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Proposed Rulemaking

Title

Promulgated by:
Arkansas Racing Commission

Title 23. Public Utilities and Regulated Industries

Chapter VIII. Arkansas Racing Commission, Department of Finance and Administration

Subchapter A. Generally

Part 357. Rules Governing Horse Racing in Arkansas

Subpart 1. Generally

23 CAR § 357-101. Definitions.

The following definitions and interpretations shall apply throughout this part unless the text otherwise requires:

(1) "Act" means the enabling legislation permitting pari-mutuel horse racing in this jurisdiction;

(2) "Added money" means the amount added into a stakes by the association or by sponsors, state-bred programs, or other funds added to those moneys gathered by nomination, entry, sustaining, and other fees coming from the horsemen;

(3) "Age" of a horse foaled in North America shall be reckoned from the first day of January of the year of foaling;

(4) "Also eligible" pertains to:

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

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(B) The next preferred non-qualifier for the finals or consolation from a set of elimination trials that will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit;

(5) "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions, which include:

(A) Age;

(B) Sex;

(C) Earnings; and

(D) Number of wins;

(6) "Appeal" means a request for the Arkansas Racing Commission or its designee to investigate, consider, and review any decisions or rulings of stewards of a race meeting;

(7) "Arrears" means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to this part;

(8) "Association" means a person or business entity holding a license from the Arkansas Racing Commission to conduct racing with pari-mutuel wagering;

(9) "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, parking lots, and any other areas under the jurisdiction of the Arkansas Racing Commission;

(10) "Authorized agent" means a person licensed by the Arkansas Racing Commission and appointed by a written instrument, signed and acknowledged before a notary public, by the owner in whose behalf the agent will act;

(11)(A) "Beneficial interest" means profit, benefit, or advantage resulting from a contract or the ownership of an estate, as distinct from the legal ownership or control.

(B) When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his or her own use or benefit and not as holder of title for use and benefit of another;

(12) "Betting interest" means one (1) or more horses in a pari-mutuel contest which are identified by a single program number for wagering purposes;

- (13) "Bleeder list" means a tabulation of all bleeders to be maintained by the Arkansas Racing Commission;
- (14) "Breakage" means the net pool minus payoff;
- (15) "Breeder" means the owner of the horse's dam at the time of foaling;
- (16) "Carryover" means the non-distributed pool moneys that are retained and added to a corresponding pool in accordance with this part;
- (17) "Claiming race" means a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with this part;
- (18)(A) "Commission" means the regulatory agency with the authority to regulate racing.
- (B) Also "Racing Commission" and "Arkansas Racing Commission";
- (19) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race;
- (20) "Contest" means a competitive racing event on which pari-mutuel wagering is conducted;
- (21) "Contestant" means an individual participant in a contest;
- (22) "Coupled entry" means two (2) or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes (also see "Entry").
- (23)(A) "Day" means a twenty-four-hour period beginning at 12:01 a.m. and ending 12:00 p.m. midnight. Also known as a calendar day;
- (24) "Dead heat" means the finish of a race in which the noses of two (2) or more horses reach the finish line at the same time;
- (25) "Declaration" means the act of withdrawing an entered horse from a race prior to the closing of entries;
- (26) Subject to 23 CAR § 357-405(a)(2), "Entry" means:
- (A) A horse made eligible to run in a race; or
- (B) Two (2) or more horses, entered in the same race, which have common ties of ownership or lease;
- (27) "Exhibition race" means a race on which no wagering is permitted;

(28) "Expired ticket" means an outstanding ticket that was not presented for redemption within the required time period for which it was issued;

(29)(A) "Financial interest" means an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity, or as a result of salary, gratuity, or other compensation or remuneration from any person.

(B) The lessee and lessor of a horse have a financial interest;

(30) "Flat race" means a race in which horses mounted by jockeys run over a course on which no jumps or other obstacles are placed;

(31) "Forfeit" means money due from a licensee because of error, fault, neglect of duty, breach of contract, or a penalty imposed by the stewards or the Arkansas Racing Commission;

(32) "Guest association" means an association which offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same state or another jurisdiction;

(33) "Handicap" means a race in which the weights to be carried by the horses are assigned by the Racing Secretary or Handicapper for the purpose of equalizing the chances of winning for all horses entered;

(34) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers;

(35) "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing: specifically, an entire male five (5) years of age and older;

(36) "Host association" means the association conducting a licensed pari-mutuel race meeting from which authorized contests or entire performances are simulcast;

(37) "Inquiry" means an investigation by the stewards of potential interference in a contest prior to declaring the result of said contest official;

(38) "Jockey" means a professional rider licensed to ride in races;

(39) "Licensee" means any person or entity holding a license from the Arkansas Racing Commission to engage in racing or a regulated activity;

(40) "Maiden" means a horse that has never won an official or recognized race as defined in breed registry rules;

(41) "Maiden race" means a contest restricted to non-winners;

(42) "Match race" means a race between two (2) horses under conditions agreed to by their owners;

(43) "Meeting" means the specified period and dates each year during which an association is authorized to conduct racing by approval of the Arkansas Racing Commission;

(44) "Minus pool" occurs when the amount of money to be distributed on winning wagers is in excess of the amount of money comprising the net pool;

