the conditions and eligibility he or she has established.

9.4.c. For the purpose of establishing conditions, winnings shall be considered to include all monies and prizes won up to the time of the start of a race.

9.4.d. Winnings during the year shall be calculated by the racing secretary from the preceding January 1, unless otherwise prescribed by the conditions of the race.

9.5. Daily Program. The following provisions apply to the association's racing secretary's duties and responsibilities regarding the daily program:

9.5.a. The association's racing secretary shall compile an official program for each racing day which shall contain the names of the thoroughbreds which are to run in each race together with their respective post positions, age, color, sex, breeding, jockey, owners or stable name, racing colors, weight carried, conditions of the race, the order in which each race shall be run, the distance to be run and the claiming price if applicable.

9.5.b. The association's racing secretary shall publish on the program any information and notices to the public as the Racing Commission may direct.

9.5.c. The association's racing secretary is responsible for any error in the program excluding printing errors corrected on the proof, but not corrected by the printer.

9.5.d. The advertising in the program shall not pertain to wagering facilities outside the enclosure or selections or recommendations by tipsters and/or those sponsoring off track daily selection cards, unless approved by the Racing Commission.

9.6. Stakes and Entrance Money Records. The association's racing secretary shall be the caretaker of the permanent records of all stakes and shall verify that all entrance monies due are paid prior to entry for races conducted at the meeting.

§178-1-10. Horsemen's Bookkeeper.

10.1. General Authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described in this section and maintain any other records and accounts and perform any other duties prescribed by the association and the Racing Commission.

10.2. Records. The following provisions apply to the records maintained by the horsemen's bookkeeper:

10.2.a. The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each thoroughbred owner, trainer or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

10.2.b. The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements and registrations of authorized agents.

10.2.c. All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the association.

10.2.d. All records of the horsemen's bookkeeper including records of accounts and monies and funds kept on deposit are subject to inspection by the Racing Commission at any time.

10.2.e. If the horsemen's bookkeeper is an employee of the association, the association licensee is subject to disciplinary action by the Racing Commission for any violations of or non-compliance with the provisions of this rule.

10.3. Payment of Purses. The following provisions apply to the payment of purses:

10.3.a. The horsemen's bookkeeper shall receive, maintain and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, along with all applicable taxes and other monies that properly come into his/her possession in accordance with the provisions of Racing Commission rules.

10.3.b. The horsemen's bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

10.3.c. The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, along with all applicable taxes, upon request, within forty-eight (48) hours of receipt of notification that all tests with respect to such races have cleared the primary testing laboratory as reported by the stewards or the Racing Commission, except that minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory(ies).

10.3.d. In the event a protest or appeal has been filed with the stewards or the Racing Commission, the horsemen's bookkeeper shall disburse the purse within forty-eight (48) hours of receipt of a dismissal or a final order disposing of such protest or appeal.

10.4. Holder of claim against thoroughbred. The holder of a claim whether it is a mortgage, a bill of sale or lien of any kind against a thoroughbred, shall file the claim with the horsemen's bookkeeper prior to the time the thoroughbred starts. The holder of a claim who fails to do so forfeits his or her rights in the winnings of the thoroughbred prior to the time his or her claim is properly filed.

10.5. Outstanding accounts. Owners having unpaid jockey or other fees at the close of a race meeting, shall be billed by the horsemen's bookkeeper within twenty (20) days of the close of the race meet, with a duplicate copy of a bill to the trainer. All owners must pay their accounts within thirty (30) days from billing dates. At the expiration of the thirty (30) day period, the association shall notify the Racing Commission or the stewards, in writing, of all delinquent accounts, at which time all owners with outstanding accounts may have their occupational permits suspended by the stewards until the fees are paid.

§178-1-11. Paddock Judge.

11.1. General Authority. The paddock judge shall:

11.1.a. supervise the assembly of thoroughbreds in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;

11.1.b. maintain a written record of all equipment, inspect all equipment of each thoroughbred saddled, and report any change thereof to the stewards;

11.1.c. prohibit any change of equipment without the approval of the stewards;

11.1.d. ensure that the saddling of all thoroughbreds is orderly, open to public view, free from public interference, and that thoroughbreds are mounted at the same time, and leave the paddock for the post in proper sequence;

11.1.e. supervise paddock schooling of all thoroughbreds approved for such by the stewards;

11.1.f. report to the stewards any observed cruelty to a thoroughbred;

11.1.g. ensure that only properly authorized persons are permitted in the paddock; and

11.1.h. report to the stewards any unusual or illegal activities.

11.2. Paddock Judge's List. The following provisions apply to the paddock judge's list:

11.2.a. The paddock judge shall maintain a list of thoroughbreds which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing. The owner, trainer or their designee shall be verbally notified by the paddock judge if his or horse is placed on the paddock judge's list.

11.2.b. Upon request, the paddock judge shall provide a copy of the list to the stewards.

11.2.c. To be removed from the paddock judge's list, a thoroughbred must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the thoroughbred is capable of performing safely in the paddock.

§178-1-12. Horse Identifier.

12.1. General Authority. The horse identifier shall:

12.1.a. when required, ensure the safekeeping of registration certificates held at the racetrack for thoroughbreds stabled and/or racing on association grounds;

12.1.b. inspect documents of ownership, registration or breeding necessary to ensure the proper identification of each thoroughbred scheduled to compete at a race meeting;

12.1.c. examine every starter in the paddock for sex, color, markings and lip tattoo, microchip (ISO 11784), freeze brand or other identification method approved by the appropriate breed registry and the Racing Commission for comparison with its registration certificate to verify the thoroughbred's identity; and

12.1.d. supervise the tattooing, microchip implanting, freeze branding or other method of identification approved by the appropriate breed registry and the Racing Commission for identification of any thoroughbred located on association grounds, if he or she is the official tattooer.

12.2. Report of Violations. The identification of thoroughbreds shall be made by the horse identifier who shall report any irregularities to the paddock judge and stewards.

12.3. Fraud or attempted fraud in the identification of a thoroughbred. Any person attempting to establish the identity of a thoroughbred or its ownership is responsible to the same extent as the owner, and shall be subject to a fine or suspension in the case of fraud or attempted fraud.

§178-1-13. Clerk of Scales.

13.1. General Authority. The clerk of scales shall:

13.1.a. verify the presence of all jockeys in the jockeys' room at the appointed time;

13.1.b. verify that all such jockeys have a current jockey's permit issued by the Racing Commission;

13.1.c. verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately;

13.1.d. oversee the security of the jockeys' room including the conduct of the jockeys and their attendants;

13.1.e. promptly report to the stewards any infraction of the rules with respect to weight, weighing, riding equipment, deficiencies in equipment, or conduct;

13.1.f. assist the jockey room custodian;

13.1.g. record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;

13.1.h. maintain the record of applicable winning races on all apprentice jockey certificates at the meeting;

13.1.i. release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet;

13.1.j. assume the duties of the jockey room custodian in his or her absence;

13.1.k. cause any overweight to be displayed immediately to the public and cause this information to be immediately announced over the public address system by the announcer; and

13.1.l. use reasonable efforts to verify that safety equipment required to be worn by jockeys is worn.

§178-1-14. Jockey Room Custodian.

14.1. General Authority. The jockey room custodian shall:

14.1.a. maintain order, decorum, and cleanliness in the jockey and scale rooms;

14.1.b. assist the clerk of the scales in the performances of his or her duties;

14.1.c. ascertain that no persons, other than racing officials, members of the Racing Commission or its representatives, representatives of jockeys, and necessary jockey room attendants are admitted to the jockey room on a day of racing without the express permission of the stewards for each time of entry;

14.1.d. oversee the care and storage of all racing colors;

14.1.e. oversee the jockeys' attendants and arrange their rotation among jockeys in the matter of weighing out;

14.1.f. ascertain that any jockey attendant not approved by the stewards and not holding an occupational permit issued by the Racing Commission is permitted to assist any jockey at any time;

14.1.g. report any irregularities to the stewards that occur in the jockey room;

14.1.h. ascertain that jockeys are neat in appearance and attired in keeping with this rule when they leave the room to ride in a race;

14.1.i. notify the jockeys that it is time to go directly to the paddock and notify the stewards of any jockey not in compliance; and

14.1.j. ensure that the jockeys' room is properly equipped and inform the stewards and association of any deficiencies.

14.2. Prohibited conduct. The jockey room custodian shall not lend money to any jockey or any other person in the jockey room and shall not sell or exchange raffle tickets. The jockey room custodian shall not be involved in any financial transactions of any kind in the jockey room, with the exception of the buying and selling of racing equipment used by the jockeys.

§178-1-15. Starter.

15.1. General Authority. The starter shall:

15.1.a. have complete jurisdiction over the starting gate, the starting of thoroughbreds and the authority to give orders not in conflict with the rules of racing as may be required to ensure all participants an equal opportunity to a fair start;

15.1.b. appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle thoroughbreds in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters;

15.1.c. ensure that at least one assistant starter is available for each thoroughbred in a race,

unless permission is otherwise granted by the stewards;

15.1.d. assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions before post time for the race;

15.1.e. assess the ability of each person applying for a jockey's permit in breaking from the starting gate and working a thoroughbred in the company of other thoroughbreds, and make such assessment known to the stewards;

15.1.f. load thoroughbreds into their positions in the starting gate in alternating sequence, with the thoroughbred assigned to the post closest to the inside rail and the thoroughbred assigned to the post position nearest to the middle of the field being loaded first, and so on, until the field is properly loaded. When there are less than seven (7) thoroughbreds running a race, they may be loaded in the starting gate in the order of their positions beginning from the inside rail. Vicious and unruly horses may be loaded out of sequence in the discretion of the starter; and

15.1.g. assess any thoroughbred that has not run a race within the preceding six (6) months and determine whether or not it can break out of the gate satisfactorily.

15.2. Reloading of thoroughbreds. If a thoroughbred or thoroughbreds break through the gate or unseat his or her rider after part or all of the field is loaded in the gate for the start, and that thoroughbred is not immediately taken in hand by the outrider and brought back for reloading, the starter may unload the remaining thoroughbreds in the gate and reload in their proper order when the runaway thoroughbred is brought back in position for loading.

15.3. Starter's List. No thoroughbred shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all thoroughbreds which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. A thoroughbred on the starter's list shall be refused entry until it has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the direct supervision of the starter or an assistant. The starter shall provide copies of the starter's list to the stewards and the association's racing secretary, including information pertaining to the thoroughbreds that are schooled sufficiently to be permitted to run.

15.4. Assistant Starters. With respect to an official race, the assistant starters shall not:

15.4.a. handle or take charge of any thoroughbred in the starting gate without the expressed permission of the starter;

15.4.b. impede the start of a race;

15.4.c. apply a whip or other device, with the exception of steward-approved twitches, to assist in loading a thoroughbred into the starting gate;

15.4.d. slap, boot or otherwise dispatch a thoroughbred from the starting gate;

15.4.e. strike or use abusive language to a jockey; or

15.4.f. accept or solicit any gratuity or payment other than his/her regular salary, directly or

indirectly, for services in starting a race.

15.5. Report Violations. The starter and assistant starters shall report all unauthorized activities to the stewards.

§178-1-16. Timer/Clocker.

16.1. General Authority of the Timer. The following provisions shall apply to the general authority of the timer:

16.1.a. The timer shall accurately record the time elapsed between the start and finish of each race.

16.1.b. The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.

16.1.c. At the end of a race, the timer shall post the official running time on the infield totalisator board on instruction by the stewards.

16.1.d. At a racetrack equipped with an appropriate infield totalisator board, the timer shall post the quarter times (splits) for thoroughbred races in fractions as a race is being run.

16.1.e. For back-up purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that at least three stopwatches are used by the stewards or their designees.

16.1.f. The timer shall maintain a written record of fractional and finish times of each race and have the same available for inspection by the stewards or the Racing Commission on request.

16.2. General Authority of the Clocker. The following provisions apply to the general authority of the clocker:

16.2.a. The clocker shall be present during training hours at each track on association grounds, which is open for training, to identify each thoroughbred working out and to accurately record the distances and times of each thoroughbred's workout.

16.2.b. Each day, the clocker shall prepare a list of workouts that describes the name of each thoroughbred which worked along with the distance and time of each thoroughbred's workout.

16.2.c. At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the association's racing secretary.

§178-1-17. Placing Judges.

17.1. General Authority. The following provisions apply to the general authority of the placing judges:

17.1.a. The placing judges shall occupy the judges' stand at the time the thoroughbreds pass the finish line and indicate the order of finish of the thoroughbreds. If in doubt of the proper order of finish, they may delay posting the result until after they examine the photo of the finish of the race to determine

the positions of the thoroughbreds. Decisions are final, unless an objection to the winner or any thoroughbred officially placed is made and sustained. Nothing in this section prevents the placing judges from correcting any mistake. The correction is subject to confirmation by the stewards before the official result is posted.

17.1.b. The placing judges shall determine the order of finishing of as many thoroughbreds as they consider proper, but never less than five (5), if five (5) or more are racing. When the placing judges differ on the order of finish the majority governs. The placing judges shall file the finish of each race with the association's racing secretary or his or her assistants and with the Racing Commission.

17.2. Dead Heats. The following provisions apply to dead heats:

17.2.a. In the event the placing judges determine that two (2) or more thoroughbreds finished the race simultaneously and cannot be separated as to their order of finish, a dead heat shall, with the approval of the stewards, be declared.

17.2.b. In the event one or more of the first four (4) finishers of a race are involved in a dead heat, the placing judges shall publicly post the results and cause the numbers of the thoroughbred or thoroughbreds involved to be published.

§178-1-18. Racing Commission Veterinarian(s).

18.1. General. The Racing Commission veterinarian(s) shall:

18.1.a. be employed by the Racing Commission;

18.1.b. be a graduate veterinarian and be licensed to practice veterinary medicine in the state of West Virginia;

18.1.c. be qualified to objectively and competently perform the regulatory duties described herein;

18.1.d. refuse employment or payment, directly or indirectly, from any thoroughbred owner or trainer of a thoroughbred racing or intending to race in this jurisdiction while employed as a Racing Commission veterinarian;

18.1.e. refrain from directly treating or prescribing for any thoroughbred under his/her jurisdiction except in cases of emergency, accident or injury;

18.1.f. have no employment history or business relationship prior to or during employment as the Racing Commission veterinarian that could constitute a conflict of interest or impede in the performance of official duties;

18.1.g. recommend to the stewards any thoroughbred deemed unsafe to be raced, or a thoroughbred that it would be inhumane to allow to race;

18.1.h. conduct pre-race examinations on all potential starters on race day;

18.1.i. inspect any thoroughbred when there is a question as to the physical condition of such

thoroughbred independent of the thoroughbred's entry status;

18.1.j. be present in the paddock during saddling; on the racetrack during the post parade; and, at the starting gate until the thoroughbreds are dispatched from the starting gate for the race;

18.1.k. recommend to the stewards the scratching of any thoroughbred that is, in the opinion of the Racing Commission veterinarian, injured, ill, or otherwise unable to compete due to a medical or health-related condition;

18.1.l. inspect any thoroughbred which appears in physical distress during the race or at the finish of the race; and report such thoroughbred together with his/her opinion as to the cause of the distress to the stewards;

18.1.m. provide emergency medical care to horses injured while racing and effect case transfer to the practicing veterinarian;

18.1.n. be authorized to humanely destroy any thoroughbred deemed to be so seriously injured that it is in the best interests of the thoroughbred to so act;

18.1.o. report to the Racing Commission the names of all thoroughbreds humanely destroyed or which otherwise expire at the meeting or on association grounds and the reasons therefore;

18.1.p. maintain all required records of postmortem examinations performed on thoroughbreds which have died within the jurisdiction of the Racing Commission;

18.1.q. maintain the veterinarians' list of thoroughbreds ineligible to race and cause notification to be provided to a horse's trainer that a horse trained by him or her is on the veterinarians' list;

18.1.r. supervise, control and establish any necessary procedures for the operation of the test barn;

18.1.s. supervise the taking of all specimens for testing according to procedures approved by the Racing Commission;

18.1.t. provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion, or contamination and assure sample integrity;

18.1.u. provide the stewards with a written statement regarding the nature and seriousness of all laboratory reports of prohibited substances in equine samples;

18.1.v. have jurisdiction over the practicing veterinarians on the association's grounds for the purpose of this rule;

18.1.w. review and consult with the applicants and the stewards/Racing Commission regarding permit applications of practicing veterinarians, veterinary technicians or assistants, vendors of medical supplies and equipment, non-veterinarian health care providers;

18.1.x. cooperate with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases;

18.1.y. keep current and/or update the Jockey Club Equine Injury Database, if the association is a participant in the database; and

18.1.z. cause the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version ~~13.2~~ 14.0 (revised ~~April 20, 2017~~ January 2019), set forth in table 178-1 D at the end of this rule, any medication/substance thresholds set forth in section 49 of this rule and in the Association of Racing Commissioners International Controlled Therapeutic Medication Schedule, Version 3.2, contained in table 178-1F at the end of this rule and the Association of Racing Commissioners International Endogenous, Dietary, or Environmental Substances Schedule, Version ~~3.0~~ 4.0, contained in table 178-1G at the end of this rule, to be publicly posted in the office of Racing Commission veterinarian(s).

18.2. Veterinary Technicians. The Racing Commission may employ veterinary technicians registered by the West Virginia Board of Veterinary Medicine or other veterinary assistants qualified to assist the Racing Commission veterinarians. A veterinary technician or veterinary assistant employed by the Racing Commission shall perform all lawful duties and shall act under the direct supervision of the Racing Commission veterinarian(s).

PART 4. ISSUANCE OF LICENSES AND DUTIES OF LICENSEES.

§178-1-19. License Required.

19.1. Any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description wishing to obtain a license to conduct a race meeting with pari-mutuel wagering during any calendar year shall file a license application with the Racing Commission on forms prescribed by the Racing Commission.

19.2. Such application shall disclose, but not be limited to, the following:

19.2.a. If the applicant is an individual, the full name and address of the applicant;

19.2.b. If the applicant is a partnership, firm or association, the full name and address of each partner or member thereof and the name of the partnership, firm or association and its address;

19.2.c. If the applicant is a corporation, its name, the state of its incorporation, its address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in the state of West Virginia;

19.2.d. The dates such applicant intends to hold or conduct each horse race meeting during the calendar year;

19.2.e. The location of the horse racetrack, place or enclosure where such applicant proposes to hold or conduct such horse race meeting;

19.2.f. Whether the applicant, any partner, member, officer or director has previously applied for a license under W. Va. Code §19-23-1 *et seq.* or for a similar license in this or any other state, and if so, whether such license was issued or refused, and, if issued, whether it was ever suspended or revoked;

19.2.g. If the applicant is an individual, his or her fingerprints; if the applicant is a partnership, firm or association, the fingerprints of each partner or each member; if the applicant is a corporation, the fingerprints of each officer and director. Such fingerprints shall be provided for examination by the West Virginia State Police Criminal Investigation Bureau and the Federal Bureau of Investigation and shall be accompanied by a signed authorization for the release of information by those agencies;

19.2.h. Such other information as the Racing Commission may in its discretion reasonably require, including, but not limited to, satisfactory evidence that the applicant has the ability to pay all taxes due the state, purses, salaries of racing officials and other expenses incident to the horse race meeting for which a license is sought. If satisfactory evidence of ability to pay such expenses and fees cannot be furnished by the applicant, the Racing Commission may require a bond or other adequate security before the license is issued; and

19.2.i. A signed, notarized verification that the information contained on the application is true and accurate. Such verification shall be signed by the individual seeking the license; or, by a partner or member if the applicant is a partnership, firm or association; or, by an officer or director if the applicant is a corporation.

19.3. A license is neither transferrable nor assignable to any other person. The sale of the assets of an association requires the buyer to apply for a racing license from the Racing Commission if the buyer wishes to conduct a horse race meeting with pari-mutuel wagering in this state.

19.4. The Racing Commission shall promptly consider any application for a license. Based upon such application and any other information before it, the Racing Commission shall make and enter an order either approving or denying the application. If an application for a license is approved, the Racing Commission shall issue a license to conduct a horse race meeting, and shall designate on the face of the license the dates upon which the horse race meeting shall be held, the location of the horse racetrack, place or enclosure where the horse race meeting is to be held, and other information as the Racing Commission shall consider proper.

19.5. The Racing Commission may deny an application for a license or may suspend, revoke or otherwise discipline a license if it finds that the applicant or the licensee:

19.5.a. Has knowingly made a false statement of material fact in the application or has knowingly failed to disclose any information called for in the application;

19.5.b. Is or has been found guilty of any corrupt or fraudulent act, practice or conduct in connection with any horse race meeting in this or any other state;

19.5.c. Is or has been convicted, within ten years prior to the date of the application, of an offense which under the laws of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

19.5.d. Has failed to comply with W. Va. Code §19-23-1 *et seq.* or any rules of the Racing Commission;

19.5.e. Has had a license to hold or conduct a horse race meeting denied for just cause, suspended or revoked in any other state;

19.5.f. Has defaulted in the payment of any obligation or debt due to the state of West Virginia under W. Va. Code §19-23-1 *et seq*;

19.5.g. Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business in this state; or

19.5.h. Has failed to furnish a bond or other adequate security, if the same is required by the Racing Commission under W. Va. Code §19-23-7(b) and this rule.

19.6. In issuing licenses for horse race meetings at the various horse racetracks in this state, the Racing Commission shall consider the horse racing circuits with which the horse racetracks in this state are associated or contiguous to, and shall also consider dates which are calculated to increase the tax revenues accruing from horse racing.

19.7. If a horse racetrack, place or enclosure specified on the face of the license as the licensee's location for horse racing becomes unsuitable because of flood, fire, or other catastrophe, or cannot be used for any reason, the Racing Commission may, upon application, authorize the horse race meeting, or any remaining portion thereof, to be conducted at any other racetrack, place or enclosure available for that purpose, provided that the owner of the racetrack, place or enclosure willingly consents to the use thereof.

§178-1-20. General Duty.

20.1. An association, its officers, directors, officials and employees shall abide by and enforce the laws of this state governing racing and the rules and orders of the Commission and stewards and failure to do so may result in the imposition of disciplinary action against the association's license and/or against the occupational permit held by an officer, director, official and/or employee of the association.

20.2. No individual who has a direct or indirect financial interest of twenty percent (20%) or more in a partnership, firm, association, corporation or other entity or organization of whatever character or description licensed by the Racing Commission to conduct horse racing and pari-mutuel wagering shall race or permit, or cause to be raced, any horse in which he or she has an interest, either direct or indirect, at any meeting where racing is conducted under the license.

20.3. Any person holding an occupational permit who is actively engaged in the management of any aspect of the operations of a licensed racetrack shall not directly or indirectly wager on the outcome of any race under the jurisdiction of the Racing Commission.

20.4. If the association is a corporation, it shall, upon request, provide a list of all stockholders or shareholders to the Racing Commission.

20.5. Thirty (30) days before conducting a stakes race, each association shall submit to the Racing Commission the conditions for all stakes races it proposes to hold, together with the stake, purse or reward, all of which are subject to the approval of the Racing Commission.

§178-1-21. Financial Requirements.

21.1. Insurer of the Race Meeting. The following provisions apply to the association's duty as insurer of each race meeting:

21.1.a. The association shall maintain, in an approved depository, the amounts deducted from the pari-mutuel handles for purse distribution as specified by the provisions of W. Va. Code §19-23-10 and this rule.

21.1.b. An association is obligated as part of its duties to ensure that the amounts retained from the pari-mutuel handles are distributed according to the West Virginia Code and Racing Commission rules.

21.1.c. An association shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely distribution in accordance with the West Virginia Code, Racing Commission rules, association rules and race conditions.

21.1.d. The association shall provide proof of liability insurance coverage upon request of the Racing Commission.

21.2. Financial Reports. Each licensee shall file audited financial statements on or before the 30th of April of each year, unless otherwise authorized by the Racing Commission. These financial statements will cover all income and disbursements relating directly and indirectly to horse racing activities in the state, including, but not limited to, the following: concessions, programs, parking, pari-mutuel wagering, and breakage. The financial statements shall be prepared in accordance with generally accepted accounting principles and shall be accompanied by the report of an independent certified public accountant. If the association is a corporation, it shall provide the Racing Commission with a copy of its annual audited, consolidated financial statements contained in the corporation's annual report to its shareholders and, if applicable, as submitted to the United States Securities and Exchange Commission.

§178-1-22. Facilities and Equipment.

22.1. Facilities and Equipment for Patrons and Permit Holders. The following provisions apply to the facilities and equipment that an association must provide for patrons and permit holders:

22.1.a. The association shall provide equipment for fingerprinting and photographing all occupational permit holders and shall provide the necessary equipment to coat the occupational permit in plastic with the picture of the permit holder.

22.1.b. The association shall furnish and maintain at least one (1) ambulance for the exclusive use of persons, staffed with at least two (2) emergency medical technicians, one of whom shall be a certified paramedic, at any time the racetrack is open for live racing or exercising. If the ambulance is being used to transport an individual, the association may not conduct a race or be open for training until the ambulance is replaced, and ready for immediate duty, to be placed at a readily available location to the racing strip, so that no time may be lost in answering calls. Unless otherwise approved by the Racing Commission or the stewards, an ambulance shall follow the mounted horses at a safe distance during the running of the race.

22.1.c. The association shall equip and maintain at its racetrack at least one (1) first aid room provided with adequate beds and equipped with first aid appliances and material as approved by the Racing Commission. Each association shall meet minimum staffing requirements of emergency service personnel during all racing hours and employ an emergency medical technician and an individual trained in cardiopulmonary resuscitation. Additionally, each association shall employ a paramedic and/or a

registered nurse during all racing hours.

22.1.d. The association shall ensure that the public areas of the association grounds are designed and maintained for the safety of the patrons and occupational permit holders and are accessible to persons with disabilities as required by state and federal law.

22.1.e. The association shall provide a supply of free drinking water.

22.1.f. The association shall maintain adequate restroom facilities on association grounds and ensure the safety and cleanliness of the restroom facilities at all times.

22.1.g. The association shall designate an office and suitable parking spaces for the exclusive use of the Racing Commission, its employees and representatives. The association shall offer sufficient office space for private consultation and necessary office equipment. The office shall be equipped with a telephone and shall also have sufficient space for secure, locked storage for Racing Commission records and supplies. The key to such storage shall be available only to the Racing Commission and/or the stewards. The association shall also provide sufficient office space for the Racing Commission license clerk(s), investigator(s), security officer(s) and any other Racing Commission personnel, as requested by the Racing Commission.

22.1.h. Any racing association contemplating a change of any kind pertaining to the racing strip, the erection of new buildings, stands or other structures, on the grounds of the association which are to be used as a part of the facilities for conducting a race meeting, shall notify the Racing Commission in writing before any changes are made.

22.2. Officials' Stands. Stands for placing judges, clockers, timers, and stewards shall be maintained in positions commanding an uninterrupted view of the entire racing strip and shall be appropriately maintained and furnished. The stands are subject to approval by the Racing Commission.

