

January 9, 2011

Sunday, January 9, 2011

2:00 p.m. to 4:00 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Richard Thompson
ex officio nonvoting member

Senate

House

Minard, Chairman
Snyder, Vice Chair
Prezioso
Unger
Boley
Facemyer

Absent

Brown, Chairman
Poling, Vice Chair
Miley
Talbott
Overington
Sobonya

The meeting was called to order by Senator Minard, Chair.

Senator Minard moved that the minutes of the December 13 & 14, 2010, meeting be approved. The motion was adopted.

Senator Minard moved that the rule proposed by the **Division of Highways, Use of State Road Rights of Way and Adjacent Areas, 157CSR6**, be reconsidered. The motion was adopted.

Rita Pauley, Associate Counsel, explained her abstract on the rule proposed.

Senator Minard moved that the proposed rule be approved. The motion was adopted.

Mrs. Pauley reviewed her abstract on the rule proposed by the **Alcohol Beverage Control Commission, Licensed Retailer Operations, 175CSR1**, stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Anoop Bhasin, General Counsel for the Commission responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mrs. Pauley explained her abstract on the rule proposed by the **Alcohol Beverage Control Commission, Licensing of Retail Outlets, 175CSR5**, stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **Elections Commission, West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, 146CSR5**, stated that the Agency has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley explained her abstract on the rule proposed by the **Secretary of State, Combined Voter Registration and Drivers Licensing Fund, 153CSR25**, and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Jay Lazell, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Air Quality - DEP, Ambient Air Quality Standards, 45CSR8**, and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Mr. Lazell explained his abstract on the rule proposed by the **Division of Air Quality - DEP, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration, 45CSR14**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Karen Price, with the WV Manufacturers Association, addressed the Committee and responded to questions.

Fred Dural with the Department of Environmental Protection addressed the Committee and responded to questions.

Ann Blankenship, Counsel for the WV Manufacturers Association, responded to questions from the Committee.

Senator Facemyer moved that the proposed rule be laid over. The motion was adopted.

Mr. Lazell reviewed his abstract on the rule proposed by the **Division of Air Quality - DEP, Standards of Performance for New Stationary Sources, 45CSR16**.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Mr. Lazell explained his abstract on the rule proposed by the **Division of Air Quality - DEP, Control of Air Pollution from Combustion of Solid Waste, 45CSR18**, and stated that the Department has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Lazell reviewed his abstract on the rule proposed by the **Division of Air Quality - DEP, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment, 45CSR19**.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Mr. Lazell explained his abstract on the rule proposed by the **Division of Air Quality - DEP, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45CSR25**, and responded to questions from the Committee.

Senator Snyder moved that the proposed rule be approved. The motion was adopted.

Mr. Lazell reviewed his abstract on the rule proposed by the **Division of Air Quality - DEP, Emission Standards for Hazardous Air Pollutants, 45CSR34**.

Senator Snyder moved that the proposed rule be approved. The motion was adopted.

Senator Snyder moved to adjourn the meeting. The motion was adopted.

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 9, 10 and 11, 2011

Sunday, January 9, 2011

2:00 pm - 4:00 pm

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Thompson, ex
officio nonvoting member

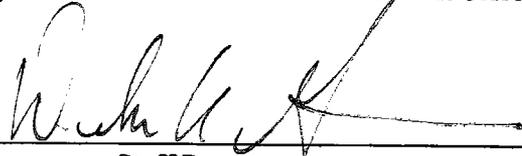
Senate

Minard, Chair
Snyder, Vice Chair
Prezioso
Unger
Boley
Facemyer

House

Brown, Chair
Poling, D., Vice Chair
Fleischauer
Talbot
Overington
Sobonya

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 9, 2011
2:00 p.m. to 4:00 p.m.
Senate Judiciary Committee Room

1. **Approval of Minutes - Meetings of December 13 & 14, 2010**
2. **Reconsideration of Legislative Rule:**
 - *. **Division of Highways**
Use of State Road Rights of Way and Adjacent Areas
157CSR6
 - Approve
3. **Review of Legislative Rules:**
 - a. **Division of Air Quality - DEP**
Ambient Air Quality Standards
45CSR8
 - Approve
 - b. **Division of Air Quality - DEP**
Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration
45CSR14
 - *Laid Over*
Approve as Modified
 - c. **Division of Air Quality - DEP**
Standards of Performance for New Stationary Sources
45CSR16
 - Approve
 - d. **Division of Air Quality - DEP**
Control of Air Pollution from Combustion of Solid Waste
45CSR18
 - Approve as Modified
 - e. **Division of Air Quality - DEP**
Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment
45CSR19
 - Approve

- f. **Division of Air Quality - DEP**
Control of Air Pollution from Hazardous Waste Treatment,
Storage and Disposal Facilities
45CSR25
 - Approve
- g. **Division of Air Quality - DEP**
Emission Standards for Hazardous Air Pollutants
45CSR34
 - Approve
- h. **Alcohol Beverage Control Commission**
Licensed Retailer Operations
175CSR1
 - Approve as Modified
- i. **Alcohol Beverage Control Commission**
Licensing of Retail Outlets
175CSR5
 - Approve as Modified
- j. **Elections Commission**
West Virginia Supreme Court of Appeals Public Campaign
Financing Pilot Program
146CSR5
 - Approve as Modified
- k. **Secretary of State**
Combined Voter Registration and Drivers Licensing Fund
153CSR25
 - Approve

4. Other Business

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- h. **Alcohol Beverage Control Commission**
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153CSR25

4. Other Business

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Legislative Rule-Making Review Committee

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officio nonvoting member

Richard Thompson, ex
officio nonvoting member

Senate

Minard, Chair	<input checked="" type="checkbox"/>
Snyder, Vice Chair	<input checked="" type="checkbox"/>
Prezioso	<input checked="" type="checkbox"/>
Unger	<input type="checkbox"/>
Boley	<input checked="" type="checkbox"/>
Facemyer	<input checked="" type="checkbox"/>

House

Brown, Chair	<input checked="" type="checkbox"/>
Poling, Vice Chair	<input checked="" type="checkbox"/>
Fleischauer	<input checked="" type="checkbox"/>
Talbott	<input checked="" type="checkbox"/>
Overington	<input checked="" type="checkbox"/>
Sobonya	<input checked="" type="checkbox"/>

- Track 37⁴⁷ Judiciary memory card
- Minard called the meeting to order
- Minard moved to approve minutes. Adopted
- Reconsideration:
Highways 157CSR6
Rita explained - As filed
Minard moved ^{reconsider} - Approved
Minard moved rule - Approved
- ABCC 175CSR1
Rita explained & responded to ?'s
Anoop Bhasin, Sen. Counsel for ABCC responded to ?'s
Brown moved as modified
Adopted

• ABCC 175CSR5

Rita explained & responded to ?'s
Brown moved rule as modified
Adopted

• Elections 146CSR5

Rita explained & responded to ?'s
Brown moved rule as modified
Adopted

• Secretary of State 153CSR25

Rita explained & responded to ?'s
Brown moved rule
Adopted

• Air Quality 45CSR8

Jay explained
Brown moved rule
Adopted

• Air Quality 45CSR14

Jay explained & responded to ?'s
Karen Price w/ WV Manufacturers Association
addressed the Committee

Brown moved as modified

Fred Dural w/ DEP addressed the Committee &
responded to ?'s

Ann Blankenship, Esq. w/ Manufacturers Assoc. responded to ?'s

Facey moved to lay over - Adopted

• Air Quality 45CSR16
Jay explained
Brown moved rule
Adopted

• Air Quality 45CSR18
Jay explained
Brown moved rule as modified
Adopted

• Air Quality 45CSR19
Jay explained
Brown moved rule
Adopted

• Air Quality 45CSR25
Jay explained & responded to ?'s
Snyder moved rule
Adopted

• Air Quality 45CSR34
Jay explained
Snyder moved rule
Adopted

Snyder moved to adjourn - Adopted

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2. **Reconsideration of Legislative Rule:**

Approve ✓
Division of Highways
Use of State Road Rights of Way and Adjacent Areas
157CSR6

- Approve

3. **Review of Legislative Rules:**

Approved ✓
a. Division of Air Quality - DEP
Ambient Air Quality Standards
45CSR8

- Approve

Layed over b. **Division of Air Quality - DEP**
Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution for the Prevention of
Significant Deterioration
45CSR14

- Approve as Modified

Approved ✓
Division of Air Quality - DEP
Standards of Performance for New Stationary Sources
45CSR16

- Approve

Approved as modified ✓
d. Division of Air Quality - DEP
Control of Air Pollution from Combustion of Solid Waste
45CSR18

- Approve as Modified

Approved e. **Division of Air Quality - DEP**
Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution Which Cause or Contribute
to Nonattainment
45CSR19

- Approve

Approved *h.*

Division of Air Quality - DEP
Control of Air Pollution from Hazardous Waste Treatment,
Storage and Disposal Facilities
45CSR25

- Approve

Approved *g.*

Division of Air Quality - DEP
Emission Standards for Hazardous Air Pollutants
45CSR34

- Approve

Approved *h.*
as modified

Alcohol Beverage Control Commission
Licensed Retailer Operations
175CSR1

- Approve as Modified

Approved *i.*
as modified

Alcohol Beverage Control Commission
Licensing of Retail Outlets
175CSR5

- Approve as Modified

Approved *j.*
as modified

Elections Commission
West Virginia Supreme Court of Appeals Public Campaign
Financing Pilot Program
146CSR5

- Approve as Modified

Approved *k.*

Secretary of State
Combined Voter Registration and Drivers Licensing Fund
153CSR25

- Approve

4. Other Business

Approved f.

Division of Air Quality - DEP
Control of Air Pollution from Hazardous Waste Treatment,
Storage and Disposal Facilities
45CSR25

- Approve

Approved g.

Division of Air Quality - DEP
Emission Standards for Hazardous Air Pollutants
45CSR34

- Approve

*Approved h.
as modified*

Alcohol Beverage Control Commission
Licensed Retailer Operations
175CSR1

- Approve as Modified

*Approved i.
as modified*

Alcohol Beverage Control Commission
Licensing of Retail Outlets
175CSR5

- Approve as Modified

*Approved j.
as modified*

Elections Commission
West Virginia Supreme Court of Appeals Public Campaign
Financing Pilot Program
146CSR5

- Approve as Modified

Approved k.

Secretary of State
Combined Voter Registration and Drivers Licensing Fund
153CSR25

- Approve

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2. **Reconsideration of Legislative Rule:**

✓

Division of Highways

Use of State Road Rights of Way and Adjacent Areas
157CSR6

- Approve

3. **Review of Legislative Rules:**

✓

Division of Air Quality - DEP

Ambient Air Quality Standards
45CSR8

- Approve

b.

Division of Air Quality - DEP

Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution for the Prevention of
Significant Deterioration
45CSR14

- Approve as Modified

✓

Division of Air Quality - DEP

Standards of Performance for New Stationary Sources
45CSR16

- Approve

✓

Division of Air Quality - DEP

Control of Air Pollution from Combustion of Solid Waste
45CSR18

- Approve as Modified

e.

Division of Air Quality - DEP

Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution Which Cause or Contribute
to Nonattainment
45CSR19

- Approve

Approve

Approved

Layed over

Approved

Approved as modified

Approved

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House

Minard, Chair
Snyder, Vice Chair
Prezioso
Unger
Boley
Facemyer

✓
✓
✓
✓
✓

Brown, Chair
Poling, Vice Chair
Fleischauer
Talbot
Overington
Sobonya

✓
✓
✓
✓
✓

Minutes approved
Div. of Highways
Rita explained

Brawn

Reconsider

Brawn

Approve.

ABCC 175 CSR1

Rita explained & responded to questions
Anoop, ABCC responded to questions

Brawn

Approve as modified

ABCC 175 CSR5

Rita explained & responded to questions
~~Anoop respond~~
Approve as modified

Brawn

Elections Commission

Bitá explained & responded to questions

Brown Approve as modified

Secretary of State

Bitá explained & responded to questions

Brown Approve

DEP 45 CSR 8

Jay explained

Brown Approve

DEP 45 CSR 14

Jay explained & responded to questions

Brown Approve as mod.

Fred Dural, DEP responded to questions

Haren Price - ok w/ modification

Ann Blankenship, rep Manufacturers Assoc

Faemeyer Postpone question to diff. day.

DEP 45 CSR 16

Jay explained

Brown Approve

DEP 45 CSR 18

Jay exp.

Brown Approve as modified

DEP 45 CSR 19

Jay explained

Brown

Approve

DEP 45 CSR 25

Jay explained & responded to q's

Snyder

Approve

DEP 45 CSR 34

Jay explained

Snyder

Approve

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: Jan. 9, 2011

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Anoop Bhasin		WVARCH	175CSL1 175CS25	

45CSR14

**TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY**

**SERIES 14
PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF
MAJOR STATIONARY SOURCES OF AIR POLLUTION FOR THE
PREVENTION OF SIGNIFICANT DETERIORATION**

§45-14-1. General.

1.1. Scope. — This rule provides:

1.1.a. A mechanism to ensure that economic growth will occur in harmony with the preservation of existing clean air resources; to prevent the development of any new non-attainment problems; to protect the public health and welfare from any adverse effects which might occur even at air quality levels better than the West Virginia and National Ambient Air Quality Standards; and to preserve, protect, and enhance the air quality in areas of special natural, recreational, scenic, or historic value. It is the intent of the Secretary to register and evaluate sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining National or West Virginia Ambient Air Quality Standards or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels; and

1.1.b. A method to quantitatively define significant deterioration of air quality with respect to the desired degree of preservation of air quality for various areas and to set forth procedures for registration and reporting, and the criteria for obtaining a permit to construct or relocate a major stationary source or make a major modification to a stationary source within a designated attainment or unclassified area of the State of West Virginia. Such construction, modification, or relocation without such a permit is a violation of this rule.

1.2. Authority. — W. Va. Code §22-5-4.

1.3. Filing Date. — ~~April 30, 2010.~~

1.4. Effective Date. — ~~June 1, 2010.~~

1.5. Federal Regulation. — Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will, for the purpose of this rule, be construed as that version which was in effect as of ~~June 1, 2009~~ June 1, 2010.

1.6. Former Rules. — This legislative rule amends 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration" which was filed on ~~May 8, 2009~~ April 30, 2010 and became effective on ~~June 1, 2009~~ June 1, 2010.

§45-14-2. Definitions.

2.1. "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as described below, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under section 25. Instead, subsections 2.63 and 2.8 shall apply for those purposes.

2.1.a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Secretary may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2.1.b. The Secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

2.1.c. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

2.1.d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, provided the source owner or operator maintains and submits to the Director, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the Director if the Director determines such a period to be more representative of normal source operations following the physical or operational change.

2.2. "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in subsection 2.8) of all emissions units (as defined in subsection 2.27) at the source, that emit or have the potential to emit the PAL pollutant.

2.3. "Administrator" means the Administrator of the United States Environmental Protection Agency.

2.4. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

2.5. "Air pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.6. "Air pollution" or "statutory air pollution" means and is limited to the discharge into the air by the act of man substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

2.7. "Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or limits enforceable by the Secretary which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

2.7.a. The applicable standards as set forth in 40 CFR Parts 60 and 61;

2.7.b. The applicable State of West Virginia emissions limitations or permit conditions, including those with a future compliance date; or

2.7.c. The applicable federally enforceable emissions limitations or permit conditions, including those with a future compliance date.

2.8. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subdivisions 2.8.a through 2.8.d.

2.8.a. For any existing electric utility steam generating unit, baseline actual emissions means the average emission rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

2.8.a.1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2.8.a.2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

2.8.a.3. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

2.8.a.4. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph 2.8.a.2.

2.8.b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Secretary for a permit required under this rule, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

2.8.b.1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

45CSR14

2.8.b.2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

2.8.b.3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 45CSR19-8.6.

2.8.b.4. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

2.8.b.5. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs 2.8.b.2 and 2.8.b.3.

2.8.c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

2.8.d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision 2.8.a, for other existing emissions units in accordance with the procedures contained in subdivision 2.8.b, and for a new emissions unit in accordance with the procedures contained in subdivision 2.8.c.

2.9. "Baseline area" means any county of the State of West Virginia in which a major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Secretary rescinds the corresponding minor source baseline date in accordance with subdivision 2.42.d.

2.10. "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:

2.10.a. The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2.10.b. The actual emissions representative of sources in existence on the applicable minor source baseline date. However, the following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

2.10.b.1. actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

2.10.b.2. actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

2.11. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

2.12. "Best available control technology (BACT)" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Secretary, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any federally enforceable emissions limitations or emissions limitations enforceable by the Secretary. If the Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.13. "Building, Structure, Facility, or Installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are a part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two (2)-digit code) as described in the Standard Industrial Classification Manual, 1987 (United States Government Printing Office stock number GPO 1987 0-185-718:QL 3).

2.14. "CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

2.15. "Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

2.16. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy – Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for USEPA. The Federal contribution for a qualifying project shall be at least twenty (20) percent of the total

cost of the demonstration project.

2.17. [Reserved].

2.18. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

2.18.a. begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2.18.b. entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

2.19. "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Secretary from requesting or accepting any additional information.

2.20. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

2.21. "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

2.22. "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

2.23. "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

2.24. "Department of Environmental Protection" or "DEP" means the Department of Environmental Protection as defined in W. Va. Code §22-1-4.

2.25. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five (25) MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

2.26. "Emission" means the release, escape or discharge of air pollutants into the air.

2.27. "Emissions unit" means any part of a stationary source that emits or would have the potential to

emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in subsection 2.25. For purposes of this rule, there are two types of emissions units as described in subdivisions 2.27.a and 2.27.b.

2.27.a. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

2.27.b. An existing emissions unit is any emissions unit that does not meet the requirements in subdivision 2.27.a. A replacement unit, as defined in subsection 2.68, is an existing emissions unit.

2.28. "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

2.29. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR Parts 60, 61 and 63, rules of the approved West Virginia State Implementation Plan, any permit requirements established pursuant to 40 CFR §52.21 or this rule, and any operating permits issued under a program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

2.30. [Reserved.]

2.31. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

2.32. [Reserved.]

2.33. [Reserved.]

2.34. [Reserved.]

2.35. [Reserved.]

2.36. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

2.37. "Lowest achievable emission rate (LAER)" means, for any source, the more stringent of the following:

2.37.a. The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2.37.b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emission rate for the new or modified emissions units within the stationary source. In no event shall the application of the term permit a new or proposed new or modified stationary source to emit any pollutant in

excess of the amount allowable under an applicable new source standard of performance.

2.38. [Reserved.]

2.39. Major emissions unit means:

2.39.a. Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

2.39.b. Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas. For example, in accordance with the definition of major stationary source in §182(c) of the CAA, an emissions unit would be a major emissions unit for VOC if the unit is located in a serious ozone non attainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

2.40. "Major modification" means any physical change in or change in the method of operation of a major stationary source which results in: a significant emissions increase (as defined in subsection 2.75) of any regulated NSR pollutant (as defined in subsection 2.66); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined at subsection 2.75) from any emissions units or net emissions increase (as defined in subsection 2.46) at a major stationary source that is significant for volatile organic compounds or NO_x shall be considered significant for ozone. However, the following actions do not constitute a physical change or change in the method of operation:

2.40.a. Routine maintenance, repair, and replacement.

2.40.b. Use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

2.40.c. Use of an alternative fuel by reason of an order or rule under §125 of the CAA.

2.40.d. Use of fuel generated from municipal solid waste as an alternative fuel at a steam generating unit.

2.40.e. Use of an alternative fuel or raw material by a stationary source, provided that:

2.40.e.1. Prior to January 6, 1975, the source was capable of accommodating such alternative fuel or raw material, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR §52.21 or under any permit issued or order entered pursuant to any rule of the Secretary after January 6, 1975;

2.40.e.2. The source is approved to use the alternative fuel or raw material under any permit issued under 40 CFR §52.21 or under any permit issued or order entered pursuant to any rule of the Secretary.

2.40.f. An increase in the hours of operation unless such increase would be prohibited by a Federal permit issued pursuant to 40 CFR §52.21 or by any permit issued or order entered pursuant to any rule of the Secretary.

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2.40.g. An increase in the production rate unless such increase would be prohibited by a Federal permit issued pursuant to 40 CFR §52.21 or by any permit issued or order entered pursuant to any rule of the Secretary.

2.40.h. Any change in ownership at a stationary source.

2.40.i. [Reserved.]

2.40.j. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

2.40.j.1. The State Implementation Plan; and

2.40.j.2. Other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

2.40.k. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated NSR pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

2.40.l. The reactivation of a very clean coal-fired electric utility steam generating unit.

2.40.m. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under section 25 for a PAL for that pollutant. Instead, the definition at subsection 2.53 shall apply.

2.41. "Major modification for ozone" means a major modification for volatile organic compounds or NO_x.

2.42. "Major and minor source baseline date."

2.42.a. "Major source baseline date" means:

2.42.a.1. in the case of particulate matter and sulfur dioxide, January 6, 1975; and

2.42.a.2. in the case of nitrogen dioxide, February 8, 1988.

2.42.b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to the requirements of 40 CFR §52.21 or to this rule submits a complete application under this rule. The trigger date is:

2.42.b.1. In the case of particulate matter and sulfur dioxide, August 7, 1977, and

2.42.b.2. In the case of nitrogen dioxide, February 8, 1988.

2.42.c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

2.42.c.1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under §107(d)(i)(D) or (E) of the CAA for the pollutant on the date of its complete application under 40 CFR §52.21 or this rule; and

2.42.c.2. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

2.42.d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the Secretary may rescind any such minor source baseline date where it can be demonstrated to the Secretary's satisfaction that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

2.43. "Major stationary source" means:

2.43.a. any Any of the following stationary sources of air pollutants which emits or has the potential to emit, one hundred (100) tons per year or more of any regulated NSR pollutant:

- Fossil Fuel-fired Steam Electric Plants of More than 250 Million Btu/hr Heat Input,
- Coal Cleaning Plants (with thermal dryers),
- Kraft Pulp Mills,
- Portland Cement Plants,
- Primary Zinc Smelters,
- Iron and Steel Mill Plants,
- Primary Aluminum Ore Reduction Plants (with thermal dryers),
- Primary Copper Smelters,
- Municipal Incinerators Capable of Charging More than 250 Tons of Refuse per Day,
- Hydrofluoric, Sulfuric and Nitric Acid Plants,
- Petroleum Refineries,
- Lime Plants,
- Phosphate Rock Processing Plants,
- Coke Oven Batteries,
- Sulfur Recovery Plants,
- Carbon Black Plants (furnace process),
- Primary Lead Smelters,
- Fuel Conversion Plants,
- Sintering Plants,
- Secondary Metal Production Plants,
- Chemical Process Plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140),
- Fossil Fuel Boilers (or combinations thereof) Totaling More than 250 Million Btu/hour Heat Input,
- Petroleum Storage and Transfer Units with a Total Storage Capacity Exceeding 300,000 Barrels,
- Taconite Ore Processing Plants,
- Glass Fiber Processing Plants, and
- Charcoal Production Plants;

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2.43.b. Notwithstanding the stationary source size specified in subdivision 2.43.a, any stationary source which emits or has the potential to emit, two hundred fifty (250) tons per year or more of any regulated NSR pollutant; or

2.43.c. Any physical change at a stationary source, not otherwise qualifying under subdivision 2.43.a as a major stationary source, if the change itself would constitute a major stationary source.

2.43.d. A major source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

2.43.e. The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source is listed in Table 1.

2.43.f. In addition to those facilities covered under subdivision 2.43.e, all coal preparation plants as defined under 40 CFR §60.251(a) which process more than 200 tons per day shall count ~~fugitives~~ fugitive emissions from all “affected facilities” at the source, i.e., ~~thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems.~~

2.43.g. For the purpose of ~~this subsection~~ subdivision 2.43.f, the term “affected facilities” means those facilities which are listed or identified as “affected facilities” in the applicable standard promulgated under §§111 or 112 of the CAA.”

Table 1
SOURCE CATEGORIES WHICH MUST INCLUDE FUGITIVE EMISSIONS

- Fossil-Fuel-Fired Steam Electric Plants Greater Than 250 Million Btu/Hour Heat Input
- Coal Cleaning Plants (with thermal dryers)
- Kraft Pulp Mills
- Portland Cement Plants
- Primary Zinc Smelters
- Iron and Steel Mill Plants
- Primary Aluminum Ore Reduction Plants
- Primary Copper Smelters
- Municipal Incinerators Capable of Charging Greater Than 250 Tons of Refuse/Day
- Hydrofluoric, Sulfuric, and Nitric Acid Plants
- Petroleum Refineries
- Lime Plants
- Phosphate Rock Processing Plants
- Coke Oven Batteries
- Sulfur Recovery Plants
- Carbon Black Plants (furnace process)
- Primary Lead Smelters
- Fuel Conversion Plants
- Sintering Plants
- Secondary Metal Production Plants
- Chemical Process Plants - The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140

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- Fossil Fuel Boilers (or combinations thereof) Totaling More Than 250 Million Btu/Hour Heat Input
- Petroleum Storage and Transfer Units with a Total Storage Capacity Exceeding 300,000 Barrels
- Taconite Ore Processing Plants
- Glass Fiber Processing Plants
- Charcoal Production Plants
- Any other stationary source category which, as of August 7, 1980, is being regulated under §§111 or 112 of the CAA.

2.44. "Major stationary source for ozone" means a major stationary source of volatile organic compounds or NO_x.

2.45. "Necessary preconstruction approvals or permits" means those permits or approvals required under the CAA and rules promulgated under W.Va. Code §22-5-4.

2.46. "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount of emissions by which the sum of the following exceeds zero:

2.46.a. The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to subsection 3.4;

2.46.b. Any other increases and decreases in actual emissions at the major source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under subdivision 2.46.b shall be determined as provided in subsection 2.8 of this section, except that paragraphs 2.8.a.3 and 2.8.b.4 shall not apply;

2.46.c. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs not more than five (5) years prior to the date on which construction on the particular change commences nor later than the date on which the increase from the particular change occurs.

2.46.d. An increase or decrease in actual emissions is creditable only if:

2.46.d.1. The increase or decrease in actual emissions has not been relied upon by the United States Environmental Protection Agency in issuing a permit pursuant to 40 CFR §52.21; or

2.46.d.2. By the Secretary in issuing a permit pursuant to this rule and such permit is in effect on the date on which the increase in emissions from the particular change occurs.

2.46.e. The increase or decrease in actual emissions of particulate matter, sulfur dioxide, or nitrogen oxides which occurred prior to the applicable minor source baseline date was required to be considered and calculated in determining the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the net emissions increase for PM₁₀;

2.46.f. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

2.46.g. A decrease in actual emissions is creditable only to the extent that:

2.46.g.1. The old level of actual emissions or the old level of allowable emissions, whichever is

lower, exceeds the new level of actual emissions;

2.46.g.2. It is federally enforceable and is enforceable by the Secretary at and after the time that the actual construction on the particular change begins;

2.46.g.3. The decrease in actual emissions must have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;

2.46.g.4. [Reserved.]

