WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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6/5/2023 2:14:03 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Racing Commission

TITLE-SERIES: 178-01

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: Thoroughbred Racing

CITE STATUTORY AUTHORITY: W.Va. Code 19-23-2(a)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/06/2023 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Joe K. Moore

ADDRESS: 900 Pennsylvania Avenue

Charleston, WV 25302

EMAIL: joe.k.moore@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The Rule updates the rules of thoroughbred racing in the State.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The amendments are necessary to modernize the rules of thoroughbred racing and to improve the health and safety of participants.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no expected economic impact on the revenues of State government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no expected economic impact on special revenue accounts.

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

There is no expected economic impact on the State or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 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

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

There is no expected fiscal impact from this rule.

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

Yes

Anoop Bhasin -- 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. – June 5, 2023.

1.4. Effective Date. –

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on August 1, ~~2032~~ 2034.

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~~ 12 consecutive months of verifiable residence in West Virginia as a yearling, except for the ~~thirty~~ 30 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.

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	$75.00	$70.00	$60.00	$60.00
$6,000.00 to $7,799.00	10% of Win Purse	$85.00	$75.00	$70.00	$70.00
$7,800.00 to $9,999.00	10% of Win Purse	$100.00	$80.00	$75.00	$70.00
$10,000.00 to $17,999.00	10% of Win Purse	5% of Place Purse	$85.00	$80.00	$75.00
$18,000.00 to $24,999.00	10% of Win Purse	5% of Place Purse	5% of Show Purse	$85.00	$80.00
$25,000.00 to $49,999.00	10% of Win Purse	5% of Place Purse	5% of Show Purse	$100.00	$95.00
$50,000.00 to $99,999.00	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of Fourth Purse	$100.00
$100,000.00 and up	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of Fourth Purse	$115.00

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 ~~one hundred eighty (~~180~~)~~ days and must pass a Commission approved examination before becoming eligible to be entered.	**2nd LIFETIME offense in owner's stable in any jurisdiction** Disqualification and loss of purse. **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.	**3rd LIFETIME offense in owner's stable 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.

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 one NSAID 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	**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.	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.	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	**2nd offense in stable (365 day period in any jurisdiction)**	**3rd offense in 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.	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.	Loss of purse. 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.	Loss of purse. 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:_____