22.3. Audio and Visual Equipment. The following provisions apply to the audio and visual equipment required for racing:

22.3.a. The association shall provide and maintain in good working order a communication system between the stewards' stand; office of the association's racing secretary; tote room; jockeys' room; paddock; test barn; starting gate; clocker's/timer's stand; Racing Commission veterinarian(s); track announcer; location of the ambulances (equine and human); and other locations and persons designated by the Commission.

22.3.b. A camera or electronic photofinish device selected by the association conducting the meeting shall be approved by the Racing Commission and shall be used to make photographs or images of the horses at the finish to assist the placing judges in determining their positions as exclusively indicated by the noses of the horses. On request by the Racing Commission, the association shall provide, without cost, photographs or images of a finish to the Commission or its representatives. Finish photographs or images of each race shall be maintained by the association for not less than one (1) month after the end of the race meeting, or such other period as may be requested by the stewards or the Racing Commission.

22.3.c. The association shall install and use a video recording system approved by the Racing Commission with not fewer than three (3) cameras operating from positions designated by the Racing

Commission to provide clear panoramic and head-on views and recordings of each race from start to finish. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review shall be provided in the stewards' stand. On request by the Racing Commission, the association shall provide, without cost, a copy of the video recording of each race to the Commission or its representatives. Video recordings made during each race shall be retained by the association for not less than one (1) month after the end of the race meeting, or such other period as may be requested by the stewards or the Racing Commission.

22.3.d. On all racetracks, the official photographer for the association shall be required to hold an occupational permit issued by the Racing Commission. In all cases when a still picture is taken by the official photographer, he or she shall direct his or her camera at a point away from the finish line unless otherwise approved by the stewards or the Racing Commission. No photographer, other than the official photographer, shall be permitted on the racetrack, unless permission is granted by the stewards or the Racing Commission; and then only for pictures that are specifically requested and in places as are approved by the stewards or the Racing Commission.

22.4. Rails. The following provisions to the rails required for racing:

22.4.a. Racetracks, including turf tracks, shall have inside and outside rails, including gap rails, designed, constructed and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the Racing Commission prior to the first race meeting at the track.

22.4.b. All potential obstructions shall be set back a minimum of ten (10) feet from the back of the inside rail. All existing obstructions, shall be moved back a minimum of ten (10) feet from the back of the rail and/or padded, as directed by the Racing Commission.

22.5. Starting Gates. Each racing association shall provide and maintain at least two operable padded starting gates on every race day of its meeting. Each association shall use every reasonable endeavor to have in attendance whenever the gates are in use, one or more individuals who are skilled and qualified to maintain the gates in good working order, and be available for periodic inspections of the starting gates as may be required by the Racing Commission.

22.6. Distance Markers. The following provisions apply to the distance markers required for racing:

22.6.a. An association shall provide starting point markers and distance poles in a size and position that is clearly seen from the stewards' stand.

22.6.b. The starting point markers and distance poles must be marked as follows:

22.6.b.1. 1/4 POLES -- Red and White;

22.6.b.2. 1/8 POLES -- Green and White; and

22.6.b.3. 1/16 POLES -- Black and White.

22.7. Lighting. The following provisions apply to the lighting required for racing:

22.7.a. An association shall provide lighting for the racetrack and the patron facilities that is adequate to ensure the safety and security of the patrons, permit holders and horses. The association shall also provide lighting to ensure the proper operation of video recording and photofinish equipment.

22.7.b. If an association conducts racing at night, the association shall maintain a backup lighting system that is sufficient to ensure the safety of race participants and patrons.

22.7.c. An association shall provide adequate lighting in the stable areas as required by the Racing Commission.

22.8. Equine Ambulance. The following provisions apply to the equine ambulance required for racing:

22.8.a. An association shall provide an equine ambulance staffed by trained personnel on association grounds on each day that the racetrack is open for racing or training.

22.8.b. The ambulance must be properly ventilated and kept at an entrance to the racing strip when not in use.

22.8.c. The ambulance must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The ambulance must be able to:

22.8.c.1. navigate on the racetrack during all weather conditions; and

22.8.c.2. transport a horse off the association grounds.

22.8.d. The ambulance must be equipped with:

22.8.d.1. large, portable screens to shield a horse from public view;

22.8.d.2. ramps to facilitate loading a horse;

22.8.d.3. adequate means of loading a horse that is down;

22.8.d.4. a padded interior;

22.8.d.5. a movable partition to initially provide more room to load a horse and to later restrict a horse's movement;

22.8.d.6. a shielded area for the person who is attending to the horse; and

22.8.d.7. an adequate area for the storage of water and veterinary drugs and equipment.

22.8.e. An association may not conduct a race unless an equine ambulance or a substitute approved by a Racing Commission veterinarian is readily available.

22.8.f. The equine ambulance, its supplies and attendants and the operating procedures for the equine ambulance must be approved by a Racing Commission veterinarian.

22.9. Barns. The following provisions apply to the barn area required for racing:

22.9.a. Each barn shall be numbered and each and every stall in the barn shall be numbered and a record of each designation filed with the association's racing secretary.

22.9.b. All used bedding and manure shall be removed from the stalls daily and shall be deposited at a place designated by the association. The association shall remove or cause to be removed all bedding and manure from the stable area.

22.10. Test Barn. The following provisions apply to the test barn required for racing:

22.10.a. The association shall provide a suitable building, approved by the Racing Commission, for a test barn. The test barn shall be under the supervision of the Racing Commission veterinarian(s), for the purpose of collecting specimens for any test required by the Racing Commission.

22.10.b. The test barn shall be equipped with:

22.10.b.1. a walk area that is large enough to accommodate four (4) horses;

22.10.b.2. at least four (4) enclosed stalls that permit observation of the specimen collection process and provide for the protection of collection personnel;

22.10.b.3. facilities and equipment for the collection, identification, and storage of specimens;

22.10.b.4. a wash rack or wash stall that is large enough to accommodate two (2) horses at the same time;

22.10.b.5. hot and cold running water;

22.10.b.6. equipment for washing and cooling horses;

22.10.b.7. clean water buckets for each horse; and

22.10.b.8. any other items required by the Racing Commission.

22.10.c. The test barn shall be kept locked at all times when not in use. The only persons authorized to have keys shall be the racetrack general manager or his or her designee and the Racing Commission veterinarian(s) and their designees.

22.11. Concussion Protocol. An association shall adopt, have posted, and implement a protocol for education, evaluation, diagnosis and management of concussion of jockeys which shall be approved by the Racing Commission. Each jockey shall acknowledge in writing that he/she has been made aware of the concussion protocols in place at the racetrack where he/she is riding. A minimum assessment shall include the most current sport concussion assessment tool examination, when necessary, and be performed by a medical professional authorized in the State of West Virginia to perform such evaluation. Additionally, a return to ride guideline shall be established in order to clear a jockey who has been concussed, or is believed to have been concussed, once he or she is declared fit to ride by a medical

professional authorized to do so. Included in such guideline shall be the use of the Medical Authorization form set forth in Table 178-1H at the end of this rule. The Stewards shall be notified when a jockey is not permitted to ride and when a jockey has been authorized to return to ride.

§178-1-23. Operations.

23.1. Security. The following provisions apply to the security required on association grounds:

23.1.a. An association conducting a race meeting shall maintain security controls over its grounds.

23.1.b. An association shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas, which includes but is not limited to the stable area and paddock, and to ensure that all participants at its race meeting hold permits as required by this rule.

23.1.c. An association shall prevent access to and shall remove or cause to be removed from its restricted areas, which includes but is not limited to the stable area and paddock, any person who does not have an occupational permit, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

23.1.d. Upon request, a written report shall be made to the Racing Commission or the stewards by the director of the security department at each race track, which details any and all occurrences or incidents on association grounds. This report shall include the name of all persons involved in the occurrences or incidents and the circumstances of the occurrences or incidents.

23.1.e. It is the responsibility of the racing association conducting a meeting under a license issued by the Racing Commission to assure that all persons under the age of sixteen (16) years are properly supervised by an adult when admitted to the association grounds. Persons under the age of eighteen (18) years may not be admitted in a restricted area without the written permission of the stewards, except in case of an emergency or except where the person has been issued a permit at age sixteen (16) pursuant to the exception specified in subdivision 24.1.i. of this rule. Violation of this rule may result in a fine or other discipline against a licensee and/or occupational permit holder when warranted in the discretion of the stewards and/or the Racing Commission.

23.2. Fire Prevention. The following provisions apply to fire prevention on association grounds:

23.2.a. An association shall develop and implement a program for fire prevention on association grounds. An association shall instruct employees working on association grounds of the procedures for fire prevention.

23.2.b. No person shall:

23.2.b.1. smoke in stalls, feed rooms, under shed rows, on the track running surface or in any other "no smoking" area of the association's grounds as identified by the association or the Racing Commission;

23.2.b.2. burn open fires or oil and gas lamps in the stable area;

23.2.b.3. leave unattended any electrical appliance that is plugged-in to an electrical

outlet, with the exception of a fan approved by the association;

23.2.b.4. permit horses to come within reach of electrical outlets or cords;

23.2.b.5. store flammable materials such as cleaning fluids or solvents in the stable area; or

23.2.b.6. lock a stall which is occupied by a horse.

23.3. Performances. The following provisions apply to performances:

23.3.a. The minimum number of races per day at all licensed racetracks shall be eight (8), and the maximum number of races per day shall be ten (10), unless otherwise authorized by the Racing Commission.

23.3.b. The Racing Commission shall approve the post time for the first race of each race day. Each race after the first race of each race day shall be run at intervals to be approved by the Racing Commission. In the event of an emergency, the stewards may approve the alteration of the post time for the first race of each race day and the intervals at which other races shall be run.

23.4. Posting of Jockey Insurance Coverage. The following provisions apply to the posting of jockey insurance coverage:

23.4.a. If an association carries insurance for the coverage of jockeys who are injured while on the grounds of the association, the association shall have on file with the Racing Commission a copy of the actual policy and post in the jockeys' room the declaration page from such insurance policy and shall, upon the request of any jockey who is participating in the race meeting, provide a copy of the policy of such insurance. Such request shall be made in writing to the person designated by the association to respond to such requests as specified in a notice posted with the declaration page.

23.4.b. In the event that the insurance policy is changed during the race meeting the association shall promptly notify the Racing Commission and post a notice of any such changes in the jockeys' room.

PART 5. ISSUANCE OF PERMITS AND DUTIES OF PERMIT HOLDERS.

§178-1-24. General Provisions Applicable to All Permit Applicants and Permit Holders.

24.1. Permit Required. The following provisions apply to permit requirements:

24.1.a. Racing participants and personnel; racing officials (excluding those employed by the Racing Commission); and, persons employed by the association or employed by a person or concern contracting with or approved by the association or Commission to provide a service or commodity on association grounds, shall have a valid occupational permit issued by the Racing Commission, unless otherwise specifically exempted from this requirement.

24.1.b. Applicants for occupational permits shall file a completed application on a form prescribed by the Racing Commission with the license clerk stationed at the racetrack. Applications shall be reviewed by the stewards who may issue or deny the permit; hold the application for further investigation; or, refer it to the Racing Commission for a determination.

24.1.c. The Racing Commission may designate categories of permit applications that require a determination of issuance or denial by the Commission and not the stewards. The Racing Commission may require, however, that the stewards provide a recommendation as to the issuance or denial of any such permit application.

24.1.d. Applicants for occupational permits may be required to provide fingerprints for examination by the West Virginia State Police Criminal Investigation Bureau and the Federal Bureau of Investigation. If the applicant has been fingerprinted by the Racing Commission or another racing jurisdiction within the previous thirty-six (36) months, then the Commission may accept the previous fingerprints or require new fingerprints. If fingerprints are required to be provided by an applicant, the applicant shall provide a signed authorization for the release of information by the examining agencies. The costs of fingerprinting and fingerprint analysis shall be paid by the applicant.

24.1.e. The Commission may issue permits to persons holding valid permanent (not temporary) permits/licenses issued by racing jurisdictions in North America. The applicant must be in good standing in each jurisdiction where he or she holds or has held a racing permit/license; have cleared a Federal Bureau of Investigation or Royal Canadian Mounted Police fingerprint check within the previous thirty-six (36) months, or such other period as may required by the Racing Commission; file an application; and, pay the required applicable fees prior to participating in racing.

24.1.f. The fees that shall be paid to the Racing Commission for occupational permits issued effective for calendar year 2012 and thereafter are set forth in table 178-1A at the end of this rule.

24.1.g. The Commission may assess an applicant or permit holder a credit card transaction fee in connection with the payment by credit card of any fees/costs under this subsection.

24.1.h. An occupational permit is neither transferable nor assignable to any other person.

24.1.i. The Racing Commission shall not grant an occupational permit to anyone under eighteen (18) years of age. Provided, except that an occupational permit may be granted at sixteen (16) years of age for the children and grandchildren of licensed permit holders; licensed permit holders being defined for the purposes of this subdivision as owners, breeders, trainers and veterinarians. An applicant may be required to submit a certified copy of his or her birth certificate in connection with his or her application for a permit.

24.1.j. The filing of an application for a permit shall authorize the Racing Commission to investigate criminal and employment records, to engage in interviews to determine the applicant's character and qualifications and to verify information provided by the applicant.

24.1.k. The filing of an application for a permit shall authorize the Racing Commission to examine and determine the immigration status of the applicant through the United States Department of Homeland Security, United States Citizenship and Immigration Services, or their successors.

24.2. Consent to Search and Seizure. The following provisions apply to permit holders' consent to search and seizure as a condition of holding a permit:

24.2.a. Members of the Racing Commission, the stewards, the Racing Commission veterinarian(s), the Racing Commission security officer, Racing Commission investigators, or persons

authorized by them, have the right to inspect and search any person on association grounds who has been granted an occupational permit by the Racing Commission, as well as any stables, rooms, trailers, vehicles or other places or things within the association grounds.

24.2.b. Members of the Racing Commission, the stewards, the Racing Commission veterinarian(s), the Racing Commission security officer and Racing Commission investigators have the right to seize any prohibited medication, drugs, paraphernalia or devices.

24.2.c. By accepting an occupational permit, all permit holders are deemed to consent to the search and seizure provided for by this subsection.

24.3. Substance Abuse/Addiction.

24.3.a. All permit holders shall be deemed to be exercising the privileges of their permit, and shall be subject to the requirements of this subsection when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas or other areas of the association grounds.

24.3.b. It shall be a violation to exercise the privileges granted by a permit issued by the Racing Commission if the permit holder:

24.3.b.1. Is engaged in the illegal sale or distribution of alcohol or a controlled substance;

24.3.b.2. Possesses, without a valid prescription, a controlled substance;

24.3.b.3. Is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and is not engaged in an abstinence-based program of recovery acceptable to the Racing Commission;

24.3.b.4. Has in his or her possession on association grounds any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;

24.3.b.5. Refuses to submit to urine or drug testing, when notified that such testing is based on a random drug testing procedure; is based on reasonable suspicion that the person is using drugs or alcohol; or, is based on the permit holder's acting as if in an impaired condition; or

24.3.b.6. Presently has drugs (controlled substances) or alcohol in his or her body. With regard to alcohol, the results of a breathalyzer test showing a reading of more than .05 percent of alcohol in the blood shall be the criterion for a finding of alcohol present in the body. With regard to other controlled substances, the presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph.

24.3.c. At their discretion, the Racing Commission, the Executive Director, and/or the stewards may conduct random drug testing, as well as testing based on reasonable suspicion, in order to ensure safety on the racetrack.

24.3.d. Random and reasonable suspicion drug testing of permit holders shall be accomplished by the taking of urine specimens. However, the Racing Commission, the Executive Director and/or the stewards retain the right to direct a permit holder to submit to a drug test by methods, including, but not limited to, blood, hair follicle, or skin.

24.3.e. When conducted, random drug testing shall apply, equally, to all permit holders who are, at the time of the random testing, exercising the privileges of their permit in such ways as may affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas or other areas of the association grounds.

24.3.f. No notice need be given as to the onset or cessation of random testing.

24.3.g. Random drug testing shall be conducted at the direction of the Racing Commission, the Executive Director and/or the stewards on an unannounced basis before or after the beginning of a racing card. The names of all permit holders who are performing duties at the track on the date the random drug testing is conducted shall be placed in a secure container which shall be in the custody of a Racing Commission security officer or investigator. The Racing Commission security officer or investigator shall draw a designated number of names from the secure container. Representatives of any racing trade organizations representing permit holders on the racetrack may attend and witness the random selection of names.

24.3.h. For race meetings with a duration of less than five (5) months, random drug testing shall occur at least once during the course of the meeting. For race meetings with a duration of six months or more, random drug testing shall occur at least twice during the meeting.

24.3.i. If possible, each urine sample received from a permit holder shall be divided into two (2) separate parts. One part shall be designated as the "official permit holder test sample" and shall be tested by a Commission approved laboratory. The remaining part of the specimen shall be known as the "permit holder split sample" and shall be available for testing at a Commission approved independent laboratory upon the request of the permit holder who provided the specimen sample. All specimens taken by Commission representatives are under the jurisdiction of and shall remain the property of the Commission at all times.

24.3.j. In the event that a permit holder is physically unable to provide a urine sample or enough of a urine sample to divide for a split sample, the Racing Commission, the Executive Director and/or the stewards may allow the permit holder to submit to another method of drug testing, including, but not limited to, blood, hair follicle, or skin, if any of such alternative methods are feasible.

24.3.k. If the urine sample obtained from the permit holder is insufficient for division for a split sample, but sufficient for an official permit holder test sample to be tested by a Commission approved laboratory, then the results of tests performed on such official sample shall be considered prima facie evidence of the condition of the permit holder.

24.3.l. Each sample or specimen collected from a permit holder shall be tested, at a minimum, for marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites, and phencyclidine (PCP). In certain reasonable suspicion scenarios or when it is otherwise determined that additional testing is necessary, permit holders may be required to produce additional samples that may be analyzed using additional screening panels.

24.3.m. All costs of initial testing under this subsection shall be at the expense of the racing association. However, should the results of a test come back positive, the costs of the test may be assessed against the permit holder, upon approval by the stewards. All costs for the testing of a specimen or split sample portion made available for the permit holder shall be the financial responsibility of the requesting person.

24.3.n. If a permit holder refuses to submit to urine or drug testing under this subsection or if a permit holder tests positive, his or her permit may be summarily suspended at the discretion of the stewards and/or may be subject to other disciplinary action in accordance with this rule. Physical inability to produce a urine sample shall not be considered to be a refusal to submit to drug testing.

24.3.o. Upon completion of testing, the Commission approved laboratory shall make a confidential written report to the Executive Director and the stewards of any positive finding.

24.3.p. Upon receipt of a written report containing a positive finding, the Executive Director or the stewards shall notify the permit holder. At that time, the permit holder shall also be notified of her or her right to request a split sample test within seventy-two (72) hours of such notification.

24.3.q. If a permit holder elects to have split sample testing, he or she shall comply with the following:

24.3.q.1. The request shall be submitted in writing within seventy-two (72) hours of notification on a form prescribed by the Racing Commission.

24.3.q.2. The permit holder shall be responsible for all charges and costs incurred in shipping, transporting and testing the split sample.

24.3.r. A permit holder who fails to adhere to the requirements of subdivision 24.3.q. shall be deemed to have waived his or her right to have a split sample tested.

24.3.s. The Racing Commission, the Executive Director, and/or the stewards shall provide for a secure chain of custody for the original sample and the split sample, if any, to be made available upon request to the permit holder.

24.3.t. If the findings of the Commission approved independent laboratory fail to confirm the findings of the Commission approved laboratory, no action shall be taken against the permit holder.

24.3.u. Unless or until the Commission and/or the stewards proceed to take action against a permit holder's permit for a positive test, the test results for the original sample and the split sample shall remain confidential and shall not be released.

24.3.v. If a permit holder tests positive for a medication for which he or she has a valid prescription or it is otherwise learned by the Commission, the Executive Director or the stewards that a permit holder is taking a prescribed medication, the Commission, the Executive Director or the stewards may, in their discretion, require that the permit holder provide a statement from his or her prescribing physician as to whether the permit holder can safely perform the duties under his or her permit while taking the prescribed medication.

24.3.w. A permit holder who is a first time violator under this subsection shall be required to undergo a professional assessment before the stewards and/or the Racing Commission determine whether or not the permit holder's condition is such that he or she may hold a permit and participate in racing. In the discretion of the stewards and/or the Racing Commission, a first time violator may be required to produce a negative test result; may be required to submit to further testing; and/or may be required to successfully complete a certified drug/alcohol rehabilitation program as a condition of holding a permit and participating in racing.

24.3.x. A permit holder who is a second time violator under this subsection shall be subject to suspension. The permit holder may not apply for reinstatement of his or her permit until such time as he or she has successfully completed a certified drug/alcohol rehabilitation program and has otherwise satisfied the Racing Commission and/or the stewards that he or she is fit to hold a permit.

24.3.y. A permit holder who is a third time violator under this subsection may be subject to revocation and may be deemed ineligible to apply for reinstatement of his or her permit for a period of time determined by the stewards and/or the Racing Commission. The Racing Commission and/or the stewards may determine what, if any, conditions a third time violator is required to meet in order to be considered for reinstatement of his or her permit.

24.4. Employer Responsibility. The following provisions apply to the responsibility of employers who are occupational permit holders:

24.4.a. The responsibility of obtaining an occupational permit for an employee rests with the employer. Employment of an individual without reporting the employment to the stewards and immediately obtaining an occupational permit for the employee may subject the employer's occupational permit to fine, suspension or other discipline.

24.4.b. No occupational permit holder may have in his or her employment, in any capacity, any employee less than eighteen (18) years of age, except where the employee has been issued a permit at age sixteen (16) pursuant to the exception specified in subdivision 24.1.i. of this rule.

24.5. Workers' Compensation. The following provisions apply to workers' compensation coverage for occupational permit holders who are employers:

24.5.a. All occupational permit holders who are employers shall carry workers' compensation insurance covering their employees, unless exempted by state law.

24.5.b. Occupational permit holders shall produce proof of coverage in the state of West Virginia or, if applicable, a letter of exemption from the West Virginia Insurance Commissioner or a notarized affidavit attesting that they have no employees, at the time of application for an occupational permit and may be required to produce proof of coverage or a letter of exemption or affidavit upon the request of the association or the stewards.

24.6. Financial Responsibility. The following provisions apply to the financial responsibility of occupational permit holders:

24.6.a. Applicants for occupational permits may be required to submit satisfactory evidence of financial responsibility.

24.6.b. After an occupational permit has been issued, the applicant shall maintain a record of financial responsibility during the period for which an occupational permit is issued.

24.7. Duration of Permit. The following provisions apply to the duration of occupational permits:

24.7.a. Each occupational permit is for one (1) year unless otherwise approved by the stewards or the Racing Commission. Each permit shall be renewed according to the following schedule: Permits issued to persons whose date of birth is January 1 through and including April 30 shall be renewed no later than April 30 of each year; permits issued to persons whose date of birth is May 1 through and including August 31 shall be renewed no later than August 31 of each year; and permits issued to persons whose date of birth is September 1 through and including December 31 shall be renewed no later than December 31 of each year.

24.7.b. An occupational permit holder who has been suspended and subsequently reinstated after the expiration of his or her occupational permit may not pursue his or her vocation until the stewards or the Racing Commission grants a new occupational permit.

24.8. Conflict of Interest. The stewards or the Racing Commission may deny, suspend or revoke an occupational permit if a conflict of interest exists or could exist as a result of the issuance or holding of the permit.

24.9. Permit Restrictions, Limitations and Conditions. The stewards or the Racing Commission may restrict, limit or impose any condition or conditions on an occupational permit that they consider necessary in their discretion to protect the best interests and integrity of racing.

24.10. Permit Denial. When the denial of an occupational permit has been ordered by the Racing Commission, the Racing Commission shall report the reasons for the denial to the applicant and shall further report the denial to the Association of Racing Commissioners International, Inc., so that other racing jurisdictions may be informed of the denial.

24.11. Grounds for Denial, Suspension or Revocation of Permit. The Racing Commission and/or the stewards may, in their discretion, refuse to issue or renew an occupational permit to an applicant, or may in their discretion suspend, revoke, or impose other disciplinary measures upon an occupational permit issued pursuant to this rule, if the applicant or permit holder:

24.11.a. has been convicted of a crime in any jurisdiction. In considering the conviction, the Racing Commission and/or the stewards shall examine:

24.11.a.1. the nexus, or relationship, between the crime committed and the qualifications, functions or duties necessary to engage in an occupation in the racing industry;

24.11.a.2. the nature and seriousness of the conduct;

24.11.a.3. the individual's conduct since the events leading to the conviction;

24.11.a.4. the individual's age and maturity at the time of the offense;

24.11.a.5. the amount of time that has elapsed since the conviction;

24.11.a.6. whether the conviction represented an isolated event;

24.11.a.7. whether the individual demonstrates any consciousness of wrongdoing or remorse regarding the wrongfulness of his or her conduct; and

24.11.a.8. any other factor the Racing Commission deems relevant to its inquiry.

24.11.b. has engaged in bookmaking and/or touting;

24.11.c. has demonstrated financial irresponsibility by having a judgment issued against him or her for failure to pay a debt owed as a result of obtaining feed, shelter, drugs, transportation, services for horses, veterinary services or supplies for himself or herself or others;

24.11.d. has engaged in any fraud or misrepresentation in connection with racing, breeding and/or pari-mutuel wagering;

24.11.e. has violated, attempted to violate, or knowingly aided and abetted the violation of any law, rule, ruling or order with respect to racing in West Virginia or any other jurisdiction;

24.11.f. has disturbed the peace on association grounds;

24.11.g. has used profane, indecent or vulgar language to any racing official;

24.11.h. has written, issued, made or presented a check in payment for a permit fee, fine, nomination, entry or other racing fee, assessment, service or supply when the individual knew or should have known that the check would be refused for payment by the bank upon which it was written, or that the account upon which the check was written did not contain sufficient funds for payment of the check, or that the check was written on a closed account or nonexistent account;

24.11.i. has allowed another to use his or her occupational permit or other racing credential for the purpose of transferring any of the benefits pertaining to the permit or credential;

24.11.j. has had an occupational permit refused, denied, suspended, revoked or otherwise disciplined by any other racing jurisdiction;

24.11.k. has failed to disclose or has falsely stated any information required in the application for a permit;

24.11.l. is unqualified to perform the duties required by the holding of the permit;

2.11.m. is ineligible for employment pursuant to federal or state law because of age or citizenship or is otherwise ineligible pursuant to the provisions of this rule;

24.11.n. accepts or offers, directly or indirectly, any bribe, gift or gratuity in any form, which may influence the result of a race, or fails to report knowledge of this kind of activity immediately to the stewards or the Racing Commission;

24.11.o. has violated any provision of this rule and/or the provisions of W. Va. Code §19-23-1 *et seq.*;

24.11.p. has knowingly, or without conducting proper due diligence, sold a horse for slaughter, directly. "Due diligence: as used in this subdivision, shall mean the care and prudence that a reasonable racing permit holder should exercise to avoid selling a horse to a person or persons who may cause a horse to be conveyed to slaughter;

24.11.q. has abandoned, mistreated, abused, neglected or engaged in an act of cruelty to a horse or any other livestock or domestic animals kept on association grounds, or has been convicted of animal cruelty in a court of competent jurisdiction;

24.11.r. has caused, attempted to cause, or participated in any way in an attempt to cause the pre-arrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the stewards or the Racing Commission;

24.11.s. possesses on association grounds without the permission of the stewards any appliance or device, other than a riding crop allowed by this rule, which could be used to alter the speed of a horse in a race or workout;

24.11.t. has violated any of the provisions contained in subsection 24.3. of this rule pertaining to substance abuse/addiction;

24.11.u. has failed to return any purse money, trophies, or awards paid in error or ordered redistributed by the stewards and/or the Racing Commission;

24.11.v. has made a material misrepresentation in the process of registering, entering or racing a horse as West Virginia owned, West Virginia bred, or West Virginia sired;

24.11.w. has failed to pay a required fee, fine or cost;

24.11.x. possesses on association grounds a needle, syringe or other injectable except as allowed by subdivision 48.2.c. of this rule;

24.11.y. other than a practicing veterinarian, possesses on association grounds a medication, stimulant, sedative, depressant, local anesthetic or any other foreign substance prohibited by this rule;

24.11.z. manufactures, attempts to manufacture or possesses a false permit or other racing identification document/badge;

24.11.aa. tampers with or alters surveillance and/or security equipment and/or safety alarm/notification systems on association grounds;

24.11.bb. has hired a person as an employee who does not have an occupational permit in violation of subsection 24.4.a. and/or has hired a person as an employee who is under the age allowed under subsection 24.4.b. of this rule;

24.11.cc. has knowingly failed to disclose the complete ownership or beneficial interest in a horse entered to be raced;

24.11.dd. has misrepresented or attempted to misrepresent facts in connection with the sale of a

horse or other matter pertaining to the racing or the registration of a thoroughbred;

24.11.ee. is a fugitive from justice;

24.11.ff. has knowingly filed a false complaint against another permit holder and/or a racing official where the Racing Commission and/or the stewards determine that the complaint was made without reasonable or probable cause and for the purpose of harassment or abuse of the complaint process; or

24.11.gg. has engaged in conduct unbecoming or detrimental to the best interests of racing.