2.46.h. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

2.47. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

2.48. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified in 40 CFR Part 60, Appendix B, or by a test method specified in any rule of the Secretary which has been incorporated as part of the federally approved State Implementation Plan. All references to particulate or particulate matter in this rule shall mean particulate matter emissions.

2.49. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, public, statutory or private corporation or association organized or existing under the laws of this or any state or country, and any firm, partnership, or association of whatever nature.

2.50. "Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with subsections 25.1 through 25.15.

2.51. "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

2.52. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

2.53. "PAL major modification" means, notwithstanding subsections 2.40 and 2.46 (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

2.54. "PAL permit" means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Secretary that establishes a PAL for a major stationary source.

2.55. "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

2.56. [Reserved.]

2.57. "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

2.58. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or is enforceable by the Secretary in any permit and/or consent order issued by the United States Environmental Protection Agency or by the Secretary. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.59. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

2.60. "Prevention of Significant Deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan, or the program in 40 CFR §52.21. Any permit issued under such a program is a major new source review (NSR) permit.

2.61. [Reserved.]

2.62. "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

2.63. "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

2.63.a. In determining the projected actual emissions under subsection 2.63 (before beginning actual construction), the owner or operator of the major stationary source:

2.63.a.1. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

2.63.a.2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

2.63.a.3. Shall exclude, in calculating any increase in emissions that results from ~~he~~ the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under subsection 2.8 and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

2.63.a.4. In lieu of using the method set out in paragraphs 2.63.a.1 through 2.63.a.3, may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection 2.58.

2.64. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

2.64.a. Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the Secretary's emissions inventory at the time of enactment;

2.64.b. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

2.64.c. Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

2.64.d. Is otherwise in compliance with the requirements of the CAA.

2.65. [Reserved.]

2.66. "Regulated NSR pollutant" means the following:

2.66.a. Any pollutant for which a National Ambient Air Quality Standard has been promulgated and any pollutant identified under this subdivision as a constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

2.66.a.1. Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

2.66.a.2. Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

2.66.a.3. Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the Secretary demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

2.66.a.4. Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment

or unclassifiable area, unless the Secretary demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

2.66.b. Any pollutant that is subject to any standard promulgated under §111 of the CAA;

2.66.c. Any Class I or II substance subject to a standard promulgated under or established by title VI of the CAA;

2.66.d. Any pollutant that otherwise is subject to regulation under the CAA; ~~except that any or all hazardous air pollutants either listed in §112 of the CAA or added to the list pursuant to §112(b)(2) of the CAA, which have not been delisted pursuant to §112(b)(3) of the CAA, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under §108 of the CAA as defined in subsection 2.80.~~

2.66.e. ~~[Reserved.] Notwithstanding subdivisions 2.66.a through 2.66.d, the term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in §112 of the CAA, or added to the list pursuant to §112(b)(2) of the CAA, and which have not been delisted pursuant to §112(b)(3) of the CAA, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under §108 of the CAA.~~

2.66.f. [Reserved.]

2.67. "Relocate" or "Relocation" means the physical movement of a source outside of its existing plant boundaries.

2.68. "Replacement unit" means an emissions unit for which all the criteria listed in subdivisions 2.68.a through 2.68.d are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

2.68.a. The emissions unit is a reconstructed unit within the meaning of 40 CFR §60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit;

2.68.b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit;

2.68.c. -The replacement does not change the basic design parameter(s) of the process unit; and

2.68.d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

2.69. "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction

relative to the performance of technology in widespread commercial use as of November 15, 1990.

2.69.a. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

2.69.b. The Secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection 2.69 and is granted an extension under §409 of the CAA.

2.70. [Reserved.]

2.71. "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within ten (10) years after that change, where the Secretary determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Secretary shall:

2.71.a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under Title IV of the CAA; and

2.71.b. Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

2.72. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include, but are not limited to emissions from any off-site support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

2.73. "Secretary" means the Secretary of the Department of Environmental Protection as defined in W. Va. Code §§22-1-6 or 22-1-8.

2.74. "Significant" means:

2.74.a. In reference to a net emission increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

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Pollutant and Pollutant Emission Rate (tons per year)	
Carbon monoxide:	100 tpy
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
PM ₁₀ :	15 tpy
PM _{2.5} :	10 tpy of direct PM _{2.5} emissions
PM _{2.5} :	40 tpy of SO ₂ emissions
PM _{2.5} :	40 tpy of NO _x emissions (unless demonstrated not to be a PM _{2.5} precursor under subsection 2.66).
Ozone:	40 tpy of VOC or NO _x
Lead:	0.6 tpy
Fluorides:	3 tpy
Sulfuric acid mist:	7 tpy
Hydrogen sulfide (H ₂ S):	10 tpy
Total reduced sulfur: (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S):	10 tpy
Municipal waste combustor organics (as total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans):	3.5x10 ⁻⁶ tpy
Municipal waste combustor metals (as particulate matter):	15 tpy
Municipal waste combustor acid gases (as the sum of SO ₂ and HCl):	40 tpy
Municipal solid waste landfill emissions (as nonmethane organic compounds):	50 tpy

2.74.b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in subdivision 2.74.a, any emissions rate; and

2.74.c. Notwithstanding subdivision 2.74.a, any emissions rate or any net emissions increase

associated with a major stationary source or major modification, which would construct within ten (10) kilometers of any Class I area, and have an impact on such area equal to or greater than $1 \mu\text{g}/\text{m}^3$ (twenty-four (24) hour average).

2.75. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in subsection 2.74) for that pollutant.

2.76. "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in subsection 2.74 or in the CAA, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection 2.39.

2.77. "Significant impact" means an increase in the ambient air concentration for a particular pollutant as follows:

	Averaging time (hours)				
	Annual	24	8	3	1
Ambient Air Concentration Increase ($\mu\text{g}/\text{m}^3$)					
SO ₂	1.0	5.0		25.0	
PM ₁₀	1.0	5.0			
NO ₂	1.0				
Ambient Air Concentration Increase (mg/m^3)					
CO			0.5		2.0

2.78. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in subsection 2.74 or in the CAA, whichever is lower.

2.79. "Source" or "Stationary source" means, for the purpose of this rule, any building, structure, facility, or installation which emits or may emit any a regulated air NSR pollutant.

2.80. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator under Title 40, Chapter I, Subchapter C of the Code of Federal Regulations, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

2.80.a. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818–12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in subdivisions 2.80.d and 2.80.e.

2.80.b. For purposes of subdivisions 2.80.c through 2.80.e, the term tpy CO₂e equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed as follows:

2.80.b.1. Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98 - Global Warming Potentials.

2.80.b.2. Sum the resultant value from paragraph 2.80.b.1 for each gas to compute a tpy CO₂e.

2.80.c. The term emissions increase as used in subdivisions 2.80.d and 2.80.e shall mean that both a significant emissions increase (as calculated using the procedures in subsection 3.4) and a significant net emissions increase (as defined in subsections 2.46 and 2.74) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in subdivision 2.74.b.

2.80.d. Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

2.80.d.1. The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or

2.80.d.2. The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and,

2.80.e. Beginning July 1, 2011, in addition to the provisions in subdivision 2.80.d, the pollutant GHGs shall also be subject to regulation:

2.80.e.1. At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e;
or

2.80.e.2. At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more;

~~2.80:~~ 2.81. "TSP" or "Total suspended particulate matter" means particulate matter as measured by the methods described in Appendix B of 40 CFR Part 50.

~~2.81:~~ 2.82. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plan and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during and after the project is terminated.

~~2.82:~~ 2.83. [Reserved.]

~~2.83:~~ 2.84. "US EPA" means the United States Environmental Protection Agency.

~~2.84:~~ 2.85. "Volatile organic compounds (VOC)" is as defined in 40 CFR §51.100(s).

§45-14-3. Applicability.

3.1. The requirements of this rule apply to the construction of any new major stationary source (as defined in subsection 2.43) or any proposed project at an existing major stationary source in an area designated as attainment or unclassifiable under §§ 107(d)(1)(A)(ii) or (iii) of the CAA.

3.2. The requirements of sections 7 through 13 and sections 17 through 19 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule otherwise provides.

3.3. No new major stationary source or major modification to which the requirements of sections 7 through 13 and sections 17 through subsection 19.7 apply shall begin actual construction without a permit issued by the Secretary that states that the major stationary source or major modification will meet those requirements.

3.4. Determination of major modification. -- The determination as to whether a proposed project is a major modification for a regulated NSR pollutant shall be determined in accordance with the specific provisions set forth in subdivisions 3.4.a through 3.4.f.

3.4.a. Except as otherwise provided in subsections 3.5 and 3.6, and consistent with the definition of major modification contained in subsection 2.40, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases -- a significant emissions increase (as defined in subsection 2.75), and a significant net emissions increase (as defined in subsections 2.46 and 2.74). The proposed project is not a major modification if it does not cause a significant emissions increase. If the proposed project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

3.4.b. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3.4.c through 3.4.f. ~~For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in subdivision 2.43.f or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subdivision 2.43.f and that are not, by themselves, part of a listed source category.~~ The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in subsection 2.46. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3.4.c. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. -- A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in subsection 2.63) and the baseline actual emissions (as defined in subdivisions 2.8.a and 2.8.b), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74).

3.4.d. Actual-to-potential test for projects that only involve construction of a new emissions unit(s). -- A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the

difference between the potential to emit (as defined in subsection 2.58-) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in subdivision 2.8.c) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74).

3.4.e. [Reserved]

3.4.f. Hybrid test for projects that involve multiple types of emissions units. – A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3.4.c through 3.4.d as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74).

3.5. For any major stationary source subject to a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements set forth in section 25.

§45-14-4. Ambient Air Quality Increments and Ceilings.

4.1. No increases in pollutant concentrations over the baseline concentrations are allowed in excess of those listed below:

Maximum Allowable Pollutant Concentration Increase over Baseline Concentration ($\mu\text{g}/\text{m}^3$)	
Class I Areas	
Particulate matter:	
PM ₁₀ , Annual geometric mean	4
PM ₁₀ , 24-hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II Areas	
Particulate matter:	
PM ₁₀ , Annual geometric mean	17
PM ₁₀ , 24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

Nitrogen dioxide: Annual arithmetic mean	25
Class III	
Particulate matter: PM ₁₀ , Annual geometric mean	34
PM ₁₀ , 24-hour maximum	60
Sulfur dioxide: Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700
Nitrogen dioxide: Annual arithmetic mean	50

4.2. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one location.

4.3. No pollutant concentration shall exceed any air quality standard promulgated:

4.3.a. by the Secretary; or

4.3.b. by the US EPA.

§45-14-5. Area Classification.

5.1. Dolly Sods Wilderness Area and Otter Creek Wilderness Area are designated as Class I Areas;

5.2. The Spruce Knob-Seneca Rocks National Recreational Area, the Cranberry National Wilderness, and the New River Gorge National Scenic River are designated as Class II Areas; and

5.3. The remainder of the State of West Virginia is designated as a Class II Area.

§45-14-6. Prohibition of Dispersion Enhancement Techniques.

6.1. The use of stack heights which exceed good engineering practice or any dispersion techniques to reduce the concentration of any air pollutant and thereby, affect the degree of emission limitation required is prohibited unless a stack existed or dispersion technique was implemented before December 31, 1970.

§45-14-7. Registration, Reporting and Permit Requirements for Major Stationary Sources and Major Modifications.

7.1. No person shall cause, suffer, allow, or permit the construction or relocation of any major stationary source or a major modification to be commenced after the effective date of this rule in any area designated as attainment or unclassifiable under §107 of the CAA, without notifying the Secretary of such intent and obtaining prior to beginning actual construction, or modification (as defined by subsection 2.10)

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a permit(s) to so construct, modify, or relocate the major stationary source or major modification as herein provided. If the area in which such source would be constructed or the area in which such modification would occur is designated as nonattainment under §107 of the CAA, as amended, for any pollutant which the source or modification would emit in significant amounts (as defined by subsection 45CSR19-2.65), the source or modification shall meet all requirements of 45CSR19 for that pollutant and shall not be subject to the requirements of this rule for that pollutant.

7.2. The owner or operator of the source shall file with the Secretary a timely and complete permit application containing sufficient information as, in the judgment of the Secretary, will enable the Secretary to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any rules promulgated by the Secretary in general and with the requirements of this rule. Such information may include, but not be limited to:

7.2.a. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

7.2.b. A detailed schedule for construction of the source or modification;

7.2.c. A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied;

7.2.d. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

7.2.e. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

7.3. Each permit application shall be signed by the owner or operator of the major stationary source or major modification, and such signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, or relocation, and operation of the major stationary source or major modification in accordance with applicable rules of the Secretary, the permit application, and any permit issued pursuant to this rule.

7.4. Within thirty (30) days of the receipt of a permit application for construction or relocation of a major stationary source or for a major modification, the Secretary shall determine if the application is complete or if there exists any deficiency in the application or information submitted, and shall notify the applicant of all such deficiencies, if any. In the event of such a deficiency, the date of receipt of the application shall be the date on which the Secretary received all required information.

7.5. Within six (6) months of the receipt of a complete permit application for construction or relocation of a major stationary source or for a major modification, the Secretary shall issue such a permit unless the Secretary determines that the proposed major stationary source or major modification has not satisfied the requirements of this rule, will violate applicable emission standards, will interfere with the attainment or maintenance of applicable ambient air quality standards, or will be inconsistent with the intent and purpose of this rule, in which case the Secretary shall issue an order for the prevention of such construction, modification, or relocation.

7.6. If the Secretary denies a permit application for the proposed construction or relocation of any major stationary source or major modification, the order shall set forth the Secretary's reasons with reasonable specificity.

7.7. The Secretary may impose any reasonable conditions as part of a granted construction, modification, or relocation permit. Such conditions may include, but not be limited to, the submission of periodic progress or operation reports, the provisions of a suitable sampling site, the installation of pollutant monitoring devices, and the operation and maintenance of ambient air quality monitoring stations.

§45-14-8. Control Technology Requirements.

8.1. Any person proposing to construct or relocate a major stationary source or major modification shall meet each applicable emissions limitation promulgated by the Secretary and any applicable emissions standard or standard of performance under 40 CFR Parts 60, 61 and 63.

8.2. Any person proposing to construct a new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

8.3. Any person proposing a major modification of a stationary source shall apply best available control technology for each regulated NSR pollutant for which such proposed major modification would cause a significant net emissions increase from such source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

8.4. For any proposed construction of a major stationary source or major modification which is a phased construction project, the determination of best available control technology shall be reviewed and modified as appropriate at the last reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

§45-14-9. Requirements Relating to the Source's Impact on Air Quality.

9.1. Any person proposing to construct or relocate a major stationary source or to make a major modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emission increases or reductions (including secondary emissions) would not cause or contribute to air pollution in violation of:

9.1.a. Any National or West Virginia Ambient Air Quality Standard; or

9.1.b. Any applicable maximum allowable increase over the baseline concentration in any area.

9.2. A major source or major modification will be considered to cause or contribute to a violation of a National Ambient Air Quality Standards when the ambient impact of the emissions from such source or modification would, at a minimum, exceed the significant impact levels defined in subsection 2.63.

§45-14-10. Modeling Requirements.

10.1. All estimates of ambient concentrations required under section 9 shall be based on the applicable air quality models, data bases, and other requirements specified in the Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models).

10.2. Where an air quality impact model specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted, provided that said modification or substitution is approved in writing by the Administrator.

§45-14-11. Air Quality Monitoring Requirements.

11.1. Any person proposing to construct or relocate a major stationary source shall provide an analysis of the ambient air quality in the area that the major stationary source would affect for each pollutant that it would have the potential to emit in a significant amount.

11.2. Any person proposing to make a major modification to a stationary source shall provide an analysis of the ambient air quality in the area that the major modification would affect for each pollutant for which it would result in a significant net emissions increase.

11.3. For those pollutants for which no National or West Virginia Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Secretary determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

11.4. For those pollutants (other than non-methane hydrocarbons) for which such an ambient air quality standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

11.5. All ambient air quality monitoring data that is required shall have been gathered over a period of one (1) year and shall represent the year preceding receipt of the application, except that, if the Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

11.6. Any person proposing to construct or relocate a major stationary source or make a major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Secretary determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

11.7. Operation of monitoring stations required by section 11 shall meet the requirements of Appendix B of 40 CFR Part 58 during the operation of the monitoring stations.

§45-14-12. Additional Impact Analysis Requirements.

12.1. Any person proposing to construct or relocate a major stationary source or make a major modification shall provide:

12.1.a. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated

with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value; and

12.1.b. An analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

§45-14-13. Additional Requirements and Variances for Sources Impacting Federal Class I Areas.

13.1. Notice to EPA. -- The Secretary shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification impacting a Class I area and provide notice to the Administrator of every action related to the consideration of such permit.

13.2. Notice to Federal land managers. -- The Secretary shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager or the Federal official, charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area.

13.3. The Secretary shall also provide the Federal land manager or such Federal officials with a copy of the preliminary determination required under subsection 17.2, and shall make available to them any materials used in making that determination, promptly after the Secretary makes such determination. Finally, the Secretary shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

13.4. Federal Land Manager. -- The Federal Land Manager or the Federal official, charged with direct responsibility for management of such lands has an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Secretary, whether a proposed source or modification will have an adverse impact on such values.

13.5. The Federal Land Manager of the affected Class I area may present to the Secretary during the public review process described in section 17 a demonstration that the emissions from the proposed major stationary source or major modification would have an adverse impact on the air quality-related values (including visibility) of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Secretary concurs with such demonstration, the Secretary shall deny the permit to construct.

13.6. Class I variances. -- The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal land manager concurs with such demonstration and he so certifies, the Secretary may issue the permit: Provided, That the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline

concentration for such pollutants:

Maximum Allowable Pollutant Concentration Increase over Minor Source Baseline Concentration ($\mu\text{g}/\text{m}^3$)	
Particulate Matter:	
PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

13.7. An applicant for a permit pursuant to this rule shall be allowed the Class I variances as provided in 40 CFR §§51.166(p)(4), (5), (6), and (7) as contained in the Code of Federal Regulations on July 1, 1994, provided, that all requirements of said 40 CFR §§51.166(p)(4), (5), (6), and (7) are met and written notification of variance in accordance with said section(s) is provided to the Secretary.

§45-14-14. Procedures for Sources Employing Innovative Control Technology.

14.1. Any person proposing to construct or modify a major stationary source or major modification may petition the Secretary to approve a system of innovative control technology in lieu of best available control technology. Any such proposed innovative control technology shall meet the following conditions:

14.1.a. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

14.1.b. The proposed source or modification must achieve a level of continuous emissions reduction equivalent to that which would have been required under section 8 by a date specified by the Secretary;

14.1.c. The source or modification would meet requirements equivalent to all requirements of this rule that a stationary source employing a system of best available control technology would be required to meet;

14.1.d. Before the date specified in subsection 14.4, the source or modification would:

14.1.d.1. Not cause or contribute to any violation of an applicable National Ambient Air Quality Standard;

14.1.d.2. Not impact any area where an applicable increment is known to be violated;

14.1.d.3. Meet all other applicable requirements including those for public participation; and

14.1.e. The provisions of 40 CFR §51.166(p) (relating to Class I areas) have been satisfied with

respect to all periods during the life of the source or modification.

14.2. The Secretary shall consult with the governor(s) of other state(s) and the Federal Land Manager(s) of areas impacted by the proposed source or modification.

14.3. The Secretary, with the concurrence of the governor(s) of other state(s) and the Federal Land Manager(s), may make a determination that the source or modification would be employing innovative control technology.

14.4. The Secretary shall specify a date by which the source or modification must meet the requirements and conditions of subsection 14.1. Such date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance.

14.5. The Secretary shall withdraw any approval to employ a system of innovative control technology made under this section 14 if:

14.5.a. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

14.5.b. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

14.5.c. The Secretary decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

14.6. If the source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with subsection 14.5, the Secretary shall specify a date by which the source or modification shall meet the requirement for the application of best available control technology through use of a demonstrated system of control. This date shall not exceed three (3) years from the date of the end of the specified time period or the date that the approval is withdrawn, whichever is earlier.

§45-14-15. Exclusions From Increment Consumption.

15.1. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

15.1.a. Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation as of the effective date of this rule) over the emissions from such sources before the effective date of such an order;

15.1.b. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

15.1.c. Concentrations of particulate matter attributable to the increase in emissions from

construction or other temporary emission-related activities of new or modified sources; and

15.1.d. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources so long as such exclusion meets the following requirements:

15.1.d.1. The temporary emissions increase of sulfur dioxide, particulate matter or nitrogen dioxides does not exceed two (2) years in duration;

15.1.d.2. The exclusion period for the temporary emissions increase is not renewable; and

15.1.d.3. The exclusion allows no emissions increases from a stationary source which would:

15.1.d.3.A. Impact a Class I area or an area where an applicable increment is known to be violated; or

15.1.d.3.B. Cause or contribute to a violation of a National Ambient Air Quality Standard.

15.1.d.4. The exclusion requires limitations to be in effect at the end of the exclusion period specified in paragraph 15.1.d.1, which ensures that the emissions levels from stationary sources would not exceed those levels occurring from such sources before the temporary increase.

15.2. No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which subdivision 15.1.a refers or the plan to which subdivision 15.1.b refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the later of such effective dates.

§45-14-16. Specific Exemptions.

16.1. A non-profit health or non-profit educational institution proposing to construct or relocate a major stationary source or to make a major modification may petition the Secretary for an exemption from the requirements of subsections 8.2, 8.3 and 8.4 and sections 9, 11 and 12.

16.2. ~~Any person proposing to construct, modify or relocate a source which does not belong to any category listed in Table 1 may exclude fugitive emissions, to the extent quantifiable, in the calculation of potential to emit~~ The source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any of the source categories listed in Table 1 may petition the Secretary for exemption from the requirements of subsections 8.2, 8.3, 8.4 and sections 9, 11 and 12.

16.3. Any person proposing to relocate a source or modification that is a portable stationary source which has previously received a permit under this rule may petition the Secretary for an exemption from the requirements of subsections 8.2, 8.3 and 8.4 and sections 9, 11 and 12. The Secretary shall grant this exemption if the following conditions are met:

16.3.a. The source proposes to relocate and emissions of the source at the new location would not exceed two (2) years;

- 16.3.b. The emissions from the source would not exceed its allowable emissions;
 - 16.3.c. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated;
 - 16.3.d. The source identifies the proposed new location and the probable duration of operation at the new location; and
 - 16.3.e. Such petition shall be submitted to the Secretary not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Secretary.
- 16.4. Requirements equivalent to those contained in subsections 8.2, 8.3 and 8.4 and sections 9, 11 and 12 do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under §107 of the CAA.
- 16.5. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the Secretary for an exemption from the requirements of sections 9 through 12 with respect to a particular pollutant and the Secretary shall grant such exemption, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would not exceed two (2) years, would not impact any Class I area and would not impact any area where an applicable increment is known to be violated.
- 16.6. Any person proposing to modify a major stationary source located in a Class II area that was in existence prior to March 1, 1978 may petition the Secretary for an exemption from the requirements of sections 9, 11 and 12 as they relate to any maximum allowable increase for a Class II area. The Secretary shall grant such exemption if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than fifty (50) tons per year.
- 16.7. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the Secretary for an exemption from the requirements of section 11 with respect to a particular pollutant if:
- 16.7.a. The applicant demonstrates that the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, an air quality impact less than the amounts listed in Table 2; or
 - 16.7.b. The applicant demonstrates that the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Table 2; or
 - 16.7.c. The applicant's request is for any pollutant which is not listed in Table 2.

Table 2 - De Minimis Air Quality Impacts
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Pollutant	Concentration ($\mu\text{g}/\text{m}^3$)	Averaging Time
Carbon Monoxide	575	8-hour
Nitrogen Dioxide	14	annual
PM ₁₀	10	24-hour
Sulfur Dioxide	13	24-hour
Ozone ¹	None	NA
Lead	0.1	3-month
Fluorides	0.25	24-hour
Hydrogen Sulfide	0.2	1-hour
Total Reduced Sulfur	10	1-hour
Reduced Sulfur Compounds	10	1-hour

¹ No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data.

16.8. The permitting requirements contained in subdivision 9.1.b do not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit to the Secretary before the provisions embodying the maximum allowable increase took effect as part of the plan and the Secretary subsequently determines that the application as submitted before that date was complete.

16.9. The permitting requirements contained in subdivision 9.1.b shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM₁₀ if:

16.9.a. The owner or operator of the source or modification submitted an application for a permit to the Secretary before the provisions embodying the maximum allowable increases for PM₁₀ took effect as part of the plan, and

16.9.b. The Secretary subsequently determines that the application as submitted before that date was complete. Instead, the applicable requirements of subdivision 9.1.b shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

§45-14-17. Public Review Procedures.

17.1. At the time that an application for a construction, modification or relocation permit is filed, the applicant shall place a Class I legal advertisement in a newspaper of general circulation in the area where the source will be located. No permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants proposed to be discharged, the

nature of the permit being sought, the proposed start-up date for the source and a contact telephone number for more information.

17.2. After finishing the review of a complete application, the Secretary shall make a preliminary determination whether a permit should be approved, approved with conditions, or disapproved.

17.3. The Secretary shall make available in at least one location in the region in which the proposed source would be constructed a copy of all materials the applicant submitted (excluding data entitled to protection as confidential information under 45CSR31), a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

17.4. The Secretary shall place a Class I legal advertisement in a paper of general circulation in the area where the proposed source would be constructed, modified, or relocated. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, the proposed start-up date, the preliminary determination, the degree of increment consumption that is expected from the source or modification, notification of the opportunity for written public comment, provisions for requesting a public meeting, details concerning the time and place of such a meeting if one is scheduled, and notification of the opportunity for comment at a public meeting if such meeting is to be conducted. A public comment period of thirty (30) days shall be provided and so stated in the advertisement.

17.5. The Secretary shall send a copy of the advertisement to the applicant, to the Administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, any State, and any Federal Land Manager, whose lands may be affected by emissions from the source or modification.

17.6. The Secretary shall consider public comments submitted within thirty (30) days after the Secretary's public notification of an opportunity for comment upon a proposed construction or relocation of a major stationary source or major modification, and comments submitted within a specified period not to exceed fifteen (15) days after any public meeting to receive comment on such proposed construction, modification, or relocation before making a final decision on the approvability of the application. The Secretary shall make copies of all comments available for public inspection in the same locations where the Secretary made available preconstruction information relating to the proposed source or modification.

17.7. The Secretary shall make a final determination whether construction should be approved, approved with conditions, or disapproved.

17.8. The Secretary shall notify the applicant in writing of the final determination and make a copy of such notification available for public inspection at the same location where the Secretary made available preconstruction information and public comments relating to the proposed source or modification.

§45-14-18. Public Meetings.

18.1. Public meetings to receive comments on permit applications shall be held when the Secretary deems it appropriate or when substantial interest is expressed, in writing, by persons who might reasonably be expected to be affected by the proposed major source or major modification.

18.2. The Secretary or the Secretary's designee shall preside over such meetings and ensure that all

interested parties have ample opportunity to present comments. Such meetings shall be held at a convenient place as near as practicable to the location of the proposed major source or major modification.