24.12. Badges. All occupational permit holders shall be issued a badge or credential by the association; shall visibly display their badge or credential at all times in restricted areas; and, are responsible for the safekeeping of their badge or credential. The association shall not issue duplicate badges or credentials except upon payment of a fee of five dollars ($5.00).

24.13. Safety Equipment. The following provisions apply to the safety equipment required for occupational permit holders:

24.13.a. Any permit holder mounted on a horse or stable pony on association grounds must wear a properly secured safety helmet at all times. The permit holder is responsible for providing sufficient evidence that his/her helmet meets or exceeds one of the following safety standards: American Society for Testing and Materials (ASTM 1163); UK Standards (EN-1384 and PAS-015); or, Australian/New Zealand Standard (AS/NZ 3838).

24.13.b. Any person mounted on a horse or stable pony on the association racing surface, all assistant starters and anyone handling a horse in a starting gate must wear a safety vest at all times. The safety vest must comply with or exceed one of the following minimum standards: British Equestrian Trade Association (BETA): 2000 Level 1; Euro Norm (EN) 13158: 2000 Level 1; American Society for Testing and Materials (ASTM) F2681-08; Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or, Australian Racing Board (ARB) Standard 1.1998.

24.14. Knowledge of Rules. The following provisions apply to the responsibility of permit holders to be knowledgeable of the Racing Commission's rules and to report violations of such rules:

24.14.a. A permit holder shall be knowledgeable of the rules of the Racing Commission; and by acceptance of a permit, agrees to abide by such rules.

24.14.b. A permit holder shall report to the Racing Commission or the stewards any knowledge, or reasonable cause to believe that, he or she has that a violation of the Commission's rules has occurred or may occur. A permit holder failing to do so, or who does not report all material details regarding the violation or potential violation, shall be subject to discipline by the stewards and/or the Racing Commission up to and including revocation of his or her permit.

24.15. Duty to Cooperate. By acceptance of a permit, a permit holder has a duty to cooperate with the Racing Commission, its Executive Director, its stewards, its security officers, its investigators and other employees, agents and representatives in any inquiry, investigation, review or proceeding. Cooperation shall include, but is not limited to, being truthful, candid and forthcoming when interviewed or questioned and providing any requested records, items or things in a prompt and timely manner. To prevent even the appearance that a permit holder is withholding pertinent information, he or she should

avoid narrowly construing interview questions or requests for records, items or things. A permit holder's response to any inquiry should include any information that may be potentially relevant. Failure to cooperate shall be a violation of this rule and shall subject a permit holder to discipline by the stewards and/or the Racing Commission up to and including revocation of his or her permit.

§178-1-25. Owners.

25.1. Permit Requirements for Owners. The following provisions apply to the permit requirements for owners:

25.1.a. Each person who has a five percent (5%) or more ownership or beneficial interest in a horse is required to hold an occupational permit issued by the Racing Commission.

25.1.b. All owners of horses and their employees are subject to the permit requirements of this rule immediately upon acceptance or occupancy of stabling accommodations from an association or upon making an entry to run on an association's racetrack. Every owner who races and/or stables his or her horses on the association's racetrack shall notify the association and the stewards of the names of his or her employees.

25.1.c. An applicant for an owner's permit shall own or lease a horse which is eligible to race and under the care of a trainer holding a permit issued by the Racing Commission. An owner shall notify the stewards of a change in trainer of his or her horse and shall obtain a notarized transfer certificate. Provided that a notarized transfer certificate shall not be required if the horse has not run within a sixty (60) day period or a period of sixty (60) days has passed since the horse last started at the subject racetrack.

25.2. Permit Requirements for Multiple Owners. The following provisions apply to the permit requirements for multiple owners:

25.2.a. If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall hold a permit as required by subdivision 25.1.a. of this rule.

25.2.b. Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the Racing Commission all owners holding a five percent (5%) or greater beneficial interest, unless otherwise required by the Racing Commission.

25.2.c. Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a five percent ownership or beneficial interest shall file with the Commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of ownership or beneficial interest, is not presently ineligible for a permit or suspended/revoked in any racing jurisdiction. If such affidavit is not provided or if it is determined that a person having an ownership or beneficial interest in a horse is ineligible for a permit or suspended/revoked in any racing jurisdiction, then the stewards or the Commission may refuse to issue occupational permits to the owners or suspend or revoke the owners' permits.

25.2.d. To obtain an owner's permit, an owner with less than a five percent (5%) ownership or beneficial interest in a horse shall establish a bona fide need for the permit and the issuance of such permit shall be approved by the stewards.

25.2.e. An application for joint ownership of a horse shall include a designation of a managing owner, a business address, the percentage of each owner's beneficial interest and any other information required by the Racing Commission. Receipt of any correspondence, notice or order at the business address provided shall constitute official notice to all persons involved in the ownership of the horse.

25.2.f. A written, notarized appointment of a managing owner or authorized agent shall be filed with the Racing Commission.

25.3. Stable Name Registration. Owners and lessees holding an occupational permit may adopt a stable name subject to the approval of the Racing Commission. The following provisions apply to stable name registration:

25.3.a. The applicant shall identify all persons using the stable name. Changes shall be reported immediately to the Racing Commission.

25.3.b. A person who has registered a stable name may cancel it upon written notice to the Racing Commission.

25.3.c. A stable name may be changed by registering a new stable name.

25.3.d. A stable name which has been registered by any other person will not be approved by the Racing Commission.

25.3.e. A stable name shall be clearly distinguishable from other registered stable names.

25.3.f. The stable name and the name of the owner shall be published in the program.

25.3.g. If the stable name consists of more than one person, the program shall list the name of the managing owner along with the phrase "*et al.*"

25.3.h. All persons using a stable name shall comply with all rules regarding issuance of permits to owners.

25.4. Racing Colors. The following provisions apply to racing colors:

25.4.a. Owners or trainers shall provide racing colors which may be subject to the approval of the Racing Commission except at racetracks where colors are furnished by the association. Racing colors shall be registered with the association's racing secretary. The stewards may authorize a temporary substitution of racing colors when necessary.

25.4.b. The racing colors to be worn by each jockey in a race shall be described in the program, and any change shall be announced to the public prior to the commencement of the race.

25.5. Transfer of Ownership. The following provisions apply to transfer of ownership:

25.5.a. If a horse is transferred by private sale or at public auction, the written acknowledgment of both parties is necessary to prove the fact that the horse was transferred with its engagements. The transfer of a horse under any circumstances to a non-eligible person shall not give that person the privilege of racing the horse.

25.5.b. No horse entered in a race may be sold or transferred until after the race in which the horse is entered has been run unless otherwise permitted by the stewards.

25.5.c. When a horse is sold with its engagements transferred, valid subscriptions, entries or rights of entry continue to exist with the surviving partners of a duly registered partnership in the event of the death of a partner, provided that the subscriptions, entries or rights of entry were made prior to the partner's death.

25.5.d. No person shall make or receive the transfer of a horse or engagement for the purpose of evading disqualification.

25.5.e. As long as an owner is in arrears with the horsemen's bookkeeper, no engagements can be transferred or accepted by him or her. No horse can be entered by an owner or under an owner's subscription until the owner is no longer in arrears.

25.5.f. When a seller fails to withdraw a horse from a race, when the engagement for that race is not sold or transferred with the horse, the purchaser may not start the horse or receive the stakes if the horse wins.

25.5.g. If a horse is sold or transferred with its engagements or any part of them, the seller cannot withdraw the horse from any engagements.

25.5.h. If a horse is sold to a disqualified person, the horse's racing engagements are void as of the date of sale.

25.5.i. If the ownership of a horse is changed through claiming or transfers, the association's racing secretary shall transfer the original registration certificate to the new owner or update the records of the new owner.

25.5.j. Any transfer of ownership or change of a trainer in a stake, handicap, futurity or other special event must occur at least thirty (30) days before the event unless the transferor and transferee can satisfy the board of stewards that the transfer of ownership or change of a trainer was, in fact, an arms length transaction and not for the purpose of evading the coupling rules or any other rule of racing.

25.6. Death of Owner. Subscriptions and all entries or rights of entry under them become void on the death of a subscriber, except in the case of a surviving partnership or except upon the approval of the stewards when the personal representative of an estate requests in writing that the benefits accrue to the estate of the decedent subscriber for the privilege of transfer, and agrees to assume any and all obligations incident to the original entries.

§178-1-26. Trainers.

26.1. Permit Requirement for Trainers. The following provisions apply to the permit requirements for trainers:

26.1.a. A trainer shall obtain an occupational permit from the Racing Commission and shall list on his or her occupational permit application the names of all owners or part owners of the horses he or she trains.

26.1.b. An applicant for a trainer's occupational permit who has not previously held a trainer's permit shall provide the following or undergo the following in connection with his or her application so that the Racing Commission and/or the stewards may determine whether or not the applicant is qualified to hold a trainer's permit:

26.1.b.1. evidence that the applicant held a permit in another racing occupation in the state of West Virginia for three (3) consecutive years; or

26.1.b.2. evidence that the applicant held a permit in another racing occupation in another state for four (4) consecutive years; and

26.1.b.3. statements from two (2) reputable persons in the racing industry attesting to the person's character and qualifications; and

26.1.b.4. a written and/or oral and/or practical skills examination administered by the stewards and/or their designee.

26.2. Trainer Responsibility as to the Condition of the Horse. As further set forth in subdivision 51.1.a. of this rule, the trainer is responsible as an absolute insurer of the condition of the horses he or she enters in an official workout or a race regardless of any act of a third party.

26.3. Other Trainer Responsibilities. In addition to the responsibilities set forth in section 51 of this rule, the following provisions apply to trainers holding an occupational permit in this state:

26.3.a. No trainer shall harbor, engage, retain, or employ any person not holding an occupational permit. Each trainer is responsible for ensuring that persons under his or her supervision or employment hold an occupational permit.

26.3.b. Each trainer shall register with the association's racing secretary and the association's security department every person under his or her supervision or employment.

26.3.c. Each trainer is responsible for the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association.

26.3.d. Each trainer is responsible for the disclosure of the true and entire ownership of each horse in his or her care, custody or control and immediately reporting any change in ownership to the stewards for approval and to the association's racing secretary for recording.

26.3.e. Each trainer is responsible for representing an owner in making entries, declarations, scratches and in all other matters pertaining to racing.

26.3.f. Each trainer is responsible for ensuring that horses are entered as to eligibility and weight or other allowances claimed.

26.3.g. Each trainer is responsible for presenting his or her horse and being present in the paddock at a time appointed before post time of the race in which the horse is entered.

26.3.h. Each trainer is responsible for personally attending to his or her horses in the paddock and

supervising the saddling thereof. Provided that, a trainer may designate, or request that the stewards designate, another person holding a trainer or assistant trainer permit to perform such duties. Provided further that, such designee shall not have an interest in another horse in the race. A trainer who wishes to designate another trainer or assistant trainer or who wishes to have the stewards make such designation shall give oral or written notification to the stewards no later than one hour before post time.

26.3.i. Each trainer is responsible for ensuring that the correct horse is sent to the paddock for saddling.

26.3.j. Each trainer is responsible for being present following the running of the race to attend his or her horse or for delegating such responsibility to a designee provided for in subdivision 26.3.h. of this rule; to an employee holding an occupational permit; or, to the owner.

26.3.k. Each trainer is responsible for registering with the association's racing secretary the name, age, sex, breeding and ownership of all horses under his or her custody, care or control.

26.3.l. No trainer shall utilize stalls on association grounds unless such stalls have been assigned to him or her by the association's racing secretary.

26.3.m. Each trainer is responsible for instructing the jockey to give his or her best effort during a race and that each horse shall be ridden to win.

26.3.n. No trainer shall have in his or her custody, care or control any horse owned, in whole or in part, by a disqualified person.

26.3.o. Each trainer is responsible for notifying horse owners upon the revocation or suspension of his or her trainer's permit. Upon application by the owner, the stewards may approve the transfer of the owner's horses to the care of another trainer holding an occupational permit, and upon an approved transfer, the horses may be entered to race. Upon transfer of the horse(s), the inactive trainer shall not be involved in any arrangements related to the care, custody or control of the horse(s) and shall not benefit financially or in any way from the training of the horse(s).

26.3.p. No trainer shall accept or offer, directly or indirectly, any bribe, gift or gratuity in any form, which may influence the result of a race.

26.3.q. No trainer shall move or permit to be moved any horse or horses under his or her custody, care or control into the association's grounds without permission from the association's racing secretary or his or her designee. No trainer shall move or permit to be moved any horse or horses under his or her custody, care or control out of the association's grounds without first signing out the horse on a form prescribed by the association and made available at the stable gate: *Provided*, That, for all horses stabled on the association grounds, permission is required from the association's racing secretary or his or her designee at the time of removal if the horse is entered to race or may be entered to race at another racetrack for a period of seven (7) days following the day of its removal from the association's grounds. No trainer shall move or permit to be moved any horse or horses under his or her custody, care or control into the association's grounds without presenting a current negative Coggins test for equine infectious anemia (EIA).

26.3.r. No trainer shall withdraw any money from the horsemen's bookkeeper, either in his or her own name or that of an owner, nor may he or she contract obligations against the account of any owner or

part owner, unless the trainer is the authorized agent of the owner or part owner; has been granted such authority as the authorized agent; and has an occupational permit allowing him or her to act as an authorized agent.

26.3.s. No trainer shall employ a jockey for the purpose of preventing him or her from riding in any race.

26.3.t. Each trainer shall notify the clocker prior to exercising a horse in a workout of the correct spelling of the horse's name and the distance to be worked.

26.4. Restrictions on Wagering. Each trainer shall refrain from wagering on his or her horse or horses to win or finish first in combination with other horses in a race in which the trainer is participating.

§178-1-27. Owners' Authorized Agents.

27.1. Permits required. The following provisions apply to the permit requirements for owners' authorized agents:

27.1.a. Each authorized agent shall obtain an occupational permit from the Racing Commission.

27.1.b. An application for a permit shall be filed for each owner represented.

27.1.c. A written instrument signed by the owner shall accompany the authorized agent's application for a permit and shall clearly set forth the delegated powers of the authorized agent. The owners' signature shall be acknowledged before a notary public.

27.1.d. If the written instrument is a power of attorney it shall be filed with the Racing Commission and attached to the application.

27.1.e. An owner wishing to make changes to the written instrument shall do so in writing in a signed, notarized statement.

27.1.f. The authorized agent's appointment may be terminated by the owner, in writing, acknowledged before a notary public and filed with the Commission whereupon the authorized agent's permit shall not be valid.

27.2. Powers and Duties. The following provisions apply to the powers and duties of owners' authorized agents:

27.2.a. An authorized agent holding an occupational permit may perform on behalf of an owner-principal holding an occupational permit all acts as relate to racing, as specified in the agency appointment, that could be performed by an owner-principal if such owner-principal were present.

27.2.b. In executing any document on behalf of an owner-principal, the authorized agent shall clearly identify the authorized agent and the owner-principal.

27.2.c. When an authorized agent enters a claim for the account of an owner-principal, the name of the owner-principal for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

27.2.d. Authorized agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority. Any change in ownership shall be reported immediately to, and approved by, the stewards and recorded by the racing secretary.

§178-1-28. Jockeys.

28.1. Eligibility. The following provisions apply to the eligibility of jockeys for permits and for racing:

28.1.a. A jockey shall obtain an occupational permit from the Racing Commission, and the Racing Commission shall not issue an occupational permit to any jockey under eighteen (18) years of age.

28.1.b. A jockey shall pass a physical examination given within the previous twelve (12) months by a licensed physician, a licensed physician's assistant, or a licensed nurse practitioner affirming fitness to participate as a jockey, as well as a baseline concussion test using the most current SCAT testing protocol. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

28.1.c. An applicant for an occupational permit to act as a jockey shall show competence by evidence of the holding of other racing permits and/or the demonstration of riding ability, which may include the riding of ten (10) or more races under a temporary occupational permit issued by the stewards. The stewards and/or the Racing Commission may consult representatives of the jockeys and the horsemen, the starter, and any other racing personnel that they deem appropriate in determining the competence and ability of an individual applying for an occupational permit to act as a jockey.

28.1.d. A jockey who is serving a suspension of ten (10) race days or less may ride in designated races during the suspension if:

28.1.d.1. the race has been specified as a designated race by the association's racing secretary before the inception of the race meeting at the association; or

28.1.d.2. the race has been approved as a designated race by the stewards officiating at the meeting; and

28.1.d.3. the jockey is named no later than the time set for the close of entries for the race; and

28.1.d.4. the jockey agrees to serve an additional race day of suspension in place of the race day on which the jockey rides in a designated race.

28.1.d.5. Reciprocity of this rule applies only to those states, which have adopted the designated race rule.

28.1.e. The suspension of a jockey for a riding interference or other riding offense begins on the second race day after the ruling, unless otherwise ordered by the stewards. A suspension for all other offenses begins immediately after the ruling.

28.1.f. A jockey temporarily suspended may exercise or gallop horses until the racetrack closes

for the morning.

28.2. Apprentice Jockeys. The following provisions apply to apprentice jockeys:

28.2.a. Jockey apprentices shall obtain an occupational permit from the Racing Commission and shall comply with the provisions of this section relating to jockeys, except those that are in conflict with this subsection specifically relating to apprentices.

28.2.b. An application for an occupational permit to act as an apprentice jockey shall be accompanied by:

28.2.b.1. an original, notarized contract between the apprentice and his or her employer, if a contract has been entered into;

28.2.b.2. written proof of at least one (1) year of service with a racing stable;

28.2.b.3. a certificate of proficiency from the starter; and

28.2.b.4. a birth certificate or satisfactory evidence of the date of birth.

28.2.c. Any person eighteen (18) years of age or older who has not been previously issued an occupational permit as a jockey in this or any other country, and who meets the eligibility requirements, may be granted an apprentice certificate. The certificate shall be subject to the approval and jurisdiction of the Racing Commission.

28.2.d. Apprentice contracts entered into and apprentice certificates issued in the state of West Virginia shall be made on forms approved by the Racing Commission and completed originals of these documents shall be on file with the stewards.

28.2.e. Any and all amendments to an apprentice contract shall be made in writing, shall be notarized, and the original amendments shall be filed with the stewards. Copies of the amendments shall be retained by the parties to the contract.

28.2.f. All apprentice contracts, wherever entered into, shall be approved by and filed with the stewards.

28.2.g. If an apprentice contract is transferred, that transfer shall be approved by and filed with the stewards by both the transferor and the transferee.

28.2.h. No person may enter into a contract in West Virginia with an apprentice jockey unless he or she is the owner or trainer of a stable of horses, which would, in the opinion of the stewards, warrant his or her employment of an apprentice.

28.2.i. All engagements for an apprentice jockey to ride, other than those for his or her contract employer, shall be made by himself or herself, his or her agent, or his or her contract employer, who may act as his or her agent without an agent occupational permit. However, the person making the engagements is responsible for the proper maintenance of the apprentice's engagement book.

28.2.j. A duly certified apprentice jockey may claim the following weight allowances in all

overnight races, except stakes and handicaps:

28.2.j.1. Ten (10) pounds allowance beginning with the first mount and continuing until he or she has ridden five (5) winners;

28.2.j.2. Seven (7) pounds allowance until the apprentice has ridden an additional thirty-five (35) winners; and

28.2.j.3. If an apprentice has ridden a total of forty (40) winners prior to the end of a period of one (1) year from the date of riding his or her fifth winner, he or she shall have an allowance of five (5) pounds until the end of that year.

28.2.k. If after one (1) year from the date of the fifth winning mount, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) more year or until the fortieth winner, whichever comes first. But in no event may a weight allowance be claimed for more than two (2) years from the date of the fifth winning mount, unless an extension has been granted pursuant to this rule.

28.2.l. After the completion of the conditions set forth in subdivisions 28.2.j. and 28.2.k., an apprentice jockey may claim an allowance of three (3) pounds for a period of one (1) year when riding horses owned or trained by his or her original contract employer, if the contract has not been transferred or sold since he or she rode his or her first winner. The holder of the contract at the time the apprentice rides his or her first winner is considered the original contract employer.

28.2.m. An apprentice allowance shall be claimed at the time of entry and shall not be waived except by consent of the stewards.

28.2.n. The stewards shall not consider any race, unless reported in the Daily Racing Form or an equivalent publication, in determining a jockey's right to the apprentice allowance.

28.2.o. An apprentice jockey who loses his or her apprentice allowance for any reason shall obtain a jockey occupational permit before being permitted to ride again.

28.2.p. The stewards may extend the weight allowance of an apprentice jockey when, in the discretion of the stewards, an apprentice jockey cannot continue riding due to:

28.2.p.1. physical disablement or illness;

28.2.p.2. military service;

28.2.p.3. attendance in an institution of secondary or higher education;

28.2.p.4. restriction on racing; or

28.2.p.5. other valid reasons.

28.2.q. To qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven (7) consecutive days during the period in which he or she was entitled to an apprentice allowance. Under exceptional circumstances, the stewards may consider total days lost

collectively. An apprentice applying for an extension must produce documentation to the stewards verifying the time lost.

28.2.r. An apprentice may petition one (1) of the racing jurisdictions in which he or she has been issued an occupational permit for an extension of the time for claiming apprentice weight allowances. The apprentice is bound by the decision of the jurisdiction that is petitioned.

28.2.s. The stewards may take jurisdiction of an application for extension of an apprentice allowance in cases where the application is based upon a claim of physical injuries or restrictions on racing which occurred at racetracks licensed by the Racing Commission.

28.3. Jockey Responsibility. The following provisions apply to a jockey's responsibility:

28.3.a. A jockey shall give a best effort during a race, and each horse shall be ridden to win. A jockey shall not ease up on or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money.

28.3.b. A jockey shall faithfully fulfill all engagements in respect to racing.

28.3.c. Any jockey, having given a call personally or through his or her agent, who fails to fulfill an engagement in a race may not accept another mount or be assigned by the stewards to another mount in that race.

28.3.d. A jockey shall not ride or agree to ride in any race without the consent of the owner to whom he or she is under contract.

28.3.e. A jockey may not ride in any race against a horse of his or her contract employer unless his or her mount and his or her contract employer's horse are both in the hands of the same trainer.

28.3.f. A jockey may have no more than one (1) agent.

28.3.g. All engagements to ride, other than those for his or her contract employer, shall be made by him or her or his or her agent. The person making the engagements is responsible for the proper maintenance of the jockey's engagement book.

28.3.h. A jockey shall not have an attendant other than those provided by the association. If a jockey cannot find an available attendant, the clerk of scales shall assign one. A jockey may care for his or her own equipment.

28.3.i. A fine shall be paid by the jockey himself or herself and any other permit holder paying the fine is subject to discipline by the stewards.

28.4. Jockey Betting. No jockey shall make a wager on any race, nor accept the promise or token of any wager with respect to the race in which he or she is riding, except through or from the owner or trainer of the horse he or she rides, and then only on that horse.

28.5. Jockey's Spouse. A jockey shall not compete or ride in any race against a horse which is owned, trained or ridden by the jockey's spouse. If a conflict arises between a jockey and the jockey's spouse as to who shall compete or ride in a race and no agreement can be reached as to which of them shall

compete or ride, the stewards shall draw lots to resolve the conflict.

28.6. Jockey Mount Fees. The following provisions apply to jockey mount fees:

28.6.a. The organization representing the majority of the horsemen and the organization representing the majority of the jockeys at each racetrack may negotiate and reach agreements specifying the mount fees to be paid to the jockeys at each racetrack. Any agreement reached shall be filed with the Racing Commission thirty (30) days prior to the start of the race meeting. In the absence of such an agreement, the jockey mount fees shall be as set forth in table 178-1B at the end of this rule.

28.6.b. The owner of the horse shall pay the jockey riding fees to the horsemen's bookkeeper.

28.6.c. If any owner or trainer engages two (2) or more jockeys for the same race, he or she shall pay the losing fee for each engaged jockey not riding in the race, as well as the appropriate fee to the jockey who does ride.

28.6.d. A jockey fee shall be considered earned when the clerk of scales weighs out the jockey. The fee shall not be considered earned if the jockey, of his or her own free will, takes himself or herself off of the horse he or she is engaged to ride and when injury to the horse or rider is not involved. The stewards are vested with the authority to interpret and apply this subdivision and to determine whether or not a jockey fee is or is not earned based upon the facts and circumstances presented in a particular instance.

28.6.e. In a dead heat, the jockeys involved shall divide equally the sum total of the fees they would have received individually had one beaten the other or others. Likewise, the owners of the horses involved shall pay their equal share of fees.

§178-1-29. Jockey Agents.

29.1. Eligibility. The following provisions apply to the eligibility of jockey agents:

29.1.a. An applicant for a permit as a jockey agent shall:

29.1.a.1. provide written proof of agency with at least one (1) jockey holding a permit issued by the Racing Commission;

29.1.a.2. demonstrate to the stewards that he or she has a contract for agency with at least one (1) jockey who has been issued a permit by the Racing Commission; and

29.1.a.3. be qualified, as determined by the stewards, by reason of experience, background and knowledge. A jockey agent's permit from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

29.1.a.3.A. a written examination; or

29.1.a.3.B. an interview or oral examination.

29.1.a.4. Applicants not previously issued a permit as a jockey agent shall be required to

pass a written and oral examination.

29.1.b. A jockey agent may not hold an occupational permit in any other capacity as long as he or she holds an agent's occupational permit, unless the stewards approve the additional occupational permit. A jockey agent or his or her spouse shall not be the owner or trainer of any race horse nor shall he or she have any interest in the ownership of a horse.

29.2. Limit on Contracts. A jockey agent may serve as agent for no more than two (2) journeymen jockeys, or one (1) journeyman jockey and one (1) apprentice jockey.

29.3. Responsibilities. The following provisions apply to jockey agent responsibilities:

29.3.a. A jockey agent shall not make or assist in making engagements for a jockey other than those the agent is issued a permit to represent.

29.3.b. A jockey agent shall file written proof of all agencies and changes of agencies with the stewards.

29.3.c. A jockey agent shall notify the stewards, in writing, prior to withdrawing from representation of a jockey and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

29.3.d. All persons permitted to make riding engagements shall maintain current and accurate records of all engagements made, such records being subject to examination by the stewards at any time.

29.3.e. A jockey agent shall not name a jockey on a horse without the consent of the horse's trainer.

29.4. Prohibited Areas. A jockey agent is prohibited from entering the jockey room, winner's circle, racing strip, paddock or saddling enclosure during the hours of racing, unless permitted by the stewards.

29.5. Agent Withdrawal. The following provisions apply to jockey agent withdrawal:

29.5.a. When any jockey agent withdraws from representation of a jockey, the jockey agent shall immediately notify the stewards and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

29.5.b. A jockey agent shall not be permitted to withdraw from the representation of any jockey unless written notice to the stewards has been provided.

§178-1-30. Blacksmiths.

30.1. An applicant for an occupational permit to act as a blacksmith shall be qualified, as determined by the stewards, by reason of experience, background and knowledge of blacksmithing. A permit to act as a blacksmith from another jurisdiction, having been issued within a prior period as determined by the stewards, may be accepted as evidence of experience and qualifications.

30.2. An applicant for an occupational permit to act as a blacksmith who has not been previously issued a permit in this or any other state shall:

30.2.a. provide written statements from two (2) reputable persons attesting that the applicant is personally known to them; that the applicant is of good character and reputation; and that the applicant is capable of engaging in the vocation of blacksmith;

30.2.b. pass a test conducted by a panel appointed by the stewards in which the applicant:

30.2.b.1. undergoes a written or oral examination regarding horse shoes and horse shoeing;

30.2.b.2. demonstrates that he or she can shoe a horse with racing plates; and

30.2.b.3. demonstrates that he or she can fit a steel stock shoe to a pattern provided by the panel, for the application of a bar to be added.

30.2.c. The panel appointed by the stewards to conduct the test shall consist of a veterinarian, a trainer and a blacksmith, all holding occupational permits issued by the Racing Commission.

30.2.d. The applicant shall have his or her own tools necessary to complete the examination.

30.2.e. If the applicant fails the test, he or she may retake it after a period of six (6) months.

30.2.f. The stewards may exempt an applicant from the test requirement if the applicant can produce a certificate or other verification that he or she has graduated from an accredited blacksmith school.

§178-1-31. Practicing Veterinarians.

31.1. Eligibility. An applicant for a permit as a practicing veterinarian shall be qualified and licensed to practice veterinary medicine in the state of West Virginia and be otherwise qualified to be issued a permit to participate in racing. An application for a practicing veterinarian permit from the Racing Commission must be accompanied by a copy of the applicant's current license to practice veterinary medicine in the state of West Virginia.

31.2. Responsibility. The following provisions apply to the responsibilities of practicing veterinarians:

31.2.a. All practicing veterinarians administering drugs, medications or other substances shall be responsible for ensuring that the drugs, medications or other substances and the veterinary treatment of horses are administered in accordance with this rule.

31.2.b. All practicing veterinarians shall promptly notify the Racing Commission veterinarian(s) of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge.

31.3. Restrictions on Wagering. A practicing veterinarian shall not wager on the outcome of any race if the practicing veterinarian has treated a horse participating in that race within the past thirty (30) days.

§178-1-32. Tip Sheet Vendor.

32.1. Any person granted an occupational permit as a tip sheet vendor shall comply with the following:

32.1.a. Only one (1) version of a tip sheet for use at any one (1) racetrack on any given race day may be published and sold by a tip sheet vendor holding an occupational permit.

32.1.b. To ensure fair conditions for the wagering public, a tip sheet vendor may not use the same facilities to produce a tip sheet that is used by another tip sheet vendor at the same racetrack.

PART 6. CLAIMING RACING.

§178-1-33. Claiming Racing -- General Provisions.

33.1. A person entering a horse in a claiming race warrants that the title to such horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering such horse, the written consent of the holder of the claim or lien has been filed with the horsemen's bookkeeper. A person may not claim ownership in a horse after the horse has run in a claiming race in the name of another person who, at the time of the race, had peaceable and undisputed possession of the horse.

33.2. Every horse claimed shall run in the interest and for the account of the owner who entered it in the race, but title to the claimed horse is vested in the successful claimant from the time the horse becomes a starter. The successful claimant shall become the owner of the horse. Provided that, a claim shall be voided if a horse suffers a fatality during the running of the race, dies, or is euthanized by a Racing Commission veterinarian on the race course or an adjacent area to which the horse may be safely and humanely removed as directed by a Racing Commission veterinarian. Provided further that, a claim is voidable at the discretion of the new owner for a period of one hour after the race is made official, for any horse that is vanned off the track at the direction of a Racing Commission veterinarian or that is observed by a Racing Commission veterinarian to be lame or unsound while on the racetrack for that race.

33.3. For claiming purposes, if a horse is owned by more than one (1) owner, the total ownership shall be considered as a single entity.

33.4. At the time of entry into a claiming race, the owner may opt to declare a horse ineligible to be claimed, provided that the horse has been laid off and has not started for a minimum of one hundred eighty (180) days since its last race and is entered for a claiming price equal to or greater than the claiming price of the horse's last start. A notice shall be included in the daily program if an owner opts to declare a horse ineligible to be claimed under this subsection.

33.5. The stewards shall decide any questions arising under these sections pertaining to claiming racing; shall pass upon all claims; and, may, in their discretion, declare any claim void.

§178-1-34. Claiming of Horses.

34.1. Any horse starting in a claiming race is subject to be claimed for its entered price by any:

34.1.a. occupational permit holder in good standing;

34.1.b. holder of a valid claim certificate; or

34.1.c. an authorized agent holding an occupational permit acting on behalf of an eligible claimant.

§178-1-35. Claim Certificate.

35.1. An applicant for a claim certificate shall submit to the stewards:

35.1.a. an application for an owner's occupational permit and the required fee; and

35.1.b. the name of a trainer holding an occupational permit, or person eligible to hold a trainer's occupational permit, who will assume the care and responsibility for any horse claimed;

35.2. The stewards shall issue a claim certificate upon satisfactory evidence that the applicant is eligible for an owner's occupational permit.

§178-1-36. Prohibitions.

36.1. A person shall not claim more than one (1) horse in a race, nor shall a person submit more than one (1) claim for the same horse.

36.2. An authorized agent, although representing more than one eligible claimant, shall not submit more than one (1) claim in any race.

36.3. A trainer, even though eligible to make a claim, shall not submit a claim in the same race in which the owner of horses trained by him or her has submitted a claim. If this occurs, the stewards shall declare the trainer's claim void.

36.4. When a stable consists of horses owned by more than one (1) owner, but trained by the same trainer, not more than one (1) claim may be entered on behalf of the stable in any race. If more than one (1) claim is entered, the owners shall compete by lot for the claim.

36.5. When a stable consists of horses owned by more than one (1) owner, but trained by the same trainer, the owners are not eligible to claim from that trainer's stable.

36.6. A person shall not offer or enter into an agreement to claim, or attempt to prevent another person from claiming, a horse in a claiming race.

36.7. Owners and trainers running horses in a claiming race shall not collude or make any agreement for the protection of their horses.

36.8. Any person making a false affidavit in connection with the filing of a claim pursuant to the procedures set forth in section 37 of this rule, may be summarily suspended by the stewards or may be subject to other disciplinary action by the stewards and/or the Racing Commission.

§178-1-37. Procedure for Claiming.

37.1. The claiming price of each horse in a claiming race shall be printed on the official program and all claims for a horse shall be for the amount designated in the official program, plus all transfer fees and applicable taxes.

37.2. To make a valid claim for a horse, an eligible person shall:

37.2.a. deposit with the horsemen's bookkeeper an amount equal to the amount of the claim, plus all transfer fees and applicable taxes, unless at the time of making the claim the person has an unencumbered amount equal to the amount of the claim to his or her credit with the horsemen's bookkeeper;

37.2.b. accurately complete a written claim on a form approved by the stewards and which shall include an affidavit in which the claimant certifies that he or she is claiming the horse for his or her own account or as an authorized agent, and not for any other person;

37.2.c. identify the horse to be claimed by the spelling of its name as spelled on the official program;

37.2.d. place the completed claim form inside a sealed envelope approved by the stewards which shall have no identification marked on it other than the number of the race in which the claim is being made;

37.2.e. have the time of day that the claim is entered stamped on the envelope; and

37.2.f. have the envelope deposited in the locked claim box no later than ten (10) minutes prior to post time of the race for which the claim is entered.

37.3. After a claim has been deposited in the claim box, it is irrevocable by the claimant.

37.4. Officials and employees of the association shall not provide any information as to the filing of claims until after the race has been run, except as is necessary for processing of the claim.

37.5. If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their designee.

37.6. Notwithstanding any designation of sex or age appearing in the racing program or in any racing publication, the claimant of a horse shall be solely responsible for the determination of the sex or age of any horse claimed.

37.7. All horses claimed in other states and racing in the state of West Virginia are subject to the conditions of the claiming rule in the state where the claim was made.

§178-1-38. Transfer of Claimed Horses.

38.1. Upon a successful claim, the stewards shall issue an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the stewards and the association's racing secretary. Upon notification by the stewards, the horsemen's bookkeeper shall immediately debit the claimant's account for the claiming price, applicable taxes and transfer fees.

38.2. A person shall not refuse to deliver a properly claimed horse to the successful claimant. If a person refuses to deliver a properly claimed horse, the stewards may prevent the horse claimed from racing, and may prevent all other horses owned or trained by that person from racing, until delivery is made.

38.3. Transfer of possession of a claimed horse shall take place immediately after the race has been run by the delivery of the horse to the claimant in the paddock, unless otherwise directed by the stewards. However, if the horse is required to be taken to the test barn for post-race testing, the original trainer or his/her designee shall maintain physical custody of the claimed horse; shall observe the testing procedure; shall sign the official form as witness to the taking of the specimen; and, shall, upon the release of the horse by the Racing Commission veterinarian or his or her designee, transfer possession of the claimed horse to the claimant. The successful claimant or his or her designee may also accompany the horse to the test barn for post-race testing.

38.4. When a horse is claimed out of a claiming race, the horse's engagements are transferred, with the horse, to the claimant.

38.5. Any horse claimed shall not be sold or transferred, wholly or in part thereof, to anyone for thirty (30) days except in another claiming race. The horse shall not remain in the same barn or under the control or management of its former owner or trainer for thirty (30) days, unless reclaimed, nor shall it race outside of the state of West Virginia for a period of sixty (60) days, except for stakes races and special events, or unless special permission is granted by the stewards.

38.6. The previous trainer of a claimed horse shall, within forty-eight (48) hours after a race is made official, provide to the new owner an accurate record of all corticosteroid joint injections that were administered to the horse within thirty (30) days before the race.

PART 7. RULES OF THE RACE.

§178-1-39. Entries and Nominations.

39.1. Entries. The following provisions apply to entries:

39.1.a. A horse shall not be qualified to start in any race unless the horse has been entered and is qualified at the time of starting for the race in which it has been entered.

39.1.b. No person shall willfully enter, or cause to be entered, or start a horse in a race, when he or she knows or believes the horse to be ineligible or disqualified.

39.1.c. A person who does not have an interest in a horse that is at least equal to the ownership interest of any other individual owner may not enter the horse in a race as the owner.

39.1.d. One (1) or more of the owners of a horse may make joint subscriptions and entries. However, each owner is jointly and separately liable for all fees.

39.1.e. A horse must be eligible at the time of starting.

39.1.f. No horse owned by multiple owners shall be permitted to enter or to start until the owners

have complied with rules for the permitting of multiple owners as set forth in subsection 25.2. of this rule.

39.1.g. If the association's racing secretary receives an entry from any disqualified person or a disqualified horse, the entry is void and any money paid for that entry shall be returned if the disqualification is disclosed forty-five (45) or more minutes before post time for the race. Otherwise, any money shall be paid to the winner.

39.1.h. The association's racing secretary shall not accept an entry from spouses while either is disqualified from racing. For the purpose of this rule, spouses shall be considered as one.

39.2. Procedure. The following provisions apply to the procedure for entries:

39.2.a. For all races, the association's racing secretary or his or her assistants are authorized to receive entries.

39.2.b. Entries shall be made in writing, by telephone, by facsimile or by electronic means approved by the Racing Commission. Each association shall provide blank forms on which written entries may be made. Upon the request of the association's racing secretary or the stewards, any entry not made in writing shall be confirmed in writing.

39.2.c. When a horse is entered, it must be clearly identified by stating its age, sex, name, color, and the names of its sire and dam.

39.2.d. The stewards may refuse an entry of any person, or the transfer of any entry, with notice and the reason given.

39.2.e. The entry of a horse shall be in the name of his or her valid owner.

39.2.f. The association's racing secretary shall immediately compile and conspicuously display the number of entries upon the closing of all overnight races.

39.2.g. Alterations shall not be made in any entry after closing of entries, except correction of errors approved by the stewards.

39.3. Entries of Horses Having Common Ties. The following provisions apply to entries of horses having common ties through ownership or training:

39.3.a. No more than two (2) horses having common ties through ownership or training may be entered in an overnight race. When horses having common ties through ownership or training are entered in an overnight race, preference by date on the day of entry shall be given. Provided, however, when making an entry involving two (2) horses having common ties through ownership, a preference for one (1) of the horses must be made and both of such horses having common ties may not start to the exclusion of a single entry.

39.3.b. In a stakes race, futurity or other special event, any two (2) 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.

39.3.c. In any race ordered split by the association's racing secretary into two (2) or more

divisions, horses in an entry involving horses having common ties through ownership or training shall be seeded in separate divisions and separated.

39.4. Closings. The following provisions apply to the closing of entries:

39.4.a. The association's racing secretary shall close all entries at an advertised time with no entry accepted thereafter. The association's racing secretary, however, may postpone closing or filling of overnight races. Provided that, if the association's racing secretary postpones the closing or filling of one or more overnight races past the advertised time, he or she shall postpone the closing or filling of all other overnight races until the same time.

39.4.b. For futurity races, if a horse is not named through the entry box at the published time of closing, the horse shall be denied entry.

39.4.c. No races shall be drawn or cancelled until such time as all races comprising the racing card have been filled.

39.5. Number of Starters in a Race. The following provisions apply to the number of starters in a race:

39.5.a. The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and its extensions. The number of starters may be further limited by the number of horses which, in the opinion of the stewards, can be afforded a safe, fair and equal start.

39.5.b. If, due to racetrack limitations, the number of entries to any purse race is in excess of the number of horses that may be permitted to start, the horses for the race and their post or starting gate positions, shall be determined by the preference system or the conditions of the race. The same methods shall be employed in determining the horses and post or starting positions in split races.

39.6. Split or Divided Races. The association's racing secretary may split or divide any overnight race.

39.7. Post Positions. The manner of selecting positions of horses at the starting gate shall be determined by lot by the association's racing secretary or his or her designee, in public, at the close of the entries. The horses drawn are entitled to the position at the starting gate corresponding to the number drawn.

39.8. Also-Eligible List. The following provisions apply to the also-eligible list:

39.8.a. If the number of entries for a race exceeds the number of horses permitted to start, the association's racing secretary may create and post an also-eligible list.

39.8.b. If any horse is scratched from a race for which an also-eligible list was created, a replacement horse shall be drawn from the also-eligible list into the race in order of preference.

39.8.c. Any owner or trainer of a horse on the also-eligible list who does not wish to start the horse in such race shall so notify the association's racing secretary prior to scratch time for the race, thereby forfeiting any preference to which the horse may have been entitled.

39.8.d. A horse which draws into a straightaway race from the also-eligible list shall start from the post position vacated by the scratched horse. In the event more than one horse is scratched, post positions of horses drawing in from the also-eligible list shall be determined by public lot.

39.8.e. Horses which draw into a non-straightaway race from the also-eligible list shall start from the outermost post positions.

39.8.f. If a horse is on the also-eligible list and is selected on a subsequent race day, the horse is an automatic scratch or elimination from the eligible list the first day.

39.9. Preferred List. The association's racing secretary shall maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The manner in which the preferred list shall be maintained and all rules governing such list shall be the responsibility of the association's racing secretary. Such rules must be submitted to the Racing Commission thirty (30) days prior to the commencement of the race meeting and are subject to the approval of the Commission.

§178-1-40. Naming of Riders.

40.1. Owners and/or trainers shall name their jockeys no later than scratch time of that race.

40.2. Any change of a jockey after scratch time of a race must be sanctioned by the stewards and shall be promptly and publicly displayed and announced.

§178-1-41. Declarations and Scratches.

41.1. Declarations. The following provisions apply to declarations:

41.1.a. A declaration is the act of withdrawing an entered horse from a race prior to the closing of entries.

41.1.b. The declaration of a horse from a race is irrevocable.

41.1.c. If the miscarriage of any declaration by mail or otherwise is alleged, satisfactory proof of the miscarriage is required of the complainant. Otherwise, the declaration shall not be accepted.

41.2. Scratches. The following provisions apply to scratches:

41.2.a. A scratch is the act of withdrawing an entered horse from a contest after the closing of entries.

41.2.b. A scratch of a horse from a race is irrevocable.

41.2.c. No horse shall be considered to be scratched from a race until the trainer or his or her designee notifies the association's racing secretary within the prescribed time period established by the association.

41.2.d. Scratches from stakes races shall close four (4) hours before post time for that race, unless

otherwise approved by the stewards.

41.2.e. No horse in an overnight race shall be scratched without the approval of the stewards.

41.2.f. A recommendation from a Racing Commission veterinarian to scratch a horse shall be given to the stewards and shall be used only as an aid in determining whether a scratch shall be approved.

41.2.g. Entry of a horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of ~~five (5)~~ seven (7) days after such horse was scratched or excused and the horse has been removed from the veterinarians' list by a Racing Commission veterinarian.

§178-1-42. Weights.

42.1. Allowances. The following provisions apply to weight allowances:

42.1.a. A weight allowance must be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

42.1.b. A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.

42.1.c. Horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

42.1.d. A claim of weight allowance to which a horse is not entitled shall not disqualify it unless a protest is made in writing and lodged with the stewards at least one (1) hour before post time for that race.

42.1.e. A horse shall not be given a weight allowance for failure to finish second or lower in any race.

42.1.f. No horse shall receive an allowance of weight nor be relieved extra weight for having been beaten in one (1) or more races, but this rule shall not prohibit maiden allowances or allowances to horses that have not won a race within a specified period or a race of a specified value.

42.1.g. Except in handicap races which expressly provide otherwise, two (2) year old fillies shall be allowed three (3) pounds, and fillies and mares, three (3) years old and upward, shall be allowed five (5) pounds before September 1 and three (3) pounds thereafter in races where competing against male horses.

42.2. Penalties. The following provisions apply to weight penalties:

42.2.a. Weight penalties are obligatory.

42.2.b. Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race.

42.2.c. No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race.

42.2.d. Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

42.2.e. The reports, records and statistics as published by the Daily Racing Form, Equibase or other recognized publications shall be considered official in determining eligibility, allowances and penalties, but may be corrected.

42.2.f. For determining weight penalties and allowances for horses that have previously won or placed in Graded or Group races, penalties in the race conditions will only apply to Graded or Group races in Part 1 countries as recognized in the International Catalogue Standards (ICS) book.

42.2.g. When a race is in dispute, both the horse that finished first and any other horse involved in the dispute are subject to all penalties attached to the winner of that race until the matter is decided.

42.3. Scale of Weights. The following provisions apply to the scale of weights:

42.3.a. With the exception of apprentice allowances, handicap races, three (3) year old horses entered to run in races against horses four (4) years old and upwards, and the allowance provided in subdivision 42.3.b., no jockey shall be assigned a weight of less than one hundred eighteen (118) pounds. For three (3) year old horses entered to run in races against horses four (4) years old and upwards from January 1 through August 31, no jockey shall be assigned a weight of less than one hundred sixteen (116) pounds.

42.3.b. Except in handicaps, fillies two (2) years old shall be allowed three (3) pounds, and fillies and mares three (3) years old and upward shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in races where competing against horses of the opposite sex.

42.3.c. A notice shall be included in the daily program that lists the weight to be carried by each horse as established by the association's racing secretary and that notifies the public that jockeys may carry approximately three (3) pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures. Additionally, the public shall be notified in the daily program that upon the stewards' approval, jockeys may weigh in with an additional three (3) pounds for inclement weather gear.

§178-1-43. Workouts.

43.1. Requirements. Any horse which has not raced for a period of sixty (60) days shall have one (1) published workout, or a workout certified by the clocker, to be announced over the public address system prior to the horse starting.

43.2. Identification. The following provisions apply to the identification requirements for workouts:

43.2.a. An occupational permit holder exercising a horse in a workout shall identify the horse at the request of the clocker.

43.2.b. An occupational permit holder exercising a horse in a workout shall, upon request of the clocker, identify the distance the horse is to be worked and the point on the track where the workout will start.

43.2.c. An occupational permit holder wishing to exercise a horse on the racing strip between races shall obtain permission from the stewards and the track superintendent. When a horse is being warmed up or exercised between races, a public announcement shall be made giving the name of the horse and explaining its presence on the racing strip.

§178-1-44. Horses Ineligible. A horse is ineligible to start in a race when:

44.1. its breed registration certificate is not on file with the association's racing secretary one-half (½) hour before post time for the first race; the stewards may waive this requirement if the information contained on the registration certificate is otherwise available and the horse is otherwise correctly identified to the stewards' satisfaction; provided that the stewards shall not waive this requirement if the horse is scheduled to start in a claiming race.

44.2. its name has been changed and it has not been issued a new registration certificate by the appropriate breed registry;

44.3. it is not fully identified and is tattooed on the inside of the upper lip, is microchipped with a unique microchip (ISO 11784), freeze brand or identified by any other method approved by the appropriate breed registry and the Racing Commission;

44.4. the owner of the horse is in financial arrears; except with the approval of the association's racing secretary or the stewards;

44.5. it is owned in whole or in part by an undisclosed person or interest;

44.6. it is not in sound racing condition;

44.7. it has been trachea tubed to artificially assist breathing;

44.8. it has been nerved; except as provided for in this rule;

44.9. it has impaired eyesight in both eyes, as determined by a Racing Commission veterinarian;

44.10. it is under two (2) years of age;

44.11. it is thirteen (13) years of age or older;

44.12. it is owned by an owner and/or supervised by a trainer who do not hold occupational permits issued by the Racing Commission;

44.13. it is owned, in whole or in part, or is under the care and control of a person who is excluded by the stewards or the association or suspended by the stewards; provided that, when the person has been reinstated to the racetrack by the association or the stewards, or the person's suspension has been rescinded or has expired, or the horse has been transferred through a bona fide sale to an owner acceptable to and approved by the stewards or the Racing Commission, the horse may be eligible to start in a race;

44.14. at the time of starting of the race it is on the stewards' list, the paddock judge's list, the starter's list, the veterinarians' list or the bleeder list, except when there exists an unforseen administrative

issue in removing the horse from the veterinarians' list of another racing jurisdiction. However, the horse is eligible to be entered while on the veterinarians' list subject to subsection 52.3 of this rule as long as no other horse is excluded from the race;

44.15. if the horse is a mare who is or who may be in foal, unless full information as to services or breeding has been filed with the association's racing secretary and the owner's practicing veterinarian has given approval; provided that if a mare who is or who may be in foal is permitted to start in a race under this subsection, the breeding information and the practicing veterinarian's approval shall be conspicuously posted in the association's racing secretary's office and if the mare is claimed, the original owner shall supply the stallion service certificate to the new owner that has claimed the horse;

44.16. there is no current negative test certificate for Equine Infectious Anemia (EIA) attached to its breed registration certificate or proof of a negative test certificate is not otherwise available;

44.17. it has shoes (racing plates) which have toe grabs with a height greater than four millimeters (0.15748 inches), bends, jars, caulks, stickers or any other traction device on the front hooves while racing or training on dirt racing surfaces. Provided that, for any race in this state that has been issued a grade by the American Graded Stakes Committee, the stewards may allow the toe grab rule established by the American Graded Stakes Committee to be followed in that race. The association shall notify the Racing Commission and the stewards upon the issuance of a grade for a race by the American Graded Stakes Committee so that the stewards may allow the appropriate toe grab rule to be administered and enforced. A copy of the toe grab rule in graded stakes races shall be published in the office of the association's racing secretary;

44.18. it has not raced in twelve (12) months since its previous start until the horse has been subjected to the protocols within subdivision 52.3.d. of this rule; and

44.19. it is a first time starter four (4) years of age or older until the horse has been subjected to the protocols within subdivision 52.3.d. of this rule.

§178-1-45. Running of the Race.

45.1. Equipment. The following provisions apply to the equipment used in connection with the running of a race:

45.1.a. All riding crops are subject to approval and enforcement by the stewards and inspection by the clerk of scales and shall meet the following requirements:

45.1.a.1. Riding crops shall have a shaft and a flap and will be allowed in racing and training, only as follows:

45.1.a.1.A. Maximum weight of eight ounces;

45.1.a.1.B. Maximum length, including flap, of thirty (30) inches;

45.1.a.1.C. Minimum diameter of the shaft of three-eighths (3/8) inch; and

45.1.a.1.D. Shaft contact area must be smooth, with no protrusions or raised surface, and covered by shock absorbing material.

45.1.a.2. The flap is the only allowable attachment to the shaft and must meet these specifications:

45.1.a.2.A. Length beyond the end of the shaft a maximum of one (1) inch;

45.1.a.2.B. Width a minimum of eight-tenths (0.8) of an inch and a maximum of one and six-tenths (1.6) inches;

45.1.a.2.C. No reinforcement or additions beyond the end of the shaft;

45.1.a.2.D. No binding within seven (7) inches of the end of the shaft; and

45.1.a.2.E. Shock absorbing characteristics similar to those of the contact area of the shaft.

45.1.b. No bridle shall exceed two (2) pounds.

45.1.c. The use of plastic bridles and/or reins is prohibited unless they are steel reinforced.

45.1.d. The starter shall give permission to add blinkers to a horse's equipment or to discontinue the use of blinkers.

45.1.e. Riding crops and/or blinkers may be used on two (2) year olds as well as other first time starters if schooled or reviewed by the starter with the riding crops and/or blinkers, and approved by the starter and the stewards before time of entry.