18.3. At a reasonable time prior to such meetings, the Secretary shall provide appropriate information to news media in the area where the proposed source or modification is to be located.

§45-14-19. Permit Transfer, Cancellation and Responsibility.

19.1. A permittee may petition the Secretary for a transfer of a permit previously issued in accordance with this rule. The Secretary shall approve such permit transfer provided the following conditions are met:

19.1.a. The permittee, in the petition, describes the reasons for the requested permit transfer and certifies that the subject source is in compliance with all the provisions and requirements of its permit, and

19.1.b. The transferee provides written acknowledgment that it accepts and will comply with all the requirements, terms, and conditions as contained in the subject permit.

19.2. The Secretary shall suspend or revoke a permit if, after eighteen (18) months from the date of issuance the holder of the permit cannot provide the Secretary, at the Secretary's request, with written proof of a good faith effort that such construction, modification, or relocation has commenced and remains ongoing. Such proof shall be provided not later than thirty (30) days after the Secretary's request.

19.3. The Secretary may suspend, modify, or revoke the permit if the plans and specifications upon which the approval was based or the conditions established in the permit are not adhered to. Upon notice of the Secretary's intent to suspend, modify or revoke a permit, the permittee may request a conference with the Secretary in accordance with the provisions of W.Va. Code §22-5-5 to show cause why the permit should not be suspended, modified or revoked.

19.4. Any owner or operator who constructs, modifies or relocates any stationary source not in accordance with the application submitted pursuant to this rule or with the terms of any permit to construct, modify or relocate, or any owner or operator of a source subject to this rule who commences construction after the effective date of this rule without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

19.5. Possession of a permit does not relieve any person of the responsibility of complying with any and all rules of the Secretary or W.Va. Code § 22-1-1 et seq.

19.6. [Reserved.]

19.7. Any person who owns or operates any particular source or modification which becomes a major stationary source or major modification solely by virtue of a relaxation in any limitation, enforceable by the Administrator or the Secretary, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation), shall become subject to the requirements of this rule as though construction had not yet commenced on the source or modification.

19.8. Except as otherwise provided in subdivision 19.8.f, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility,

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within the meaning of subdivision 19.8.f, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs 2.63.a.1 through 2.63.a.3 for calculating projected actual emissions.

19.8.a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

19.8.a.1. A description of the proposed project;

19.8.a.2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the proposed project; and

19.8.a.3. A description of the applicability test used to determine that the proposed project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 2.63.a.2 and an explanation for why such amount was excluded, and any netting calculations, if applicable.

19.8.b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information required under subdivision 19.8.a to the Secretary. Nothing in subdivision 19.8.b shall be construed to require the owner or operator of such a unit to obtain any determination from the Secretary before beginning actual construction.

19.8.c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 19.8.a.1. The owner or operator shall calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

19.8.d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Secretary within 60 days after the end of each year during which records must be generated under subdivision 19.8.c setting out the unit's annual emissions during the calendar year that preceded submission of the report.

19.8.e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Secretary if the annual emissions, in tons per year, from the project identified in subdivision 19.8.a, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 19.8.a.3), by a significant amount (as defined in subsection 2.74) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 19.8.a.3. Such report shall be submitted to the Secretary within 60 days after the end of such year. The report shall contain the following:

19.8.e.1. The name, address and telephone number of the major stationary source;

19.8.e.2. The annual emissions as calculated pursuant to subdivision 19.8.c; and

19.8.e.3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

19.8.f. A “reasonable possibility” under subsection 19.8 occurs when the owner or operator calculates the project to result in either:

19.8.f.1. A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under subsection 2.75 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

19.8.f.2. A projected actual emissions increase that, added to the amount of emissions excluded under paragraph 2.63.a.3, sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under subsection 2.75 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this paragraph, and not also within the meaning of paragraph 19.8.f.1, then provisions under subdivisions 19.8.b through 19.8.e do not apply to the project.

19.9. The owner or operator of the source shall make available the information required to be documented and maintained pursuant to subsection 19.8 for review upon a request for inspection by the Secretary or the general public pursuant to the requirements contained in 45CSR30.

§45-14-20. Disposition of Permits.

20.1. In the event that the Secretary promulgates changes to this rule or in the event of a redesignation of an attainment or non-attainment area (in accordance with § 107 of the CAA) prior to final disposition of a permit, the Secretary shall make final disposition of the permit application in accordance with such newly promulgated standards or redesignation.

§45-14-21. Conflict with Other Permitting Rules.

21.1. For sources required to obtain a permit under this rule, the provisions of 45CSR13 requiring a permit do not apply, so that only a single permit is required; provided, however, that:

21.1.a. The base permit application fee of \$1,000 pursuant to 45CSR22, subdivision 3.4.a shall apply to such sources in addition to other applicable fees; and

21.1.b. Any permit issued under this rule includes conditions that ensure compliance with the provisions of 45CSR13 to the extent applicable to any regulated air pollutant (as defined in 45CSR13) not otherwise covered under this rule.

21.2. For sources that may be subject to 45CSR13, 45CSR14 and/or 45CSR19, the more stringent provisions of each applicable rule shall apply.

§45-14-22. [Reserved.]

§45-14-23. [Reserved.]

§45-14-24. [Reserved].

§45-14-25. Actuals PALs.

25.1. Applicability.

25.1.a. The Secretary may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in subsections 25.1 through 25.15. The term "PAL" shall mean "actuals PAL" throughout section 25.

25.1.b. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in subsections 25.1 through 25.15, and complies with the PAL permit:

25.1.b.1. Is not a major modification for the PAL pollutant;

25.1.b.2. Does not have to be approved through the PSD program; and

25.1.b.3. Is not subject to the provisions in subsection 19.4 (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

25.1.c. Except as provided under paragraph 25.1.b.3, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

25.2. Definitions. -- For the purposes of this section 25, the definition in subdivision 25.2.a applies. When a term is not defined in these paragraphs, it shall have the meaning given in section 2 or in the CAA.

25.2.a. Allowable emissions means "allowable emissions" as defined in subsection 2.6, except as modified according to paragraphs 25.2.a.1 and 25.2.a.2.

25.2.a.1. The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

25.2.a.2. An emissions unit's potential to emit shall be determined using the definition in subsection 2.58, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

25.3. Permit application requirements. -- As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Secretary for approval:

25.3.a. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

25.3.b. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

25.3.c. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision 25.13.a.

25.4. General requirements for establishing PALs.

25.4.a. The Secretary is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs 25.4.a.1 through 25.4.a.7 are met.

25.4.a.1. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

25.4.a.2. The PAL shall be established in a PAL permit that meets the public participation requirements in section 17.

25.4.a.3. The PAL permit shall contain all the requirements of subsection 25.7.

25.4.a.4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

25.4.a.5. Each PAL shall regulate emissions of only one pollutant.

25.4.a.6. Each PAL shall have a PAL effective period of 10 years.

25.4.a.7. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections 25.12 through 25.14 for each emissions unit under the PAL through the PAL effective period.

25.4.b. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets pursuant to 45CSR19 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

25.5. Public participation requirements for PALs. -- PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 45CSR13. This includes the requirement that the Secretary provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Secretary must address all material comments before taking final action on the permit.

25.6. Setting the 10-year actuals PAL level.

25.6.a. Except as provided in subdivision 25.6.b, actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in subsection 2.8) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under subsection 2.74 or under the CAA, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the

baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The Secretary shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Secretary is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

25.6.b. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subdivision 25.6.a, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

25.7. Contents of the PAL permit. – The PAL permit must contain, at a minimum, the information in subdivisions 25.7.a through 25.7.j.

25.7.a. The PAL pollutant and the applicable source-wide emission limitation in tons per year.

25.7.b. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

25.7.c. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subsection 25.10 before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Secretary.

25.7.d. A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

25.7.e. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection 25.9.

25.7.f. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision 25.13.a.

25.7.g. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subsection 25.12.

25.7.h. A requirement to retain the records required under subsection 25.13 on site. Such records may be retained in an electronic format.

25.7.i. A requirement to submit the reports required under subsection 25.14 by the required deadlines.

25.7.j. Any other requirements that the Secretary deems necessary to implement and enforce the

PAL.

25.8. PAL effective period and reopening of the PAL permit. -- The requirements in subdivisions 25.8.a and 25.8.b apply to actuals PALs.

25.8.a. PAL effective period. -- The Secretary shall specify a PAL effective period of 10 years.

25.8.b. Reopening of the PAL permit.

25.8.b.1. During the PAL effective period, the Secretary must reopen the PAL permit to:

25.8.b.1.A. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

25.8.b.1.B. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets pursuant to 45CSR19; and

25.8.b.1.C. Revise the PAL to reflect an increase in the PAL as provided under subsection 25.11.

25.8.b.2. The Secretary shall have discretion to reopen the PAL permit for the following:

25.8.b.2.A. Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

25.8.b.2.B. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

25.8.b.2.C. Reduce the PAL if the Secretary determines that a reduction is necessary to avoid causing or contributing to a National Ambient Air Quality Standard (NAAQS) or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

25.8.b.3. Except for the permit reopening in subparagraph 25.8.b.1.A for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection 25.5.

25.9. Expiration of a PAL. -- Any PAL that is not renewed in accordance with the procedures in subsection 25.10 shall expire at the end of the PAL effective period, and the requirements in subdivisions 25.9.a through 25.9.e shall apply.

25.9.a. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs 25.9.a.1 and 25.9.a.2.

25.9.a.1. Within the time frame specified for PAL renewals in subdivision 25.10.b, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each

group of emissions units, if such a distribution is more appropriate as decided by the Secretary) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision 25.10.e, such distribution shall be made as if the PAL had been adjusted.

25.9.a.2. The Secretary shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Secretary determines is appropriate.

25.9.b. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Secretary may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

25.9.c. Until the Secretary issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph 25.9.a.2, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

25.9.d. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in subsection 2.40.

25.9.e. The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to subsection 19.4, but were eliminated by the PAL in accordance with the provisions in paragraph 25.1.b.3.

25.10. Renewal of a PAL. -- The Secretary shall follow the procedures specified in subsection 25.5 in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Secretary.

25.10.a. Application deadline. -- A major stationary source owner or operator shall submit a timely application to the Secretary to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

25.10.b. Application requirements. -- The application to renew a PAL permit shall contain the information required in paragraphs 25.10.c.1 through 25.10.c.4.

25.10.b.1. The information required in subdivisions 25.3.a through 25.3.c.

25.10.b.2. A proposed PAL level.

25.10.b.3. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

25.10.b.4. Any other information the owner or operator wishes the Secretary to consider in determining the appropriate level for renewing the PAL.

25.10.c. PAL adjustment. -- In determining whether and how to adjust the PAL, the Secretary shall consider the options outlined in paragraphs 25.10.d.1 and 25.10.d.2. However, in no case may any such adjustment fail to comply with paragraph 25.10.d.3.

25.10.c.1. If the emissions level calculated in accordance with subsection 25.6 is equal to or greater than 80 percent of the PAL level, the Secretary may renew the PAL at the same level without considering the factors set forth in paragraph 25.10.d.2; or

25.10.c.2. The Secretary may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Secretary in his or her written rationale.

25.10.c.3. Notwithstanding paragraphs 25.10.d.1 and 25.10.d.2:

25.10.c.3.A. If the potential to emit of the major stationary source is less than the PAL, the Secretary shall adjust the PAL to a level no greater than the potential to emit of the source; and

25.10.c.3.B. The Secretary shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection 25.11 (increasing a PAL).

25.10.d. If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Secretary has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

25.11. Increasing a PAL during the PAL effective period.

25.11.a. The Secretary may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs 25.11.a.1 and 25.11.a.2.

25.11.a.1. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

25.11.a.2. As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant

or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

25.11.a.3. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph 25.11.a.1, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

25.11.a.4. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

25.11.b. The Secretary shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph 25.11.a.2), plus the sum of the baseline actual emissions of the small emissions units.

25.11.c. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection 25.5.

25.12. Monitoring requirements for PALs.

25.12.a. General requirements.

25.12.a.1. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

25.12.a.2. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs 25.12.b.1 through 25.12.b.4 and must be approved by the Secretary.

25.12.a.3. Notwithstanding paragraph 25.12.a.2, you may also employ an alternative monitoring approach that meets paragraph 25.12.a.1 if approved by the Secretary.

25.12.a.4. Failure to use a monitoring system that meets the requirements of this rule renders the PAL invalid.

25.12.b. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 25.12.c through 25.12.i:

45CSR14

25.12.b.1. Mass balance calculations for activities using coatings or solvents;

25.12.b.2. CEMS;

25.12.b.3. CPMS or PEMS; and

25.12.b.4. Emission factors.

25.12.c. Mass balance calculations. -- An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

25.12.c.1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

25.12.c.2. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

25.12.c.3. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Secretary determines there is site-specific data or a site-specific monitoring program to support another content within the range.

25.12.d. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

25.12.d.1. CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, appendix B; and

25.12.d.2. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

25.12.e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

25.12.e.1. The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

25.12.e.2. Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Secretary, while the emissions unit is operating.

25.12.f. Emission factors. -- An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

25.12.f.1. All emission factors shall be adjusted, if appropriate, to account for the degree of

uncertainty or limitations in the factors' development;

25.12.f.2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

25.12.f.3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Secretary determines that testing is not required.

25.12.g. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

25.12.h. Notwithstanding the requirements in subdivisions 25.12.c through 25.12.g, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Secretary shall, at the time of permit issuance:

25.12.h.1. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

25.12.h.2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

25.12.i. Re-validation. – All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Secretary. Such testing must occur at least once every 5 years after issuance of the PAL.

25.13. Recordkeeping requirements.

25.13.a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of section 28 and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

25.13.b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

25.13.b.1. A copy of the PAL permit application and any applications for revisions to the PAL; and

25.13.b.2. Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

25.14. Reporting and notification requirements. – The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Secretary in accordance with the applicable title V operating permit program. The reports shall meet the requirements in subdivisions 25.14.a through 25.14.c.

45CSR14

25.14.a. Semi-annual report. -- The semi-annual report shall be submitted to the Secretary within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs 25.14.a.1 through 25.14.a.7.

25.14.a.1. The identification of owner and operator and the permit number.

25.14.a.2. Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision 25.13.a.

25.14.a.3. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

25.14.a.4. A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

25.14.a.5. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

25.14.a.6. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision 25.12.g.

25.14.a.7. A signed statement by the responsible official (as defined by the 45CSR30-2.38) certifying the truth, accuracy, and completeness of the information provided in the report.

25.14.b. Deviation report. -- The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 45CSR30-5.1.c.3 shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 45CSR30-5.1.c.3. The reports shall contain the following information:

25.14.b.1. The identification of owner and operator and the permit number;

25.14.b.2. The PAL requirement that experienced the deviation or that was exceeded;

25.14.b.3. Emissions resulting from the deviation or the exceedance; and

25.14.b.4. A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

25.14.c. Re-validation results. -- The owner or operator shall submit to the Secretary the results of any re-validation test or method within 3 months after completion of such test or method.

25.15. Transition requirements.

45CSR14

25.15.a. The Secretary may not issue a PAL that does not comply with the requirements in subsections 25.1 through 25.15 after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule.

25.15.b. The Secretary may supersede any PAL that was established prior to the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule with a PAL that complies with the requirements of subsections 25.1 through 25.15.

§45-14-26. Inconsistency Between Rules.

26.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

January 10, 2011

Monday, January 10, 2011

7:00 p.m. to 9:00 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Richard Thompson
ex officio nonvoting member

Senate

House

Minard, Chairman
Snyder, Vice Chair
Prezioso
Unger
Boley
Facemyer

Absent

Brown, Chairman
Poling, Vice Chair
Miley
Talbot
Overington
Sobonya

Absent

The meeting was called to order by Senator Minard, Chair.

Jay Lazell, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Air Quality - DEP, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration, 45CSR14**, and stated that the Commission has agreed to technical modifications.

Senator Facemyer moved that the proposed rule be approved as modified. The motion was adopted.

Brian Skinner, Associate Counsel, explained his abstract on the rule proposed by the **Alcohol Beverage Control Commission, Licensing of Retail Outlets, 175CSR5**, stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Clayton Chandler, Fleet Manager for the Commission, responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified.

Delegate Poling moved to amend the rule by removing Section 11 in its entirety. The motion was adopted.

Delegate Brown moved that the proposed rule be approved as modified and amended. The motion was adopted.

Mr. Lazell reviewed her abstract on the rule proposed by the **Explosives and Blasting - DEP, West Virginia Explosives and Blasting Rule, 199CSR1**, and stated that the Agency has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Chief Counsel, explained her abstract on the rule proposed by the **Bureau for Public Health, Specialized Multipatient Medical Transport, 64CSR29**.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Miss Graham reviewed her abstract on the rule proposed by the **Bureau for Public Health, Fire Department Rapid Response Services Licensure, 64CSR44**.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Miss Graham explained his abstract on the rule proposed by the **Bureau for Public Health, Emergency Medical Services, 64CSR48**, stated that the Bureau has agreed to technical modifications and responded to questions from the Committee.

Joel Watts with the Miner's Health Safety and Training, addressed the Committee and responded to questions.

Dr. Drema Mace, Director of OEMS, responded to questions.

Marsha Thacker, with OEMS, responded to questions from the Committee.

Senator Facemyer requested fiscal/budget. Agreed.

Daren Wilks, Chief of Operations with OEMS, responded to questions and addressed the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Miss Graham reviewed her abstract on the rule proposed by the **Department of Health and Human Resources, Sex Offender Treatment Program Certification, 64CSR87**, and stated that the Department has agreed to technical modifications.

Susan McQuaide, Director of Sexual Abuse Counseling Services, addressed the Committee.

Frank Fazalari addressed the Committee and responded to questions.

Susan Perry with legal Services for DHHR responded to questions.

Delegate Flieshauer moved that the proposed rule be approved as modified.

Delegate Brown moved that the proposed rule be withdrawn. The motion was adopted.

Mr. Lazell explained his abstract on the rule proposed by the **Mining and Reclamation - DEP, West Virginia Surface Mining Reclamation Rule, 38CSR2**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Tom Clarke, Director of the Division, responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified.

Jason Bostic with the WV Coal Association addressed the Committee and responded to questions.

Delegate Fleishauer moved to amend the proposed rule by removing 3.32.b. The motion was adopted.

Delegate Brown moved that the proposed rule be approved as modified and amended. The motion was adopted.

Mr. Lazell reviewed his abstract on the rule proposed by the **Office of Water Resources - DEP, Requirements Governing Water Quality Standards, 47CSR2**, and responded to questions from the Committee.

Scott Mandirola with the Department, responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Charles Roskovensky, Associate Counsel, explained his abstract on the rule proposed by the **Racing Commission, Thoroughbred Racing, 178CSR1**, and stated that the Department has agreed to technical modifications.

Senator Snyder moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **Racing Commission, Greyhound Racing, 178CSR2**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified.

Anthony East with the Attorney General's Office, representing the Racing Commission, responded to questions from the Committee.

Senator Snyder moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **Racing Commission, Pari-Mutual Wagering, 178CSR5**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Senator Snyder moved that the proposed rule be approved as modified. The motion was adopted.

Delegate Brown moved to direct staff to prepare bills of introduction.

Miss Graham addressed the Committee.

Senator Snyder moved to adjourn the meeting. The motion was adopted.

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 9, 10 and 11, 2011

Monday, January 10, 2011

7:00 pm - 9:00 pm

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Thompson, ex
officio nonvoting member

Senate

Minard, Chair
Snyder, Vice Chair
Prezioso
Unger
Boley
Facemyer

✓
✓
✓

✓

✓

✓

House

Brown, Chair
Poling, D., Vice Chair
Fleischauer
Talbot
Overington
Sobonya

✓

✓

✓

✓

✓

✓

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 10, 2011
7:00 p.m. to 9:00 p.m.
Senate Judiciary Committee Room

1. Review of Legislative Rules:

- a. **Division of Air Quality - DEP**
Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration
45CSR14
 - LAID OVER
 - Approve as Modified

- b. **Department of Administration**
State Owned Vehicles
148CSR3
 - Approve as Modified

- c. **Explosives and Blasting - DEP**
West Virginia Explosives and Blasting Rule
199CSR1
 - Approve as Modified

- d. **Bureau for Public Health**
Specialized Multipatient Medical Transport
64CSR29
 - Approve

- e. **Bureau for Public Health**
Fire Department Rapid Response Services Licensure
64CSR44
 - Approve

- f. **Bureau for Public Health**
Emergency Medical Services
64CSR48
 - Approve as Modified

- g. **Department of Health and Human Resources**
Sex Offender Treatment Program Certification
64CSR87
 - Approve as Modified
- h. **Mining and Reclamation - DEP**
West Virginia Surface Mining Reclamation Rule
38CSR2
 - Approve as Modified
- i. **Racing Commission**
Thoroughbred Racing
178CSR1
 - Approve as Modified
- j. **Racing Commission**
Greyhound Racing
178CSR2
 - Approve as Modified
- k. **Racing Commission**
Pari-Mutual Wagering
178CSR5
 - Approve as Modified
- l. **Office of Water Resources - DEP**
Requirements Governing Water Quality Standards
47CSR2
 - Approve

2. Other Business

Direct staff to prepare report and bills of authorization for introduction.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
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178CSR2
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Pari-Mutual Wagering
178CSR5
- l. **Office of Water Resources - DEP**
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47CSR2

2. Other Business - Direct staff to prepare report and bills of authorization for introduction.

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LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 10, 2011
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45CSR14
- LAID OVER
 - Approve as Modified
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State Owned Vehicles
148CSR3
- Approve as Modified
- c. ✓ **Explosives and Blasting - DEP**
West Virginia Explosives and Blasting Rule
199CSR1
- Approve as Modified
- d. ✓ **Bureau for Public Health**
Specialized Multipatient Medical Transport
64CSR29
- Approve
- e. ✓ **Bureau for Public Health**
Fire Department Rapid Response Services Licensure
64CSR44
- Approve
- f. ✓ **Bureau for Public Health**
Emergency Medical Services
64CSR48
- Approve as Modified

g ✓ **Department of Health and Human Resources**
Sex Offender Treatment Program Certification
64CSR87

- Approve as Modified

h ✓ **Mining and Reclamation - DEP**
West Virginia Surface Mining Reclamation Rule
38CSR2

- Approve as Modified

i ✓ **Racing Commission**
Thoroughbred Racing
178CSR1

- Approve as Modified

j ✓ **Racing Commission**
Greyhound Racing
178CSR2

- Approve as Modified

k ✓ **Racing Commission**
Pari-Mutual Wagering
178CSR5

- Approve as Modified

l ✓ **Office of Water Resources - DEP**
Requirements Governing Water Quality Standards
47CSR2

- Approve

2. Other Business

Direct staff to prepare report and bills of authorization for introduction.

* Please fill out

Drema

? Full Name: Drema Mae, PhD

Title: Director

With: BPH/STEMS (State Trauma +
Emergency Medical Systems)

March March Tucker

? Full Name:

Title: Chief of Regulations

With: BPH/STEMS

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 10, 2011
7:00 p.m. to 9:00 p.m.
Senate Judiciary Committee Room

1. Review of Legislative Rules:

*Approved w.
as modified*

Division of Air Quality - DEP
Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution for the Prevention of
Significant Deterioration
45CSR14

- LAID OVER
- Approve as Modified

*Approved w.
as modified
& amended*

Department of Administration
State Owned Vehicles
148CSR3

- Approve as Modified

*Approved w.
as modified*

Explosives and Blasting - DEP
West Virginia Explosives and Blasting Rule
199CSR1

- Approve as Modified

Approved w.

Bureau for Public Health
Specialized Multipatient Medical Transport
64CSR29

- Approve

Approved w.

Bureau for Public Health
Fire Department Rapid Response Services Licensure
64CSR44

- Approve

*Approved w.
as modified*

Bureau for Public Health
Emergency Medical Services
64CSR48

- Approve as Modified

Request 8.
rule be
withdrawn

Department of Health and Human Resources
Sex Offender Treatment Program Certification
64CSR87

- Approve as Modified

Approve 2.
as modified
and amended

Mining and Reclamation - DEP
West Virginia Surface Mining Reclamation Rule
38CSR2

- Approve as Modified

Approve 1.
as modified

Racing Commission
Thoroughbred Racing
178CSR1

- Approve as Modified

Approve 1.
as modified

Racing Commission
Greyhound Racing
178CSR2

- Approve as Modified

Approve 4.
as modified

Racing Commission
Pari-Mutual Wagering
178CSR5

- Approve as Modified

Approved 4.

Office of Water Resources - DEP
Requirements Governing Water Quality Standards
47CSR2

- Approve

2. Other Business

Direct staff to prepare report and bills of authorization for introduction.

JANUARY INTERIM ATTENDANCE

Legislative Interim Meetings

January 9, 10 & 11, 2011

Monday, January 10, 2011

7:00 p.m. - 9:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Richard Thompson, ex
officio nonvoting member

Senate

House

Minard, Chair	✓
Snyder, Vice Chair	✓
Prezioso	✓
Unger	✓
Boley	✓
Facemyer	✓

Brown, Chair	✓
Poling, Vice Chair	✓
Fleischauer	✓
Talbott	✓
Overington	✓
Sobonya	✓

Air Quality

Laid over from yesterday

Facemyer

Approve as mod.

Administration

Brian explained

Recess §11 be removed

Clayton Chandler, Fleet Mgr. responded to questions

Brown

Approve as mod.

Poling

Amend to remove §11 adopted

As mod & amended

Explosives & Blasting

Jay explained

Brown

Approve as mod.