45.1.f. A horse's tongue may be tied down with clean bandages, gauze or tongue strap. Under no circumstances shall the material to be used as a tongue-tie be furnished by anyone other than the trainer of the horse on which it is to be used. No employee of the association may tie the tongue, replace, or repair a tongue-tie.

45.1.g. The stewards or their designee may give permission during the current meeting for any change of equipment from that which a horse carried in its previous race.

45.1.h. A horse starting in a race shall not be shod with ordinary or training shoes, nor shall the horse run without shoes unless by permission of the stewards and after announcement to the public.

45.1.i. Horseshoes on which the trailing portion of the shoe is turned down are prohibited at licensed racetracks in West Virginia.

45.2. Racing Numbers. The following provisions apply to racing numbers:

45.2.a. Each horse shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

45.2.b. A jockey shall wear a number on his or her right arm and this number and the saddle cloth number shall correspond to the number of the horse in the official program.

45.2.c. In the case of an entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall appear in the official program as 1 and 1A.

45.2.d. Each horse in the mutuel field shall carry a separate number or may carry the same number with a distinguishing letter following the number.

45.3. Jockey Requirements. The following provisions apply to requirements imposed upon jockeys in connection with the running of a race:

45.3.a. In riding a race, a jockey shall be neat in appearance and the judgment of the stewards controls in this regard. A jockey shall dress in jockey attire including, cap, jacket, white or light breeches and top boots. A jockey's first name and/or middle name and/or surname, or initials representing the first letters of the jockey's first name and/or middle name and/or surname, may be printed on the side of a jockey's breeches in black lettering not to exceed thirty-two (32) square inches. The names(s) or initials on a jockey's breeches must be those of the jockey wearing the breeches.

45.3.b. A jockey must wear a safety vest when riding in an official race. The safety vest must comply with or exceed one of the following minimum standards: British Equestrian Trade Association (BETA): 2000 Level 1; Euro Norm (EN) 13158: 2000 Level 1; American Society for Testing and Materials (ASTM) F2681-08; Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or, Australian Racing Board (ARB) Standard 1.1998.

45.3.c. A jockey must wear a safety helmet when riding in an official race. A jockey is responsible for providing sufficient evidence that his/her helmet meets or exceeds one of the following safety standards: American Society for Testing and Materials (ASTM 1163); UK Standards (EN-1384 and PAS-015); or, Australian/New Zealand Standard (AS/NZ 3838).

45.3.d. A jockey shall wear the colors of the owner or owners of the horse he or she is riding, unless otherwise approved by the stewards and a jockey shall have a number on the saddlecloth of his mount corresponding to the number of the horse as exhibited in the official program.

45.4. Jockey Advertising. The following provisions apply to jockey advertising:

45.4.a. A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour of or during a race, unless:

45.4.a.1. The material advertises or promotes the Jockeys' Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;

45.4.a.2. The material is the Permanently Disabled Jockeys Fund logo, with no additional picture or logo; or

45.4.a.3. The picture or logo has previously been approved by the current owner, the association, and the stewards under the process set forth in this subsection, and this approval is reflected in the Racing Commission's official records; and

45.4.a.4 The material complies with the size restrictions of subparagraphs 45.4.b.2.A., 45.4.b.2.B. and 45.4.b.2.C. of this subsection; or the following criteria are met:

45.4.a.4.A. The material meets the advertising standards listed in subdivision 45.4.b. of this subsection; and

45.4.a.4.B. The jockey obtains the written approval established in subdivision 45.4.d. of this subsection.

45.4.b. Advertising or promotional material displayed on jockey clothing shall:

45.4.b.1. Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

45.4.b.2. Comply with the following size restrictions;

45.4.b.2.A. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

45.4.b.2.B. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

45.4.b.2.C. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

45.4.c. A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

45.4.d. For advertising or promotional material addressed in subparagraphs 45.4.a.4.A. and 45.4.a.4.B. of this subsection, approval in writing of all three (3) of the following shall be required:

45.4.d.1. The managing owner of the horse, or the owner's authorized agent;

45.4.d.2. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in paragraph 45.4.b.1. of this subsection; and

45.4.d.3. The stewards, who shall grant approval if they reasonably determine the material meets the standards in paragraph 45.4.b.2. and subdivision 45.4.c. of this subsection.

45.4.e. Written approval for advertising and promotional material shall be evidenced by completion and return of the "Request to Wear Advertising and Promotional Materials" set forth in table 178-1C at the end of this rule. The form shall be completed and submitted to the stewards not later than a time designated by the stewards.

45.4.f. As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine that the requirements of this subsection are met.

45.4.g. This rule shall not prohibit the sponsor of a licensed racing association race or race meeting from displaying advertising or promotional material on an association saddlecloth if it does not

interfere with the clear visibility of the number of the horse.

45.4.h. Advertising content other than that approved in this rule shall not be permitted.

45.5. Weighing Out. The following provisions apply to weighing out:

45.5.a. The clerk of scales shall weigh out each jockey for his or her respective horses in each race not less than twenty (20) minutes before the time fixed for the race, unless otherwise authorized by the stewards. In case of substitution of a rider after the original rider has been weighed out, the substitute rider shall be weighed out as promptly as possible and the name of the substitute and his or her weight publicly announced and displayed.

45.5.b. Every jockey who is to ride shall report and weigh out at the appointed time, unless excused by the stewards. Every jockey who has an engagement to ride in a stakes race shall report into the jockey room no later than one (1) hour before post time of that race, unless permission is granted to do otherwise by the stewards. Jockeys shall not leave the jockey room, except to view the races from a point approved by the stewards or to ride in a race, unless permission is granted by the stewards.

45.5.c. No jockey may carry overweight in excess of two (2) pounds without the consent of the owner or trainer and no jockey shall be allowed to ride more than five (5) pounds overweight.

45.5.d. Any overweight shall be declared by a jockey to the clerk of scales at the time appointed in advance of a race. The clerk of scales shall report to the stewards any failure on the part of any jockey to comply with this subdivision.

45.5.e. The clerk shall have all jockey overweights displayed and/or announced publicly and any change in the amount of an overweight after the jockey's declaration pursuant to subdivision 45.5.d., shall be displayed and/or announced publicly.

45.5.f. If any underweight is discovered after wagering has commenced and before the actual start of the race, the horse shall be returned to the paddock and the weight shall be corrected and announced publicly.

45.5.g. The association shall provide the only attendants who may assist jockeys in weighing out. The attendants must hold an occupational permit issued by the Racing Commission.

45.5.h. A jockey's weight shall include his or her clothing, boots, saddle and its attachments and any other equipment except the bridle, bit, blinkers, goggles, number cloth and safety equipment including helmet, vest, over-girth, reins and breast collar.

45.5.i. A jockey shall ride a race with the same clothing, boots, saddle and its attachments, and any other equipment not excepted from the jockey's weight under subdivision 45.5.h., that the jockey had on or had in his or her possession when the jockey weighed out for that race.

45.5.j. Upon the stewards' approval, jockeys may be allowed up to three (3) pounds more than published weights for inclement weather clothing and equipment.

45.6. Paddock to Post. The following provisions apply to paddock to post activities:

45.6.a. Every horse shall be saddled by his or her trainer in the paddock unless permission has been granted by the stewards to saddle elsewhere.

45.6.b. The post parade shall not exceed twelve (12) minutes, except in cases of unavoidable delay. Horses shall be allowed to break formation and canter, warm up, or go as they please to the post, unless otherwise directed by the stewards. Horses shall start without unnecessary delay once they have reached the post.

45.6.c. After the horses enter the racing strip, no jockey shall dismount and no horse shall be made available to the care of an attendant without the consent of the stewards or the starter. The horse shall be free of all hands other than those of the jockey, assistant starter or Racing Commission veterinarian before the starter releases the barrier.

45.6.d. If a jockey is injured on the way to the starting gate so as to require another jockey for his or her replacement, the horse shall be taken to the paddock and re-mounted with a replacement jockey who shall ride over the uncompleted portion of the route of the parade to the starting gate.

45.6.e. If a jockey is thrown from the horse on the way from the paddock to the starting gate, he or she shall remount the horse, return to the point where he or she was thrown and then proceed over the route of the parade to the starting gage. A horse shall carry his or her assigned weight from paddock to starting gate and from starting gate to finish.

45.6.f. In case of an accident occurring to a jockey, to his or her horse, or equipment, the stewards or the starter may permit the jockey to dismount. The stewards may permit the horse to be cared for during the delay and may permit all jockeys to dismount, and all other horses to be cared for during the delay.

45.6.g. If a horse leaves the racing strip while moving from paddock to starting gate, the horse shall be returned to the racing strip at the nearest practical point to that at which the horse left the racing strip. The horse shall complete his parade to the starting gate from the point at which the horse left the racing strip.

45.6.h. No person shall willfully delay the arrival of a horse at the starting gate.

45.6.i. No person, other than the rider, starter, or assistant starter shall be permitted to assist a horse in obtaining a start.

45.6.j. The starter shall load thoroughbreds into their positions in the starting gate in alternating sequence, with the thoroughbred assigned to the post closest to the inside rail and the thoroughbred assigned to the post position nearest to the middle of the field being loaded first, and so on, until the field is properly loaded. When there are less than seven (7) thoroughbreds running a race, they may be loaded in the starting gate in the order of their positions beginning from the inside rail. Vicious and unruly horses may be loaded out of sequence in the discretion of the starter.

45.7. Post to Finish.

45.7.a. The following provisions apply to the start of a race:

45.7.a.1. The starter is responsible for assuring that each participant receives a fair start.

45.7.a.2. If the stewards suspect a false start has occurred, they shall post the inquiry sign and may disqualify the horse(s), declare it a non-starter, or take no action.

45.7.a.3. If, for any reason, the doors in front of any stall in a mechanical or electrically operated gate fail to open, thereby preventing a horse from starting when the starter dispatches the field, the entire amount wagered on the affected horse shall be refunded: Provided, that the horse is not part of an entry or part of a mutuel field.

45.7.b. The following provisions apply to interference, jostling or striking:

45.7.b.1. A jockey shall not ride carelessly or willfully so as to permit his or her mount to interfere with, impede or intimidate any other horse in the race.

45.7.b.2. No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment.

45.7.b.3. No jockey shall unnecessarily cause his or her horse to shorten its stride or engage in other actions so as to give the appearance of having suffered a foul.

45.7.c. The following provisions apply to maintaining a straight course:

45.7.c.1. When the way is clear in a race, a horse may be ridden to any part of the course, but if any horse swerves, or is ridden to either side, so as to interfere with, impede or intimidate any other horse, it is a foul.

45.7.c.2. The offending horse may be disqualified, if in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful or the result of careless riding.

45.7.c.3. If the stewards determine the foul was intentional, or due to careless riding, the jockey may be held responsible and his or her occupational permit may be disciplined.

45.7.d. The following provisions apply to disqualification:

45.7.d.1. When the stewards determine that a horse shall be disqualified for interference, they may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last.

45.7.d.2. If a horse is disqualified for a foul, any horse or horses in the same race owned or trained by the same interests, may also be disqualified.

45.7.d.3. Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person authorized to handle or attend to a horse shall be prima facie evidence of a violation of this rule and is sufficient grounds for the stewards to scratch or disqualify the horse.

45.7.d.4. Should the stewards determine that there is more than one (1) incident of interference in a race where disqualification is warranted, the stewards shall deal with the incidents in the

order in which the incidents occurred during the race from start to finish; except in the case where the same horses are involved in multiple incidents. Once a horse has been disqualified, it should remain placed behind the horse with which it interfered. The stewards shall make a conscious effort to place and maintain as placed, every and all horses placed behind others for interference.

45.7.e. All horses shall be ridden out past the finish line in every race. A jockey shall not ease up or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money. A jockey shall give a best effort during a race, and each horse shall be ridden to win.

45.7.f. The following provisions apply to the use of a riding crop:

45.7.f.1. Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

45.7.f.2. No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, shall be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.

45.7.f.3. Riding crops may be used on two (2) year olds, as well as other first time starters, if schooled or reviewed by the starter with the riding crop and approved by the starter and the stewards before the time of entry.

45.7.f.4. The riding crop shall only be used for safety, correction and encouragement.

45.7.f.5. All riders shall comply with the following when using a riding crop:

45.7.f.5.A. Showing the horse the riding crop and giving it time to respond before hitting it;

45.7.f.5.B. Having used the riding crop, giving the horse a chance to respond before using it again;

45.7.f.5.C. Using the riding crop in rhythm with the horse's stride.

45.7.f.6. Prohibited use of the riding crop includes, but is not limited to, striking a horse:

45.7.f.6.A. on the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;

45.7.f.6.B. during the post parade or after the finish of the race except when necessary to control the horse;

45.7.f.6.C. excessively or brutally causing welts or breaks in the skin;

45.7.f.6.D. when the horse is clearly out of the race or has obtained its maximum placing;

45.7.f.6.E. persistently even though the horse is showing no response under the

riding crop; or

45.7.f.6.F. striking another rider or horse.

45.7.f.7. After the race, horses may be subject to inspection by a Racing Commission veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.

45.7.f.8. The giving of instructions by any permit holder that if obeyed would lead to a violation of this subdivision may result in disciplinary action also being taken against the permit holder who gave such instructions.

45.7.g. If a horse leaves the racing strip after the start, the stewards shall disqualify the horse.

45.7.h. If a horse becomes incapacitated during the running of the race or is otherwise unable to finish, best efforts shall be made to dismount, unsaddle and remove the horse from the racing strip without passing the public stands. Further, the horse shall not be euthanized on the racing strip in the direct view of the public unless authorized by a Racing Commission veterinarian or his or her designee.

45.7.i. If a horse is in distress, it shall remain on the racing strip until a Racing Commission veterinarian and the equine ambulance arrive and remove the horse.

45.7.j. During the running of the race, the stewards shall exclude all unauthorized persons from the racing strip.

45.7.k. The following provisions apply to the order of finish:

45.7.k.1. The official order of finish shall be decided by the placing judges with the aid of the photo finish system, and in the absence of the photo finish film record, the video replay. The photo finish and video replay are only aids in the placing judges' decision. The decision of the placing judges shall be final in all cases.

45.7.k.2. The nose of the horse shall determine the placement of the horse in relationship to other horses in the race.

45.7.l. The following provisions apply to returning after the finish:

45.7.l.1. After a race has been run, the jockey shall ride promptly to the place designated by the stewards, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

45.7.l.2. If a jockey is prevented from riding to the designated unsaddling area because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales, or may be excused from weighing in by the stewards.

45.7.m. The following provisions apply to unsaddling:

45.7.m.1. Only persons authorized by the stewards may assist the jockey with unsaddling the horse after the race.

45.7.m.2. No one shall place a covering over a horse before it is unsaddled and the jockey has removed the equipment that is to be included in his or her weight.

45.7.n. The following provisions apply to weighing in:

45.7.n.1. A jockey shall weigh in at no less than the same weight at which he or she weighed out, and if under that weight, and after consideration of mitigating circumstances by the stewards, his or her mount may be disqualified from any portion of the purse money.

45.7.n.2. In the event of such disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

45.7.n.3. A jockey's weight shall include clothing, boots, saddle and its attachments and any other equipment except the bridle, bit, blinkers, number cloth and over-girth, reins and breast collar.

45.7.n.4. Upon approval of the stewards, jockeys may be allowed up to three (3) pounds more than published weights to account for inclement weather clothing and equipment.

45.7.n.5. The post-race weight of a jockey includes any sweat, dirt and mud that may have accumulated on the jockey, jockey's clothing, jockey's safety equipment and over-girth. This accounts for additional weight depending on specific equipment, as well as weather, track and racing conditions.

45.7.o. The following provisions apply to dead heats:

45.7.o.1. When two (2) or more horses run a dead heat, the results of the dead heat are final.

45.7.o.2. The owners of the horses in a dead heat shall divide equally the purse money involved.

45.7.o.3. If a dead heat is for first place, each horse shall be considered a winner of the amount received according to paragraph 45.7.o.2 of this subdivision.

45.7.o.4. When a dead heat is run for second place and an objection is made and sustained as to the winner of the race, the horses which run the dead heat for second place shall be considered to have run a dead heat for first place.

45.7.o.5. Owners shall divide equally all moneys and other prizes and if no agreement can be reached as to which of them shall receive a cup, plate or other indivisible prize, they shall draw lots for it in the presence of one (1) or more of the stewards.

45.7.o.6. In case of a dead heat for win, each of the horses involved is a winner for the purpose of this subdivision.

§178-1-46. Protests, Objections and Inquiries.

46.1. Stewards to Inquire. The following provisions apply to inquiries by the stewards:

46.1.a. The stewards shall take cognizance of foul riding and may entertain reports from other racing officials, regardless of whether or not a formal complaint is made. The stewards shall not consider a complaint which comes from any person other than the jockey, trainer or owner of the horse interfered with.

46.1.b. In determining the extent of disqualification, the stewards in their discretion may:

46.1.b.1. declare null and void a track record set or equalled by a disqualified horse, or any horses included with it in an entry due to common ties of ownership or training;

46.1.b.2. affirm the placing judges' order of finish and hold the jockey responsible if, in the stewards' opinion, the foul riding did not affect the order of finish; or

46.1.b.3. disqualify the offending horse and hold the jockey blameless if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.

46.2. Race Objections. The following provisions apply to race objections:

46.2.a. An objection following the running of any race must be made to the stewards before the race is declared official.

46.2.b. The stewards shall make all findings of fact as to all matters occurring during and incident to the running of a race; shall determine all objections and inquiries, and shall determine the extent of disqualification, if any, of horses in the race.

46.2.c. Once the stewards have determined a race objection, any party may make a complaint to the stewards regarding such determination. A complaint must be made in writing to the stewards within twenty-four (24) hours of their determination.

46.2.d. If a jockey wishes to object to a happening in a race, he or she must notify the clerk of scales immediately upon his or her arrival at the scales for weighing-in. However, when the Quick Official is being used the jockey shall notify the outrider that is equipped with a two-way radio for communication with the stewards, that the jockey wishes to claim foul or put a "hold" on the race. The jockey may either claim foul or put the race on hold. The jockey shall then proceed to the clerk of scales and contact the stewards upon dismounting.

46.3. Protests. The following provisions apply to protests:

46.3.a. A protest shall be made in writing, signed by the complainant and filed with the stewards before post time of the race in question.

46.3.b. A protest, except a protest involving fraud, may be filed only by the owner or his or her authorized agent, the trainer, or the jockey of a horse engaged in the race in which the protest is made or by a racing official of the meeting.

46.3.c. Any person may make a protest involving fraud.

46.3.d. If a claimed horse has had a posterior digital neurectomy and has not complied with the requirements of paragraph 51.1.b.9. of this rule, the claimant has forty-eight (48) hours from the start of the race from which the horse was claimed to file a protest which shall be supported by an affidavit made by a practicing veterinarian holding an occupational permit and a Racing Commission veterinarian.

46.3.e. Anyone who protests against a horse engaged in a race and who files the protest with the stewards not less than sixty (60) minutes before post time, shall receive immediate consideration. The stewards shall disqualify the horse from starting when there is no proof provided within thirty (30) minutes of post time that the horse is qualified to start.

46.3.f. A protest against the scheduled distance of a race shall be made at least thirty (30) minutes before post time for that race.

46.3.g. A protest may not be withdrawn unless a request to withdraw is submitted in writing and is approved by the stewards.

46.3.h. No person shall make a frivolous protest.

46.3.i. The stewards shall keep a record of all protests and complaints and any action taken on the protests and complaints.

PART 8. EQUINE VETERINARY PRACTICES, HEALTH AND MEDICATION.

§178-1-47. Equine Health.

47.1. General. All horses that move onto a West Virginia racetrack from another state or country must comply with all applicable rules of the West Virginia Commissioner of Agriculture and with the applicable rules of the United States Department of Agriculture.

47.2. Equine Infectious Anemia (EIA). The following provisions apply to equine infectious anemia (EIA):

47.2.a. No horse shall be permitted on the grounds of a racing association in this state unless the horse has had a negative Coggins test for EIA.

47.2.b. A person designated by the racing association, must review official test papers of each horse at the time of entry on the grounds of the racing association to ensure that all horses are negative for EIA.

47.2.c. All horses being moved interstate must have been tested for EIA with a negative result within twelve (12) months prior to start in a race held under the jurisdiction of the Racing Commission.

47.2.d. All horses not moved interstate must have been tested for EIA with a negative result within twelve (12) months prior to start in a race held under the jurisdiction of the Racing Commission.

47.2.e. Should a horse at a racetrack in this state test positive for EIA, notification shall be sent to the West Virginia Commissioner of Agriculture within twenty-four (24) hours after the results of the test are known. Copies of the notification sent to the Commissioner of Agriculture shall be simultaneously provided to the stewards and the association.

47.2.f. Once a positive EIA test is received for a horse at a racetrack in this state, the rules and procedures of the Commissioner of Agriculture govern the handling and movement of infected and exposed horses at the track.

47.3. Euthanasia. No horse shall be euthanized on the grounds of an association until the horse has been observed by a Racing Commission veterinarian. If an emergency arises, a practicing veterinarian attending to the horse may euthanize the horse and shall subsequently notify a Racing Commission veterinarian.

§178-1-48. Veterinary Practices.

48.1. Veterinarians under Authority of Racing Commission Veterinarian(s). Veterinarians issued an occupational permit by the Racing Commission and practicing at any location under the jurisdiction of the Commission are under the authority of the Racing Commission veterinarian(s) and the stewards. The Racing Commission veterinarian(s) may recommend to the stewards or the Racing Commission the discipline that may be imposed upon a veterinarian who violates this rule.

48.2. The following limitations apply to drug treatments of horses that are engaged in activities, including training, related to competing in pari-mutuel racing in West Virginia:

48.2.a. No drug may be administered except in the context of a valid veterinarian-client-patient relationship between and attending veterinarian, the horse owner (who may be represented by the trainer or other agent) and the horse. The owner is not required by this rule to follow the veterinarian's instructions, but no drug may be administered without a veterinarian having examined the horse and having provided the treatment recommendation. Such relationship requires the following:

48.2.a.1. The veterinarian, with the consent of the owner, has accepted responsibility for making medical judgments about the health of the horse;

48.2.a.2. The veterinarian has sufficient knowledge of the horse to make a preliminary diagnosis of the medical condition of the horse;

48.2.a.3. The veterinarian has performed an examination of the horse and is acquainted with the keeping and care of the horse;

48.2.a.4. The veterinarian is available to evaluate and oversee treatment outcomes, or has made appropriate arrangements for continuing care and treatment;

48.2.a.5. The relationship is maintained by veterinary visits as needed; and,

48.2.a.6. The veterinary judgements of the veterinarian are independent and are not dictated by the trainer or owner of the horse.

48.2.b. No prescription drug may be administered except as prescribed by an attending veterinarian.

48.2.c. The trainer and veterinarian are both responsible to ensure compliance with these limitations on drug treatments of horses, except the medical judgment to recommend a drug treatment or to

prescribe a drug is the responsibility of the veterinarian and the decision to proceed with a drug treatment that has been so recommended is the responsibility of the horse owner (who may be represented by the trainer or other agent).

~~48.2.~~ 48.3. Treatment Restrictions. The following provisions apply to treatment restrictions:

~~48.2.a.~~ 48.3.a. Except as otherwise provided in this subsection, no person other than a veterinarian licensed to practice veterinary medicine in the state of West Virginia and holding an occupational permit issued by the Racing Commission shall possess or administer to a horse a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) at any location under the jurisdiction of the Racing Commission.

~~48.2.b.~~ 48.3.b. This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

~~48.2.b.1.~~ 48.3.b.1. A recognized non-injectable nutritional supplement or other substance approved by a Racing Commission veterinarian;

~~48.2.b.2.~~ 48.3.b.2. A non-injectable substance on the direction or by prescription of a veterinarian licensed to practice veterinary medicine in the state of West Virginia and holding an occupational permit issued by the Racing Commission; or

~~48.2.b.3.~~ 48.3.b.3. A non-injectable non-prescription medication or substance.

~~48.2.c.~~ 48.3.c. No person, other than a veterinarian licensed to practice veterinary medicine in the state of West Virginia and holding an occupational permit issued by the Racing Commission shall possess a hypodermic needle, syringe or injectable of any kind on association grounds, unless otherwise approved by the stewards or the Racing Commission. At any location under the jurisdiction of the Racing Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Racing Commission veterinarian(s). If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Racing Commission, that person may request permission of the stewards and/or the Commission to have a syringe. Such a request shall be in writing and shall be accompanied by a statement from a licensed physician explaining why it is necessary for the person to possess a syringe. If permission is granted to any person to have a syringe at any location under the Racing Commission's jurisdiction, the stewards and/or the Commission may impose conditions and/or restrictions in connection with such approval.

~~48.2.d.~~ 48.3.d. Practicing veterinarians shall not have contact with an entered horse on a race day except for the administration of furosemide (lasix®) under the guidelines set forth in subsection 49.7. of this rule unless approved by a Racing Commission veterinarian. If approval to have contact with an entered horse on a race day for purposes other than the administration of furosemide (lasix®) is obtained from a Racing Commission veterinarian, or if reasonable efforts are made to contact a Racing Commission veterinarian and he or she is unavailable, a practicing veterinarian may have contact with the horse for purposes other than the administration of furosemide (lasix®): *Provided*, That the practicing veterinarian shall complete a form prescribed by the Racing Commission notifying the Racing Commission veterinarian of the contact. Such form shall be provided to the Racing Commission veterinarian one hour before post time. Any unauthorized contact may result in the horse being scratched from the race in which it was scheduled to compete and may result in further disciplinary action by the stewards.

~~48.3.~~ 48.4. Veterinarians' Reports. Every veterinarian who treats a racehorse at any location under the jurisdiction of the Racing Commission shall ~~record in writing the name of the horse treated, any medication, drug, substance, or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested by a Racing Commission veterinarian(s).~~ submit a Veterinarian's Medication Report Form to the Racing Commission Veterinarian or other Commission designee at the racetrack where the horse is entered to run. The Form shall be submitted in a manner and format specified by the Racing Commission which includes the name of the horse treated; any medication, drug substance or procedure administered or prescribed; the name of the trainer of the horse; the date and time of treatment; and any other information requested by a Racing Commission Veterinarian. The veterinarian treating the racehorse shall sign ~~each written record of treatment and shall provide such treatment records to the stewards and/or the Racing Commission veterinarian(s) upon request~~ the Medication Report Form and shall file it with the Racing Commission Veterinarian not later than post time of the race for which the horse is entered. Any Medication Report Form filed with the Racing Commission Veterinarian shall be confidential and its contents shall not be disclosed except in the course of an investigation of a possible violation of this rule or in a proceeding before the stewards of the Commission, or to the trainer or owner of record at the time of treatment. A timely and accurate filing of a Medication Report Form that is consistent with the analytical results of a positive test may be used as a mitigating factor in determining the nature and extent, if any, of a rules violation. Any veterinarian who falsifies a Medication Report Form or any treatment record or who fails to complete and file Medication Report Forms or to maintain other treatment records may be disciplined by the stewards or the Racing Commission.

~~48.4.~~ 48.5. Prohibited Practices. The following are prohibited practices:

~~48.4.a.~~ 48.5.a. The possession or use of a drug, substance or medication on the premises of a facility under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing; or no generally accepted used in equine care exists.