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: Jan. 10, 2011

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Susan McQuade	Braley + Thompson 1 Dunbar Plaza Dunbar WV 25064	RE: Sex Offender Rules (g)	64-87	X
Joel I. Watts	1615 Washington East Chas. WV	WV Training Board EMS (f)	64CSR48	X
Frank Fazzolari	Family Counseling Connection 1021 Quappin St Ste 414 Chas WV 25301	SEX OFFENDER RULES (g)	64-67	X

JANUARY INTERIM ATTENDANCE

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officio nonvoting member

Senate

House

Minard, Chair

✓

Brown, Chair

Snyder, Vice Chair

✓

Poling, Vice Chair

✓

Prezioso

✓

Fleischauer

✓

Unger

✓

Talbott

✓

Boley

✓

Overington

✓

Facemyer

✓

Sobonya

✓

Minard called the meeting to order

Air Quality 45CSR14

Jay explained

Send to Facemyer moved rule as modified

Adopted

Administration 148CSR3

Brian explained & responded to ?s

Clayton Chandler, Fleet Manager, responded to ?s

Brown moved rule as modified

Poling moved to amend by removing

Section 11 - Adopted

Brown moved rule as modified & amended

Adopted

- Explosives & Blasting 199CSR1
Jay explained
Brown moved as modified
Adopted

- Health 64CSR29
Debra explained
Brown moved rule
Adopted

- Health 64CSR44
Debra explained
Brown moved rule
Adopted

- Health 64CSR48
Debra explained & responded to ?'s
Joel Whatts w/ Miners' Health Safety & Training addressed
the Committee & responded to ?'s
Dr. Drema Mace, Director of OEMS responded to ?'s
Marilyn Stacker w/ OEMS responded to ?'s
Facemeyr requested Fiscal/Budget - agreed
Darren Wilkes, Chief of Operations w/ OEMS
responded to ?'s and addressed to Committee
Brown moved as modified
Adopted

• Health 64CSR87

Debra explained

Susan McQuaide, Director of Sexual Abuse
Counseling Services, addressed the Committee

Frank Fajalari w/

addressed the Committee & responded to ?'s

Susan Perry w/ Legal Services for DTHR

responded to ?'s

→ Brown moved that the Agency withdraw the rule
→ Flieshauer moved rule as modified
→ Adopted

• Mining & Reclamation 38CSR2

Jay explained & responded to ?'s

Tom Clarke, Director of the Division of Min. Rec
responded to ?'s

Brown moved rule as modified

Jason Bostic w/ WU Coal Association addressed
the Committee & responded to ?'s

Flieshauer moved to amend by removing
3.32b - Adopted

Brown moved rule as modified & amended
Adopted

- Water Resources 47CSR2
Jay explained & responded to ?'s
Scott Mandiola w/ DEP responded to ?'s
Brown moved rule
Adopted

- Racing 178CSR1
Charlie explained
Snyder moved as modified
Adopted

- Racing 178CSR2
Charlie explained & responded to ?'s
Brown moved as modified
Anthony Eats^(?) w/ AG's office for Racing
responded to ?'s
Snyder moved rule as modified
Adopted

- Racing 178CSR5
Charlie explained & responded to ?'s
Snyder moved as modified
Adopted

- Brown moved to direct staff for bills
- Debra addressed the Committee
- Snyder moved to adjourn

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January 10, 2011

Dear Legislative Rule Committee,

This e-mail is from Susan McQuaide. I've been a Sexual Offender Treatment Specialist for 22 years, working with adults, juveniles and also child and adult victims of sexual assault.

Along with several other providers, I have concerns with the sex offender rules and ask that the current version not be passed. Our number 1 goal should be protection of the community and this bill will decrease the safety of our communities.

During 2006-2008, several Sexual Offender Treatment Specialists were appointed to a committee to write the rules. They were passed and put into effect January 2009. In July 2009, the rules were pulled and put on the shelf, so to speak, as there was confusion about DHHR managing DOC's Sex Offender (SO) Programs.

One year later, the rules resurfaced and were rewritten by a committee of 5-6 individuals, none of whom were sexual offender treatment providers. The new version will exclude a number of sexual offender treatment providers from being able to continue providing this service. Those of us with 15-22 years of experience will no longer be qualified to run sexual offender treatment programs. This will be harmful to the safety of our communities.

Our main concerns are as follows:

- 5.1.C The requirements were changed to exclude numerous providers.
- The program application was \$100.00. Now it is 850.00.
- There conflicting statements about private practice being excluded.
- Having to have a Behavioral Health License to operate a program. This work is often provided by individuals who are private practitioners. They do not operate a full service mental health facility.

Revisions are needed as follows:

The new requirements for Program Coordinator now exclude many with 15-22 years of experience as sex offender treatment specialist. The previous rules (5.1.c.1,2,3) allowed more types of degrees, licensure and certification as a Sex Offender Treatment Specialist. The original rules were not written with the purpose of eliminating our state's most qualified, experienced therapists from being able to continue to do their job, thus allowing continued protection of the community.

The original SO Rules Committee wanted 5.1.c. to read:

A treatment provider who has a Master's Degree or above in psychology, social work or counseling or a related field and is licensed and/or certified to provide sex offender treatment. The new writing excludes certain types of degrees and licensures and doesn't mention certification. We could also agree on a grandfathering clause. There are nurses, rehab counselors, educators and people certified, not licensed as LPC or LCSW, etc. who are doing this work and should be able to continue what they are doing.

The price for a Program License was raised 850% from \$100.00/yr to \$850.00/yr. This is prohibitive for most private practitioners. The rationale was that a trained evaluator would be hired to review the programs and their records. If there are, at the most 13-16 programs in the state, do we need a full time evaluator to review records once or twice a year? DHHR's monitoring agencies OFLAC and APS offices currently review records once or twice a year. I know of 7 outpatient treatment programs in the state. Someone from OFLAC told me there may be as many as 13-16 SO Programs.

The rules are unclear about "private practice". Rule 2.4.a.3 says private practice is excluded from the rules. Rule 4.1.b says a person must be part of a Behavioral Health Center (or other facilities) in order to provide Sex Offender Treatment, which would eliminate private practice. This is confusing. A partial sentence under Programs (3.24) is also confusing and contradictory where it states, "To include a private practice".

We work daily with perpetrators of sexual violence in an effort to get them to have their sexually aggressive needs met elsewhere. It is difficult, strenuous work. We believe this Rule will eliminate jobs and place people at a higher risk because there will be more untreated sex offenders in WV. Please assist us in better protecting our communities by sending this Rule back to the drawing board. A new committee needs to be appointed that includes 10 or more Sex Offender Treatment Providers. Thanks for listening and thanks for your consideration in this matter.

Sincerely,

Susan McQuaide, MA, LSW, CSOTS

Susan McQuaide, MA, LSW, CSOTS
Director, Sexual Abuse Counseling Services
Braley and Thompson
Also in private practice, McQuaide and Associates
Approved BBHMF Evaluator
Finding Words Forensic Interview Evaluator

178CSR1

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. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- This rule repeals and replaces W. Va. 178 CSR 1, Racing Commission, Thoroughbred Racing, filed April 6, 2007 and effective April 6, 2007.

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 foaled in West Virginia or sired by an accredited West Virginia sire.

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. "Adjunct medication" means

Aminocaproic acid, Tranexamic acid, Carbazochrome and no other medications.

2.4. "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.

2.5. "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.

2.6. "Also-Eligible" pertains to:

2.6.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

2.6.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.

2.7. "Appeal" means a request for the Racing Commission or its designee to hold a hearing and review any decisions or rulings of the stewards.

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

2.9. "Arrears" means all moneys due for entrance fees (including jockeys' fees), fines,

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subscriptions for stakes, purchase money in claiming or selling races and also any default in money incident to the rules.

2.10. "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.

2.11. "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.

2.12. "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.

2.13. "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. "Coupled Entry" means two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes.

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

2.29. "Day" means a twenty-four (24)

hour period ending at midnight.

2.30. "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.

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

2.32. "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.

2.33. "Entry" means:

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

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

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 West Virginia 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 West Virginia 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.

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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 "bicarbonate loading" means a bicarbonate or other alkalizing 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 totalizator 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 interests 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 West Virginia 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 West Virginia 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 employing official chemists who are members in good standing with the Association of Official Racing Chemists.

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 West Virginia 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 6 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 West Virginia 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.

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

2.107. "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.

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

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

7.6.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.

7.6.c. A racing official may be

held responsible by the stewards or the Racing Commission for the actions of their assistants.

7.7. 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.

7.8. 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 charge any permit holder for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

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.

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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 five thousand dollars (\$5,000.00) per violation;

8.5.g.3. require forfeiture or redistribution of 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.

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's list:

8.10.a. The stewards shall maintain a stewards' list which shall be posted in the office of 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, Coggins, 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. 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.c. 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. 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 drug testing laboratory(ies) of the official chemist(s) 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 their 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.

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 totalizator board on instruction by the stewards.

16.1.d. At a racetrack equipped with an appropriate infield totalizator 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 publically 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

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racine 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 inspections 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 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 these rules;

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) (revised December 2010), set forth in table 178-1 D at the end of this rule, and any medication/substance thresholds set forth in section 49 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 the 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 West Virginia 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 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 West Virginia 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 West Virginia 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 West Virginia 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. If the association is a corporation, it shall, upon request, provide a list of all stockholders or shareholders to the Racing Commission.

20.4. 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 West Virginia 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.

§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. 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 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), 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.

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 exempt 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 fingerprints are required to be provided by an applicant, the applicant shall provide a signed authorization for the release of information by those agencies.

24.1.e. 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 178-1 A at the end of this rule.

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

24.1.g. The Racing Commission shall not grant an occupational permit to anyone under eighteen (18) years of age. 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.h. 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.

24.2. 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 veterinarians, the Racing Commission security officer and Racing Commission investigators 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 section.

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, 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 its discretion, the Racing Commission 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. 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.e. No notice need be given as to the onset or cessation of random testing.

24.3.f. When a specimen or sample is collected from a permit holder for testing under this subsection, a sufficient sample shall be collected, when possible, to ensure a quantity for a the split sample so that a permit holder may request an independent analysis of the specimen or sample.

24.3.g. The Racing Commission and/or the stewards shall provide for a secure chain of custody for the sample to be made available to the permit holder.

24.3.h. 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 sample portion made available for the permit holder shall be the financial responsibility of the requesting person.

24.3.i. 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.

24.3.j. 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.k. 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.l. 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.

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. Every occupational permit is for one (1) year and expires on December 31 in the year in which it was issued, unless otherwise approved by the stewards or the Racing Commission.

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 or breeding;

24.11.e. has violated or attempted to violate 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 or assessment 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

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

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 he or she has that a violation of the Commission's rules has occurred or may occur.

§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 an 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.

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 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, unless otherwise required by the Racing Commission.

25.2.c. 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.d. A written, notarized

appointment of a managing owner or authorized agent shall be filed with the Racing Commission.

25.3. Partnerships. The following provisions apply to owner-partnerships:

25.3.a. Each and every partner, including spouses, shall obtain an owner's occupational permit to allow the partnership to act on the racetracks of West Virginia and they shall complete proper partnership forms.

25.3.b. A partnership shall appoint an authorized agent to represent it in all matters, and only the authorized agent shall withdraw money or sign claims for that partnership. A written instrument delegating specific powers to the authorized agent shall be signed by all members of the partnership and shall be notarized.

25.3.c. Partnership forms shall, among other things, set forth the following:

25.3.c.1. the name and address of every person having an interest in the horse or horses involved;

25.3.c.2. any interest greater than or equal to ten percent (10%);

25.3.c.3. to whom race winnings are payable;

25.3.c.4. in whose name the horse or horses shall run;

25.3.c.5. with whom the power to enter a horse in a race and the power to make a declaration rests; and

25.3.c.6. the terms of any contingency, lease or any other arrangement.

25.3.d. All partnership forms shall be signed by all partners or by their

authorized agent.

25.3.e. In case of an emergency, authority to sign declarations of partnerships may be electronically communicated to the Racing Commission.

25.3.f. The part owner of any horse cannot assign his or her share, or any part of it, without the written consent of the other partners. The consent shall be filed with the Racing Commission and the association's racing secretary.

25.3.g. Any alteration in a recorded partnership's registration must be reported in writing by the partnership or its authorized agent and must contain the notarized signatures of each and every partner.

25.3.h. All partners in a partnership are jointly and severally liable for all stakes, fees, and other obligations.

25.3.i. For claiming purposes, if a horse is owned by more than one (1) owner the total ownership shall be considered a single entity.

25.4. 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:

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

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

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

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

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

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

25.4.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.*".

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

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

25.5.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.

25.5.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.

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

25.6.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.

25.6.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.

25.6.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.

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

25.6.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.

25.6.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.

25.6.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.

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

25.6.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.

25.6.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.

25.7. 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:

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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 examination administered by the stewards.

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.

26.4.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.

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

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

26.4.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.

26.4.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.

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

26.4.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 26.4.h. of this rule; to an employee holding an occupational permit; or, to the owner.

26.4.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.

26.4.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.

26.4.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.

26.4.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.

26.4.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).

26.4.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.

26.4.q. No trainer shall move or permit to be moved any horse or horses under his or her custody, care or control into or out of the association's grounds without permission from the the association's racing secretary or his or her designee. Provided that, a horse may be moved out of the association's grounds for the purpose of receiving emergency medical treatment. In such an emergency, the horse shall be signed out on a form prescribed by the association and made available at the stable gate. 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).

26.4.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.

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

26.5. 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 affirming fitness to participate as a jockey. 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. A 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 who fails to fulfill an engagement in a race may not accept 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.

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 178-1 B 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 journeymen jockeys, or one journeyman jockey and one 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.

29.4. 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. 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, whether it is alive or dead, sound or unsound, or injured during the race or after the 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. 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 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.

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 continues to qualify 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 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. Maidens two (2) years old and up may start in West Virginia.

39.1.f. A horse must be eligible at the time of starting.

39.1.g. No horse owned by a partnership shall be permitted to enter or to start until the owners have complied with rules for the registration of the partnership as set forth in subsection 25.3. of this rule.

39.1.h. 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.i. 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. A signed entry blank is prima facie evidence that the contents of the entry blank express the desires and intent of the person making entry.

39.2.d. 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.e. The stewards may refuse an entry of any person, or the transfer of any entry, with notice and the reason given.

39.2.f. The entry of a horse shall be in the name of his or her valid owner.

39.2.g. The association's racing secretary shall immediately compile and conspicuously display the number of entries upon the closing of all overnight races.

39.2.h. Alterations shall not be made in any entry after closing of entries, except correction of errors approved by the stewards.

39.3. Coupled Entries. The following provisions apply to coupled entries:

39.3.a. Two (2) or more horses which are entered in a race shall be joined as a

mutuel entry and constitute one (1) betting interest if they are owned or leased in whole or in part by the same owner or are trained by a trainer who owns or leases any interest in any of the other horses in a race, except that such entries may be uncoupled in stakes races, futurities or other special events.

39.3.b. No more than two (2) horses having common ties through ownership or training may be entered in an overnight race. Under no circumstances may both horses of a coupled entry start to the exclusion of a single entry. When making a coupled entry, a preference for one (1) of the horses must be made.

39.3.c. In the event of disqualification of any part of a coupled entry, it shall be in the discretion of the stewards whether the disqualification shall extend to all or any other part of the coupled entry.

39.3.d. 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.e. In any race ordered split by the association's racing secretary into two (2) or more divisions, horses coupled pursuant subdivisions 39.3.a. and 39.3.b. of this subsection shall be seeded in separate divisions and uncoupled.

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. A horse which draws into a non-straightaway race from the also-eligible list shall start from the outermost post position. 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.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.

§178-1-42. Weights.

42.1. Allowances. The following provisions apply to weight allowances:

42.1.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. Claim of weight allowance to which a horse is not entitled shall not disqualify it unless 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 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 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 apprentices, no jockey shall be assigned a weight of less than one hundred eighteen (118) pounds.

42.3.b. 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:

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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;

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 thirteen (13) years of age or older;

44.11. it is owned by an owner and/or supervised by a trainer who do not hold occupational permits issued by the Racing Commission;

44.12. 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;

44.13. 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;

44.14. it has been removed from starting due to sickness or physical disability and therefore is ineligible to start for a minimum of ten (10) calendar days, exclusive of the day of the horse's removal; provided that at the expiration of the minimum ten (10) day period, the stewards may

allow a horse to start in a race if the entry is accompanied by a written certificate of fitness from a Racing Commission veterinarian;

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; and

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.

§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 one-half (½) 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 a coupled 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 Jockey's 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 178-1 C 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 the 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 remounted 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 gate. 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, for any reason, the doors in front of any stall in a mechanical or electrically operated gate fails 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.c.4. In a straightaway race, every horse must maintain

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position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane in such a manner that it interferes with, impedes or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

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, whether coupled or uncoupled 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 these rules 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 incident occurs 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 should 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;

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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 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 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 coupled with it as an entry;

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. 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 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. Treatment Restrictions. The following provisions apply to treatment restrictions:

48.2.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. 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. A recognized non-injectable nutritional supplement or other substance approved by a Racing Commission veterinarian;

48.2.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. A non-injectable non-prescription medication or substance.

48.2.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. 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 subsection 49.7. of this rule unless approved by a Racing Commission veterinarian.

48.3. 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). 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. Any veterinarian who falsifies any treatment record or who fails to maintain treatment records may be disciplined by the stewards or the Racing

Commission.

48.4. Prohibited Practices. The following are prohibited practices:

48.4.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

48.4.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. 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. Erythropoietin;

48.4.c.2. Darbepoetin;

48.4.c.3. Oxyglobin®;

48.4.c.4. Hemopure®;

and

48.4.c.5. Aransep.

48.4.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. Any treated horse shall not be permitted to race for a minimum of ten (10) days following treatment;

48.4.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;

48.4.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; and

48.4.d.4. All extracorporeal shock wave therapy or radial pulse wave therapy treatments must be reported to a Racing Commission veterinarian on a prescribed form not later than the time established by a Racing Commission veterinarian.

48.4.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.

§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)

(revised December 2010), set forth in table 178-1 D 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 178-1 E 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. 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) (revised December 2010), set forth in table 178-1 D 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. Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

49.2.d.12.C. Miscellaneous cardiotoxic 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) (revised December 2010), set forth in table 178-1 D at the end of this rule) and the penalty guidelines set forth in table 178-1 E 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) (revised December 2010), set forth in table 178-1 D 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 178-1 E 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) (revised December 2010), set forth in table 178-1 D 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) (revised December 2010), set forth in table 178-1 D 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 178-1 E 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 178-1 E 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.

49.4. 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. Therapeutic medications in excess of established threshold concentrations;

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.

49.5. 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 following provisions apply to NSAIDs:

49.6.a. The use of one (1) of three (3) approved NSAIDs shall be permitted under the following conditions:

49.6.a.1. Not to exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least twenty-four (24) hours before post time for the race in which the horse is entered:

49.6.a.1.A. Phenylbutazone (or its metabolite oxyphenylbutazone) – 5 micrograms per milliliter;

49.6.a.1.B. Flunixin – 20 nanograms per milliliter;

49.6.a.1.C. Ketoprofen – 10 nanograms per milliliter.

49.6.a.2. These or any other NSAID are prohibited to be administered within twenty-four (24) hours before post time for the race in which the horse is entered.

49.6.a.3. The presence of

more than one (1) of the three (3) approved NSAIDs, with the exception of phenylbutazone in a concentration below one (1) microgram per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one (1) of the approved NSAIDs shall be discontinued at least forty-eight (48) hours before post time for the race in which the horse is entered.

49.6.b. 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. The administration of the adjunct medications described in this subsection is permissible if there is compliance with the provisions of this subsection.

49.7.c. 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 horse of operation of the racetrack.

49.7.d. Race day administration of furosemide (lasix®) is permitted as follows:

49.7.d.1. A horse scheduled to race that is permitted to use furosemide (lasix®) shall be administered furosemide (lasix®) by a veterinarian holding a permit issued by the Racing Commission before the running of the race unless, under subdivision 49.7.h. of this rule, the horse has been declared off of furosemide (lasix®) by its owner or trainer.

49.7.d.2. As indicated by post-race quantitation, a horse may not carry in its body at the time of the running of a race more than 100 nanograms of furosemide (lasix®) per milliliter of plasma.

49.7.e. The practicing veterinarian who administers furosemide (lasix®) to a horse scheduled to race shall prepare a written certification indicating:

49.7.e.1. That furosemide (lasix®) was administered; and

49.7.e.2. If applicable, each adjunct medication that was administered.

49.7.f. The written certification set forth in subdivision 49.7.e. of this rule shall be in the possession of a designated Commission representative at least one (1) hour before the horse is scheduled to race.

49.7.g. The stewards shall order a horse scratched if the written certification set forth in subdivision 49.7.e. is not received in a timely manner.

49.7.h. The following provisions apply to racing off of furosemide (lasix®):

49.7.h.1. A horse on the furosemide (lasix®) program that races without furosemide (lasix®) in any jurisdiction which permits the use of furosemide (lasix®) may not be eligible for its use for a period of sixty (60) days.

49.7.h.2. To become eligible after sixty (60) days, the horse shall have been observed to have bled by a Racing Commission veterinarian either:

49.7.h.2.A. Externally; or

49.7.h.2.B. By endoscopic examination.

49.7.i. The following provisions apply to program notice requirements for horses on furosemide (lasix®):

49.7.i.1. Of the horses scheduled to race, the official program shall denote the horses which have been administered:

49.7.i.1.A. Furosemide (lasix®);

49.7.i.1.B. Furosemide (lasix®) for the first time; and

49.7.i.1.C. Furosemide (lasix®) and one or more adjunct medications.

49.7.i.2. If the official program contains past performance lines, each past performance line shall indicate if the horse was administered;

49.7.i.2.A. Furosemide (lasix®); or

49.7.i.2.B. Furosemide (lasix®) and an adjunct medication.

49.7.j. The following provisions apply to adjunct medications:

49.7.j.1. The following medications may be administered to a horse in conjunction with furosemide (lasix®):

49.7.j.1.A. Aminocaproic acid;

49.7.j.1.B. Tranexamic acid; and

49.7.j.1.C. Carbazochrome.

49.7.j.2. If a horse is to receive one or more adjunct medications as described in paragraph 49.7.j.1. of this rule:

49.7.j.2.A. The trainer of the horse, at the time of entry, shall declare the use of adjunct medication; and

49.7.j.2.B. The veterinarian who administers an adjunct medication shall report each specific adjunct medication administered on the same form used to report the administration of furosemide (lasix®) as required by subdivision 49.7.e. of this rule.

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 within the last two (2) years 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 veterinarian's list and remain on the list for a minimum of ten (10) calendar days.

A second time bleeder shall be placed on the veterinarians' 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. Anti-Ulcer Medications. The following anti-ulcer medications are permitted to be administered, at the stated dosage, up to twenty-four (24) hours prior to the race in which the horse is entered:

49.9.a. Cimetidine (Tagamet®) – 8-20 mg/kg PO BID-TID;

49.9.b. Omeprazole (Gastrogard®) – 2.2 grams PO SID; and

49.9.c. Ranitidine (Zantac®) – 8 mg/kg PO BID.

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. Although caffeine may be found in a horse due to environmental contamination/inadvertent exposure, no sample or specimen shall exceed the level of 100 nanograms per milliliter of serum or plasma when tested post race.

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 sample 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.
16 β -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 administered 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. Out of Competition Testing for Blood and/or Gene Doping Agents. The following provisions apply to out of competition testing for blood an/or gene doping agents:

49.13.a. Any horse on the grounds at a racetrack under the jurisdiction of the Racing Commission; or under the care or control of trainer or owner holding an occupational permit issued by the Racing Commission is subject to testing for blood and/or gene doping agents without advance notice. This rule does not apply to therapeutic medications approved by the FDA for use in the horse and the recognized off-label use of any FDA approved medication.

49.13.b. Horses to be tested may be selected at random, with probable cause, or as determined by the Racing Commission or the stewards.

49.13.c. A Racing Commission veterinarian, or any practicing veterinarian holding an occupational permit or a licensed veterinary technician authorized by the Racing Commission, may at any time, take a urine, blood or hair sample from a horse for this purpose.

49.13.d. Prohibited substances, practices and procedures are defined as:

49.13.d.1. Blood doping agents including, but not limited to Erthropoietin (EPO), Darbepoetin, Oxyglobin®, Hemopure®, Aransep or any substance that abnormally enhances the oxygenation of body tissues.

49.13.d.1. 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.

49.13.e. Cooperation with the Racing Commission veterinarian, or any practicing veterinarian or licensed veterinary technician authorized by the Racing Commission, includes:

49.13.e.1. Assisting in the immediate location and identification of the horse selected for out of competition testing;

49.13.e.2. Providing a stall or safe location to collect the samples;

49.13.e.3. Assisting the veterinarian in properly procuring the samples;

49.13.e.4. Split samples will be collected as set forth in this rule.

49.13.f. Out of competition samples will be sent to the official laboratory of the Racing Commission, or other laboratory as designated by the Commission with reports made in accordance with the provisions of these medication rules and the penalty provisions thereof.

49.14. Therapeutic Medications. The use of the following therapeutic medications shall be permitted under the following conditions:

49.14.a. Glycopyrrolate – Not to exceed a 3.5 pg/ml threshold concentration in serum or plasma;

49.14.b. Methocarbamol – Not to exceed a 1 ng/ml threshold concentration in serum or plasma;

49.14.c. Dimethylsulfoxide (DMSO) – Not to exceed a 10 mcg/ml threshold concentration in serum or plasma.

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. Official chemists. The following provisions apply to official chemists:

50.2.a. The official chemists selected by the Racing Commission to engage in either primary or split post-race specimen or sample analysis shall be members in good standing of the Association of Official Racing Chemists and shall make all reports directly to the secretary of the Racing Commission and the chief steward at the appropriate racetrack.

50.2.b. In order for a chemist 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.

50.2.c. A split sample testing laboratory shall be a member in good standing of the Association of Official Racing Chemists and approved by the Racing Commission.

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 official chemist.

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 an official chemist 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 an official chemist 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 official chemist or his or her staff. 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 prevents 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 official chemist of 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 an official chemist 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 an official chemist 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 signed by the chemist 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 a primary laboratory until the time that specimens are packed and secured for shipment to the primary 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 a primary 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 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 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 exists. When quantitative levels of permitted medications exceed the permitted levels, the level of the confirming laboratory, if lower than the primary 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 her 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 be 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; and

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.

§178-1-52. Physical Inspection of Horses.

52.1. Assessment of Racing Condition.

The stewards may order an examination at any time of any horse entered for a race or which has run in a race.

52.2. Racing Soundness Examinations.

The following provisions apply to racing soundness examinations:

52.2.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.

52.2.b. The examination allowed under this subsection will be conducted by a qualified professional selected by the Racing Commission or its designees.

52.2.c. Test specimens may be obtained from the expired or euthanized thoroughbred upon which the examination is conducted and may be sent to an official chemist approved by the Racing Commission for testing

for foreign substances and natural substances at abnormal levels. When practical, specimens should be procured prior to euthanasia.

52.2.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.

52.2.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

52.2.f. Each owner and trainer shall comply with this subsection 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, totalizator, 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

178CSR1

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

178CSR1

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

178CSR1

TABLE 178-1 C

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

178CSR1

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

Amendments to Thoroughbred Rule

- Struck 2.23 – definition of “clear and convincing” because this definition only applies to the due process/hearing section that we have been instructed to make a separate procedural rule
- Struck 2.33 – definition of “de novo” because this definition only applies to the due process/hearing section that we have been instructed to make a separate procedural rule
- Added 18.1.z. – to require the RCI Classification Guidelines and the medication/substance thresholds in our rule to be posted in the office of the Racing Commission veterinarian(s)
- Reworded 26.4.h. and 26.4.j. – to allow a trainer or asst trainer to be designated by trainer to attend to and saddle horse in paddock
- Reworded 26.4.q. – to reinforce requirement that a horse has to have current, negative Coggins test to come on to the grounds of racetrack and added language which allows horses to be taken off of track grounds in an emergency without prior permission of the track's racing secretary.
- Added 44.17 – which adds a 4mm toe grab rule
- Reworded 49.1.k – to require the stewards to document in writing the aggravating and/or mitigating factors that they may consider in determining penalties for medication violations
- Moved the language that was in 49.2.d.11 to 49.2.c.6.– Table D, the RCI Classification Guidelines that we adopted, make the anabolic/androgenic steroids Class 3 drugs/substances, but I mistakenly had anabolic/androgenic steroids listed in the text of the rule as a Class 4 drugs/substances. This cut and paste of the language puts it in the correct class in the text of the rule, makes it match the RCI Classification Guidelines, and fixes a mistake.
- Reworded 49.11. – re: AAS to include blood thresholds (in addition to the existing urine thresholds) per Joe Strug and Dr. Scot Waterman.
- Reworded 49.12 – re: TCO₂ to incorporate higher threshold for lasix horses and to make the language re: the level of uncertainty in testing clearer. The level of uncertainty was always .4 millimoles, but I used the language that Joe Strug gave to me from the Delaware rule to make the language clearer and to incorporate the higher threshold for lasix horses.
- Added 49.14. – which sets forth the thresholds for glycopyrrolate, methocarbamol, and DMSO. This addition, moves and renumbers the graded stakes section to 49.15.
- Added the word “urine” in front of the word “specimen” in 50.3.c., 50.3.d. and 50.3.d. per Joe Strug.

- Struck the language in 50.3.f. “A Racing Commission veterinarian shall retain the part of the specimen that is not sent to the primary testing laboratory.” per Joe Strug and inserted the new language that appears there re: the collection of blood specimens per Joe Strug.
- Reworded 50.3.g., 50.5.a.1., 50.5.a.2., 50.5.a.3., 50.5.i., 50.5.i.1.,50.5.i.5., 50.5.j. – per Joe Strug to have blood refrigerated and urine frozen.
- Reworded 50.3.l. – per Joe Strug
- Reworded 50.4.e. – per Joe Strug to say no sooner than 90 minutes post race test because Strug says that is the only way to ensure a valid post race test.
- Struck Part 9 re: due process/hearings, Sections 54 through 56, per instruction of rule making committee staff (these sections will become part of the new procedural rule)
- Moved up Part 10 regarding the Thoroughbred Development Fund and changed it to Part 9, Sections 54 and 55.
- Reworded 54.2. – to change the language re: non-resident mares
- Changed the version of the Uniform Classification Guidelines for Foreign Substances from the January 2010 version to the newly issued December 2010 version which reclassifies DMSO from Class 5 to Class 4 and adds a new drug, Zilpaterol, Class 3, Penalty A (reflects changes in the text of the rule so as to reference the December 2010 version and changes Table D of the rule to the December 2010 version)
- Made technical/typographic corrections:
 - changed Uniform Classification Guidelines of Foreign Substances to Uniform Classification Guidelines for Foreign Substances;
 - changed Association’s Racing Secretary or his designee(s) to Association Racing Secretary or his or her designee(s);

TABLE 178-1 D

**Uniform Classification Guidelines
for Foreign Substances**

**Association of Racing
Commissioners International (RCI)
(revised December 2010)**

**Association of Racing Commissioners International, Inc.
Drug Testing Standards and Practices Program
Model Rules Guidelines**



**Uniform Classification Guidelines for Foreign Substances
and
Recommended Penalties and Model Rule**

Revised December 2010

**Association of Racing Commissioners International, Inc.
Uniform Classification Guidelines for Foreign Substances**

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Preamble to the Uniform Classification Guidelines of Foreign Substances

The Preamble to the Uniform Classification Guidelines was approved by the RCI Drug Testing and Quality Assurance Program Committee (now the Drug Testing Standards and Practices Program Committee) on August 26, 1991. Minor revisions to the Preamble were made by the Drug Classification subcommittee (now the Veterinary Pharmacologists Subcommittee) on September 3, 1991.

"The Uniform Classification Guidelines printed on the following pages are intended to assist stewards, hearing officers and racing commissioners in evaluating the seriousness of alleged violations of medication and prohibited substance rules in racing jurisdictions. Practicing equine veterinarians, state veterinarians, and equine pharmacologists are available and should be consulted to explain the pharmacological effects of the drugs listed in each class prior to any decisions with respect to penalties to be imposed. The ranking of drugs is based on their pharmacology, their ability to influence the outcome of a race, whether or not they have legitimate therapeutic uses in the racing horse, or other evidence that they may be used improperly. These classes of drugs are intended only as guidelines and should be employed only to assist persons adjudicating facts and opinions in understanding the seriousness of the alleged offenses. The facts of each case are always different and there may be mitigating circumstances which should always be considered. These drug classifications will be reviewed frequently and new drugs will be added when appropriate."

Notes Regarding Classification Guidelines

- Where the use of a drug is specifically permitted by a jurisdiction, then the jurisdiction's rule supersedes these penalty guidelines.
- Regulators should be aware that a laboratory report may identify a drug only by the name of its metabolite. The metabolite might not be listed here, but the parent compound may be.
- These classes of drugs are intended only as guidelines and should be employed only to assist persons adjudicating facts and opinions in understanding the seriousness of the alleged offenses.
- The facts of each case are different and there may be mitigating circumstances that should be considered.
- These drug classifications will be reviewed periodically. New drugs will be added or some drugs may be reclassified when appropriate.

Classification Criteria

The RCI Drug Classification Scheme is based on 1) pharmacology, 2) drug use patterns, and 3) the appropriateness of a drug for use in the racing horse. Categorization is decided using the following general guidelines:

- **Pharmacology.** Drugs that are known to be potent stimulants or depressants are placed in higher classes, while those that have (or would be expected to have) little effect on the outcome of a race are placed in lower classes.
- **Drug Use Patterns.** Some consideration is given to placement of drugs based on practical experience with their use and the nature of positive tests. For example, procaine positives have in the past been associated primarily with the administration of procaine penicillin, and this has been taken into consideration in the placement of procaine into Class 3 instead of Class 2 with other injectable local anesthetics.
- **Appropriateness of Drug Use.** Drugs that clearly are intended for use in equine therapeutics are placed in lower classes. Drugs that clearly are not intended for use in the horse are placed in higher classes, particularly if they might affect the outcome of a race. Drugs that are recognized as legitimately useful in equine therapeutics but could affect the outcome of a race are placed in the middle or higher classes.

The list includes most drugs that have been reported as detected by racing authority laboratories in the United States, Canada, the United Kingdom and other Association of Official Racing Chemists (AORC) laboratories, but does not include those which would seem to have no effect on the performance of the horse or drug detectability. For example, it does not include antibiotics, sulfonamides, vitamins, anthelmintics, or pangamic acid, all of which have been reported.

The list contains many drugs that have never been reported as detected. Usually, these are representatives of chemical classes that have the potential for producing an effect, and in many cases, for which at least one drug in that chemical class has been reported.

Most drugs have numerous effects, and each was judged on an individual basis. There are instances where there is a rather fine distinction between drugs in one category and those in the next. This is a reflection of a nearly continuous spectrum of effects from the most innocuous drug on the list to the drug that is the most offensive.

Classification Definitions

- **Class 1:** Stimulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Many of these agents are Drug Enforcement Agency (DEA) schedule II substances. These include the following drugs and their metabolites: Opiates, opium derivatives, synthetic opioids and psychoactive drugs, amphetamines and amphetamine-like drugs as well as related drugs, including but not limited to apomorphine, nikethamide, mazindol, pemoline, and pentylenetetrazol. Though not used as therapeutic agents, all DEA Schedule 1 agents are included in Class 1 because they are potent stimulant or depressant substances with psychotropic and often habituating actions.
- **Class 2:** Drugs that have a high potential to affect performance, but less of a potential than drugs in Class 1. These drugs are 1) not generally accepted as therapeutic agents in racing horses, or 2) they are therapeutic agents that have a high potential for abuse. Drugs in this class include: psychotropic drugs, certain nervous system and cardiovascular system stimulants, depressants, and neuromuscular blocking agents. Injectable local anesthetics are included in this class because of their high potential for abuse as nerve blocking agents.
- **Class 3:** Drugs that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2. Drugs in this class include bronchodilators, anabolic steroids and other drugs with primary effects on the autonomic nervous system, procaine, antihistamines with sedative properties and the high-ceiling diuretics.
- **Class 4:** This class includes therapeutic medications that would be expected to have less potential to affect performance than those in Class 3. Drugs in this class includes less potent diuretics; corticosteroids; antihistamines and skeletal muscle relaxants without prominent central nervous system (CNS) effects; expectorants and mucolytics; hemostatics; cardiac glycosides and anti-arrhythmics; topical anesthetics; antidiarrheals and mild analgesics. This class also includes the non-steroidal anti-inflammatory drugs (NSAIDs), at concentrations greater than established limits.
- **Class 5:** This class includes those therapeutic medications for which concentration limits have been established by the racing jurisdictions as well as certain miscellaneous agents such as dimethylsulfoxide (DMSO) and other medications as determined by the regulatory bodies. Included specifically are agents that have very localized actions only, such as anti-ulcer drugs, and certain anti-allergic drugs. The anticoagulant drugs are also included.

• **Prohibited Practices:**

- A) The possession and/or use of a drug, substance or medication, specified below, on the premises of a facility under the jurisdiction of the regulatory body 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 driver; or the use of which may adversely affect the integrity of racing:
- 1) Erythropoietin
 - 2) Darbepoietin
 - 3) Oxyglobin
 - 4) Hemopure
- B) The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.
- C) The practice, administration, or application of a treatment, procedure, therapy or method identified below, which is performed on the premises of a facility under jurisdiction of a regulatory body and which may endanger the health and welfare of the horse or endanger the safety of the rider or driver, or the use of which may adversely affect the integrity of racing:

Drug Classification Scheme

- **Class 1:** Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines, and all DEA Schedule I substances (see <http://www.usdoj.gov/dea/pubs/scheduling.html>), and many DEA Schedule II drugs. Also found in this class are drugs that are potent stimulants of the CNS. Drugs in this class have no generally accepted medical use in the racing horse and their pharmacologic potential for altering the performance of a racing horse is very high.
- **Class 2:** Drugs placed in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the racing horse. 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 racing horse. The following groups of drugs are placed in this class:
 - A. Opiate partial agonists, or agonist-antagonists.
 - B. Non-opiate psychotropic drugs. These drugs may have stimulant, depressant, analgesic or neuroleptic effects.
 - C. Miscellaneous drugs, which might have a stimulant effect on the CNS.
 - D. Drugs with prominent CNS depressant action.
 - E. Anti-depressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects.
 - F. Muscle blocking drugs - those that have a direct neuromuscular blocking action.
 - G. Local anesthetics that have a reasonable potential for use as nerve-blocking agents (except procaine).
 - H. Snake venoms and other biologic substances that may be used as nerve-blocking agents.
- **Class 3:** Drugs placed 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 racing horse. The following groups of drugs are placed in this class:
 - A. Drugs affecting the autonomic nervous system that do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects. Bronchodilators are included in this class.
 - B. A local anesthetic that 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).
 - C. Miscellaneous drugs with mild sedative action, such as the sleep-inducing antihistamines.
 - D. Primary vasodilating/hypotensive agents.
 - E. Potent diuretics affecting renal function and body fluid composition.
 - F. Anabolic and/or androgenic steroids and other drugs.

- **Class 4:** Drugs in this category comprise primarily 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:
 - A. Non-opiate drugs that have a mild central antipyretic effect.
 - B. Drugs affecting the autonomic nervous system that do not have prominent CNS, cardiovascular, or respiratory effects:
 - 1. Drugs used solely as topical vasoconstrictors or decongestants.
 - 2. Drugs used as gastrointestinal antispasmodics.
 - 3. Drugs used to void the urinary bladder.
 - 4. Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.
 - C. Antihistamines that do not have a significant CNS depressant effect. This does not include the H2 blocking agents, which are in Class 5.
 - D. Mineralocorticoid drugs.
 - E. Skeletal muscle relaxants.
 - F. Anti-inflammatory drugs. These drugs may reduce pain as a consequence of their anti-inflammatory action.
 - 1. Non-steroidal anti-inflammatory drugs (NSAIDs). (Aspirin-like drugs).
 - 2. Corticosteroids (glucocorticoids).
 - 3. Miscellaneous anti-inflammatory agents.
 - G. Less potent diuretics.
 - H. Cardiac glycosides and antiarrhythmic agents.
 - 1. Cardiac glycosides.
 - 2. Antiarrhythmic agents (exclusive of lidocaine, bretylium, and propranolol).
 - 3. Miscellaneous cardiotoxic drugs.
 - I. Topical Anesthetics - agents not available in injectable formulations.
 - J. Antidiarrheal drugs.
 - K. Miscellaneous drugs:
 - 1. Expectorants with little or no other pharmacologic action.
 - 2. Stomachics.
 - 3. Mucolytic agents.
- **Class 5:** Drugs in this category are therapeutic medications for which concentration limits have been established by the racing jurisdictions as well as certain miscellaneous agents. Included specifically are agents that have very localized actions only, such as anti-ulcer drugs, and certain antiallergic drugs. The anticoagulant drugs are also included.

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Acebutolol	Sectral	3	B	Amiodarone		4	B
Acecarbromal		2	A	2-Aminoheptane	Tuamine	4	B
Acenocoumarol		5	C	Aminophylline	Aminophyllin, etc.	3	B
Acepromazine	Atrovet, Notensil, PromAce®	3	B	Aminopyrine		4	B
Acetaminophen (Paracetamol)	Tylenol, Tempra, etc.	4	C	Amisometradine	Rolictron	4	B
Acetanilid		4	B	Amisulpride	Solian	2	A
Acetazolamide	Diamox, Vetamox	4	B	Amitraz	Mitaban	3	A
Acetophenazine	Tindal	2	A	Amitriptyline	Elavil, Amitril, Endep	2	A
Acetophenetidin (Phenacetin)		4	B	Amlodipine	Ammivin, Norvasc	4	B
Acetylsalicylic acid (Aspirin)		4	C	Amobarbital	Amytal	2	A
Aclomethasone	Aclovate	4	C	Amoxapine	Asendin	2	A
Adinazolam		2	A	Amperozide		2	A
Adrenochrome monosemicarbazone salicylate		4	B	Amphetamine		1	A
Albuterol (Salbutamol)	Proventil, Ventolin	3	B	Amrinone		4	B
Alclofenac		2		Amyl nitrite		3	A
Alcuronium	Alloferin	2	A	Anileridine	Leritine	1	A
Aldosterone	Aldocortin, Electrocortin	4	B	Anilopam	Anisine	2	A
Alfentanil	Alfenta	1	A	Anisindione		5	C
Almotriptan	Axert	3		Anisotropine	Valpin	4	B
Alphaprodine	Nisentil	2	A	Antipyrine		4	B
Alpidem	Anaxyl	2	A	Apazone (Azapropazone)	Rheumox	4	B
Alprazolam	Xanax	2	A	Apomorphine		1	A
Alprenolol		3	A	Aprindine		4	B
Althesin	Saffan	2	A	Aprobarbital	Alurate	2	A
Ambenonium	Mytelase, Myeuran	3	B	Arecoline		3	A
Ambroxol	Ambriol, etc.	4	B	Arformoterol		3	A
Amcinonide	Cyclocort	4	C	Articaine	Septocaine; Ultracaine, etc.	2	A
Amiloride	Moduretic; Midamor	4		Atenolol	Tenomin	3	B
Aminocaproic acid	Amicar, Caprocid	4	C	Atomoxetine	Strattera	2	A
				Atracurium	Tracrium	2	A

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Atropine		3	B	Bisoprolol	Zebeta, Bisobloc, etc.	3	B
Azacylonol	Frenque	2	A	Bitolterol	Effectin	3	A
Azaperone	Stresnil, Suicalm, Fentaz (with Fentanyl)	2	A	Bolasterone		3	A
Baclofen	Lloresal	4	B	Boldenone	Equipoise	3	B
Barbital	Veronal	2	A	Boldione		3	A
Barbiturates		2	A	Bretylium	Bretylol	3	B
Beclomethasone	Propadern	4	C	Brimonidine	Alphagan	2	A
Bemegride	Megimide, Mikedimide	2	A	Bromazepam	Lexotan, Lectopam	2	A
Benazeprilat, Benazepril and MC-tab	Lotrel, Lotensin	3	A	Bromfenac	Duract	3	A
Bendroflumethiazide	Naturetin	4	B	Bromhexine	Oletor, etc.	4	B
Benoxaprofen		2	A	Bromisovalum	Diffucord, etc.	2	A
Benoxinate	Dorsacaine	4	C	Bromocriptine	Parlodol	2	A
Benperidol	Anquill	2	A	Bromodiphenhydramine		3	B
Bentazepam	Tiadipona	2	A	Bromperidol	Bromidol	2	A
Benzactizine	Deprol, Bronchodiletten	2	A	Brompheniramine	Dimetane, Disomer	4	B
Benzocaine		4	B	Brotizolam	Brotocol	2	A
Benzocetamine		2	A	Budesonide	Pulmacort, Rhinocort	4	C
Benzodiazepines		2	A	Bufexamac		3	A
Benzphetamine	Didrex	2	A	Bumetanide	Bumex	3	B
Benzthiazide		4	B	Bupivacaine	Marcaine	2	A
Benztropine	Cogentin	2	A	Buprenorphine	Temgesic	2	A
Benzylpiperazine (BZP)		1	A	Bupropion	Wellbutrin	2	A
Bepriidil	Bepadil	4	B	Buspirone	Buspar	2	A
Betamethasone	Betasone, etc.	4	C	Butabarbital (Secbutobarbitone)	Butacaps, Butasol, etc.	2	A
Betaxolol	Kerlone	3	B	Butacaine	Butyn	4	B
Bethanechol	Urecholine, Duvoid	4	C	Butalbital (Taibutal)	Fiorinal	2	A
Bethanidine	Esbatal	3	A	Butamben (butyl aminobenzoate)	Butesin	4	C
Biperiden	Akineton	3	A	Butanilcaine	Hostacain	2	
Biriperone		2	A	Butaperazine	Repoise	2	A
				Butoctamide	Listomin	2	A

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Butorphanol	Stadol, Torbugesic	3	B	Chloraldehyde (chloral)		2	A
Butoxycaine	Stadacain	4	B	Chloralose (Alpha-Chloralose)		2	A
N-Butylscopolamine		3	B	Chlordiazepoxide	Librium	2	A
Caffeine		2	B	Chlorhexidol		2	A
Calusterone	Methosorb	3	B	Chlormerodrin	Neohydrin	4	B
Camazepam	Paxor	2	A	Chlormezanone	Trancopal	2	A
Camphor		4	C	Chloroform		2	A
Candesartan	Atcand	3	B	Chlorophenesin	Maolate	4	BC
Captodlame	Covatine	2	A	Chloroprocaine	Nesacaine	2	A
Captopril	Capolen	3	B	Chloroquine	Avioclor	4	C
Carazolol	Carbacel, Conducton	3	A	Chlorothiazide	Diuril	4	B
Carbachol	Lentin, Doryl	3	B	Chlorpheniramine	Chlortrimeton, etc.	4	B
Carbamezapine	Tegretol	3	B	Chlorproethazine	Newipleg	2	A
Carbidopa + levodopa	Sinemet	2	A	Chlorpromazine	Thorazine, Largactil	2	A
Carbinoxamine	Clistin	3	B	Chlorprothixene	Taractan	2	A
Carbromol	Mifudorm	2	A	Chlorthalidone	Hydroton	4	B
Carfentanil		1	A	Chlorzoxazone	Paraflex	4	B
Carisoprodol	Rela, Soma	2	B	Ciclesonide		4	B
Carphenazine	Proketazine	2	A	Cilostazol	Pletal	5	C
Carpipramine	Prazinil	2	A	Cimeterol		3	A
Carprofen	Rimadyl	4	B	Cimetidine	Tagamet	5	D
Carteolol	Cartrol	3	B	Cinchocaine	Nupercaine	4	C
Carticaine (see articaine)	Septocaine; Ultracaine, etc.	2	A	Citalopram	Celex	2	A
Carvedilol	Coreg	3	B	Clanobutin		4	B
Cathinone (khat, kat, qat, quat, chat, catha, Abyssinian tea, African tea)		1	A	Clemastine	Tavist	3	B
Celecoxib	Celebrex	3	B	Clenbuterol	Ventipulmin	3	B
Cetirizine	Zyrtec	4	B	Clibucaine	Batrax	4	C
Chloral betaine	Beta-Chlor	2	A	Clidinium	Quarezan, Clindex, etc.	3	B
Chloral hydrate	Nactec, Oridrate, etc.	2	A	Clobazam	Urbanyl	2	A
				Clobetasol	Temovate	4	C
				Clocapramine		2	A

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Clocortolone	Cloderm	4	C	Cyproheptadine	Periactin	4	C
Clofenamide		4	B	Danazol	Danocrine	3	B
Clomethiazole (Chlormethiazole)		2	A	Dantrolene	Dantrium	4	C
Clomipramine	Anafranil	2	A	Darbepoetin	Aranesp	2	A
Clonazepam	Klonopin	2	A	Decamethonium	Syncurine	2	A
Cloridine	Catapres	3	B	Dehydrochloromethyltestosterone		3	B
Clorazepate	Tranxene	2	A	Dembroxol (Dembrexine)	Sputolysin	4	C
Clomecaine	Placacid	4	C	Demoxepam		2	A
Clostebol		3	B	Deoxycorticosterone	Percortin, DOCA, Descotone, Dorcostrin	4	C
Clothiapine	Enterin	2	A	DeraΔcoxib	Deremaxx	3	B
Clotiazepam	Trecalmo, Rize	2	A	Desipramine	Norpromine, Pertofrane	2	A
Cloxacolam	Enadel, Sepazon, Tolestan	2	A	Desonite	Des Owen	4	C
Clozapine	Clozaril, Leponex	2	A	Desoximetasone	Topcort	4	C
α-Cobratoxin		1	A	Desoxymethyltestosterone		3	B
Cocaine		1	B	Detomidine	Dormosedan	3	B
Codeine		1	A	Dexamethasone	Azium, etc.	4	C
Colchicine		4	B	Dextromethorphan		4	B
Conorphone		2	A	Dextromoramide	Palfium, Narcolo	1	A
Corticaine	Ultracain	2	A	Dextropropoxyphene	Darvon	3	B
Cortisone	Cortone, etc.	4	C	Dezocine	Dalgan	2	A
Cromolyn	Intel	5	C	Diamorphine		1	A
Crotetamide		2	A	Diazepam	Valium	2	B
Cyamemazine	Tercian	2	A	Diazoxide	Proglycem	3	B
Cyclandelate	Cyclospasmol	3	A	Dibucaine	Nupercainal, Cinchocaine	4	C
Cyclizine	Merazine	4	B	Dichloralphenazone	Febenol, Isocom	2	A
Cyclobarbitol	Phanodorm	2	A	Dichlorphenamide	Daramide	4	C
Cyclobenzaprine	Flexeril	4	B	Diclofenac	Voltaren, Voltarol	4	C
Cyclomethylcaine	Surfacaine	4	C	Dicumarol	Dicumarol	5	C
Cyclothiazide	Anhydron, Renazide	4	B	Diethylpropion	Tepanil, etc.	2	A
Cycrimine	Pagitane	3	B	Diethylthiambutene	Thermalon	2	A

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Diflorasone	Florone, Maxiflor	4	C	Dromostanolone	Drolban	3	B
Diflucortolone	Flu-Cortinest, etc.	4	C	Droperidol	Inapsine, Droleptan, Innovar-Vet (with Fentanyl)	2	A
Difunisal		3	B	Duloxetine		2	A
Digitoxin	Crystodigin	4	B	Dyclonine	Dyclone	4	C
Digoxin	Lanoxin	4	B	Dyphylline		3	B
Dihydrocodeine	Parcodin	2	A	Edrophonium	Tensilon	3	B
Dihydroergotamine		4	B	Eletripan	Relpax	3	A
Dilorazepam	Briantum	2	A	Eltenac		4	C
Diltiazem	Cardizem	4	B	Enalapril (metabolite enalaprilat)	Vasotec	3	B
Dimeflin		3	A	Enciprazine		2	A
Dimethisoquin	Quotane	4	B	Endorphins		1	A
Dimethylsulfoxide (DMSO)	Domoso	4	C	Enkephalins		1	A
Dimethylsulphone (MSM)		5	C	Ephedrine		2	A
Diphenadione		5	C	Epibatidine		2	A
Diphenhydramine	Benadryl	3	B	Epinephrine		2	A
Diphenoxylate	Difenoxin, Lomotil	4	B	Ergoloid mesylates (dihydroergocornine mesylate, dihydroergocristine mesylate, and dihydroergocryptine mesylate)		2	A
Diprenorphine	M50/50	2	A	Ergonovine	Ergotrate	4	C
Dipyridamole	Persantine	3	B	Ergotamine	Gynergen, Cafegot, etc.	4	B
Dipyrrone	Novin, Methampyrone	4	C	Erthryl tetranitrate	Cardilate	3	A
Disopyramide	Norpace	4	B	Erythropoietin(EPO)	Epogen, Procrit, etc.	2	A
Divalproex	Depakote	3	A	Esmolol	Brevibloc	3	B
Dixyrazine	Esucos	2	A	Esomeprazole	Nexium	5	D
Dobutamine	Dobutrex	3	B	Estazolam	Domnamid, Eurodin, Nuctalon	2	A
Dopamine	Intropin	2	A	Etamiphylline		3	B
Donepezil	Aricept	1	A	Etanercept	Enbrel	4	B
Doxacurium	Nuromax	2	A	Ethacrynic acid	Edecrin	3	B
Doxapram	Dopram	2	A	Ethamivan		2	A
Doxazosin		3	A				
Doxefazepam	Doxans	2	A				
Doxepin	Adapin, Sinequan	2	A				
Doxylamine	Decapryn	3	B				

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Ethanol		2	A	Fenspiride	Respiride, Respan, etc	3	B
Ethchlorvynol	Placidyl	2	A	Fentanyl	Sublimaze	1	A
Ethinamate	Valmid	2	A	Fentiazac		3	B
Ethoheptazine	Zactane	4	B	Fexofenadine	Allegra	4	C
Ethopropazine	Parsidol	2	A	Firocoxib		4	B
Ethosuximide	Zarontin	3	A	Flecaiclide	Idalon	4	B
Ethotoin	Peganone	4	B	Floctafenine	Idalon, Idarac	4	B
Ethoxzolamide	Cardrase, Ethamide	4	C	Fluanisone	Sedalande	2	A
Ethylaminobenzoate (Benzocaine)	Semets, etc.	4	C	Flucinolone	Synalar, etc.	4	C
Ethylestrenol	Maxibolin, Organon	3	B	Fludiazepam	Erispam	2	A
Ethylisobutrazine	Diquel	2	A	Fludrocortisone	Alforone, etc.	4	C
Ethylmorphine	Dionin	1	A	Flufenamic acid		3	B
Ethylnorepinephrine	Bronkephrine	3	A	Flumethasone	Flucort, etc.	4	C
Etidocaine	Duranest	2	A	Flumethiazide	Ademol	4	B
Etifoxin	Stresam	2	A	Flunarizine	Sibellum	4	B
Etizolam	Depas, Pasaden	2	A	Flunisolide	Bronilide, etc.	4	C
Etodolac	Lodine	3	B	Flunitrazepam	Rohypnol, Narcozep, Darkene, Hypnodorm	2	A
Etodroxizine	Indunox	2	A	Flunixin	Banamine	4	C*
Etomidate		2	A	Fluocinolone	Synalar	4	C
Etorphine HCl	M99	1	A	Fluocinonide	Licon, Lidex	4	C
Famotidine	Gaster, etc.	5	D	Fluopromazine	Psyquil, Siquil	2	A
Felbamate	Felbatol	3	A	Fluoresone	Caducid	2	A
Felodipine	Plendil	4	B	Fluorometholone	FML	4	B
Fenarbamate	Tymium	2	A	Fluoroprednisolone	Predef-2X	4	C
Fenbufen	Cincopal	3	B	Fluoxetine	Prozac	2	A
Fenclozic acid	Myalex	2	A	Fluoxymesterone	Halotestin	3	B
Fenfluramine	Pondimin	2	A	Flupenthixol	Depixol, Fluanxol	2	A
Fenoldopam	Coriopam	3	B	Fluphenazine	Prolixin, Permitil, Anatenzol, etc.	2	A
Fenopropfen	Nalfon	3	B	Flupirtine	Katadolone	3	A
Fenoterol	Berotec	3	B	Fluprednisolone	Alphadrol	4	C
				Flurandrenolide	Cordran	4	C