~~48.4.b.~~ 48.5.b. The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the Racing Commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in humans or animals is forbidden without prior permission of the Racing Commission or a Racing Commission veterinarian. This rule shall not restrict the recognized off-label use of any FDA approved medication.

~~48.4.c.~~ 48.5.c. The possession and/or use of blood doping agents (agents that abnormally enhance the oxygenation of body tissue), including but not limited to those listed below, on the premises of a facility under the jurisdiction of the Racing Commission is forbidden:

~~48.4.c.1.~~ 48.5.c.1. Aminoimidazole carboxamide ribonucleotide (AICAR);

~~48.4.c.2.~~ 48.5.c.2. Darbepoetin;

~~48.4.c.3.~~ 48.5.c.3. Equine Growth Hormone;

~~48.4.c.4~~. 48.5.c.4. Erythropoietin;

~~48.4.e.5.~~ 48.5.c.5. Hemopure ®;

~~48.4.e.6.~~ 48.5.c.6. *Myo*-Inositol Trispyprophosphate (ITPP);

~~48.4.e.7.~~ 48.5.c.7. Oxyglobin®;

~~48.4.e.8.~~ 48.5.c.8. Thymosin beta; and

~~48.4.e.9.~~ 48.5.c.9. Venoms and derivatives thereof.

~~48.4.d.~~ 48.5.d. The use of extracorporeal shock wave therapy or radial pulse wave therapy shall not be permitted unless the following conditions are met:

~~48.4.d.1.~~ 48.5.d.1. Any treated horse shall not be permitted to race or train for a minimum of ten (10) days following treatment;

~~48.4.d.2.~~ 48.5.d.2. The use of extracorporeal shock wave therapy or radial pulse wave therapy machines shall be limited to veterinarians holding occupational permits issued by the Commission and using registered and approved machines at a previously-disclosed location;

~~48.4.d.3.~~ 48.5.d.3. Any extracorporeal shock wave therapy or radial pulse wave therapy machines on the association grounds must be registered with and approved by the Commission or its designee before use;

~~48.4.d.4.~~ 48.5.d.4. All extracorporeal shock wave therapy or radial pulse wave therapy treatments must be reported to a Racing Commission veterinarian within one (1) day on a prescribed form. The horse shall be added to a list of ineligible horses. This list shall be kept in the association's racing secretary's office and shall be accessible to jockeys and/or their agents during normal business hours; and

~~48.4.d.5.~~ 48.5.d.5. Any person participating in the use of extracorporeal shock wave therapy and/or in the possession of extracorporeal shock wave therapy machines in violation of this rule shall be considered to have committed a prohibited practice and is subject to a Class A penalty as set forth in table 178-1E at the end of this rule.

~~48.4.e.~~ 48.5.e. The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within twenty-four (24) hours prior to the post time of a race in which the horse is entered is prohibited without the prior permission of a Racing Commission veterinarian or his or her designee.

48.5.f. The following are prohibited substances and methods:

48.5.f.1. The substances and methods in the Association of Racing Commissioners International (RCI) Prohibited List set forth in table 178-1 I at the end of this rule may not be used at any place or time, and may not be possessed on the premises of a racing or training facility under the jurisdiction of the Racing Commission, except as a restricted therapeutic use.

48.5.f.2. Restricted Therapeutic Use. A limited number of medications on the Association of Racing Commissioners International (RCI) Prohibited List set forth in table 178-1 I at the end of this rule shall be exempted when the administration occurs in compliance with the Association of Racing Commissioners International (RCI) Required Conditions for Restricted Therapeutic Use set forth in

table 178-1 J at the end of this rule.

48.5.f.2.A. "Report When Sampled" means the administration of the substance must be reported to the Racing Commission when the horse is next sampled, if the horse is sampled within twenty-four (24) hours after administration.

48.5.f.2.B. "Pre-File Treatment Plan" means the filing of a treatment plan for the substance in a manner approved by the Racing Commission and that is filed by the time of administration of the substance.

48.5.f.2.C. "Written Approval from Commission" means the Racing Commission has granted written approval of a written treatment plan before the administration of the substance.

48.5.f.2.D. "Emergency Use (report)" means the substance had to be administered due to an acute emergency involving the life or health of the horse, provided the emergency use is reported to the Racing Commission as soon as practicable after the treatment occurs.

48.5.f.2.E. "Prescribed by Veterinarian" means the substance has been prescribed by an attending veterinarian, in compliance with subsection 48.2 of this rule and recorded in the veterinary records in the manner required by the Racing Commission.

48.5.f.2.F. "Report Treatment means the treatment reported to the Racing Commission by the trainer at the time of administration to provide the Racing Commission with information for the Veterinarian's List. The trainer may delegate this responsibility to the treating veterinarian, who shall make the report when so designated.

48.5.f.2.G. "Other Limitations" means additional requirements that apply, such as a substance may be used only in fillies or mares or a horse that is administered a substance shall be reported immediately to the Racing Commission and placed on the veterinarians' list for a specific minimum period of time. The use of the substance must comply with the other applicable rules of the Racing Commission.

48.5.f.3. No person shall at any time administer any other doping agent to a horse except pursuant to a valid, therapeutic, evidence-based treatment plan.

48.5.f.3.A. "Other doping agent" means a substance this is not listed in the Association of Racing Commissioners International (RCI) Prohibited List set forth in table 178-1 I at the end of this rule, has a pharmacologic potential to alter materially the performance of the horse, has no generally accepted medical use in the horse when treated, and is:

48.5.f.3.A.1. capable at any time of causing an action or effect, or both, within one or more of the blood, cardiovascular, digestive, endocrine, immune, musculoskeletal, nervous, reproductive, respiratory, or urinary mammalian body systems; including but not limited to endocrine secretions and their synthetic counterparts, masking agents, oxygen carriers, and agents that directly or indirectly affect or manipulate gene expressions; but

48.5.f.3.A.2. not a substance that is considered to have no effect on the physiology of a horse except to improve nutrition or treat or prevent infections or parasitic infestations.

48.5.f.3.B. The Racing Commission may publish advisory warnings that certain substances or administrations may constitute a violation of this rule.

48.5.f.3.C. "Therapeutic, evidence based treatment plan" means a planned course of treatment written and prescribed by an attending veterinarian before the horse is treated that:

48.5.f.3.C.1. describes the medical need of the horse for the treatment, the evidence based scientific or clinical justification for using the doping agent, and a determination that recognized therapeutic alternatives do not exist; and

48.5.f.3.C.2. complies with the veterinary practices provisions of this rule, meets the standards of veterinary practice in West Virginia, and is developed in good faith to treat a medical need of the horse.

48.5.f.3.D. Such plans shall not authorize the possession of a doping agent on the premises of a racing or training facility under the jurisdiction of the Racing Commission.

§178-1-49. Medications and Prohibited Substances.

49.1. General. Upon a finding of a violation of this medication and prohibited substances rule, the stewards shall consider the classification level of the violation as listed in the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version ~~13.2~~ 14.0 (revised ~~April 20, 2017~~ January 2019), set forth in table 178-1D at the end of this rule. Imposition of penalties and disciplinary action by the stewards for a violation of this medication and prohibited substances rule shall be consistent with the penalty guidelines set forth in table 178-1E at the end of this rule. The stewards may also consult with a Racing Commission veterinarian to determine if the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's treatment record per subsection ~~48.3~~ 48.4. The stewards may also consult with the laboratory director or other individuals to determine the seriousness of the laboratory finding or the medication violation. Penalties for all medication and drug violations shall be investigated, reviewed and determined on a case by case basis. As a result of the investigation, there may be mitigating circumstances for which a lesser or no penalty is appropriate for the permit holder and aggravating factors, which may increase the penalty beyond the minimum. Factors that may be considered are:

49.1.a. The past record of the trainer, veterinarian and/or owner in drug cases;

49.1.b. The potential of the drug(s) to influence a horse's racing performance;

49.1.c. The legal availability of the drug;

49.1.d. Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

49.1.e. The steps taken by the trainer to safeguard the horse;

49.1.f. The probability of environmental contamination or inadvertent exposure due to human drug use;

49.1.g. The purse of the race;

49.1.h. Whether the drug found was one for which the horse was receiving a treatment as documented by the treating veterinarian's treatment records;

49.1.i. Whether there was any suspicious betting pattern in the race;

49.1.j. Whether the trainer was acting under the advice of a veterinarian licensed to practice in West Virginia and holding an occupational permit issued by the Racing Commission; and

49.1.k. Any other factors deemed relevant and documented in writing by the stewards.

49.2. Uniform Classification Guidelines. The following outline describes the types of substances placed in each category of the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version ~~13.2~~ 14.0 (revised ~~April 20, 2017~~ January 2019), set forth in table 178-1D at the end of this rule. The Guidelines shall be publicly posted in the offices of the Racing Commission veterinarian(s) and the association's racing secretary.

49.2.a. Class 1. Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and United States Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the racehorse and their pharmacological potential for altering the performance of a race is very high.

49.2.b. Class 2. Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the racehorse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a racehorse. The following groups of drugs are in this class:

49.2.b.1. Opiate partial agonists, or agonist-antagonists;

49.2.b.2. Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

49.2.b.3. Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

49.2.b.4. Drugs with prominent CNS depressant action;

49.2.b.5. Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

49.2.b.6. Muscle blocking drugs which have a direct neuromuscular blocking action;

49.2.b.7. Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

49.2.b.8. Snake venoms and other biologic substances, which may be used as nerve blocking agents.

49.2.c. Class 3. Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a racehorse. The following groups of drugs are in this class:

49.2.c.1. Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

49.2.c.2. A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

49.2.c.3. Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

49.2.c.4. Primary vasodilating/hypotensive agents;

49.2.c.5. Potent diuretics affecting renal function and body fluid composition; and

49.2.c.6. Anabolic and/or androgenic steroids and other drugs.

49.2.d. Class 4. This category is comprised primarily of therapeutic medications routinely used in racehorses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

49.2.d.1. Non-opiate drugs which have a mild central analgesic effect;

49.2.d.2. Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects;

49.2.d.3. Drugs used solely as topical vasoconstrictors or decongestants;

49.2.d.4. Drugs used as gastrointestinal antispasmodics;

49.2.d.5. Drugs used to void the urinary bladder;

49.2.d.6. Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs;

49.2.d.7. Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

49.2.d.8. Mineralocorticoid drugs;

49.2.d.9. Skeletal muscle relaxants;

49.2.d.10. Anti-inflammatory drugs -- those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

49.2.d.10.A. Non-Steroidal Anti-Inflammatory Drugs (NSAIDs);

49.2.d.10.B. Corticosteroids (glucocorticoids); and

49.2.d.10.C. Miscellaneous anti-inflammatory agents.

49.2.d.11. Less potent diuretics;

49.2.d.12. Cardiac glycosides and antiarrhythmics including:

49.2.d.12.A. Cardiac glycosides;

49.2.d.12.B. Antirryhthmic agents (exclusive of lidocaine, bretylium and propanolol); and

49.2.d.12.C. Miscellaneous cardiotonic drugs.

49.2.d.13. Topical Anesthetics -- agents not available in injectable formulations;

49.2.d.14. Antidiarrheal agents; and

49.2.d.15. Miscellaneous drugs including:

49.2.d.15.A. Expectorants with little or no other pharmacologic action;

49.2.d.15.B. Stomachics; and

49.2.d.15.C. Mucolytic agents.

49.2.e. Class 5. Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents, which have very localized action only, such as anti-ulcer drugs and certain anti-allergenic drugs. The anticoagulant drugs are also included.

49.3. Penalties. The following provisions apply to penalties for violations of this medication and prohibited substance rule:

49.3.a. Upon a finding that an occupational permit holder is in violation of this medication and prohibited substance rule, the stewards or the Racing Commission may, in their discretion, issue a reprimand or warning, assess a fine, require forfeiture or redistribution of a purse or award, place a permit holder on probation, suspend a permit or racing privileges, revoke a permit, exclude the permit holder from grounds under the jurisdiction of the Racing Commission, or impose any combination of these penalties.

49.3.b. In issuing penalties against individuals found guilty of medication and drug violations a regulatory distinction shall be made between the detection of therapeutic medications used routinely to

treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.

49.3.c. The stewards or the Racing Commission shall use the Racing Medication and Testing Consortium's (RMTC) penalty category (designated by the letters "A", "B", "C" and "D" as shown on the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version ~~13.2~~ 14.0 (revised ~~April 20, 2017~~ January 2019), set forth in table 178-1D at the end of this rule and the penalty guidelines set forth in table 178-1E at the end of this rule as a starting place in the penalty stage of the deliberations for a rule violation for any drug listed in the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version ~~13.2~~ 14.0 (revised ~~April 20, 2017~~ January 2019), set forth in table 178-1D at the end of this rule.

49.3.d. The penalty guidelines for those drugs designated a penalty category of "A", "B" or "C" are set forth in table 178-1E at the end of this rule. The recommended penalty for a violation involving a drug that carries a category "D" penalty is a written warning to the trainer and/or owner. Multiple violations may result in fines and/or suspensions.

49.3.e. If a practicing veterinarian is administering or prescribing a drug not listed in the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version ~~13.2~~ 14.0 (revised ~~April 20, 2017~~ January 2019), set forth in table 178-1D at the end of this rule, the identity of the drug shall be forwarded to a Racing Commission veterinarian(s) to be forwarded to the Racing Medication and Testing Consortium (RMTC) for classification.

49.3.f. In the event that any drug or metabolite thereof is found to be present in a pre- or post-race sample and the drug or metabolite is not classified in the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version ~~13.2~~ 14.0 (revised ~~April 20, 2017~~ January 2019), set forth in table 178-1D at the end of this rule, the Racing Commission shall cause the sample to be sent to the Racing Medication and Testing Consortium (RMTC) for a determination of the appropriate classification and penalty category. Upon a determination of classification and penalty category, the trainer and owner shall be subject to the appropriate penalties as set forth in table 178-1E at the end of this rule.

49.3.g. Any Racing Commission permit holder, including practicing veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth in table 178-1E at the end of this rule for trainers holding occupational permits.

49.3.h. The owner, veterinarian or any other party holding an occupational permit involved in a positive laboratory finding shall be notified in writing of the hearing and any resulting action. In addition, their presence may be required at any and all hearings relative to the case.

49.3.i. Any practicing veterinarian found to be involved in the administration of any Class 1 drug may be referred to the West Virginia Board of Veterinary Medicine for consideration of disciplinary action against the veterinarian's license to practice in the state of West Virginia. This is in addition to any penalties issued by the stewards or the Racing Commission against the practicing veterinarian's occupational permit.

49.3.j. Any person who the stewards or the Racing Commission believe may have committed acts in violation of criminal statutes may be referred to the appropriate law enforcement agency.

49.3.k. Administrative action taken by the stewards or the Racing Commission in no way prohibits a prosecution for criminal acts committed, nor does a potential criminal prosecution stall administrative action by the stewards or the Commission.

49.3.l. Procedures shall be established by the stewards to ensure that a trainer holding an occupational permit is not able to benefit financially during the period for which he or she has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to family members holding occupational permits.

49.3.m. Multiple Medication Violations. A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with a Penalty Class A-D, as provided in the Uniform Classification Guidelines for Foreign Substances as promulgated by the Association of Racing Commissioners International (RCI), Version ~~13.2~~ 14.0 (revised ~~April 20, 2017~~ January 2019), set forth in table 178-1D at the end of this rule, shall be assigned points as follows:

Penalty Class	Points if Controlled Therapeutic Substance	Points if Non-Controlled Substance
Class A	N/A	6
Class B	2	4
Class C	½ for first violation with an additional ½ point for each additional violation within 365 days. Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation.	1 for first violation with an additional ½ point for each additional violation within 365 days.
Class D	0	0

49.3.m.1. If the stewards or the Commission determine that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

49.3.m.2. The points assigned to a medication violation by the stewards' or the Commission's ruling shall be included in the Association of Racing Commissioners International official database and the Association of Racing Commissioners International shall assign points consistent with the table set forth under subdivision 49.3.m. including, when appropriate, a designation that the points have been suspended for the medication violation. Points assigned by such regulatory ruling shall reflect, in the case of multiple positive tests as described in paragraph 49.3.m.3, whether they shall thereafter constitute a single

violation. The stewards' or the Commission's ruling shall be posted on the official website of the Commission and within the official database of the Association of Racing Commissioners International. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

49.3.m.3. A trainer's cumulative points for violations in all racing jurisdictions shall be maintained by the Association of Racing Commissioners International. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official Association of Racing Commissioners International record and shall be considered by the stewards or the Commission in their determination to subject the trainer to the mandatory enhanced penalties as provided in this rule.

49.3.m.4. Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the stewards or the Commission may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the stewards or the Commission may treat each substance found as an individual violation for which points will be assigned.

49.3.m.5. The official Association of Racing Commissioners International record shall be used to advise the stewards or the Commission of a trainer's past record of violations and cumulative points. Nothing in this rule shall be construed to confer upon a trainer the right to appeal a violation for which the remedies have been exhausted or for which the appeal time has expired as provided by West Virginia Code §§ 19-23-16(c) and 19-23-17.

49.3.m.6. The stewards or the Commission shall consider all points for violations in all racing jurisdictions as contained in the trainers' official Association of Racing Commissioners International record when determining whether the mandatory enhancements provided in this rule shall be imposed.

49.3.m.7. In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a trainer based upon the cumulative points contained in his or her official Association of Racing Commissioners International record:

Points	Suspension in days
5-5.5	15 to 30
6-8.5	45 to 60
9-10.5	90 to 180
11 or more	180 to 360

49.3.m.8. The multiple medication violation penalty system is not a substitute for the penalty system otherwise set forth in this rule and is intended to be an additional uniform penalty when a permit holder:

49.3.m.8.A. Has more than one violation for the relevant time period, and

49.3.m.8.B. Exceeds the permissible number of points.

49.3.m.9. The stewards and the Commission shall consider aggravating and mitigating factors, including the trainer's prior record for medication violations, when determining the appropriate penalty for

the underlying offense. The multiple medication violation penalty is intended to be a separate and additional penalty for a pattern of violations.

40.3.m.10. The suspension periods as provided in the table set forth under paragraph 49.3.m.7. shall run consecutive to any suspension imposed for the underlying offense.

49.3.m.11. The stewards' or the Commission's ruling shall distinguish between the penalty for the underlying offense and any enhancement based upon a stewards' or Commission review of a trainer's cumulative points and regulatory record, which may be considered an aggravating factor in a case.

49.3.m.12. Points shall expire as follows:

Penalty Classification	Time to Expungement
A	3 years
B	2 years
C	1 year

49.3.m.13. In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

49.4. Medication Restrictions. The following provisions apply to medication restrictions:

49.4.a. A finding by a Racing Commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

49.4.a.1. Drugs or medications for which no acceptable threshold concentration has been established;

49.4.a.2. Controlled therapeutic medications in excess of established threshold concentrations as set forth in the Association of Racing Commissioners International Controlled Therapeutic Medication Schedule, Version 3.2, contained in table 178-1F at the end of this rule;

49.4.a.3. Substances present in the horse in excess of concentrations at which such substances could occur naturally; and

49.4.a.4. Substances foreign to a horse at concentrations that cause interference with testing procedures.

49.4.b. Except as otherwise provided by this rule, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this rule during the twenty-four (24) hour period before post time for the race in which the horse is entered.

49.4.c. The pre-race treatment guidelines for the controlled therapeutic medications set forth in the Association of Racing Commissioners International Controlled Therapeutic Medication Schedule,

Version 3.2, contained in table 178-1F at the end of this rule, are recommendations based upon current scientific knowledge and are specific to the dosing specifications listed therein. Adherence to the pre-race treatment guidelines does not relieve or lessen a trainer's responsibilities under subdivision 51.1.a. of this rule. Provided that, a trainer or other permit holder may present evidence of compliance with these guidelines to the stewards and/or the Racing Commission as a mitigating factor to be weighed in determining penalties for medication rule violations.

49.5. Medical Labeling. The following provisions apply to medical labeling:

49.5.a. No person on association grounds where horses are lodged or kept, excluding practicing veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

49.5.b. Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

49.5.b.1. The name of the product;

49.5.b.2. The name, address and telephone number of the veterinarian prescribing or dispensing the product;

49.5.b.3. The name of each patient (horse) for whom the product is intended/prescribed;

49.5.b.4. The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

49.5.b.5. The name of the person (trainer) to whom the product was dispensed.

49.6. Non-Steroidal Anti-Inflammatory Drugs (NSAIDs). The use of NSAIDs shall be governed by the following conditions:

49.6.a. NSAIDs included in the Association of Racing Commissioners International Controlled Therapeutic Medication Schedule, Version 3.2, contained in table 178-1F at the end of this rule are not to be used in a manner inconsistent with the restrictions contained therein.

49.6.b. NSAIDs not included in the Association of Racing Commissioners International Controlled Therapeutic Medication Schedule, Version 3.2, contained in table 178-1F at the end of this rule are not to be present in a racing horse biological sample at the laboratory concentration of detection.

49.6.c. The presence of more than one NSAID may constitute a NSAID stacking violation consistent with the following restrictions:

49.6.c.1. A Class 1 NSAID Stacking Violation (Penalty Class B) occurs when:

49.6.c.1.A. Two non-steroidal anti-inflammatory drugs are found at individual

levels determined to exceed the following restrictions:

49.6.c.1.A.1. Diclofenac – 5 nanograms per milliliter of plasma or serum;

49.6.c.1.A.2. Firocoxib – 20 nanograms per milliliter of plasma or serum;

49.6.c.1.A.3. Flunixin – 20 nanograms per millileter of plasma or serum;

49.6.c.1.A.4. Ketoprofen – 2 nanograms per milliliter of plasma or serum;

49.6.c.1.A.5. Phenylbutazone – 2 micrograms per milliliter of plasma or serum; or

49.6.c.1.A.6. All other non-steroidal anti-inflammatory drugs – laboratory concentration of detection.

49.6.c.1.B. Three or more non-steroidal anti-inflammatory drugs found at individual levels determined to exceed the following restrictions:

49.6.c.1.B.1. Diclofenac – 5 nanograms per milliliter of plasma or serum;

49.6.c.1.B.2. Firocoxib – 20 nanograms per millileter of plasma or serum;

49.6.c.1.B.3. Flunixin – 3 nanograms per milliliter of plasma or serum;

49.6.c.1.B.4. Ketoprofen – 1 nanogram per milliliter of plasma or serum;

49.6.c.1.B.5. Phenylbutazone – 0.3 micrograms per milliliter of plasma or serum; or

49.6.c.1.B.6. All other non-steroidal anti-inflammatory drugs – laboratory concentration of detection.

49.6.c.2. A Class 2 NSAID Stacking Violation (Penalty Class C) occurs when:

49.6.c.2.A. Any one substance noted in subparagraph 49.6.c.1.A. of this subsection above is found in excess of the restrictions contained therein in combination with any one of the following substances at levels below the restrictions so noted but in excess of the following levels:

49.6.c.2.A.1. Flunixin – 3.0 nanograms per milliliter of plasma or serum;

49.6.c.2.A.2. Ketoprofen – 1 nanogram per milliliter of plasma or serum; or

49.6.c.2.A.3. Phenylbutazone – 0.3 micrograms per milliliter of plasma or serum;

49.6.c.3. A Class 3 NSAID Stacking Violation (Penalty Class C, fines only) occurs when:

49.6.c.3.A. Any combination of two of the following non-steroidal anti-inflammatory drugs found at or below the restrictions in subparagraph 49.6.c.1.A. of this subsection above but in excess of the noted restrictions:

49.6.c.3.A.1. Flunixin – 3 nanograms per milliliter of plasma or serum;

49.6.c.3.A.2. Ketoprofen – 1 nanogram per milliliter of plasma or serum; or

49.6.c.3.A.3. Phenylbutazone – 0.3 micrograms per milliliter of plasma or serum.

49.6.d. Any horse to which a NSAID has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of a Racing Commission veterinarian or the stewards to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

49.7. Furosemide (Lasix®). The following provisions apply to furosemide (lasix®):

49.7.a. The administration of furosemide (lasix®) to a horse is permissible if:

49.7.a.1. The administration is recommended by a practicing veterinarian holding an occupational permit issued by the Racing Commission;

49.7.a.2. The recommendation is submitted to a Racing Commission veterinarian in writing; and

49.7.a.3. The trainer declares the use of furosemide (lasix®) at the time of entry.

49.7.b. Furosemide (Lasix®) shall only be administered on association grounds.

49.7.c. Furosemide (Lasix®) shall be the only authorized bleeder medication.

49.7.d. A Racing Commission veterinarian is responsible for maintaining up-to-date records of horses which are permitted to use furosemide (lasix®), and these records shall be available for inspection during the hours of operation of the racetrack.

49.7.e. Race day administration of furosemide (lasix®) shall be permitted as follows:

49.7.e.1. A horse scheduled to race that is permitted to use furosemide (lasix®) shall be administered furosemide (lasix®) by a veterinarian employed by the owner or trainer and holding a permit issued by the Racing Commission, unless, under subdivision 49.7.f. of this rule, the horse has been

declared off of furosemide (lasix®) by its owner or trainer. The furosemide (lasix®) must be administered a minimum of four (4) hours before the scheduled post time for the race in which the horse is entered and must be administered under the supervision of a person employed by the Racing Commission.

49.7.e.2. The practicing veterinarian must deposit with a Racing Commission veterinarian an unopened and labeled supply of furosemide (lasix®) and sterile hypodermic needles and syringes to be used for the administration.

49.7.e.3. A trainer is responsible for ensuring that the horse is available at the appropriate time for its treatment.

49.7.e.4. The trainer is responsible for ensuring that a practicing veterinarian holding a permit issued by the Racing Commission has agreed to administer furosemide at the designated time.

49.7.e.5. A trainer or his or her designee shall be responsible for the guarding, condition, care, and handling of the horse at all times and the trainer or his or her designee shall be present to handle the horse and serve as a witness to the furosemide (lasix®) administration.

49.7.e.6. If the trainer or his or her designee is not present and the administration time has passed, no furosemide (lasix®) shall be administered and the stewards shall order the horse scratched.

49.7.e.7. The dose administered shall not exceed 500 mg, nor be less than 150 mg.

49.7.e.8. Furosemide shall be administered by a single, intravenous injection.

49.7.e.9. After treatment, the horse shall be required to remain in its stall in the care, custody and control of its trainer or the trainer's designee under general association and/or Commission security supervision until called to the saddling paddock.

49.7.e.10. Test results must show a detectable concentration of furosemide (lasix®) in the post-race serum, plasma or urine sample.

49.7.e.10.A. The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed;

49.7.e.10.B. Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

49.7.f. The following provisions apply to racing off of furosemide (lasix®):

49.7.f.1. A horse on the furosemide (lasix®) program that races without furosemide (lasix®) in any jurisdiction which permits the use of furosemide (lasix®), may become re-eligible for the administration of furosemide (lasix®) if the horse has been observed to have bled by a Racing Commission veterinarian or a practicing veterinarian either:

49.7.f.1.A. Externally; or

49.7.f.1.B. By endoscopic examination.

49.7.g. The following provisions apply to program notice requirements for horses on furosemide (lasix®):

49.7.g.1. Of the horses scheduled to race, the official program shall denote the horses which have been administered:

49.7.g.1.A. Furosemide (lasix®); and

49.7.g.1.B. Furosemide (lasix®) for the first time.

49.7.g.2. If the official program contains past performance lines, each past performance line shall indicate if the horse was administered furosemide (lasix®).

49.8. Bleeder List. The following provisions apply to the bleeder list:

49.8.a. A list of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout shall be maintained by the Racing Commission veterinarian(s) and the list shall be published in the association's racing secretary's office.

49.8.b. A first time bleeder shall be placed on the bleeder list and remain on the list for a minimum of ten (10) calendar days. A second time bleeder within a twelve (12) month period shall be placed on the bleeder list and remain on the list for a minimum of forty-five (45) calendar days. A bleeder in these categories is automatically released from the list after the expiration of these time periods. A horse that bleeds three (3) times within a twelve (12) month period shall be barred from further racing in West Virginia for a period of one (1) year.

49.9. Procaine Penicillin. The administration of procaine penicillin to a horse must be reported to a Racing Commission Veterinarian at a time and on a form prescribed by the Racing Commission. If a horse entered to run in a race has been administered procaine penicillin, it shall be required to be under surveillance for a minimum of six (6) hours prior to post time at a designated area on association grounds. The owner of the horse shall be responsible for all expenses related to such surveillance.

49.10. Environmental Contaminants and Substances of Human Use. The following provisions apply to environmental contaminants and substances of human use:

49.10.a. It is recognized that there are substances that can be environmental contaminants in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases. It is also recognized that there are drugs of human use and addiction and which could be found in the horse due to its close association with humans. Therefore, if an owner/trainer wishes to contest a positive test by presenting a defense that the test is the result of environmental contamination or inadvertent exposure due to human drug use, he or she must prove such defense by a preponderance of evidence presented in a hearing. If an owner/trainer proves such defense by a preponderance of evidence, it may be considered as a mitigating factor in any disciplinary action taken against the affected owner/trainer.

49.10.b. Disciplinary action shall only be taken if test sample results exceed the regulatory thresholds in the Association of Racing Commissioners International Endogenous, Dietary, or Environmental Substances Schedule, Version ~~3.0~~ 4.0, contained in table 178-1G at the end of this rule.

49.11. Androgenic-Anabolic Steroids (AAS). The following provisions apply to androgenic-anabolic steroids (AAS):

49.11.a. No AAS shall be permitted in test samples collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances boldenone and testosterone at concentrations less than the indicated thresholds.

49.11.b. Concentrations of these AAS shall not exceed the following threshold concentrations for total (*i.e.*, free drug or metabolite and drug or metabolite liberated from its conjugates):

49.11.b.1. In urine:

49.11.b.1.A. 16β-hydroxystanozolol (metabolite of stanozolol (Winstrol)) -- 1 ng/ml in urine for all horses regardless of sex;

49.11.b.1.B. Boldenone (Equipoise® is the undecylenate ester of boldenone) in male horses other than geldings -- 15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses;

49.11.b.1.C. Nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester):

49.11.b.1.C.1. In geldings -- 1 ng/ml in urine;

49.11.b.1.C.2. In fillies and mares -- 1 ng/ml in urine.

49.11.b.1.D. Testosterone:

49.11.b.1.D.1. In geldings -- 20 ng/ml in urine;

49.11.b.1.D.2. In fillies and mares -- 55 ng/ml in urine;

49.11.b.2. In plasma:

49.11.b.2.A. Stanozolol -- Screening limit no greater than 100 pg/ml in serum or plasma with a confirmatory threshold no greater than 25 pg/ml for all horses regardless of sex;

49.11.b.2.B. Boldenone -- Screening limit no greater than 100 pg/ml in serum or plasma with a confirmatory threshold no greater than 25 pg/ml for all horses regardless of sex;

49.11.b.2.C. Nandrolone -- Screening limit no greater than 100 pg/ml in serum or plasma with a confirmatory threshold no greater than 25 pg/ml for geldings and fillies and mares. Male horses other than geldings will not be tested;

49.11.b.2.D. Testosterone:

49.11.b.2.D.1. In geldings -- Screening limit no greater than 100 pg/ml in serum or plasma with a confirmatory threshold no greater than 25 pg/ml;

49.11.b.2.D.2. In fillies and mares -- Screening limit no greater than 100 pg/ml in serum or plasma with a confirmatory threshold no greater than 25 pg/ml;

49.11.b.2.D.3. In male horses other than geldings -- confirmatory threshold no greater than 2,000 pg/ml.

49.11.c. Any other anabolic steroids are prohibited in racing horses.

49.11.d. If a test on a horse exceeds the above-referenced thresholds for Boldenone, Nandrolone or Testosterone and the owner/trainer of the horse desires to have further testing to determine whether or not there is reliable proof that the amount found in the horse is naturally occurring, the owner/trainer may request that such testing be undertaken and the owner shall bear the costs of the additional testing.

49.11.e. Post-race urine and blood samples must have the sex of the horse identified to the laboratory.

49.11.f. Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administrated AAS, the horse is eligible to be removed from the list.

49.12. Alkalinizing Substances. The use of agents that elevate the horse's TCO2 or base excess level above those existing naturally in the untreated horse at normal physiological concentrations is prohibited. The following levels also apply to blood gas analysis:

49.12.a. The regulatory threshold for TCO2 in non-furosemide (lasix®) treated horses is 37.0 millimoles per liter of plasma/serum or a base excess level of 10.0 millimoles;

49.12.b. The regulatory threshold for TCO2 in furosemide (lasix®) treated horses is 39.0 millimoles per liter of plasma/serum or a base excess level of 12.0 millimoles; and

49.12.c. The measure of uncertainty in testing for TCO2 shall be .4 millimoles per liter of plasma/serum. A horse must show a base excess level of 10.4 millimoles or higher for non-furosemide (lasix®) treated horses and a base excess level of 12.4 millimoles or higher for a furosemide (lasix®) treated horse, in order for a violation to be reported under this rule.

49.13. Compounded Medications on Association Grounds. The following provisions apply to compounded medications on association grounds.

49.13.a. The possession or use of a drug, substance, or medication on association grounds that has not been approved by the appropriate federal agency (e.g., the United States Food and Drug Administration) for any use in (human or animal) is forbidden without prior permission of the Racing Commission or its designee.

49.13.b. It is a violation of this regulation to possess, use, or distribute a compounded medication on association grounds if there is an FDA approved equivalent of that substance available for purchase. A difference in available formulations or concentrations does not alleviate the need to use FDA approved products.

49.13.c. It is a violation of this rule to possess, use, or distribute a compounded medication on association grounds made from bulk substances if an FDA approved equivalent is available for purchase.

49.13.d. Combining two or more substances with pharmacologic effect constitutes the development of a new drug. This may only be done in accordance with state and local laws and must contain FDA approved medications, if available.

49.13.e. Veterinary drugs shall be compounded in accordance with all applicable state and federal laws. Compounded medications shall be dispensed only by prescription issued by a licensed veterinarian to meet the medical needs of a specific horse and for use only in that specific horse.

49.13.f. All compounded medications must be labeled in accordance with subdivision 49.5.b. of this rule.

49.13.g. Possession of an improperly labeled product by a person on association grounds is considered a violation of this rule.

49.14. Out of Competition Testing. The following provisions apply to out of competition testing:

49.14.a. The Racing Commission may at a reasonable time on any date take blood, urine or other biologic samples from a horse to enhance the ability of the Commission to enforce its medication and anti-doping rules, e.g., the Association of Racing Commissioners International (RCI) Prohibited List set forth in Table 178-1 I at the end of this rule. The Commission shall own such samples. This rule authorizes only the collection and testing of samples and does not independently make impermissible the administration to or presence in any horse of any drug or other substance. A race day prohibition or restriction of a substance by a Commission rule is not applicable to an out of competition test unless there is an attempt to race the horse in a manner that violates such rule.

49.14.b. Any horse that has been engaging in activities related to competing in horse racing in West Virginia may be tested. This includes without limitation any horses that are training outside of West Virginia to participate in racing in West Virginia and all horses that are training in West Virginia, but excludes weanlings, yearlings and horses no longer engaged in horse racing (e.g., retired broodmares).

~~49.14.a.~~ 49.14.c. ~~Any horse eligible to race in West Virginia is subject to out of competition testing without advance notice.~~ A horse is presumed to be eligible ~~to race in West Virginia~~ for out of competition testing if:

~~49.14.a.1.~~ 49.14.c.1. It is under the care, custody, or control of a trainer holding an occupational permit;

~~49.14.a.2.~~ 49.14.c.2. It is owned by an owner holding an occupational permit;

~~49.14.a.3.~~ 49.14.c.3. It is entered or nominated to race at licensed racetrack in West

Virginia;

~~49.14.a.4.~~ 49.14.c.4. It has raced at a licensed racetrack in West Virginia within the previous twelve (12) months;

~~49.14.a.5.~~ 49.14.c.5. It is ~~stabled~~ on the grounds of a licensed racetrack or training facility in West Virginia; or

~~49.14.a.6.~~ 49.14.c.6. It is eligible to participate in the West Virginia Thoroughbred Development Fund, the Accredited Race Fund, the Supplemental Purse Award Program or any other thoroughbred fund or program administered by the Racing Commission.

49.14.d. The eligibility presumptions set forth above are conclusive in the absence of evidence that a horse is not engaged in activities related to competing in horse racing in the jurisdiction.

~~49.14.b.~~ 49.14.e. Horses to be tested may be selected at random, with probable cause, or as determined ~~by~~ in the discretion of the Racing Commission, a Racing Commission Veterinarian, the stewards, the Executive Director or their respective designees.

49.14.f. Collectors shall, for suspicion-less collections of samples, abide by a plan that has been approved by a supervisor not in the field and that identifies horses or provides neutral and objective criteria to follow in the field to determine which horses to sample. Such a supervisor may consider input from persons in the field during the operation of the plan and select additional horses to be sampled.

49.14.g. Persons holding permits issued by the Racing Commission are required to cooperate and comply fully with the provisions of this out of competition testing rule.

49.14.h. Persons who apply for and are granted a trainer or owner permit shall be deemed to have given their consent for access at such premises as their horses may be found for the purpose of Racing Commission representatives collecting out of competition samples. Permit holders shall take any steps necessary to authorize access by Commission representatives at such premises.

49.14.i. No person shall knowingly interfere with or obstruct out of competition sampling.

49.14.j. Samples shall be taken under the supervision and direction of a person who is employed or designated by the Racing Commission. All blood samples shall be collected by a veterinarian licensed in the state where the sample is collected, or by a veterinary technician who is acting under appropriate supervision of the veterinarian.

49.14.k. Upon request of a representative of the Commission, the trainer, owner or their specified designee shall provide the location of their horses eligible for out of competition testing.

49.14.l. The Commission need not provide advance notice before arriving at any location, whether or not licensed by the Commission, to collect samples.

49.14.m. The trainer, owner, or their specified designee shall cooperate with the person who takes the samples for the Racing Commission, which cooperation shall include without limitation:

49.14.m.1. Assist in the immediate location and identification of the horse;

49.14.m.2. Make the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples;

49.14.m.3. Provide a stall or other safe location to collect the samples;

49.14.m.4. Assist the person who is collecting the samples in properly procuring the samples; and,

49.14.m.5. Witness the taking of the samples including the sealing of sample collection containers.

49.14.n. The management and employees of a licensed racetrack or training facility at which a horse may be located shall cooperate fully with a person who is authorized to take samples. The person who collects samples for the Commission may require that the collection be done at a specified location on such premises.

49.14.o. The Commission, if requested and in its sole discretion, may permit the trainer, owner, or their specified designee to present a horse that is located in West Virginia, but not at a racetrack or training center licensed by the Commission, to be sampled at a time and location designated by the Commission.

49.14.p. The Commission may arrange for the sampling of an out-of-state horse by the racing commission or other designated person in the jurisdiction where the horse is located. Such racing commission or other designated person shall follow the relevant provisions of this rule related to the procedures for collecting samples.

49.14.q. Out of competition test results shall be made available, for their regulatory use, to each jurisdiction that has participated in the process of collecting any out of competition sample, subject to any restrictions on public disclosure of test results that may apply to the commission that selected the horse for sampling.

49.14.r. The Commission, if requested and in its sole discretion, may permit the trainer or owner instead to transport a horse into its jurisdiction for sampling at a time and place designated by the Commission.

49.14.s. The person who takes samples for the Commission shall provide identification and disclose the purpose of the sampling to the trainer or designated attendant of the horse.

49.14.t. A written protocol for the collection of samples shall be made generally available.

49.14.u. An owner or trainer does not consent to a search of the premises by making a horse that is not located at a licensed racetrack or training center available for sampling.

49.14.v. If the trainer or other custodian of a selected horse refuses or declines to make a horse available for sampling and the managing owner has previously provided the Commission with a means for the Commission to give immediate notification to the managing owner in such situation, then the Commission shall attempt to notify the managing owner and the eligibility of the horse shall be preserved if the managing owner is able to make the horse available for immediate sampling. The Commission is

not required to make repeated attempts to notify the managing owner.

49.14.w. The chain of custody record for the sample (including a split sample where appropriate) shall be maintained and made available to the trainer, owner, or their designee when a complaint results from an out of competition test.

49.14.x. The Commission may have out of competition samples tested to produce information that may enhance the ability of the Commission to enforce its medication and anti-doping rules.

49.14.y. Split sample rules and procedures and procedures for post-race testing shall apply to out of competition testing.

49.14.z. The Commission may use any remaining out of competition samples for research and investigation.

49.14.aa. Willful failure to make a horse available for sampling or other willfully deceptive acts or interference in the sampling process shall carry a minimum penalty of a one (1) year permit suspension and referral to the Commission in addition to any other authorized penalties.

49.14.bb. A selected horse that is not made available for out of competition sampling shall be placed on the stewards' list. The horse shall remain on the stewards' list for a minimum of 180 days unless the owner can establish extraordinary mitigating circumstances.

49.14.cc. A selected horse that is presumed eligible for out of competition testing shall be placed on the stewards' list and be ineligible to race in West Virginia for 180 days if the horse is not sampled because the trainer, owner or their designee asserts that the horse is not engaged in activities related to competing in horse racing in West Virginia. This restriction shall not apply if the trainer, owner or their designee instead permits voluntarily an immediate collection of such samples from the horse.

~~49.14.c. If a horse selected for out of competition testing is located in West Virginia, samples shall be collected under the direction of a Racing Commission Veterinarian or his or her designee.~~

~~49.14.d. If a horse selected for out of competition testing is located in another racing jurisdiction, samples shall be collected by a veterinarian licensed to practice veterinary medicine in such jurisdiction and that is appointed by the Racing Commission, its Executive Director, a Racing Commission Veterinarian, the stewards, or their respective designees.~~

~~49.14.e. Prohibited substances, practices and procedures are defined as:~~

~~49.14.e.1. The presence in, or administration to, a horse, at any time, of blood doping agents including, but not limited to those listed in subdivision 48.4.e. of this rule, or any substance that abnormally enhances the oxygenation of body tissues.~~

~~49.14.e.2. The presence in, or administration to, a horse, at any time, of gene doping agents or the non-therapeutic use of genes, genetic elements, and/or cells that have the capacity to enhance athletic performance or produce analgesia.~~

~~49.14.e.3. The nontherapeutic administration to a horse, at any time, of whole blood or packed red blood cells.~~

~~49.14.e.4. The possession at any time of whole blood or packed red blood cells on association grounds or a training facility under the jurisdiction of the Racing Commission by anyone other than a practicing veterinarian licensed to practice veterinary medicine in the state of West Virginia and holding an occupational permit issued by the Racing Commission who is rendering emergency treatment to a horse located on association grounds or a training facility under the jurisdiction of the Racing Commission.~~

~~49.14.e.5. The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms.~~

~~49.14.e.6. The presence in, or administration to, a horse, at any time, of growth hormones or beta-2 agonists that are not subject to regulatory thresholds.~~

~~49.14.f. Upon the request of the Racing Commission, its Executive Director, a State Veterinarian, the stewards or their respective designees, trainers, owners or their specified designees shall provide the location of their horses eligible for out of competition testing.~~

~~49.14.f.1. If a horse is located on association grounds, the trainer, owner or specified designee shall make the horse available as soon as is practical upon the request of the Racing Commission, its Executive Director, a State Veterinarian, the stewards or their respective designees.~~

~~49.14.f.2. If a horse is not located on association grounds, the trainer, owner or specified designee shall:~~

~~49.14.f.2.A. Make the horse available as soon as practical upon arrival of the Racing Commission, its Executive Director, a State Veterinarian, the stewards or their respective designees; or~~

~~49.14.f.2.B. Bring the horse to a licensed racetrack within twenty-four (24) hours of receiving notification of out of competition sampling; or~~

~~49.14.f.2.C. Bring the horse to another location acceptable to the Racing Commission for such sampling to occur.~~

~~49.14.f.3. If the collection of out of competition samples occurs at a site other than a licensed racetrack or training facility, sampling will take place during standard business hours, but not earlier than 6:00 a.m. nor later than 6:00 p.m. The veterinarian collecting the samples or his or her designee shall notify the trainer, owner or specified designee exercising care and control of the horse a minimum of one (1) hour prior to arrival.~~

~~49.14.g. Blood, urine, hair or other biological samples may be collected for out of competition testing.~~

~~49.14.h. The trainer, owner or specified designee shall witness the sample collection including sealing sample collection containers. The chain of custody for the sample, including a split sample where appropriate, must be maintained and available for the inspection by the trainer, owner or specified designee. The chain of custody record will be available for inspection where a complaint or regulatory~~

~~action occurs as a result of the out of competition test. Split sample testing shall be conducted in accordance with subsection 50.5 of this rule.~~

~~49.14.i. Willful failure to make a horse available for sampling or other willfully deceptive acts or interference in the sampling process shall carry a minimum first offense penalty equivalent to a Class A penalty as set forth in table 178-1E at the end of this rule and a second offense penalty of permit revocation. A horse that is not produced for out of competition testing shall be placed on the veterinarians' list for a minimum of six (6) months.~~

~~49.14.j. The penalty for a finding for a drug or substance in an out of competition testing sample shall apply in the same manner as for a finding in a post-race sample and shall be subject to inclusion in the Multiple Medication Violation point system set forth in subdivision 49.3.m. of this rule.~~

~~49.14.k. The trainer, owner or any other individual who is found responsible by the stewards and/or the Racing Commission is eligible to receive a penalty for a finding for a drug or substance in an out of competition testing sample or for any other violation of this out of competition testing rule.~~

49.14.dd. The trainer of the horse is responsible for the condition of a horse sampled for an out of competition test while on the grounds of a licensed training facility or racetrack.

49.14.ee. If the horse is sampled while not the grounds of a licensing training facility or racetrack, then the owner shall be presumed to be the responsible person unless the owner can establish, by substantial evidence, that another racing permit holder had accepted the responsibility for the care, custody, and control of the horse, making such person the responsible person.

49.14.ff. If a horse sampled for an out of competition test was claimed, sold, or otherwise transferred during the time the substance giving rise to the positive test may have been administered, then the Racing Commission shall investigate to determine, by a preponderance of the evidence, the identity of the responsible person at the time such substance may have been administered.

49.14.gg. If the Commission cannot determine a responsible person, then the Commission may deem the owner responsible and may place the horse on the veterinarian's list for such time as is necessary to protect the integrity of racing.

49.14.hh. A claimed horse is ineligible to be subjected to out of competition testing in the forty-eight (48) hours post claim unless the horse was subjected to post-race testing.

49.15. American Graded Stakes Races. For any race in this state that has been issued a grade by the American Graded Stakes Committee, the stewards may allow the drug testing protocol established by the American Graded Stakes Committee to be followed in that race. The association shall notify the Racing Commission and the stewards upon the issuance of a grade for a race by the American Graded Stakes Committee so that the stewards may allow the appropriate drug testing protocol to be administered and enforced. A copy of the drug testing protocol in graded stakes races shall be published in the office of the association's racing secretary.

§178-1-50. Testing.

50.1. Reporting to the Test Barn. The following provisions apply to reporting to the test barn:

50.1.a. The official winning horse and any other horse ordered by the stewards shall be taken immediately after a race to the test barn to provide specimens of urine, blood or other bodily substances or tissues at the direction of a Racing Commission veterinarian.

50.1.b. After each race, security personnel shall maintain uninterrupted observation of the horse or horses to be tested from the unsaddling area and/or the racetrack to the test barn.

50.1.c. The stewards or a Racing Commission veterinarian(s) may require at any time that any horse be sent to the test barn to provide specimens of urine, blood or other bodily substances or tissues, as well as for an examination for sponging, and any other examination as may be directed by the stewards or a Racing Commission veterinarian.

50.1.d. The stewards or a Racing Commission veterinarian may also require any horse stabled at a racetrack to provide specimens of urine, blood or other bodily substances or tissues.

50.1.e. A Racing Commission veterinarian or the stewards may authorize a horse to return to its barn under security for the purpose of collecting specimens.

50.1.f. A security guard shall monitor access to the test barn during its operation. The security guard shall require all persons entering the test barn to sign in and sign out on a log to be maintained at the test barn.

50.1.g. No more than two (2) persons shall accompany the horse into the test barn. Such persons must hold occupational permits issued by the Racing Commission and must have a legitimate reason for being in the test barn area. No horse or persons accompanying it shall be permitted to leave the test barn until the specimens have been obtained or until they have been otherwise excused by a Racing Commission veterinarian.

50.1.h. Once any person accompanying a horse into the test barn has departed the test barn, he or she shall not be permitted to reenter, unless reentering to attend to a different horse. This prohibition does not apply to the trainer of a horse in the test barn, the Racing Commission veterinarian(s), practicing veterinarians attending to horses in the test barn, or other Racing Commission personnel.

50.1.i. All veterinary technicians or assistants collecting specimens shall remain in the test barn after the arrival of the first horse until they have completed their duties, unless excused by a Racing Commission veterinarian.

50.1.j. Random or extra testing may be required by the stewards or the Commission at any time on any horse on association grounds.

50.2. Laboratory Minimum Standards. Laboratories conducting either primary or split post-race sample analysis must meet the following minimum standards:

50.2.a. Testing laboratories selected by the Racing Commission to engage in either primary or split post-race specimen or sample analysis shall be accredited by the Racing Medication Testing Consortium (RMTC) and shall make all reports directly to the executive director of the Racing Commission and the chief steward at the appropriate racetrack.

50.2.b. In order for a testing laboratory to be selected by the Racing Commission to engage in

split post-race specimen or sample analysis, it shall establish reasonable fees for split sample testing based on its actual cost of testing.

50.3. Specimen Collection. The following provisions apply to specimen collection:

50.3.a. Specimen collection shall be done in accordance with the guidelines and instructions provided by a Racing Commission veterinarian.

50.3.b. The Racing Commission veterinarian shall determine a minimum specimen requirement for the primary testing laboratory.

50.3.c. If the urine specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the primary testing laboratory and the results of tests performed on the specimen shall be considered prima facie evidence of the condition of the horse.

50.3.d. If a urine specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

50.3.e. If a urine specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the primary testing laboratory shall be secured as the split sample.

50.3.f. A minimum of two (2) blood specimens shall be collected in blood collection tubes. A minimum of one blood specimen shall be sent to the primary testing laboratory and the remaining sample or samples shall be retained and/or distributed, as appropriate, by a Racing Commission veterinarian.

50.3.g. All blood specimens shall be refrigerated and all urine specimens shall be frozen. The racing association shall pay all laboratory expenses for blood and urine analysis.

50.3.h. Specimens of other bodily substances or tissues may be collected and forwarded to the primary testing laboratory by a Racing Commission veterinarian or his or her designee. The Racing Commission shall pay all laboratory expenses for analysis of such bodily substances or tissues.

50.3.i. Any specimen collected from a horse, and all reports of any testing of these specimens, is the property of the Racing Commission.

50.3.j. The owner, trainer, or other authorized representative shall be present when a specimen is taken from his or her horse. The owner, trainer or other authorized representative shall remain until the specimen is sealed and shall sign the official form as witness to the taking of the specimen. Failing to be present when taking any specimen or refusal to allow the taking of any specimen by any means shall subject the person or persons guilty of violating this rule to summary suspension of their occupational permit by the stewards.

50.3.k. All specimens taken by or under direction of the Racing Commission veterinarian or other authorized representative of the Racing Commission shall be delivered to the primary testing laboratory for analysis. Each specimen shall be marked and bear any information that is essential to its proper analysis. However, the identity of the horse from which the specimen was taken or the identity of its owner, trainer, jockey or stable shall not be revealed to the primary testing laboratory. The container of each specimen

shall be sealed as soon as the specimen is placed in it.

50.3.l. Blood samples for split sample analysis shall be centrifuged and the plasma separated and frozen before shipment to the split sample testing laboratory.

50.3.m. If the split sample testing laboratory determines that there is insufficient sample volume to make a specific identification of the sample contents, or if events beyond the control of the Racing Commission or its representatives prevent the split sample from being tested, then the results of tests performed by the primary laboratory shall be considered prima facie evidence of the condition of the horse.

50.3.n. If the results of the initial test on a specimen are negative, a Racing Commission veterinarian may discard the retained part of the specimen upon receipt of the negative result. If the result of the initial test on a specimen is positive, a 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 the retained part be sent for split testing.

50.3.o. The primary testing laboratory shall reveal the identity of the drug or drug metabolites to the split sample laboratory. Communication between the primary and split laboratory is limited to the exchange of the analytical method and the threshold level used to confirm the drug's identity.

50.3.p. The results of all tests performed by the primary testing laboratory are confidential and shall only be communicated to the chief steward, who shall notify the trainer in a timely manner.

50.3.q. A Racing Commission veterinarian, the stewards or authorized representatives of the Racing Commission may take samples of any medications or other materials suspected of containing improper medication or drugs which may be found in the stables or elsewhere on association grounds, or in the possession of any person connected with racing. A Racing Commission veterinarian shall deliver the sample of any medication or other materials suspected of containing improper medication to the primary testing laboratory for analysis under the same conditions as are prescribed for analysis of other specimens. The stewards may retain the sample.

50.3.r. No action shall be taken by the stewards on the report of the primary testing laboratory unless and until the medication or drug has been properly identified along with the identity of the horse from which the specimen was taken; nor until such time as an official report issued by the primary testing laboratory has been received by the chief steward at the appropriate racetrack.

50.4. Alkalinizing Substances. The following provisions apply to the testing for alkalinizing substances:

50.4.a. The stewards or a Racing Commission veterinarian may, at their discretion and at any time, order the collection of specimens from any horse present on association grounds for determination of serum or plasma pH or concentration of bicarbonate, carbon dioxide, or electrolytes.

50.4.b. Pre-race specimen collection and pre-race testing may be done at a time and manner directed by a Racing Commission veterinarian.

50.4.c. Pre-race specimen collection and post-race testing may be done at a time and manner directed by a Racing Commission veterinarian. Pre-race specimens collected for post-race testing may be

ordered by a Racing Commission veterinarian not to be frozen to ensure effective and reliable testing.

50.4.d. Post-race specimen collection and post-race testing may be done at a time and manner directed by a Racing Commission veterinarian.