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Flurazepam	Dalmane	2	A	Heptaminol	Corofundol	3	B
Flurbiprofen	Froben	3	B	Heroin		1	A
Fluspirilene	Imap, Redeptin	2	A	Hexafluorenum	Myalexen	2	A
Fluticasone	Flixonase, Flutide	4	C	Hexobarbital	Evipal	2	A
Flutoprazepam	Restas	2	A	Hexocyclium	Tral	4	C
Fluvoxamine	Dumirox, Faverin, etc.	2	A	Hexylcaine	Cyclaine	4	C
Formebolone		3	B	Homatropine	Homapin	3	B
Formoterol	Altram		B	Homophenazine	Pelvichthol	2	A
Fosinopril, metabolite, Fosinoprilat	Monopril	3	A	Hydralazine	Apresoline	3	B
Fosphenytoin	Cerebyx	3	B	Hydrochlorthiazide	Hydrodiuril	4	B
Furazabol		3	B	Hydrocodone (dihydrocodienone)	Hycodan	1	A
Furosemide	Lasix	N/A		Hydrocortisone (Cortisol)	Cortef, etc.	4	C
Gabapentin	Neurontin	4	B	Hydroflumethiazide	Saluron	4	B
Galantamine	Reminyl	2	A	Hydromorphone	Dilaudid	1	A
Gallamine	Flaxedil	2	A	Hydroxyamphetamine	Paradrine	1	A
Gepirone		2	A	4-Hydroxytestosterone		3	B
Gestrinone		3	A	Hydroxyzine	Atarax	2	B
Glutethimide	Doriden	2	A	Ibomal	Noctal	2	A
Glycopyrrolate	Robinul	3	B	Ibuprofen	Motrin, Advil, Nurpin, etc.	4	C
Guaifenesin (glycerol guaiacolate)	Gecolate	4	C	Ibutilide	Corvert	3	B
Guanadrel	Hylorel	3	A	Iloprost	Ventavis	3	A
Guanethidine	Ismelin	3	A	Imipramine	Imavate, Presamine, Tofranil	2	A
Guanabenz	Wytensin	3	B	Indomethacin	Indocin	3	B
Halazepam	Paxipam	2	A	Infliximab	Remicade	4	B
Halcinonide	Halog	4	C	Ipratropium		3	B
Halobetasol	Ultravate	4	C	Irbesarten	Avapro	3	A
Haloperidol	Haldol	2	A	Isapirone		2	A
Haloxazolam	Somelin	2	A	Isocarboxazid	Marplan	2	A
Hemoglobin glutamers	Oxyglobin Hemopure	2	A	Isoetharine	Bronkosol	3	B
				Isoflupredone	Predef	4	C

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Isomethadone		2	A	Loratidine	Claritin	4	B
Isomethheptene	Octin, Octon	4	B	Lorazepam	Ativan	2	A
Isopropamide	Darbid	4	B	Lormetazepam	Noctamid	2	A
Isoproterenol	Isoprel	2	A	Losartan	Hyzaar	3	B
Isosorbide dinitrate	Isordil	3	B	Loxapine	Laxitane	2	A
Isoxicam	Maxicam	2	A	Mabuterol		3	A
Isoxsuprine	Vasodilan	4	C	Maprotiline	Ludimil	2	A
Isradipine	DynaCirc	4	B	Mazindol	Sanorex	1	A
Kebuzone		3	B	Mebutamate	Axiten, Dormate, Capla	2	A
Ketamine	Ketalar, Ketaset, Vetalar	2	B	Mecamylamine	Inversine	3	B
Ketazolam	Anxon, Laftram, Solatran, Loftran	2	A	Meclizine	Antivert, Bonine	4	B
Ketoprofen	Orudis	4	C*	Meclofenamic acid	Arquel	4	C
Ketorolac	Toradol	3	A	Meclofenoxate	Lucidril, etc.	2	A
Labetalol	Normodyne	3	B	Medazepam	Nobrium, etc.	2	A
Lamotrigine	Lamictal	3	A	Medetomidine	Domitor	3	B
Lansoprazole		5	D	Medrysone	Medrusar, etc.	4	C
Lenperone	Elanone-V	2	A	Mefenamic acid	Ponstel	3	B
Letosteine	Viscotiol, Visiotal	4	C	Meloxicam	Mobic	4	B
Levamisole		2	B	Melperone	Eunerpan	2	A
Levobunolol	Betagan	3	B	Memantine	Namenda	2	A
Levomethorphan		2	A	Meparfynol	Oblivon	2	A
Levorphanol	Levo-Dremoran	1	A	Mepazine	Pacatal	2	A
Lidocaine	Xylocaine	2	B	Mepenzolate	Cantil	3	A
Lisinopril	Prinivil, Zestril	3	A	Meperidine	Demerol	1	A
Lithium	Lithizine, Duralith, etc.	2	A	Mephenesin	Tolserol	4	B
Lobeline		2	A	Mephenoxalone	Control, etc.	2	A
Lofentanil		1	A	Mephentermine	Wyamine	1	A
Loflazepate, Ethyl	Victan	2	A	Mephenytoin	Mesantoin	2	A
Loperamide	Imodium	2	A	Mephobarbital (Methylphenobarbital)	Mebaral	2	A
Loprazolam	Dormonort, Havlane	2	A	Mepivacaine	Carbocaine	2	B

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Meprobamate	Equanil, Miltown	2	A	Methocarbamol	Robaxin	4	B
Meralluride	Mercurhydrin	4	B	Methohexital	Brevital	2	A
Merbaphen	Novasural	4	B	Methotrexate	Folex, Nexate, etc.	4	B
Mercaptomerin	Thiomerin	4	B	Methotrimeprazine	Levoprome, Neurocil, etc.	2	A
Mercumalilin	Cumertilin	4	B	Methoxamine	Vasoxyl	3	A
Mersalyl	Salyrgan	4	B	Methoxyphenamine	Orthoxide	3	A
Mesalamine	Asacol	5	C	Methscopolamine	Pamine	4	B
Mesoridazine	Serentil	2	A	Methsuximide	Celontin	3	A
Mestanolone		3	B	Methylatropine		3	B
Mesterolone		3	B	Methylchlorthiazide	Enduron	4	B
Metaclozepam	Talis	2	A	Methyldienolone		3	B
Metaproterenol	Alupent, Metaprel	3	B	Methyldopa	Aldomet	3	A
Metaraminol	Aramine	1	A	Methylergonovine	Methergine	4	C
Metaxalone	Skelaxin	4	B	Methylnortestosterone		3	B
Metazocine		2	A	Methylphenidate	Ritalin	1	A
Metenolone		3	B	Methylprednisolone	Medrol	4	C
Methacholine		3	A	Methyltestosterone	Metandren	3	A
Methadone	Dolophine	1	A	Methyl-1-testosterone		3	A
Methamphetamine	Desoxyn	1	A	Methyprylon	Noludar	2	A
Methandienone		3	B	Methysergide	Sansert	4	B
Methandriol	Probolc	3	B	Metamide		4	B
Methandrostenolone	Dianabol	3	A	Metoclopramide	Reglan	4	C
Methantheline	Banthine	3	B	Metocurine	Metubine	2	A
Methapyrilene	Histadyl, etc.	4	B	Metolazone		3	B
Methaqualone	Quaalude	1	A	Metomidate	Hypnodil	2	A
Metharbital	Gemonil	2	A	Metopon (methyldihydromorphinone)		1	A
Methasterone		3	A	Metoprolol	Lopressor	3	B
Methazolamide	Naptazane	4	C	Mexazolam	Melex	2	A
Methcathinone		1	A	Mexilitine	Mexilil	4	B
Methdilazine	Tacaryl	4	B	Mibefradil	Posicor	3	B
Methixene	Trest	3	A				

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Mibolerone		3	B	Nefazodone	Serzone	2	A
Midazolam	Versed	2	A	Nefopam		3	A
Midodrine	Pro-Amiline	3	B	Neostigmine	Prostigmine	3	B
Milrinone		4	B	Nicardipine	Cardine	4	B
Minoxidil	Loniten	3	B	Nifedipine	Procardia	4	B
Mirtazepine	Remeron	2	A	Niflumic acid	Nifuril	3	B
Misoprostel	Cytotec	5	C	Nikethamide	Coramine	1	A
Mivacurium	Mivacron	2	A	Nimesulide		3	B
Modafinil	Provigil	2	A	Nimetazepam	Erimin	2	A
Moexipril (metabolite, moexiprilat)	Uniretic	3	B	Nimodipine	Nemotop	4	B
Molindone	Moban	2	A	Nitrazepam	Mogadon	2	A
Mometasone	Elocon	4	C	Nitroglycerin		3	B
Montelukast	Singulair	4	C	Nizatidine	Axid	5	C
Moperone	Luvatren	2	A	19-Norandrostenediol		3	B
Morphine		1	B	19-Norandrostenedione		3	B
Mosaprimine		2	A	Norbolethone		3	B
Muscarine		3	A	Norclosterbol		3	B
Nabumetone	Anthraxan, Relafen, Reliflex	3	A	Nordiazepam	Calmday, Nordaz, etc.	2	A
Nadol	Corgard	3	B	Norepinephrine		2	A
Naepaine	Amylsine	4	C	Norethandrolone		3	A
Nalbuphine	Nubain	2	A	Nortestosterone		4	C
Nalorphine	Nalline, Lethidrone	2	A	Nortriptyline	Aventyl, Pamelor	2	A
Naloxone	Narcan	3	A	Nylidrine	Arlidin	3	A
Naltrexone	Revia	3		Olanzapine	Zyprexa	2	A
Nandrolone	Nandrolin, Laurabolin, Durabolin	3	B	Olmesartan	Benicar	3	A
Naphazoline	Privine	4	B	Olsalazine	Dipentum	4	B
Naproxen	Equiproxen, Naprosyn	4	C	Omeprazole	Prilosec, Losec	5	D
Naratriptan	Amerge	3	B	Orphenadrine	Norflex	4	B
Nebivolol		3	A	Oxabolone		3	B
Nedocromil	Tilade	5	C	Oxandrolone	Anavar	3	B
				Oxaprozin	Daypro, Deflam	4	C
				Oxazepam	Serax	2	A

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Oxazolam	Serenal	2	A	Perfluorodecahydronophthalene		2	A
Oxcarbazepine	Trileptal	3	A	Perfluorooctylbromide		2	A
Oxilofrine (hydroxyephedrine)		2	A	Perfluorotripropylamine		2	A
Oxprenolol	Trasicor	3	B	Perfluorocarbons		2	A
Oxycodone	Percodan	1	A	Periciazine	Alodept, etc.	2	A
Oxymesterone		3	B	Perindopril	Biprel	3	A
Oxymetazoline	Afrin	4	B	Perlapipe	Hypnodin	2	A
Oxymetholone	Adroyd, Anadrol	3	B	Perphenazine	Trilafon	2	A
Oxymorphone	Numorphan	1	A	Phenacemide	Phenurone	4	B
Oxyperitine	Forit, Integrin	2	A	Phenaglycodol	Acalo, Aicamid, etc.	2	A
Oxyphenbutazone	Tandearil	4	C	Phenazocine	Narphen	1	A
Oxyphencyclimine	Daricon	4	B	Phencyclidine (PCP)	Sernylan	1	A
Oxyphenonium	Antrenyl	4	B	Phendimetrazine	Bontril, etc.	1	A
Paliperidone		2	A	Phenelzine	Nardelzine, Nardil	2	A
Pancuronium	Pavulon	2	A	Phenindione	Hedulin	5	C
Pantoprazole	Protonix	5	D	Phenmetrazine	Preludin	1	A
Papaverine	Pavagen, etc.	3	A	Phenobarbital	Luminal	2	A
Paraldehyde	Paral	2	A	Phenoxybenzamine	Dibenzyline	3	B
Paramethadione	Paradione	3	A	Phenprocoumon	Liquamar	5	C
Paramethasone	Haldrone	4	C	Phensuximide	Milontin	4	B
Pargyline	Eutonyl	3	A	Phentermine	Iomamin	2	A
Paroxetine	Paxil, Seroxat	2	A	Phentolamine	Regitine	3	B
Pemoline	Cylert	1	A	Phenylbutazone	Butazolidin	4	C*
Penbutolol	Levatol	3	B	Phenylephrine	Isophrin, Neo-Synephrine	3	B
Penfluridol	Cyperon	2	A	Phenylpropanolamine	Propadrine	3	B
Pentaerythritol tetranitrate	Duotrate	3	A	Phenytoin	Dilantin	4	B
Pentazocine	Talwin	3	B	Physostigmine	Eserine	3	B
Pentobarbital	Nembutal	2	A	Picrotoxin		1	A
Pentoxifylline	Trental, Vazofirin	4	C	Pimindone	Alvodine, Cimadon	2	A
Pentylentetrazol	Metrazol, Nioric	1	A	Pimozide	Orap	2	A
Perazine	Taxilan	2	A	Pinazepam	Domar	2	A
Perfluorodecolin		2	A	Pindolol	Viskin	3	A

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Pipamperone	Dipiperon	2	A	Propanteline	Pro-Banthine	3	A
Pipecuronium	Arduan	2	A	Proparacaine	Ophthaine	4	C
Pipequaline		2	A	Propentophylline	Karsivan	3	B
Piperacetazine	Psymod, Quide	2	A	Propiomazine	Largon	2	A
Piperocaine	Metycaine	2	A	Propionylpromazine	Tranvet	2	A
Pipotiazine	Lonseren, Piportil	2	A	Propiram		2	A
Pipradrol	Dataril, Gerondyl, etc.	2	A	Propofol	Diprivan, Disoprivan	2	A
Piquindone		2	A	Propoxycaine	Ravocaine	2	A
Pirbuterol	Maxair	3	A	Propranolol	Inderal	3	B
Pirenzapine	Gastrozepin	5	C	Propylhexedrine	Benzedrex	4	B
Piretanide	Arelix, Tauliz	3	B	Prostanazol		3	B
Piritramide		1	A	Prothipendyl	Dominal	2	A
Piroxicam	Feldene	3	B	Protokylol	Ventaire	3	A
Polyethylene glycol		5	C	Protriptyline	Concordin, Triptil	2	A
Polythiazide	Renese	4	B	Proxibarbitol	Axeen, Centralgol	2	A
Pramoxine	Tronothaine	4	C	Pseudoephedrine	Cenafed, Novafed	3	B
Prazepam	Verstran, Centrax	2	A	Pyridostigmine	Mestionon, Regonol	3	B
Prazosin	Minipress	3	B	Pyrilamine	Neoantergan, Equihist	3	B
Prednisolone	Delta-Cortef, etc.	4	C	Pyrithyldione	Hybersulfan, Sonodor	2	A
Prednisone	Meticorten, etc.	4	C	Quazipam	Doral	2	A
Prilocalne	Citanest	2	C	Quetiapine	Seroquel	2	A
Primidone	Mysoline	3	B	Quinbolone		3	B
Probenecid		4	C	Quinapril, metabolite Quinaprilat	Accupril	3	A
Procalnamide	Pronestyl	4	B	Quinidine	Quinidex, Quinicardine	4	B
Procaine		3	B	Rabeprazole	Aciphex	5	D
Procaterol	Pro Air	3	A	Racemethorphan		2	A
Prochlorperazine	Darbazine, Compazine	2	A	Racemorphan		2	A
Procyclidine	Kemadrin	3	B	Raclopride		2	A
Promazine	Sparine	3	B	Ractopamine	Raylean	3	A
Promethazine	Phenergan	3	B	Ramipril, metabolite Ramiprilat	Altace	3	A
Propafenone	Rythmol	4	B	Ranitidine	Zantac	5	D
Propanidid		2	A	Remifentanil	Ultiva	1	A

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Remoxipride	Roxiam	2	A	Succinylcholine	Sucostrin, Quefin, etc.	2	A
Reserpine	Serpasil	2	A	Sufentanil	Sufenta	1	A
Rilmazafone		2	A	Sulfasalazine	Azulfidine, Azaline	4	C
Risperidone		2	A	Sulfondiethylmethane		2	A
Ritanserlin		2	A	Sulfonmethane		2	A
Ritodrine	Yutopar	3	B	Sulforidazine	Inofal	2	A
Rivastigmine	Exelon	3	B	Sulindac	Clinoril	3	A
RizatRIPTAN	Maxalt	3	B	Sulpiride	Alglonyl, Sulpitil	2	A
Rocuronium	Zemuron	2	A	Sultopride	Barnetil	2	A
Rofecoxib	Vioxx	2	A	Sumatriptan	Imitrex	3	B
Romifidine	Sedivet	2	B	Tadalafil	Cialis	3	A
Ropivacaine	Naropin	2	A	Talbutal	Lotusate	2	A
Salicylamide		4	C	Tandospirone		2	A
Salicylate		4	C	Telmisartin	Micardis	3	B
Salmeterol		3	B	Temazepam	Restoril	2	A
Scopolamine (Hyoscine)	Triptone	3	B	Tenoxicam	Alganex, etc.	3	B
Secobarbital (Quinalbarbitone)	Seconal	2	A	Tepoxalin		3	B
Selegiline	Eldepryl, Jumex, etc.	2	A	Terazosin	Hytrin	3	A
Sertraline	Lustral, Zoloft	2	A	Terbutaline	Brethine, Bricanyl	3	B
Sibutramine	Meridia	3	B	Terfenadine	Seldane, Triludan	4	B
Sildenafil	Viagra	3	A	Testolactone	Teslac	3	B
Snake Venoms		2	A	Testosterone		3	B
Somatropin	Nutropin	2	A	Tetrabenazine	Nitoman	2	A
Somatrem	Protropin	2	A	Tetracaine	Pontocaine	2	A
Sotalol	Betapace, Sotacor	3	B	Tetrahydrogestrinone		3	A
Spiclomazine		2	A	Tetrahydrozoline	Tyzine	4	B
Spiperone		2	A	Tetrazepam	Musaril, Myolastin	2	A
Spirapril, metabolite Spiraprilat	Renomax	3	A	Thebaine		2	A
Spironolactone	Aldactone	4	B	Theobromine		4	B
Stanozolol	Winstrol-V	3	B	Theophylline	Aqualphyllin, etc.	3	B
Stenbolone		3	B	Thialbarbital	Kemithal	2	A
Strychnine		1	B	Thiamylal	Surital	2	A

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Thiethylperazine	Torecan	2	A	Trichloroethanol		2	A
Thiopental	Pentothal	2	A	Trichloroethylene	Trilene, Trimar	2	A
Thiopropazate	Dartal	2	A	Triclofos	Triclos	2	A
Thiopropazine	Majeptil	2	A	Tridihexethyl	Pathilon	4	B
Thioridazine	Mellaril	2	A	Trifluomeprazine	Nortran	2	A
Thiosalicylate		4	C	Trifluoperazine	Stelazine	2	A
Thiothixene	Navane	2	A	Trifluoperidol	Triperidol	2	A
Thiphenamil	Trocnate	4	B	Triflupromazine	Vetame, Vesprin	2	A
Tiapride	Italprid, Luxoben, etc.	2	A	Trihexylphenidyl	Artane	3	A
Tiaprofenic acid	Surgam	3	B	Trimeprazine	Temaril	4	B
Tiletamine	Component of Telazol	2	A	Trimethadione	Tridione	3	B
Timiperone	Tolopelon	2	A	Trimethaphan	Arfonad	3	A
Timolol	Blocardrin	3	B	Trimipramine	Surmontil	2	A
Tocainide	Tonocard	4	B	Tripelennamine	PBZ	3	B
Tofisopam	Grandaxain, Seriel	2	A	Triprolidine	Actidil	4	B
Tolazoline	Priscoline	3	B	Tubocurarine (Curare)	Metubin	2	A
Tolmetin	Tolectin	3	B	Tybamate	Benvil, Nospan, etc.	2	A
Topiramate	Topamax	2	A	Urethane		2	A
Torseamide (Torasemide)	Demadex	3	A	Valdecoxib		2	A
Tramadol	Ultram	2	A	Valerenic acid		3	A
Trandolapril (and metabolite, trandolaprilat)	Tarka	3	B	Valnoctamide	Nirvanyl	2	A
Tranexamic acid		4	C	Valsartan	Diovan	3	B
Tranlycypromine	Parnate	2	A	Vardenafil	Levitra	3	A
Trazodone	Desyrel	2	A	Vedaprofen		4	B
Trenbolone	Finoplix	3	B	Venlafaxine	Efflexor	2	A
Tretoquinol	Inolin	2	A	Veralipride	Accional, Veralipril	2	A
Triamcinolone	Vetalog, etc.	4	C	Verapamil	Calan, Isoptin	4	B
Triamterene	Dyrenium	4	B	Vercuronium	Norcuron	2	A
Triazolam	Halcion	2	A	Viloxazine	Catatrol, Vivalan, etc.	2	A
Tribromethanol		2	A	Vinbarbital	Delvinol	2	A
Tricaine methanesulfonate	Finquel	2	A	Vinylbital	Optanox, Speda	2	A
Trichlormethiazide	Naqua, Naquasone	4	C	Warfarin	Coumadin, Coufarin	5	C

Alphabetical List

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Xylazine	Rompun, Bay Va 1470	3	B				
Xylometazoline	Otrivin	4	B				
Yohimbine		2	A				
Zafirlukast	Accolate	4	C				
Zaleplon	Sonata	2	A				
Zeranol	Ralgro	4	C				
Ziconotide		1	A				
Zileuton	Zyflo	4	C				
Zilpaterol hydrochloride	Zilpaterol	3	A				
Ziprasidone	Geoden	2	A				
Zolazepam		2	A				
Zolmitriptan	Zomig	3	B				
Zolpidem	Ambien, Stilnox	2	A				
Zomepirac	Zomax	2	A				
Zonisamide	Zonegran	3	B				
Zopiclone	Imovan	2	A				
Zotepine	Lodopin	2	A				
Zuclopenthixol	Ciatyl, Cesordinol	2	A				
Δ -1-androstene-3, 17-diol		3	A				
Δ -1-androstene-3, 17-dione		3	A				
Δ -1-dihydrotestosterone		3	A				

Listing By Classification

Class 1: Stimulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Many of these agents are Drug Enforcement Agency (DEA) Schedule II substances. These include the following drugs and their metabolites: Opiates, opium derivatives, synthetic opioids, psychoactive drugs, all DEA Schedule 1* substances (see <http://www.usdoj.gov/dea/pubs/scheduling.html>), amphetamines and amphetamine-like drugs as well as related drugs, including but not limited to apomorphine, nikethamide, mazindol, pemoline, and pentylenetetrazol.

Drug	Trade Name(s)	Class	Penalty	Drug	TradeName(s)	Class	Penalty
Alfentanil	Alfenta	1	A	Levorphanol	Levo-Dremoran	1	A
Amphetamine		1	A	Lofentanil		1	A
Anileridine	Leritine	1	A	Mazindol	Sanorex	1	A
Apomorphine		1	A	Meperidine	Demerol	1	A
Benzylpiperazine (BZP)		1	A	Mephentermine	Wyamine	1	A
Carfentanil		1	A	Metaraminol	Aramine	1	A
Cathinone		1	A	Methadone	Dolophine	1	A
a-Cobratoxin		1	A	Methamphetamine	Desoxyn	1	A
Cocaine		1	B	Methaqualone	Quaalude	1	A
Codeine		1	A	Methcathinone		1	A
DEA Schedule 1 (all)*				Methylphenidate	Ritalin	1	A
Dextromoramide	Palfium, Narcolo	1	A	Metopon (methyldihydromorphinone)		1	A
Diamorphine		1	A	Morphine		1	B
Donepezil	Aricept	1	A	Nikethamide	Coramine	1	A
Endorphins		1	A	Oxycodone	Percodan	1	A
Enkephalins		1	A	Oxymorphone	Numorphan	1	A
Ethylmorphine	Dionin	1	A	Pemoline	Cylert	1	A
Etorphine HCl	M99	1	A	Pentylenetetrazol	Metrazol, Nioric	1	A
Fentanyl	Sublimaze	1	A	Phenazocine	Narphen	1	A
Heroin		1	A	Phencyclidine (PCP)	Sernylan	1	A
Hydrocodone (dihydrocodienone)	Hydocane	1	A	Phendimetrazine	Bontril, etc.	1	A
Hydromorphone	Dilaudid	1	A	Phenmetrazine	Preludin	1	A
Hydroxyamphetamine	Paradrine	1	A	Picrotoxin		1	A
				Pirritamide		1	A

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Drug	Trade Name(s)	Class	Penalty	Drug	TradeName(s)	Class	Penalty
Remifentanil	Ultiva	1	A				
Strychnine		1	B				
Sufentanil	Sufenta	1	A				
Ziconotide		1	A				

Listing by Classification

Class 2: Drugs that have a high potential to affect performance, but less of a potential than Class 1. These drugs are 1) not generally accepted as therapeutic agents in racing horses, or 2) they are therapeutic agents that have a high potential for abuse.

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Acecarbromal		2	A	Benzactizine	Deprol, Bronchodiletten	2	A
Acetophenazine	Tindal	2	A	Benzoctamine		2	A
Adinazolam		2	A	Benzodiazepines		2	A
Alclofenac		2		Benzphetamine	Didrex	2	A
Alcuronium	Alloferin	2	A	Benztropine	Cogentin	2	A
Alphaprodine	Nisentil	2	A	Biriperone		2	A
Alpidem	Anaxyl	2	A	Brimonidine		2	A
Alprazolam	Xanax	2	A	Bromazepam	Lexotan, Lectopam	2	A
Althesin	Saffan	2	A	Bromisovalum	Diffucord, etc.	2	A
Amisulpride	Solian	2	A	Bromocriptine	Parlodel	2	A
Amitriptyline	Elavil, Amitril, Endep	2	A	Bromperidol	Bromidol	2	A
Amobarbital	Amytal	2	A	Brotizolam	Brotocol	2	A
Amoxapine	Asendin	2	A	Bupivacaine	Marcaine	2	A
Amperozide		2	A	Buprenorphine	Temgesic	2	A
Anilopam	Anisine	2	A	Buspirone	Buspar	2	A
Aprobarbital	Alurate	2	A	Buspropion	Wellbutrin	2	A
Articaine	Septocaine; Ultracaine, etc.	2	A	Butabarbital	Butacaps, Butasol, etc.	2	A
Atomoxetine	Strattera	2	A	Butalbital (Talbutal)	Fiorinal	2	A
Atracurium	Tracrium	2	A	Butanilicaine	Hostacaln	2	A
Azacylonol	Frenque	2	A	Butaperazine	Repoise	2	A
Azaperone	Stresnil, Suicalm, Fentaz	2	A	Butoctamide	Listomin	2	A
Barbital	Veronal	2	A	Caffeine		2	B
Barbiturates		2	A	Camazepam	Paxor	2	A
Bemegrade	Megimide, Mikedimide	2	A	Captodiamine	Covatine	2	A
Benoxaprofen		2	A	Carbidopa + levodopa	Sinemet	2	A
Benperidol	Anquil	2	A	Carbromol	Mifudorm	2	A
Bentazepam	Tiadipona	2	A	Carisoprodol	Soma, Rela	2	B

Listing by Classification

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Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Carphenazine	Proketazine	2	A	Corticaine	Ultracain	2	A
Carpipramine	Prazinil	2	A	Crotetamide		2	A
Carticaine (see articaine)	Septocaine; Ultracaine, etc.	2	A	Cyamemazine	Tercian	2	A
Chloralose (Alpha-Chloralose)		2	A	Cyclobarbital	Phanodorm	2	A
Chloral betaine	Beta-Chlor	2	A	Darbepoetin	Aranesp	2	A
Chloral hydrate	Nactec, Oridrate, etc.	2	A	Decamethonium	Syncurine	2	A
Chloraldehyde (chloral)		2	A	Demoxepam		2	A
Chlordiazepoxide	Librium	2	A	Desipramine	Norpromine, Pertofrane	2	A
Chlormezanone	Trancopal	2	A	Dezocine	Dalgan®	2	A
Chloroform		2	A	Diazepam	Valium	2	B
Chlorhexidol		2	A	Dichloralphenazone	Febenol, Isocom	2	A
Chloroprocaine	Nesacaine	2	A	Diethylpropion	Tepanil, etc.	2	A
Chlorproethazine	Newiplege	2	A	Diethylthiambutene	Themalon	2	A
Chlorpromazine	Thorazine, Largactil	2	A	Dihydrocodeine	Parcodin	2	A
Chlorprothixene	Taractan	2	A	Dilorazepam	Briantum	2	A
Citalopram	Celex	2	A	Diprenorphine	M50/50	2	A
Clobazam	Urbanyl	2	A	Dixyrazine	Esucos	2	A
Clocapramine		2	A	Dopamine	Intropin	2	A
Clomethiazole		2	A	Doxacurium	Nuromax	2	A
Clomipramine	Anafranil	2	A	Doxapram	Dopram	2	A
Clonazepam	Klonopin	2	A	Doxefazepam	Doxans	2	A
Clorazepate	Tranxene	2	A	Doxepin	Adapin, Sinequan	2	A
Clothiapine	Entermin	2	A	Droperidol	Inapsine, Droleptan,	2	A
Clotiazepam	Trecalmo, Rize	2	A	Duloxetine		2	A
Cloxazolam	Enadel, Sepazon, Tolestan	2	A	Enciprazine		2	A
Clozapine	Clozaril, Leponex	2	A	Ephedrine		2	A
Conorphone		2	A	Epibatidine		2	A

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Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
				Class			
Epinephrine		2	A	Fluoxetine	Prozac	2	A
Ergoloid Mesylates (dihydroergocornine Mesylate, dihydroergocristine mesylate and dihydroergocryptine mesylate)	Hydergine	2	A	Flupenthixol	Depixol, Fluanxol	2	A
Erythropoietin (EPO)	Epogen, Procrit, etc.	2	A	Fluphenazine	Prolixin, Permitil, Anatenzol,	2	A
Estazolam	Domnamid, Eurodin, Nuclalon	2	A	Flurazepam	Dalmane	2	A
Ethamivan		2	A	Fluspirilene	Imap, Redeptin	2	A
Ethanol		2	A	Flutoprazepam	Restas	2	A
Ethchlorvynol	Placidyl	2	A	Fluvoxamine	Dumirox, Faverin, etc.	2	A
Ethinamate	Valmid	2	A	Galantamine	Reminyl	2	A
Ethopropazine	Parsidol	2	A	Gallamine	Flaxedil	2	A
Ethylisobutrazine	Diquel	2	A	Gepirone		2	A
Etidocaine	Duranest	2	A	Glutethimide	Doriden	2	A
Etifoxin	Stresam	2	A	Halazepam	Paxipam	2	A
Etizolam	Depas, Pasaden	2	A	Haloperidol	Haldol	2	A
Etodroxizine	Indunox	2	A	Haloxazolam	Somelin	2	A
Etomidate		2	A	Hemoglobin glutamers	Oxyglobin, Hemopure	2	A
Fenarbamate	Tymium	2	A	Hexafluorenium	Myalexen	2	A
Fenclozic Acid	Cincopal	2	A	Hexobarbital	Evipal	2	A
Fenfluramine	Pondimin	2	A	Homophenazine	Pelvichthol	2	A
Fluanisone	Sedalande	2	A	Hydroxyzine	Atarax	2	B
Fludiazepam	Erispam	2	A	Ibomal	Noctal	2	A
Flunitrazepam	Rohypnol, Narcozep, Darkene, Hypnodorm	2	A	Imipramine	Imavate, Presamine,	2	A
Flupromazine	Psyquil, Siquil	2	A	Isapirone		2	A
Fluoresone	Caducid	2	A	Isocarboxazid	Marplan	2	A
				Isomethadone		2	A
				Isoproterenol	Isoprel	2	A
				Isoxicam	Maxicam	2	A
				Ketamine	Ketalar, Ketaset, Vetalar	2	B

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Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Ketazolam	Anxon, Laftram, Solatran, Loftran	2	A	Mesoridazine	Serentil	2	A
Lenperone	Elanone-V	2	A	Metaclozepam	Talis	2	A
Levamisole		2	B	Metazocine		2	A
Levomethorphan		2	A	Metharbital	Gemonil	2	A
Lidocaine	Xylocaine	2	B	Methohexital	Brevital	2	A
Lithium	Lithizine, Duralith, etc.	2	A	Methotrimeprazine	Levoprome, Neurocil, etc.	2	A
Lobeline		2	A	Methypylon	Noludar	2	A
Loflazepate, Ethyl	Victan	2	A	Metocurine	Metubine	2	A
Loperamide	Imodium	2	A	Metomidate	Hypnodil	2	A
Loprazolam	Dormonort, Havlane	2	A	Mexazolam	Melex	2	A
Lorazepam	Ativan	2	A	Midazolam	Versed	2	A
Lormetazepam	Noctamid	2	A	Mirtazepine	Remeron	2	A
Loxapine	Laxitane	2	A	Mivacurium	Mivacron	2	A
Maprotiline	Ludiomil	2	A	Modafinil	Provigil	2	A
Mebutamate	Axiten, Dormate, Capla	2	A	Molindone	Moban	2	A
Meclofenoxate	Lucidril, etc.	2	A	Moperone	Luvatren	2	A
Medazepam	Nobrium, etc.	2	A	Mosaprimine		2	A
Melperone	Eunerpan	2	A	Nalbuphine	Nubain	2	A
Memantine	Namenda	2	A	Nalorphine	Nalline, Lethidrone	2	A
Meparfynol	Oblivon	2	A	Nefazodone	Serzone	2	A
Mepazine	Pacatal	2	A	Nimetazepam	Erimin	2	A
Mephenoqualone	Control, etc.	2	A	Nitrazepam	Mogadon	2	A
Mephénytoin	Mesantoin	2	A	Nordiazepam	Calmday, Nordaz, etc.	2	A
Mephobarbital	Mebaral	2	A	Norepinephrine		2	A
Mepivacaine	Carbocaine	2	B	Nortriptyline	Aventyl, Pamelor	2	A
Meprobamate	Equanil, Miltown	2	A	Olanzapine	Zyprexa	2	A
				Oxazepam	Serax	2	A

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Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Oxazolam	Serenal	2	A	Pipequaline		2	A
Oxlofrine (hydroxyephedrine)		2	A	Piperacetazine	Psymod, Quide	2	A
Oxyperitine	Forit, Integrin	2	A	Piperocaine	Metycaine	2	A
Paliperidone		2	A	Pipotlazine	Lonseren, Piportil	2	A
Pancuronium	Pavulon	2	A	Pipradrol	Dataril, Gerondyl, etc.	2	A
Paraldehyde	Paral	2	A	Piquindone		2	A
Paroxetine	Paxil, Seroxat	2	A	Prazepam	Verstran, Centrax	2	A
Penfluridol	Cyperon	2	A	Prilocaine	Citanest	2	A
Pentobarbital	Nembutal	2	A	Prochlorperazine	Darbazine, Compazine	2	A
Perazine	Taxilan	2	A	Propanidid		2	A
Perfluorodecolin		2	A	Propiomazine	Largon	2	A
Perfluorodecahydronophthalene		2	A	Propionylpromazine	Tranvet	2	A
Perfluorooctylbromide		2	A	Propiram		2	A
Perfluorotripropylamine		2	A	Propofol	Diprivan, Disoprivan	2	A
Perfluorocarbons		2	A	Propoxycaine	Ravocaine	2	A
Periciazine	Alodept, etc.	2	A	Prothipendyl	Dominal	2	A
Perlazine	Hypnodin	2	A	Protriptyline	Concordin, Triptil	2	A
Perphenazine	Trilafon	2	A	Proxibarbitol	Axeen, Centralgol	2	A
Phenaglycodol	Acalo, Alcamid, etc.	2	A	Pyrrithyldione	Hybersulfan, Sonodor	2	A
Phenelzine	Nardelzine, Nardil	2	A	Quazipam	Doral	2	A
Phenobarbital	Luminal	2	A	Quetiapine	Seroquel	2	A
Phentermine	Iomamin	2	A	Racemethorphan		2	A
Piminodine	Alvodine, Cimadon	2	A	Racemorphan		2	A
Pimozide	Orap	2	A	Raclopride		2	A
Pinazepam	Domar	2	A	Remoxipride	Roxiam	2	A
Pipamperone	Dipiperon	2	A	Reserpine	Serpasil	2	A
Pipecuronium	Arduan	2	A	Rilmazafone		2	A

Listing by Classification

Class 2: Drugs that have a high potential to affect performance, but less of a potential than Class 1. These drugs are 1) not generally accepted as therapeutic agents in racing horses, or 2) they are therapeutic agents that have a high potential for abuse.

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Risperidone		2	A	Thebaine		2	A
Ritanserlin		2	A	Thialbarbital	Kemithal	2	A
Rivastigmine	Exelon	2	A	Thiamylal	Surital	2	A
Rocuronium	Zemuron	2	A	Thiethylperazine	Torecan	2	A
Rofecoxib	Vioxx	2	A	Thiopental	Pentothal	2	A
Romifidine	Sedivet	2	B	Thiopropazate	Dartal	2	A
Ropivacaine	Naropin	2	A	Thiopropazine	Majeptil	2	A
Secobarbital	Seconal	2	A	Thioridazine	Mellaril	2	A
Selegiline	Eldepryl, Jumex	2	A	Thiothixene	Navane	2	A
Sertraline	Lustral, Zoloft	2	A	Tiapride	Italprid, Luxoben, etc.	2	A
Snake Venoms		2	A	Tiletamine	Component of Telazol	2	A
Somatrem	Protropin	2	A	Timiperone	Tolopelon	2	A
Somatropin	Nutropin	2	A	Tofisopam	Grandaxain, Seriel	2	A
Spiclomazine		2	A	Topirimate	Topamax	2	A
Spiperone		2	A	Tramadol	Ultram	2	A
Succinylcholine	Sucostrin, Quelin, etc.	2	A	Tranylcypromine	Parnate	2	A
Sulfondiethylmethane		2	A	Trazodone	Desyrel	2	A
Sulfonmethane		2	A	Tretoquinol	Inolin	2	A
Sulforidazine	Inofal	2	A	Triazolam	Halcion	2	A
Sulpiride	Aiglonyl, Sulpitil	2	A	Tribromethanol		2	A
Sultopride	Barnetil	2	A	Tricaine methanesulfonate	Finquel	2	A
Talbutal	Lotusate	2	A	Trichloroethanol		2	A
Tandospirone		2	A	Trichloroethylene	Trilene, Trimar	2	A
Temazepam	Restoril	2	A	Triclofos	Triclos	2	A
Tetrabenazine	Nitoman	2	A	Trifluomeprazine	Nortran	2	A
Tetracaine	Pontocaine	2	A	Trifluoperazine	Stelazine	2	A
Tetrazepam	Musaril, Myolastin	2	A	Trifluoperidol	Triperidol	2	A

Listing by Classification

Class 2: Drugs that have a high potential to affect performance, but less of a potential than Class 1. These drugs are 1) not generally accepted as therapeutic agents in racing horses, or 2) they are therapeutic agents that have a high potential for abuse.

Drug	Trade Name(s)	Class	Penalty Class	Drug	Trade Name(s)	Class	Penalty Class
Triflupromazine	Vetame, Vesprin	2	A				
Trimipramine	Surmontil	2	A				
Tubocurarine (Curare)	Metubin	2	A				
Tybamate	Benvil, Nospan, etc.	2	A				
Urethane		2	A				
Valdecoxib		2	A				
Valnoctamide	Nirvanyl	2	A				
Venlafaxine	Efflexor	2	A				
Veralipride	Accional, Veralipril	2	A				
Vercuronium	Norcuron	2	A				
Viloxazine	Catatrol, Vivalan, etc.	2	A				
Vinbarbital	Delvinol	2	A				
Vinylbital	Optanox, Speda	2	A				
Yohimbine		2	A				
Zaleplon	Sonata	2	A				
Ziprasidone	Geodon	2	A				
Zolazepam		2	A				
Zolpidem	Ambien, Stilnox	2	A				
Zomepirac	Zomax	2	A				
Zopiclone	Imovan	2	A				
Zotepine	Lodopin	2	A				
Zuclopenthixol	Ciatyl, Cesordinol	2	A				

Listing by Classification

Class 3: Drugs that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2.

Drug	Trade Name(s)	Class	Penalty Class	Drug	Trade Name(s)	Class	Penalty Class
Acebutolol	Sectral	3	B	Brimonidine	Alphagan	3	B
Acepromazine	Atrovet, Notensil, PromAce®	3	B	Bromfenac	Duract	3	A
Albuterol (Salbutamol)	Proventil, Ventolin	3	B	Bromodiphenhydramine		3	B
Almotriptan	Axert	3	A	Bufexamac		3	A
Alprenolol		3	A	Bumetanide	Bumex	3	B
Ambenonium	Mytelase, Myeuran	3	B	Butorphanol	Stadol, Torbugesic	3	B
Aminophylline	Aminophyllin, etc.	3	B	N-Butylscopolamine		3	B
Amitraz	Mitaban	3	A	Calusterone		3	B
Amlodipine	Norvasc	3	A	Candesartan	Atacand	3	B
Amyl nitrite		3	A	Captopril	Capolen	3	B
Arecoline		3	A	Carazolol	Carbacel, Conductor	3	A
Arformoterol		3	A	Carbachol	Lentin, Doryl	3	B
Atenolol	Tenormin	3	B	Carbamezapine	Tegretol	3	B
Atropine		3	B	Carbinoxamine	Clistin	3	B
Benazeprilat, Benazepril and MC-Tab	Lotensin	3	A	Carteolol	Cartrol	3	B
Betaxolol	Kerlone	3	B	Carvedilol	Coreg	3	B
Bethanidine	Esbatal	3	A	Celecoxib	Celebrex	3	B
Biperiden	Akineton	3	A	Cimeterol		3	A
Bisoprolol	Zebeta, Bisobloc, etc.	3	B	Clemastine	Tavist	3	B
Bitolterol	Effectin	3	A	Clenbuterol	Ventipulmin	3	B
Bolasterone		3	A	Clidinium	Quarezan, Clindex, etc.	3	B
Boldenone	Equipoise	3	B	Clonidine	Catapres	3	B
Boldione		3	A	Clostebol		3	B
Bretylium	Bretylol	3	B	Cyclandelate	Cyclospasmol	3	A

Listing by Classification

Class 3: Drugs that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2.

Drug	Trade Name(s)	Class	Penalty Class	Drug	Trade Name(s)	Class	Penalty Class
Cycrimine	Pagitane	3	B	Etamiphylline		3	B
Danazol	Danocrine	3	B	Ethacrynic acid	Edecrin	3	B
Dehydrochloromethyltestosterone		3	B	Ethosuximide	Zarontin	3	A
Deracoxib	Deremaxx	3	B	Ethylestrenol	Maxibolin, Organon	3	B
Desoxymethyltestosterone		3	B	Ethylnorepinephrine	Bronkephrine	3	A
Detomidine	Dormosedan	3	B	Etodolac	Lodine	3	B
Dextropropoxyphene	Darvon	3	B	Felbamate	Felbatol	3	A
Diazoxide	Proglycem	3	B	Fenbufen	Cincopal	3	B
Diflunisal		3	B	Fenoldopam	Corlopam	3	B
Dimefline		3	A	Fenopropfen	Naifon	3	B
Diphenhydramine	Benadryl	3	B	Fenoterol	Berotec	3	B
Dipyridamole	Persantine	3	B	Fenspiride	Respiride, Respan, etc	3	B
Divalproex	Depakote	3	A	Fentiazac		3	B
Dobutamine	Dobutrex	3	B	Flurbiprofen	Froben	3	B
Doxazosin		3	A	Flufenamic Acid		3	B
Doxylamine	Decapryn	3	B	Fluoxymesterone	Halotestin	3	B
Dromostanolone	Drolban	3	B	Flupirtine	Katadolone	3	A
Dyphylline		3	B	Formebolone		3	B
Edrophonium	Tensilon	3	B	Formoterol	Altram	3	B
Eletripan	Relpax	3	A	Fosinopril, Fosinoprilat	Monopril	3	A
Enalapril (metabolite enalaprilat)	Vasotec	3	B	Fosphenytoin	Cerebyx	3	B
Ergoloid mesylates		3	B	Furazabol		3	B
Erthrityl tetranitrate	Cardilate	3	A	Gabapentin	Neurontin	3	B
Esmoiol	Brevibloc	3	B	Gestrinone		3	A
				Glycopyrrolate	Robinul	3	B

Listing by Classification

Class 3: Drugs that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2.

Drug	Trade Name(s)	Class	Penalty Class	Drug	Trade Name(s)	Class	Penalty Class
Guanadrel	Hylorel	3	A	Mefenamic Acid	Ponstel	3	B
Guanethidine	Ismelin	3	A	Mepenzolate	Cantil	3	A
Guanabenz	Wytensin	3	B	Mestanolone		3	B
Heptaminol	Corofundol	3	B	Mesterolone		3	B
Homatropine	Homapin	3	B	Metaproterenol	Alupent, Metaprel	3	B
Hydralazine	Apresoline	3	B	Metenolone		3	B
4-Hydroxytestosterone		3	B	Methacholine		3	A
Ibutilide	Corvert	3	B	Methandienone		3	B
Iloprost	Ventavis	3	A	Methandriol	Probolac	3	B
Indomethacin	Indocin	3	B	Methandrostenolone	Dianabol	3	A
Ipratropium		3	B	Methantheline	Banthine	3	B
Irbesarten	Avapro	3	A	Methasterone		3	A
Isoetharine	Bronkosol	3	B	Methixene	Trest	3	A
Isosorbide dinitrate	Isordil	3	B	Methoxamine	Vasoxyl	3	A
Kebuzone		3	B	Methoxyphenamine	Orthoxide	3	A
Ketorolac	Toradol	3	A	Methsuximide	Celontin	3	A
Labetalol	Normodyne	3	B	Methylatropine		3	B
Lamotrigine	Lamictal	3	A	Methyldienolone		3	B
Levobunolol	Betagan	3	B	Methyldopa	Aldomet	3	A
Lisinopril	Prinivil, Zestril	3	A	Methylnortestosterone		3	B
Losartan	Hyzaar	3	B	Methyltestosterone	Metandren	3	A
Mabuterol		3	A	Methyl-1-testosterone		3	A
Mecamylamine	Inversine	3	B	Metolazone		3	B
Medetomidine	Domitor	3	B	Metoprolol	Lopressor	3	B
				Mibefradil	Posicor	3	B

Listing by Classification

Class 3: Drugs that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2.

Drug	Trade Name(s)	Class	Penalty Class	Drug	Trade Name(s)	Class	Penalty Class
Mibolerone		3	B	Oxandrolone	Anavar	3	B
Midodrine	Pro-Amiline	3	B	Oxcarbazepine	Trileptal	3	A
Minoxidil	Loniten	3	B	Oxprenolol	Trasicor	3	B
Moexipril (metabolite moexiprilat)	Uniretic	3	B	Oxymesterone		3	B
Muscarine		3	A	Oxymetholone	Adroyd, Anadrol	3	B
Nabumetone	Anthraxan, Relafen, Reliflex	3	A	Papaverine	Pavagen, etc.	3	A
Nadolol	Corgard	3	B	Paramethadione	Paradione	3	A
Naloxone	Narcan	3	A	Pargyline	Eutonyl	3	A
Naltrexone	Revia	3	A	Penbutolol	Levatol	3	B
Nandrolone	Nandrolin, Laurabolin, Durabolin	3	B	Pentaerythritol tetranitrate	Duotrate	3	A
Naratriptan	Amerge	3	B	Pentazocine	Talwin	3	B
Nebivolol		3	A	Perindopril	Biprel	3	A
Nefopam		3	A	Phenoxybenzamine	Dibenzyline	3	B
Neostigmine	Prostigmine	3	B	Phentolamine	Regitine	3	B
Niflumic Acid	Nifuril	3	B	Phenylephrine	Isophrin, Neo-Synephrine	3	B
Nimesulide		3	B	Phenylpropanolamine	Propadrine	3	B
Nitroglycerin		3	B	Physostigmine	Eserine	3	B
19-Norandrostenediol		3	B	Pindolol	Viskin	3	A
19-Norandrostenedione		3	B	Pirbuterol	Maxair	3	A
Norbolethone		3	B	Piretanide	Arelix, Tauliz	3	B
Norclostebol		3	B	Piroxicam	Feldene	3	B
Norethandrolone		3	A	Prazosin	Minipress	3	B
Nylidrine	Aridin	3	A	Primidone	Mysoline	3	B
Olmesartan	Benicar	3	A	Procaine		3	B
Oxabolone		3	B				

Listing by Classification

Class 3: Drugs that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2.

Drug	Trade Name(s)	Class	Penalty Class	Drug	Trade Name(s)	Class	Penalty Class
Procaterol	Pro Air	3	A	Stanozolol	Winstrol-V	3	B
Procyldine	Kemadrin	3	B	Stenbolone		3	B
Promazine	Sparine	3	B	Sulindac	Clinoril	3	A
Promethazine	Phenergan	3	B	Sumatriptan	Imitrex	3	B
Propantheline	Pro-Banthine	3	A	Tadalafil	Cialis	3	A
Propentophylline	Karsivan	3	B	Telmisartan	Micardis	3	B
Propranolol	Inderal	3	B	Tenoxicam	Alganex, etc.	3	B
Prostanazol		3	B	Tepoxalin		3	B
Protokylol	Ventaire	3	A	Terazosin	Hytrin	3	A
Pseudoephedrine	Cenafed, Novafed	3	B	Terbutaline	Brethine, Bricanyl	3	B
Pyridostigmine	Mestinon, Regonol	3	B	Testolactone	Teslac	3	B
Pyrilamine	Neoantergan, Equihist	3	A	Testosterone		3	B
Quinapril, Quinaprilat	Accupril	3	A	Tetrahydrogestrinone		3	A
Quinbolone		3	B	Theophylline	Aqualphyllin, etc.	3	B
Ractopamine	Raylean	3	A	Tiaprofenic Acid	Surgam	3	B
Ramipril, metabolite Ramiprilat	Altace	3	A	Timolol	Blocardrin	3	B
Ritodrine	Yutopar	3	B	Tolazoline	Priscoline	3	B
Rizatriptan	Maxalt	3	B	Tolmetin	Tolectin	3	B
Salmeterol		3	B	Torseamide (Torasemide)	Demadex	3	A
Scopolamine (Hyoscine)	Triptone	3	B	Trandolapril (and metabolite, Trandolaprilat)	Tarka	3	B
Sibutramine	Meridia	3	B	Trenbolone	Finoplix	3	B
Sildenafil	Viagra	3	A	Trihexylphenidyl	Artane	3	A
Sotalol	Betapace, Sotacor	3	B	Trimethadione	Tridione	3	B
Spirapril, metabolite Spiraprilat	Renomax	3	A				

Listing by Classification

Class 3: Drugs that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2.

Drug	Trade Name(s)	Class	Penalty Class	Drug	Trade Name(s)	Class	Penalty Class
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Trimethaphan	Arfonad	3	A
Tripelennamine	PBZ	3	B
Valerenic acid		3	A
Valsartan	Diovan	3	B
Vardenafil	Levitra	3	A
Xylazine	Rompun, Bay Va 1470	3	B
Zilpaterol hydrochloride	Zilpaterol	3	A
Zolmitriptan	Zomig	3	B
Zonisamide	Zonegran	3	B
Δ -1-androstene-3, 17-diol		3	A
Δ -1-androstene-3, 17-dione		3	A
Δ -1-dihydrotestosterone		3	A

Listing by Classification

Class 4: This class includes therapeutic medications that would be expected to have less potential to affect performance than those in Class 3.

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Acetaminophen (Paracetamol)	Tylenol, Tempra, etc.	4	C	Benoxinate	Dorsacaine	4	C
Acetanilid		4	B	Benzocaine		4	B
Acetazolamide	Diamox, Vetamox	4	B	Benzthiazide		4	B
Acetophenetidin (Phenacetin)		4	B	Bepidil	Bepadin	4	B
Acetylsalicylic acid (Aspirin)		4	C	Betamethasone	Betasone, etc.	4	C
Adomethasone	Aciovate	4	C	Bethanechol	Urecholine, Duvoid	4	C
Adrenochrome monosemicarbazone salicylate		4	B	Bromhexine	Oletor, etc.	4	B
Aldosterone	Aldocortin, Electro cortin	4	B	Brompheniramine	Dimetane, Disomer	4	B
Ambroxol	Ambril, etc.	4	B	Budesonide	Pulmacort, Rhinocort	4	B
Amcinonide	Cyclocort	4	C	Butacaine	Butyn	4	C
Amiloride	Moduretic; Midamor	4	B	Butamben (butyl aminobenzoate)	Butesin	4	C
Aminocaproic acid	Amicar, Caprocid	4	C	Butoxycaine	Stadacain	4	B
Aminodarone		4	B	Camphor		4	C
2-Aminoheptaine	Tuamine	4	B	Carprofen	Rimadyl	4	B
Aminopyrine		4	B	Cetirizine	Zyrtec	4	B
Amisometradine	Rolictron	4	B	Chlomerodrin	Neohydrin	4	B
Amlopidine	Norvasc, Ammivin	4	B	Chlorophenesin	Maolate	4	C
Amrinone		4	B	Chloroquine	Avloclor	4	C
Anisotropine	Valpin	4	B	Chlorothiazide	Diuril	4	B
Antipyrine		4	B	Chlorpheniramine	Chlortriemton, etc.	4	B
Apazone (Azapropazone)	Rheumox	4	B	Chlorthalidone	Hydroton	4	B
Aprindine		4	B	Chlorzoxazone	Paraflex	4	B
Baclofen	Lioresal	4	B	Ciclesonide		4	B
Beclomethasone	Propaderm	4	C	Cinchocaine	Nupercaine	4	C
Benazepril	Lotrel	4	B	Clanobutin		4	B
Bendroflumethiazide	Naturetin	4	B	Clibucaine	Batrax	4	C
				Clobetasol	Temovate	4	C

Listing by Classification

Class 4: This class includes therapeutic medications that would be expected to have less potential to affect performance than those in Class 3.