50.4.e. If a TCO2 specimen is collected post-race, it shall be taken from the horse no sooner than ninety minutes after racing.

50.4.f. Subsection 50.3 of this rule pertaining to specimen collection and subsection 50.5 of this rule pertaining to storage and shipment of split samples shall not apply to specimens collected for the testing for alkalinizing substances.

50.5. Storage and Shipment of Split Samples. The following provisions apply to the storage and shipment of split samples:

50.5.a. Split samples obtained from the horse shall be secured by a Racing Commission veterinarian and made available for further testing in accordance with the following procedures:

50.5.a.1. A Racing Commission veterinarian shall secure a split sample in the test barn under the same manner as the portion of the specimen acquired for shipment to the primary testing laboratory until the time that specimens are packed and secured for shipment to the primary testing laboratory. The Racing Commission veterinarian shall store the split urine sample in a freezer and the split blood sample in a refrigerator at secure location(s) approved by the Racing Commission;

50.5.a.2. A freezer and refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples; and

50.5.a.3. A Racing Commission veterinarian shall immediately report any evidence of a malfunction of a split sample freezer/refrigerator or samples that are not in a frozen/refrigerated condition during storage to the stewards or a designated Racing Commission representative.

50.5.b. A trainer or owner of a horse, after notification that a written report from the primary testing laboratory states that a prohibited substance or illegal level of a permitted substance has been found in a specimen obtained pursuant to this rule, may request that a split sample corresponding to the portion of the specimen tested by the primary testing laboratory be sent for testing by a testing laboratory that is identified on the list of approved laboratories maintained by the Racing Commission.

50.5.c. Prior to shipment, the representative of the Racing Commission shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to send results to the chief steward and arrangements for payment satisfactory to the split sample laboratory.

50.5.d. The request shall be made in writing and delivered to the stewards not later than seventy-two (72) hours after the trainer of the horse receives written notice of the findings of the primary testing laboratory. A Racing Commission veterinarian shall ship any requested split samples within seven (7) business days of the request.

50.5.e. The trainer or owner may elect to waive his or her right to testing of a split sample. If a trainer desires to waive the right to test the split sample, he or she shall procure prior written authorization from his or her owner to waive that right.

50.5.f. The owner or trainer of a horse who submits a specimen for drug testing shall be present or have a representative present at the time that the retained part of the specimen is prepared for storage.

50.5.g. The owner or trainer of a horse who submits a specimen for testing to a split sample laboratory shall, if requested by the laboratory, execute a hold harmless agreement for the split sample laboratory and shall execute an agreement that the results of the split sample laboratory can be introduced as evidence in any hearing. The agreements shall remain in the hands of the chief steward of the racetrack at which the positive result was reported.

50.5.h. The owner or trainer requesting testing of a split sample is responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place of shipping designated by a Racing Commission veterinarian constitutes a waiver of all rights to split sample testing.

50.5.i. Prior to opening the split sample freezer/refrigerator, the Racing Commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and any other information received by a Racing Commission veterinarian. The representative of the Racing Commission shall fully complete the form during the retrieval, packaging, and shipment of the split sample. The split sample chain of custody form shall contain:

50.5.i.1. the date and time the sample is removed from the split sample freezer/refrigerator;

50.5.i.2. the sample number;

50.5.i.3. the address where the split sample is to be sent;

50.5.i.4. the name of the carrier and the address where the sample is to be taken for shipment;

50.5.i.5. verification of retrieval of the split sample from the freezer/refrigerator;

50.5.i.6. verification of each specific step of the split sample packaging in accordance with the recommended procedure;

50.5.i.7. verification of the address of the split sample laboratory on the split sample package;

50.5.i.8. verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and

50.5.i.9. the date and time custody of the sample is transferred to the carrier.

50.5.j. A Racing Commission representative, in the presence of the owner or trainer, or his or her designee, shall remove a split sample from the split sample freezer/refrigerator.

50.5.k. The Racing Commission representative shall pack the split sample for shipment in the presence of the owner, or trainer, or designee in accordance with the packaging procedures set forth in this rule. A form shall be signed by both the owner or trainer or his or her designee and the Racing

Commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape, or other means to prevent tampering with the package.

50.5.l. The package containing the split sample shall be transported to the location where custody is transferred to the delivery carrier charged with delivery of the package to the Racing Commission approved laboratory selected by the owner, trainer or their designee.

50.5.m. The owner or trainer or designee and the Racing Commission representative shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

50.5.n. The split sample chain of custody verification form shall be completed and signed by the representatives of the Racing Commission and the owner or trainer or designee. A Racing Commission representative shall keep the original and provide a copy for the owner or trainer.

50.5.o. The owner, trainer or their designee shall not correspond with the split sample testing laboratory, once the sample has been shipped to the laboratory.

50.5.p. The split sample laboratory shall send a confidential written report on the result of its tests to the chief steward.

50.5.q. No action shall be taken against the trainer or owner if the results of the split sample testing are negative or, in the instance of quantitative levels of permitted medications, where the confirmed levels are within the permitted levels.

50.5.r. No hearing shall be held concerning the allegations against the trainer or owner, nor shall purse redistribution take place, until split sample testing has been completed and the results of the primary testing laboratory have been confirmed.

50.5.s. The owner or trainer shall be notified in writing of the results of the primary and split sample testing laboratories when confirmation of positives exist. When quantitative levels of permitted medications exceed the permitted levels, the level of the confirming laboratory, if lower than the primary testing laboratory report, shall be used as the basis for a violation and penalty.

§178-1-51. Trainer Responsibility.

51.1. The following provisions apply to the responsibilities of the trainer as they specifically relate to the health and well being of horses in his or her care, custody or control:

51.1.a. The trainer is the absolute insurer of and responsible for the condition of the horses he or she enters in an official workout or a race, regardless of the acts of third parties. If testing or analysis of urine, blood or other bodily substances or tissues prove positive showing the presence of any prohibited drug, medication or substance, the trainer of the horse may be fined, suspended, have his or her occupational permit revoked, be prohibited access to all grounds under the jurisdiction of the Racing Commission, or may be otherwise disciplined. In addition, the owner of the horse, the foreman in charge of the horse, the groom and any other person shown to have had the care, or attendance of the horse may be fined, suspended, have his or her occupational permit revoked, be prohibited access to all grounds under the jurisdiction of the Racing Commission, or may be otherwise disciplined.

51.1.b. The trainer is responsible for:

51.1.b.1. maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

51.1.b.2. keeping all hay, grain and other feed covered and in a sanitary manner;

51.1.b.3. ensuring that fire prevention rules are strictly observed in the assigned stable area;

51.1.b.4. the proper identity, custody, care, health, condition and safety of horses in his or her charge;

51.1.b.5. ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the association's racing secretary;

51.1.b.6. having each horse in his or her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of the negative test results with the association's racing secretary;

51.1.b.7. using the services of those veterinarians holding an occupational permit issued by the Racing Commission to attend horses that are on association grounds;

51.1.b.8. immediately reporting the alteration of the sex of a horse to the horse identifier and the association's racing secretary no later than at the time of entry so that the information may recorded on the foal certificate;

51.1.b.9. promptly reporting to the association's racing secretary and a Racing Commission veterinarian when a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

51.1.b.10. promptly notifying a Racing Commission veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his or her charge;

51.1.b.11. promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Racing Commission to the stewards and a Racing Commission veterinarian and compliance with subsection 52.2. of this rule governing racing soundness examinations;

51.1.b.12. maintaining a knowledge of the medication record and status of all horses in his or her care;

51.1.b.13. immediately reporting to the stewards and a Racing Commission veterinarian if he or she knows, or has cause to believe, that a horse in his or her custody, care or control has received any prohibited drugs or medication;

51.1.b.14. ensuring the fitness of a horse to perform creditably at the distance entered;

51.1.b.15. ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection;

51.1.b.16. ensuring that his or her horses are properly shod, bandaged and equipped;

51.1.b.17. attending the collection of a specimen of urine, blood or other bodily substances or tissue or delegating such responsibility to an employee holding an occupational permit or to the owner; and

51.1.b.18. maintaining accurate records, or expressly delegating the maintenance of accurate records to a practicing veterinarian, of all corticosteroid joint injections to horses trained by him or her, and making such records available to a Racing Commission veterinarian upon request.

§178-1-52. Physical Inspection of Horses.

52.1. Assessment of Racing Condition. The stewards and/or a Racing Commission veterinarian may order an examination at any time of any horse entered for a race or which has run in a race.

52.2. Pre-Race Examinations. The following provisions apply to pre-race examinations:

52.2.a. As required by subdivision 18.1.h. of this rule, one or more Racing Commission veterinarians shall conduct pre-race examinations on all potential starters on race day.

52.2.b. It shall be the trainer's responsibility to ensure that a horse that is a potential starter is on association grounds and in its assigned stall or at the pre-race examination area designated by a Racing Commission veterinarian for pre-race examination at least (4) four hours before post time of the race in which it is scheduled to start.

52.2.c. The trainer or his or her designee shall be present with the horse at the time specified in subdivision 52.2.b. of this rule for the pre-race examination and shall remain with the horse until the pre-race examination is completed.

52.3. Veterinarians' List. The following provisions apply to the veterinarians' list:

52.3.a. The Racing Commission veterinarian(s) shall maintain the veterinarians' list of all horses which are determined to be unfit to compete in a race due to illness, physical distress, unsoundness, injury, infirmity, heat exhaustion, positive test or overage, administration of a medication invoking a mandatory stand down time, administration of shock wave therapy, positive out of competition test or any other assessment or determination by a Racing Commission veterinarian that the horse is unfit to race.

52.3.b. Horses so listed are ineligible to start in a race in any jurisdiction until released by an official veterinarian or racing veterinarian except where there is an unforseen administrative issue in removing the horse from the veterinarians' list of another racing jurisdiction.

52.3.c. A horse may be removed from the veterinarians' list when, a minimum of ~~five (5)~~ seven (7) days have passed from the time the horse was place on the veterinarians' list.

52.3.d. A horse placed on the veterinarians' list when it is unfit to compete in a race due to illness, physical distress, unsoundness, injury, infirmity, heat exhaustion, or any other assessment or

determination by a Racing Commission veterinarian that warrants withdrawal from the race, shall be removed from the list only after the following has been met:

52.3.d.1. it has been established or demonstrated to the satisfaction of a Racing Commission veterinarian that the horse is serviceably sound and in fit condition to exert its best effort in a race or it can pass the pre-race examination by a Racing Commission veterinarian; ~~and~~

52.3.d.2. the provision of a published work of a minimum of four (4) furlongs at 0:52 observed by a Racing Commission veterinarian for horses that are listed as unsound or lame or other reasons as may be required at the discretion of a Racing Commission veterinarian. Prior to such work a declaration in writing must be provided by the attending veterinarian as to the fitness of the subject horse~~.~~; and

52.3.d.3. submission to a post-work biologic sample collection for laboratory confirmation for compliance with section 49 of this rule at the expense of the current owner. Violations of section 49 of this rule shall result in penalties consistent with the penalty provisions of this rule.

52.3.e. A horse placed on the veterinarians' list for a positive test or overage, administration of a medication invoking a mandatory stand down time, administration of shock wave therapy, positive out of competition test or any other veterinary administrative withdrawal shall be removed from the list only after the following have been met:

52.3.e.1. it has been established or demonstrated to the satisfaction of a Racing Commission veterinarian that the horse is serviceably sound and in fit physical condition to exert its best effort in a race or pass the pre-race examination by a Racing Commission veterinarian; and

52.3.e.2. in the discretion of a Racing Commission veterinarian, the provision of a published work of a minimum of four (4) furlongs at 0:52 observed by a Racing Commission veterinarian and submission of a post-work biologic sample collection for laboratory confirmation for compliance with section 49 of this rule at the expense of the current owner. Violations of section 49 of this rule shall result in penalties consistent with the penalty provisions of this rule.

52.4. Post-Mortem Examinations. The following provisions apply to post-mortem examinations:

52.4.a. A thoroughbred which suffers a breakdown on the race track, in training or in competition, and is euthanized, and every other thoroughbred which expires while stabled on a racetrack under the jurisdiction of the Racing Commission, may, in the discretion of a Racing Commission veterinarian, undergo an examination at a time and place acceptable to a Racing Commission veterinarian to determine the injury or sickness which resulted in euthanasia or death.

52.4.b. The examination allowed under this subsection will be conducted by a qualified professional selected by the Racing Commission or its designees.

52.4.c. Test specimens may be obtained from the expired or euthanized thoroughbred upon which the examination is conducted and may be sent to the primary testing laboratory for testing for foreign substances and natural substances at abnormal levels. When practical, specimens should be procured prior to euthanasia.

52.4.d. The Racing Commission shall be responsible for paying the costs of the examination

conducted by its selected qualified professional. The Racing Commission shall also bear the costs of testing for foreign substances and natural substances at abnormal levels, if any such costs are incurred in connection with an examination. If any additional costs are incurred in connection with preserving and/or transporting an expired or euthanized thoroughbred for examination, the Racing Commission shall also bear those costs. If the owner of the deceased thoroughbred desires to have an examination and/or testing conducted independently of the examination and/or testing conducted by professionals selected by the Racing Commission, he or she shall bear the costs of such independent examination and/or testing.

52.4.e. A record of an examination performed by the qualified professional selected by the Racing Commission shall be filed with the Racing Commission within seventy-two (72) hours of the death or within such other period approved by the Racing Commission. A record of an examination performed at the request of the owner of the deceased thoroughbred shall be filed with the Racing Commission within such period of time as ordered by the Racing Commission.

52.5. Compliance. Each owner and trainer shall comply with this section as a requisite for maintaining the occupational permit issued by the Racing Commission.

§178-1-53. Isolation/Quarantine.

53.1. In case of any illness or unusual symptoms of illness in a horse which may be considered to be contagious, a Racing Commission veterinarian and/or the Commissioner of Agriculture have the authority to determine whether or not it is necessary to isolate or quarantine a horse. The decision of the Racing Commission veterinarian and/or the Commissioner of Agriculture with reference to the necessity of isolating any horse is binding upon the trainer and owner of the horse.

53.2. The reasonable cost and expense of isolation, including boarding and medical care, shall be borne by the owner or trainer of the horse during the period of isolation.

53.3. In the event of the positive diagnosis of any infectious disease, the diagnosed horse shall remain isolated and quarantined for a period of time determined by the Racing Commission veterinarian and/or the Commissioner of Agriculture.

53.4. No horse shall be removed from quarantine without permission of a Racing Commission veterinarian and/or the Commissioner of Agriculture.

53.5. The Racing Commission veterinarian shall immediately report all quarantines and removal from quarantines to the stewards.

PART 9. WEST VIRGINIA THOROUGHBRED DEVELOPMENT FUND AND ACCREDITED RACE FUND.

§178-1-54. Eligibility.

54.1. A copy of The Jockey Club certificate of foal registration shall be attached to the West Virginia bred or sired registration form as a requirement to participate in the West Virginia thoroughbred development fund.

54.2. Non-resident mares foaling in West Virginia shall be inspected and the owner of the non-resident mare shall complete an affidavit to be supplied by the Racing Commission.

54.3. All West Virginia bred, sired or raised horses shall be registered with the West Virginia thoroughbred breeders association to be eligible to participate in any phase of the West Virginia thoroughbred development fund.

§178-1-55. Accredited Race Fund.

55.1. To qualify for the West Virginia accredited race fund, the breeders must qualify under one of the following:

55.1.a. The breeder of the West Virginia bred foal is a West Virginia resident;

55.1.b. The breeder of the West Virginia bred foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year-round, or

55.1.c. The breeder of the West Virginia bred foal is not a West Virginia resident and does not qualify under subdivision 55.1.b. above, but either the sire of the West Virginia bred foal is a West Virginia stallion, or the mare is covered only by a West Virginia accredited stallion or stallions before December 31 of the calendar year following the birth of that West Virginia bred foal.

TABLE 178-1 A

OCCUPATIONAL PERMIT FEES
(Effective for calendar year 2012 and thereafter)

Stable Name	$40.00
Corporation	$40.00
Vendor	$40.00
Owner (with registration of colors)	$30.00
Owner-Trainer (same person)	$60.00
Trainer	$30.00
Assistant Trainer	$30.00
Jockey	$30.00
Apprentice Jockey	$20.00
Jockey Agent	$20.00
Practicing Veterinarian	$30.00
Veterinarian's Assistant	$20.00
Blacksmith	$30.00
Authorized Agent (must apply for permit and pay permit fee for each person represented)	$20.00
Mutuel Employee	$20.00
Photographers, totalisator, film patrol	$20.00
Stable Foreman	$20.00
Starter	$30.00
Assistant Starter	$20.00
Association Racing Secretary	$30.00
Association Assistant Racing Secretary	$30.00

Paddock Judge	**$20.00**

TABLE 178-1 A
continued

OCCUPATIONAL PERMIT FEES
(Effective for calendar year 2012 and thereafter)

Horsemen's Bookkeeper	$20.00
Clerk of Scales	$20.00
Clocker	$20.00
Timer	$20.00
Horse Identifier	$20.00
Jockey Room Custodian	$20.00
Placing Judge	$20.00
Outrider	$20.00
Stable Hand	$20.00
Concession	$20.00
Maintenance	$20.00
Groom	$20.00
Admission	$20.00
Pony Riders	$20.00
Parking	$20.00
Security	$20.00
Exercise Rider	$20.00
Video Lottery employees	$20.00
Others not specified	$20.00

TABLE 178-1 B

JOCKEY MOUNT FEES

Purse	Winning Mount	Second Place Mount	Third Place Mount	Fourth Place Mount	Losing Mount
Up to $5,999.00	10% of Win Purse	$65.00	$60.00	$55.00	$50.00
$6,000.00 to $7,799.00	10% of Win Purse	$75.00	$70.00	$65.00	$60.00
$7,800.00 to $9,999.00	10% of Win Purse	5% of Place Purse ($78.00-$99.00)	$75.00	$70.00	$65.00
$10,000.00 to $17,999.00	10% of Win Purse	5% of Place Purse ($100.00-$149.99)	$85.00	$80.00	$75.00
$18,000.00 to $24,999.00	10% of Win Purse	5% of Place Purse ($150.00-$249.99)	5% of Show Purse ($90.00-$124.99)	$85.00	$80.00
$25,000.00 to $49,999.00	10% of Win Purse	5% of Place Purse ($250.00-$499.99)	5% of Show Purse ($125.00-$249.99)	$95.00	$85.00
$50,000.00 to $74,999.00	10% of Win Purse	5% of Place Purse ($500.00-$749.99)	5% of Show Purse ($250.00-$374.99)	$100.00	$90.00
$75,000.00 and up	10% of Win Purse	5% of Place Purse ($750.00 and up)	5% of Show Purse ($375.00 and up)	5% of Fourth Purse ($187.50 and up)	$105.00

TABLE 178-1C

REQUEST TO WEAR ADVERTISING AND PROMOTIONAL MATERIAL

DATE OF ENTRY _____

DATE OF RACE _____

RACETRACK: ❑ CHARLES TOWN ❑ MOUNTAINEER

RACE NUMBER _____

NAME OF RACE (STAKES IF APPLICABLE) _____

DESCRIPTION OF MATERIAL TO BE WORN: (Use a separate sheet if necessary)

_____

_____

_____

NAME OF ADVERTISER, PROMOTIONAL BRAND OR SPONSOR:

_____

NAME OF JOCKEY WEARING THE MATERIAL: _____

_____ _____

Signature of the Jockey or Agent Date

_____

Title (if applicable)

APPROVAL OF OWNER OR DULY AUTHORIZED AGENT

_____ _____

Signature Date

_____

Title

TABLE 178-1 C
continued

REQUEST TO WEAR ADVERTISING AND PROMOTIONAL MATERIAL

APPROVAL OF LICENSED RACING ASSOCIATION

_____ _____
Signature Date

_____
Title

APPROVAL OF THE STEWARDS

_____ _____
Signature Date

_____ _____
Signature Date

_____ _____
Signature Date

TABLE 178-1 E

The following are recommended penalties for violations due to the presence of a drug carrying a Category "A" penalty.

LICENSED TRAINER		
1st Offense Minimum one (1) year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a three (3) year suspension. **AND** Minimum fine of $10,000.00 or 10% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of $25,000.00 or 25% of purse (greater of the two). **AND** May be referred to the Racing Commission for any further action deemed necessary by the Commission.	**2nd LIFETIME offense in any jurisdiction** Minimum three (3) year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of permit revocation with no reapplication for a three (3) year period. **AND** Minimum fine of $25,000.00 or 25% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of $50,000.00 or 50% of purse (greater of the two). **AND** May be referred to the Racing Commission for any further action deemed necessary by the Commission.	**3rd LIFETIME offense in any jurisdiction** Minimum five (5) year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of permit revocation with no reapplication for a five (5) year period. **AND** Minimum fine of $50,000.00 or 50% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of $100,000.00 or 100% of purse (greater of the two). **AND** May be referred to the Racing Commission for any further action deemed necessary by the Commission.

LICENSED OWNER		
1st Offense Disqualification and loss of purse. **AND** Horse shall be placed on the veterinarian's list for ~~ninety (90)~~ one hundred eighty (180) days and must pass a Commission approved examination before becoming eligible to be entered.	**2nd LIFETIME offense in any jurisdiction** Disqualification and loss of purse. **AND** Horse shall be placed on the veterinarian's list for ~~one hundred twenty (120)~~ one hundred eighty (180) days and must pass a Commission approved examination before becoming eligible to be entered.	**3rd LIFETIME offense in any jurisdiction** Disqualification, loss of purse and $50,000.00 fine. **AND** Horse shall be placed on the veterinarian's list for one hundred eighty (180) days and must pass a Commission approved examination before becoming eligible to be entered. **AND** Referral to the Commission with a recommended minimum suspension of ninety (90) days.

TABLE 178-1 E

The following are recommended penalties for violations due to the presence of a drug carrying a Category "B" penalty, or for the presence of more than ~~two~~ one NSAID~~s~~ in a plasma/serum sample, subject to the provisions of Table 178-1 F of this rule, and for violations of the established levels for total carbon dioxide.

LICENSED TRAINER		
1st offense ~~(365 day period in any jurisdiction)~~	**2nd offense (365 day period in any jurisdiction)**	**3rd offense (365 day period in any jurisdiction)**
Minimum fifteen (15) day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a sixty (60) day suspension. **AND** Minimum fine of $500.00 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of $1,000.00. ~~**AND**~~ ~~May be referred to the Racing Commission for any further action deemed necessary by the Commission.~~	Minimum thirty (30) day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180 day suspension. **AND** Minimum fine of $1,000.00 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of $2,500.00. ~~**AND**~~ ~~May be referred to the Racing Commission for any further action deemed necessary by the Commission.~~	Minimum sixty (60) day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a one (1) year suspension. **AND** Minimum fine of $2,500.00 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of $5,000.00 or 5% of purse (greater of the two). **AND** May be referred to the Racing Commission for any further action deemed necessary by the Commission.

LICENSED OWNER		
1st offense ~~(365 day period in any jurisdiction)~~	**2nd offense in owner's stable (365 day period in any jurisdiction)**	**3rd offense in owner's stable (365 day period in any jurisdiction)**
Disqualification and loss of purse [in the absence of mitigating circumstances]. **AND** Horse must pass a Racing Commission approved examination before becoming eligible to be entered.	Disqualification and loss of purse [in the absence of mitigating circumstances]. **AND** Horse must pass a Racing Commission approved examination before becoming eligible to be entered.	Disqualification, loss of purse and in the absence of mitigating circumstances a $5,000.00 fine. **AND** Horse shall be placed on the veterinarian's list for forty-five (45) days and must pass a Racing Commission approved examination before becoming eligible to be entered.

TABLE 178-1 E

The following are recommended penalties for violations due to the presence of a drug carrying a Category "C" penalty and overages for permitted NSAIDs and furosemide: **(All concentrations are for measurements in serum or plasma.)**

LICENSED TRAINER	Phenylbutazone (>2.0-5.0 mcg/ml)* Flunixin (>20-100 ng/ml) Ketoprofen (>2-50 ng/ml) Furosemide (>100 ng/ml) and/or no furosemide when identified as administered	Phenylbutazone (>5.0 mcg/ml) Flunixin (>100 ng/ml) Ketoprofen (>50 ng/ml) and CLASS C VIOLATIONS
1st Offense (365-day period) in any jurisdiction	Minimum of a written warning to a maximum fine of $500.00	Minimum fine of $1,000.00 absent mitigating circumstances
2nd Offense (365-day period) in any jurisdiction	Minimum of a written warning to a maximum fine of $750.00	Minimum fine of $1,500.00 and 15-day suspension absent mitigating circumstances
3rd Offense (365-day period) in any jurisdiction	Minimum fine of $500.00 and to a maximum fine of $1,000.00	Minimum fine of $2,500 and 30-day suspension absent mitigating circumstances
LICENSED OWNER	Phenylbutazone (>2.0-5.0 mcg/ml)* Flunixin (>20-100 ng/ml) Ketoprofen (>2-50 ng/ml) Furosemide (>100 ng/ml) and/or no furosemide when identified as administered	Phenylbutazone (>5.0 mcg/ml) Flunixin (>100 ng/ml) Ketoprofen (>50 ng/ml) and CLASS C VIOLATIONS
1st Offense (365-day period) in any jurisdiction	Horse may be required to pass a Racing Commission approved examination before being eligible to run.	Disqualification and ~~L~~loss of purse in the absence of mitigating circumstances. Horse must pass commission-approved examination before being eligible to run.
2nd Offense (365-day period) in any jurisdiction	Horse may be required to pass a Racing Commission approved examination before being eligible to run.	Disqualification and ~~L~~loss of purse in the absence of mitigating circumstances. If same horse, placed on veterinarian's list for 45 days, must pass commission-approved examination before being eligible to run
3rd Offense (365-day period) in any jurisdiction	Disqualification and loss of purse. Horse must pass Racing Commission approved examination before being eligible to run.	Disqualification and ~~L~~loss of purse in the absence of mitigating circumstances. Minimum $5,000.00 fine. If same horse, placed on veterinarian's list for 60 days, must pass commission-approved examination before being eligible to run

*If the trainer has not had more than one violation within the previous two years, the stewards are encouraged to issue a warning in lieu of a fine provided the reported level is below 3.0 mcg/ml, absent aggravating factors.

After a two year period, if the permit holder has had no further violations, any penalty due to an overage in the 2.0 - 5.0 category shall be expunged from the permit holder's record for penalty purposes.

The recommended penalty for a violation involving a drug that carries a Category "D" penalty is a written warning to the trainer and owner. Multiple violations may result in fines and/or suspensions.

TABLE 178-1 H

MEDICAL AUTHORIZATION TO RETURN TO RIDE WHEN A JOCKEY HAS BEEN REMOVED DUE TO A SUSPECTED CONCUSSION

I, _____, have examined the jockey _____ who was removed from riding due to exhibiting signs/symptoms/behaviors consistent with a concussion. I have examined this athlete, provided an appropriate return to riding, if necessary, and determined that the jockey is cleared to resume participation on this date: _____.

Signature of Authorized Medical Professional:

_____

Date:_____