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Clocortolone	Cloderm	4	C	Dimethisoquin	Quotane	4	B
Clofenamide		4	B	Dimethylsulfoxide (DMSO)	Domoso	4	C
Clormecaine	Placacid	4	C	Diphenoxylate	Difenoxin, Lomotil	4	B
Colchicine		4	B	Dipyron	Novin, Methampyrone	4	C
Cortisone	Cortone, etc.	4	C	Disopyramide	Norpace	4	B
Cyclizine	Merazine	4	B	Dyclonine	Dyclone	4	C
Cyclobenzaprine	Flexeril	4	B	Eltenc		4	C
Cyclomethylcaine	Surfacaine	4	C	Ergonovine	Ergotrate	4	C
Cyclothiazide	Anhydron, Renazide	4	B	Ergotamine	Gynergen, Cafergot, etc.	4	B
Cyproheptadine	Periactin	4	C	Etanercept	Enbrel	4	B
Dantrolene	Dantrium	4	C	Ethoheptazine	Zactane	4	B
Dembroxol (Dembrexine)	Sputolysin	4	C	Ethotoin	Peganone	4	B
Deoxycorticosterone	Percortin, DOCA, Descotone, Dorcostrin	4	C	Ethoxzolamide	Cardrase, Ethamide	4	C
Desonite	Des Owen	4	C	Ethylaminobenzoate (Benzocaine)	Semets, etc.	4	C
Desoximetasone	Topicort	4	C	Felodipine	Plendil	4	B
Dexamethasone	Azium, etc.	4	C	Fexofenadine	Allegra	4	C
Dextromethorphan		4	B	Firocoxib		4	B
Dibucaine	Nupercainal, Cinchocaine	4	C	Flecainide	Idalon	4	B
Dichlorphenamide	Daramide	4	C	Floctafenine	Idalon, Idarac	4	B
Diclofenac	Voltaren, Voltarol	4	C	Flucinolone	Synalar, etc.	4	C
Diflorasone	Florone, Maxiflor	4	C	Fludrocortisone	Alforone, etc.	4	C
Diflucortolone	Flu-Cortinest, etc.	4	C	Flumethasone	Flucort, etc.	4	C
Digitoxin	Crystodigin	4	B	Flumethiazide	Ademol	4	B
Digoxin	Lanoxin	4	B	Flunarizine	Sibelium	4	B
Dihydroergotamine		4	B	Flunisolide	Bronilide, etc.	4	C
Diltiazem	Cardizem	4	B	Flunixin	Banamine	4	C*

Listing by Classification

Class 4: This class includes therapeutic medications that would be expected to have less potential to affect performance than those in Class 3.

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Fluocinolone	Synalar	4	C	Medrysone	Medriusar, etc.	4	C
Fluocinonide	Licon, Lidex	4	C	Meloxicam	Mobic	4	B
Fluorometholone	FML	4	B	Mephenesin	Tolserol	4	B
Fluoroprednisolone	Predef-2X	4	C	Meralluride	Mercuhydrin	4	B
Fluprednisolone	Alphadrol	4	C	Merbaphen	Novasural	4	B
Flurandrenolide	Cordan	4	C	Mercaptomerin	Thiomerin	4	B
Fluticasone	Flixonase, Flutide	4	C	Mercumaliin	Cumertilin	4	B
Guaifenesin (glycerol guaiacolate)	Gecolate	4	C	Mersalyl	Salyrgan	4	B
Halcinonide	Halog	4	C	Metaxalone	Skelaxin	4	B
Halobetasol	Ultravate	4	C	Methapyrilene	Histadyl, etc.	4	B
Hexocyclium	Tral	4	B	Methazolamide	Naptazane	4	C
Hexylcaine	Cyclaine	4	C	Methdilazine	Tacaryl	4	B
Hydrochlorothiazide	Hydrodiuril	4	B	Methocarbamol	Robaxin	4	B
Hydrocortisone (Cortisol)	Cortef, etc.	4	C	Methotrexate	Folex, Nexate, etc.	4	B
Hydroflumethiazide	Saluron	4	B	Methscopolamine	Pamine	4	B
Ibuprofen	Motrin, Advil, Nurpin, etc.	4	C	Methylchlorothiazide	Enduron	4	B
Infliximab	Remicade	4	B	Methylergonovine	Methergine	4	C
Isoflupredone	Predef	4	C	Methylprednisolone	Medrol	4	C
Isometheptene	Octin, Octon	4	B	Methysergide	Sansert	4	B
Isopropamide	Darbid	4	B	Metamide		4	B
Isoxsuprine	Vasodilan	4	C	Metoclopramide	Reglan	4	C
Isradipine	DynaCirc	4	B	Mexiltine	Mexill	4	B
Ketoprofen	Orudis	4	C*	Milrinone		4	B
Letosteine	Viscotiol, Visiotal	4	C	Mometasone	Elocon	4	C
Loratidine	Claritin	4	B	Montelukast	Singulair	4	C
Mecizine	Antivert, Bonine	4	B	Naepaine	Amylsine	4	C
Meclofenamic acid	Arquel	4	C	Naphazoline	Privine	4	B

Listing by Classification

Class 4: This class includes therapeutic medications that would be expected to have less potential to affect performance than those in Class 3.

Drug	Trade Name(s)	Class	Penalty	Drug	Trade Name(s)	Class	Penalty
Naproxen	Equiproxen, Naprosyn	4	C	Quinidine	Quinidex, Quinocardine	4	B
Nicardipine	Cardine	4	B	Salicylamide		4	C
Nifedipine	Procardia	4	B	Salicylate		4	C
Nimodipine	Nemotop	4	B	Spironalactone	Aldactone	4	B
Nortestosterone		4	C	Sulfasalazine	Azulfidine, Azaline	4	C
Olsalazine	Dipentum	4	B	Terfenadine	Seldane, Triludan	4	B
Orphenadrine	Norflex	4	B	Tetrahydrozoline	Tyzine	4	B
Oxaprozin	Daypro, Deflam	4	C	Theobromine		4	B
Oxymetazoline	Afrin	4	B	Thiosalicylate		4	C
Oxyphenbutazone	Tandearil	4	C	Thiphenamil	Trocinate	4	B
Oxyphencyclimine	Daricon	4	B	Tocainide	Tonocard	4	B
Oxyphenonium	Antrenyl	4	B	Tranexamic acid		4	C
Paramethasone	Haldrone	4	C	Triamcinolone	Vetalog, etc.	4	C
Pentoxyfylline	Trental, Vazofrin	4	C	Triamterene	Dyrenium	4	B
Phenacetamide	Phenurone	4	B	Trichlormethlazide	Naqua, Naquasone	4	C
Phensuximide	Milontin	4	B	Tridihexethyl	Pathilon	4	B
Phenylbutazone		4	C*	Trimeprazine	Temaril	4	B
Phenytoin	Dilantin	4	B	Tripolidine	Actidil	4	B
Polythiazide	Renese	4	B	Tuaminoheptane	Tuamine	4	C
Pramoxine	Tronothaine	4	C	Vedaprofen		4	B
Prednisolone	Delta-Cortef, etc.	4	C	Verapamil	Calan, Isoptin	4	B
Prednisone	Meticorten, etc.	4	C	Xylometazoline	Otrivin	4	C
Probenecid		4	C	Zafirlukast	Accolate	4	C
Procalnamide	Pronestyl	4	B	Zeranol	Ralgro	4	C
Propafenone	Rythmol	4	B	Zileuton	Zyflo	4	C
Proparacaine	Ophthaine	4	C				
Propylhexedrine	Benzedrex	4	B				

Listing by Classification

Class 5: This class includes those therapeutic medications for which concentration limits have been established by the racing jurisdictions as well as certain miscellaneous agents such as DMSO and other medications as determined by the regulatory bodies.

Drug	Trade Name(s)	Class	Penalty Class
------	---------------	-------	---------------

Anisindione		5	C
Cilostazol	Pletal	5	C
Cimetidine	Tagamet	5	D
Cromolyn	Intel	5	C
Dicumarol	Dicumarol	5	C
Dimethylsulphone (MSM)		5	C
Diphenadione		5	C
Esomeprazole	Nexium	5	D
Famotidine	Gaster, etc.	5	D
Lansoprazole		5	D
Mesalamine	Asacol	5	C
Misoprostel	Cytotec	5	C
Nedocromil	Tilade	5	C
Nizatidine	Axid	5	C
Omeprazole	Prilosec, Losec	5	D
Pantoprazole	Protonix	5	D
Phenindione	Hedulin	5	C
Phenprocoumon	Liquamar	5	C
Pirenzapine	Gastrozepin	5	C
Polyethylene glycol		5	C
Rabeprazole	Aciphex	5	C
Ranitidine	Zantac	5	D
Warfarin	Coumadin, Coufarin	5	C

Non-Classified Substances

Substances that are considered to have no effect on the physiology of a racing animal except to improve nutrition or treat or prevent infections or parasite infestations, are not classified. These Substances normally include antimicrobials, antiparasitic drugs, and nutrients such as vitamins. Examples of such substances include the following:

Sulfonamides and trimethoprim

Antibiotics:

Penicillins
Cephalosporins
Chloramphenicol
Aminoglycosides
Tetractckubes
Nitrofurans
Metronidazole

Anthelmintics:

Avermectins
Benzimidaziles
Piperazines
Pyrantel
Tetramisole

Antifungals

Vitamins:

A, D, E, K, B vitamins
Vitamin C

Bufotenine

1. It is not commercially available in any form.

2. It is a metabolite of 3-methyl-N-N dimethyltryptamine, found in reed canary grass (and potentially other food source plants). It may be found in the urine of horses eating this grass (and potentially other plant foods), and has been reported as a positive finding.

Findings of bufotenine in equine urine should not be considered for regulatory action.

TABLE 178-1 E

**PENALTY GUIDELINES
FOR VIOLATIONS OF
MEDICATION AND
PROHIBITED SUBSTANCES
RULE**

The following are recommended penalties for violations due to the presence of a drug carrying a Category "A" penalty.

1st Offense	2nd LIFETIME offense in any jurisdiction	3rd LIFETIME Offense in any jurisdiction
<p>Minimum six (6) month suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a one (1) year suspension.</p>	<p>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.</p>	<p>Minimum three (3) year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a five (5) year suspension.</p>
AND	AND	AND
<p>Minimum fine of \$1,000.00 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$5,000.00.</p>	<p>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.</p>	<p>\$5,000.00 fine</p>
AND	AND	AND
<p>May be referred to the Racing Commission for any further action deemed necessary by the Commission.</p>	<p>May be referred to the Racing Commission for any further action deemed necessary by the Commission.</p>	<p>May be referred to the Racing Commission for any further action deemed necessary by the Commission.</p>

1st Offense	2nd LIFETIME offense in any jurisdiction	3rd LIFETIME Offense in any jurisdiction
<p>Disqualification and loss of purse.</p>	<p>Disqualification and loss of purse.</p>	<p>Disqualification, loss of purse and \$5,000.00 fine.</p>
AND	AND	AND
<p>Horse may be placed on the veterinarian's list for ninety (90) days and must pass a Commission approved examination before becoming eligible to be entered.</p>	<p>Horse shall be placed on the veterinarian's list for one hundred twenty (120) days and must pass a Commission approved examination before becoming eligible to be entered.</p>	<p>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.</p>
		<p style="text-align: center;">AND</p> <p>Referral to the Commission with a recommended minimum suspension of ninety (90) days.</p>

The following are recommended penalties for violations due to the presence of a drug carrying a Category "B" penalty.

1st Offense (365 day period in any jurisdiction)	2nd offense (365 day period in any jurisdiction)	3rd Offense (365 day period in any jurisdiction)
<p>Minimum fifteen (15) day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a thirty (30) day suspension.</p>	<p>Minimum thirty (30) day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a forty-five (45) day suspension</p>	<p>Minimum forty-five (45) day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a sixty (60) day suspension</p>
AND	AND	AND
<p>No Fine.</p>	<p>Minimum fine of \$500.00 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$1,000.00.</p>	<p>Minimum fine of \$1,000.00 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$2,000.00.</p>
AND	AND	AND
<p>May be referred to the Racing Commission for any further action deemed necessary by the Commission.</p>	<p>May be referred to the Racing Commission for any further action deemed necessary by the Commission.</p>	<p>May be referred to the Racing Commission for any further action deemed necessary by the Commission.</p>

1st Offense (365 day period in any jurisdiction)	2nd offense (365 day period in any jurisdiction)	3rd Offense (365 day period in any jurisdiction)
<p>Disqualification and loss of purse.</p>	<p>Disqualification and loss of purse.</p>	<p>Disqualification, loss of purse and \$1,000.00 fine.</p>
AND	AND	AND
<p>Horse must pass a Racing Commission approved examination before becoming eligible to be entered.</p>	<p>Horse must pass a Racing Commission approved examination before becoming eligible to be entered.</p>	<p>Horse must pass a Racing Commission approved examination before becoming eligible to be entered.</p>

The following are recommended penalties for violations due to the presence of a drug carrying a Category "C" penalty and overages for phenylbutazone and furosemide: *(All concentrations are for measurements in serum or plasma.)*

LICENSED TRAINER	Phenylbutazone (5.1-9.9 mcg/ml) Furosemide (>100 ng/ml) and no furosemide when identified as administered**	Phenylbutazone (≥10.0 mcg/ml) and CLASS C Violations
1 st Offense (365-day period) in any jurisdiction	Minimum fine of \$250 absent mitigating circumstances	Minimum fine of \$500 absent mitigating circumstances
2 nd Offense (365-day period) in any jurisdiction	Minimum fine of \$500 absent mitigating circumstances	Minimum fine of \$1,000 and 15-day suspension absent mitigating circumstances
3 rd Offense (365-day period) in any jurisdiction	Minimum fine of \$1,000 and 15-day suspension absent mitigating circumstances	Minimum fine of \$2,500 and 30-day suspension absent mitigating circumstances
LICENSED OWNER	Phenylbutazone (5.1-9.9 mcg/ml) Furosemide (>100 ng/ml) and no furosemide when identified as administered**	Phenylbutazone (≥10.0 mcg/ml) and CLASS C VIOLATIONS
1 st Offense (365-day period) in any jurisdiction		Loss of purse. Horse must pass commission-approved examination before being eligible to run
2 nd Offense (365-day period) in any jurisdiction		Loss of purse. If same horse, placed on veterinarian's list for 15 days, must pass commission-approved examination before being eligible to run
3 rd Offense (365-day period) in any jurisdiction		Loss of purse. If same horse, placed on veterinarian's list for 30 days, must pass commission-approved examination before being eligible to run

SUMMARY OF RECEIPTS AND DISBURSEMENTS
Fiscal Year 2010 Through Fiscal Year 2012

- Appropriated Federal Funds & Federal Block Grants Accounts (Listed in Budget Act)
- Appropriated Special Revenue Accounts (Listed in Budget Act)
- Appropriated Lottery Funds (Listed in Budget Act)
- Other Federal Funds
- Other Special Revenue Accounts

Spending Unit Racing Commission

Department/Bureau of _____ Revenue _____

Account Name	WVFIMS Fund #	Actual Cash & Investment Balance End FY 2009	Actual Receipts FY 2010	Actual Disbursements FY 2010	Actual Cash & Investment Balance End FY 2010	Estimated Receipts FY 2011	Estimated Disbursements FY 2011	Estimated Cash & Investment Balance End FY 2011	Estimated Receipts FY 2012	Estimated Disbursements FY 2012	Estimated Cash & Investment Balance End FY 2012
	7308	-	-	-	-	2,000,000	2,000,000	-	2,000,000	2,000,000	-
Excess Lottery											
TOTAL						2,000,000	2,000,000		2,000,000	2,000,000	

FY 2011 APPROPRIATION REQUEST DIVISION EVALUATION SUMMARY

Department of Revenue
Department/Bureau

WV Racing Commission
Division

WV Code Chapter _____ 19 _____
Statutory Reference

Article 23

Division Description

Chapter 19, Article 23, Section 14 of the WV Code provides for the usage of occupational permit fees and fines to be used for the payment of hospitalization, medical care, or funeral expenses for permit holders who are not covered by workers' compensation or any other insurance coverage. (Fund 7300)

Funding Is Recommended As Follows:

Contact: Linda L. Rutledge

Title: Executive Secretary

Telephone # 304-558-2150

Email address: lacr1@wvnet.edu

Approved Signature Authority

SUMMARY OF RECEIPTS AND DISBURSEMENTS
Fiscal Year 2009 Through Fiscal Year 2011

- Appropriated Federal Funds & Federal Block Grants Accounts (Listed in Budget Act)
- Appropriated Special Revenue Accounts (Listed in Budget Act)
- Appropriated Lottery Funds (Listed in Budget Act)
- Other Federal Funds
- Other Special Revenue Accounts

Spending Unit WV Racing Commission
Department/Bureau of _____ Revenue _____

		(Must match Expenditure Schedule)									
Account Name	WVFIMS Fund #	Actual Cash & Investment Balance End FY 2008	Actual Receipts FY 2009	Actual Disbursements FY 2009	Actual Cash & Investment Balance End FY 2009	Estimated Receipts FY 2010	Estimated Disbursements FY 2010	Estimated Cash & Investment Balance End FY 2010	Estimated Receipts FY 2011	Estimated Disbursements FY 2011	Estimated Cash & Investment Balance End FY 2011
Medical Expense & Transfer Fund	7300	27,237	347,579	326,516	48,300	340,000	340,000	48,300	340,000	340,000	48,300
TOTAL		27,237	347,579	326,516	48,300	340,000	340,000	48,300	340,000	340,000	48,300

FY 2011 APPROPRIATION REQUEST DIVISION EVALUATION SUMMARY

Department of Revenue
Department/Bureau

WV Racing Commission
Division

WV Code Chapter _____ 19
Statutory Reference

Article 23

Division Description

Chapter 19, Article 23, Section 13b of the WV Code provides for usage of part of the WV Thoroughbred Development Fund for administration and promotion of the Fund to enhance the breeding of the thoroughbreds in WV.

The thoroughbred breeding industry is a significant component of our racing industry and is vital to providing thoroughbreds for racing to our two (2) thoroughbred racetracks. (Fund 7304)

Funding Is Recommended As Follows:

Contact: Linda L. Rutledge

Title: Executive Secretary

Telephone # 304-558-2150

Email address: lacr1@wvnet.edu

Approved Signature Authority

FY 2011 Appropriation Request Division Account Summary

Department of Revenue
Department/Bureau

WV Racing Commission
Division

 2011
Fund FY Org
 Appropriated General Revenue
 Account Number

7304 2011 0707
Fund FY Org
 Appropriated Special Revenue
 Account Number

 2011
Fund FY Org
 Appropriated Federal Revenue
 Account Number

	FY 2009 Actual State	FY 2010 Budgeted				FY 2011 Current-Level Request					Recommendation			
		General	Federal	Special	Other	Total	General	Federal	Special	Other	Total	Federal	Special	General
				3.00		3.00					3.00			
Number of Positions	3.00			3.00		3.00					3.00			
Personal Services	95,966			123,351		123,351					123,351			
Annual Increment	2,170			2,170		2,170					2,170			
TOTAL PERSONAL SERVICES	98,136			125,521		125,521					125,521			
Employee Benefits				1,500		1,500					1,500			
10-Personnel, Ins. Fees	300			9,602		9,602					9,602			
11-Social Security Matching	7,072			3,200		3,200					3,200			
12-Public Emp. Insurance Prem.	14,956			1,923		1,923					1,923			
13-Other Health Insurance				2,900		2,900					2,900			
14-Workers Comp.(Rate:)											13,331			
15-Unemployment Comp.				13,331		13,331					32,456			
16-Pension & Retirement	9,938			32,456		32,456								
TOTAL EMPLOYEE BENEFITS	32,267										82,161			
TOTAL CURRENT EXPENSES	31,212			82,161		82,161								
TOTAL REP. & ALTERATIONS														
TOTAL ASSETS														
TOTAL OTHER DISB.														
UNCLASSIFIED														
GROSS TOTAL	161,615			240,138		240,138					240,138			
LESS REAPPROPRIATIONS														
NET TOTAL	161,615			240,138		240,138					240,138			

FY 2011 APPROPRIATION REQUEST DIVISION EVALUATION SUMMARY

Department of Revenue
Department/Bureau

WV Racing Commission
Division

WV Code Chapter _____ 19 _____
Statutory Reference

Article 23

Division Description

Chapter 19, Article 23, Section 11 of the WV Code provides for the payment of budgeted expenses of the WV Racing Commission from pari-mutuel and daily license taxes to be used for the regulation and supervision of racing, both "live" and simulcasting. This oversight includes: Auditing more than \$700 million in pari-mutuel wagering; (2) Supervising more than 50,000 races; (3) protecting the interests of more than 2 million patrons; (4) enforcing the rules and laws of racing and breeding. (Fund 7305)

Funding Is Recommended As Follows:

Contact: Linda L. Rutledge

Title: Executive Secretary

Telephone # 304-558-2150

Email address: lacr1@wvnet.edu

Approved Signature Authority

FY 2011 Appropriation Request Division Account Summary

Department of Revenue
 Department/Bureau
 WV Racing Commission
 Division

 2011
Fund FY Org
 Appropriated General Revenue
 Account Number

7305 2011 0707
Fund FY Org
 Appropriated Special Revenue
 Account Number

 2011
Fund FY Org
 Appropriated Federal Revenue
 Account Number

	FY 2009 Actual State	FY 2010 Budgeted				FY 2011 Current-Level Request					Recommendation			
		General	Federal	Special	Other	Total	General	Federal	Special	Other	Total	Federal	Special	General
				34.00		34.00					34.00			
Number of Positions	34.00			34.00		34.00					34.00			
Personal Services	1,418,795			1,822,625		1,822,625					1,822,625			
Annual Increment	21,425			25,206		25,206					25,206			
TOTAL PERSONAL SERVICES	1,440,220			1,847,831		1,847,831					1,847,831			
Employee Benefits				9,500		9,500					9,500			
10-Personnel, Ins. Fees	12,384			141,359		141,359					141,359			
11-Social Security Matching	105,659			140,000		140,000					145,600			
12-Public Emp. Insurance Prem.	151,723													
13-Other Health Insurance				2,000		2,000					2,000			
14-Workers Comp.(Rate:)	6,838													
15-Unemployment Comp.				175,257		175,257					175,257			
16-Pension & Retirement	145,358			468,116		468,116					473,716			
TOTAL EMPLOYEE BENEFITS	421,963										724,951			
TOTAL CURRENT EXPENSES	612,580			724,951		724,951								
TOTAL REP. & ALTERATIONS														
TOTAL ASSETS														
TOTAL OTHER DISB.														
UNCLASSIFIED														
GROSS TOTAL	2,474,763			3,040,898		3,040,898								
LESS REAPPROPRIATIONS											3,046,498			
NET TOTAL	2,474,763			3,040,898		3,040,898					3,046,498			

Request for Supplemental Appropriation

Revenue	Fund	2010 FY	Org	7305 Fund	2010 FY	Org	Fund	2010 FY	Org
Department/Bureau	Appropriated General Revenue Account Number			Appropriated Special Revenue Account Number			Appropriated Federal Revenue Account Number		
Racing Commission Division									

By Items Of Appropriation	FY 2010 Request				Total	Justification
	General	Federal	Special	Other		
Number of Positions			5.00		5.00	<p>NOTE: If for capital expenditure, attach copy of form AR8.</p> <p>Choose: One-time Expenditure _____ Activity Number: _____</p> <p> On-going Expense <u> X </u> Activity Name: _____</p> <p>Program Name: <u>Administrative Expense Fund</u></p> <p>Pursuant to the appointment of a new Racing Commission on June 4 by Governor Joe Manchin, an assessment has been made of the finance and management staffing of the agency. The changes requested in this appropriation are intended to address that assessment. This assessment was caused by the existence of multiple audit findings and the lack of financial reporting found present in the agency. Lack of control over the financial structure has caused multiple lawsuits.</p> <p>Please list the anticipated benefits of this improvement to the program's mission / performance measures or the effects to the program if this improvement is not funded.</p> <p>See above</p>
Personal Services			403,000		403,000	
Annual Increment						
TOTAL PERSONAL SERVICES			403,000		403,000	
Employee Benefits			111,593		111,593	
Current Expenses			(116,188)		(116,188)	
Repairs & Alterations						
Assets						
Other Disbursements						
TOTAL			398,405		398,405	

SUMMARY OF RECEIPTS AND DISBURSEMENTS
Fiscal Year 2009 Through Fiscal Year 2011

- Appropriated Federal Funds & Federal Block Grants Accounts (Listed in Budget Act)
- Appropriated Special Revenue Accounts (Listed in Budget Act)
- Appropriated Lottery Funds (Listed in Budget Act)
- Other Federal Funds
- Other Special Revenue Accounts

Spending Unit WV Racing Commission

Department/Bureau of _____ Revenue _____

(Must match Expenditure Schedule)

Account Name	WVFIMS Fund #	Actual Cash & Investment Balance End FY 2008	Actual Receipts FY 2009	Actual Disbursements FY 2009	Actual Cash & Investment Balance End FY 2009	Estimated Receipts FY 2010	Estimated Disbursements FY 2010	Estimated Cash & Investment Balance End FY 2010	Estimated Receipts FY 2011	Estimated Disbursements FY 2011	Estimated Cash & Investment Balance End FY 2011
General Administrative Fund	7305	3,020,955	2,761,141	2,474,763	3,307,334	3,040,898	3,040,898	3,307,334	3,046,498	3,046,498	3,307,334
TOTAL		3,020,955	2,761,141	2,474,763	3,307,334	3,040,898	3,040,898	3,307,334	3,046,498	3,046,498	3,307,334

FY 2011 APPROPRIATION REQUEST DIVISION EVALUATION SUMMARY

Department of Revenue
Department/Bureau

WV Racing Commission
Division

WV Code Chapter _____

19

Statutory Reference

Article _____

23

Division Description

Chapter 19, Article 23, Section 10(d) of the WV Code provides for the usage of part of the WV Greyhound Breeding Development Fund for administration, promotion, education, and capital improvements purposes for the enhancing of the greyhound breeding industry in West Virginia. The greyhound breeding industry in WV is vital to providing greyhounds for racing at our two (2) greyhound racetracks. (Fund 7307)

Funding is Recommended As Follows:

Contact: Linda L. Rutledge

Title: Executive Secretary

Telephone # 304-558-2150

Email address: lacriv@wvnet.edu

Approved Signature Authority