(45) "Month" means a calendar month;

(46) "Mutuel field" or "field" means two (2) or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system;

(47) "Net pool" means the amount of gross ticket sales less refundable wagers and statutory commissions;

(48) "Nomination" means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee;

(49) "Nominator" means the person or entity in whose name a horse is nominated for a race or series of races;

(50) "Objection" means a:

(A) Written complaint made to the stewards concerning a horse entered in a race other than a complaint growing out of happenings in the running of the race and filed with the stewards not later than the time period for protest set forth in 23 CAR § 357-507(c); or

(B) Verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owner's authorized agent to the stewards before the race is declared official;

(51) "Official order to finish" means the order of finish of the horses in a contest as declared official by the stewards;

(52) "Official starter" means the official responsible for dispatching the horses for a race;

(53) "Official time" means the elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line;

(54) "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 contest;

(55)(A) "Optional claiming race" means a contest restricted to horses entered to be claimed for a stated claiming price and to those that have started previously for that claiming price or less.

(B) In the case of horses entered to be claimed in such a race, the race shall be considered for the purpose of this part a claiming race.

(C) In the case of horses not entered to be claimed, the race shall be considered an allowance race;

(56) "Outstanding ticket" means a winning or refundable pari-mutuel ticket that was not cashed during the performance for which it was issued; also known as "outs";

(57) "Overnight race" means a contest for which entries close at a time set by the Racing Secretary; also known as "purse race";

(58) "Owner" means a person who holds any title, right, or interest, whole or partial, in a horse, including the lessee and lessor of a horse;

(59) "Paddock" means an enclosure or other designated area where horses scheduled to compete in a contest are saddled prior to racing;

(60)(A) "Pari-mutuel system" means the manual, electro-mechanical, or computerized system and all software (including the totalisator, account betting system, and off-site betting equipment) that is used to record bets and transmit wagering data.

(B) "Pari-mutuel wagering" shall include any method of wagering approved by the Arkansas Racing Commission whereby amounts wagered are placed in one (1) or more designated wagering pools (whether or not the wagers are placed with respect to the same race), and the amounts remaining in the respective wagering pool, after reduction for the takeout under applicable law and rules of the commission, are returned to the winning bettors or bettors under the rules applicable to the particular wagering pool and in accordance with applicable law and the rules of the Arkansas Racing Commission (subject, in the case of uncashed pari-mutuel tickets, to the provisions of Arkansas Code § 23-110-406(b) and 23 CAR § 357-105(dd));

(61) "Patron" means a member of the public present on the grounds of a pari-mutuel association during a race meeting for the purpose of wagering or to observe racing;

(62) "Payoff" means the amount of money payable to winning wagers;

(63) "Performance" means a schedule of contests conducted on the same day as authorized by the Arkansas Racing Commission;

(64) "Permit" means an authorization by the Arkansas Racing Commission to an association to conduct horse racing with pari-mutuel wagering at a specified location;

(65) "Person" means any individual, partnership, corporation, or other association or entity;

(66) "Post position" means the pre-assigned position from which a horse will leave the starting gate;

(67) "Post time" means the scheduled starting time for a contest;

(68) "Prima facie evidence" means evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue;

(69) "Profit" means the net pool after deduction of the amount bet on the winners;

(70) "Profit split" means a division of profit amongst separate winning betting interests or winning betting combinations resulting in two (2) or more payoff prices;

(71) "Program" means the published listing of all contests and contestants for a specific performance;

(72) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, jockey, or official prohibited by rules, which, if true, shall exclude that horse/jockey from racing;

(73) "Purse" means the total cash amount for which a race is contested;

(74) "Race" means a contest between horses at a licensed race meeting;

(75) "Registered Arkansas-bred" thoroughbred horses, registered Arkansas thoroughbred broodmare, registered Arkansas thoroughbred stallion, foal registration, broodmare registration and stallion registration, eligibility to participate in the Arkansas Racing Commission Purse and Awards Fund and eligibility to participate in races that are restricted to registered Arkansas-bred thoroughbred horses shall be determined and made in accordance with registration and fee schedules, adopted by the Arkansas Thoroughbred Breeders and Horsemen's Association and approved by the Arkansas Racing Commission;

(76) "Restricted area" means an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access;

(77) "Result" means the part of the official order of finish used to determine the pari-mutuel payoff of pools for each individual contest;

(78) "Scratch" means the act of withdrawing an entered horse from a contest after the closing of entries;

(79) "Scratch time" means the deadline set by the association for withdrawal of entries from a scheduled performance;

(80) "Simulcast" means the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes;

(81) "Single price pool" means an equal distribution of profit to winning betting interests or winning betting combinations through a single payoff price;

(82) "Stable name" means a name used other than the actual legal name of an owner or lessee and registered with the Arkansas Racing Commission;

(83) "Stakes race" means a contest in which nomination, entry, and/or starting fees contribute to the purse;

(84) "Starter" means a horse that becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter;

(85) "Steeplechase race" means a contest in which horses mounted by jockeys run over a course on which jumps or other obstacles are placed;

(86) "Steward" means a duly appointed racing official with powers and duties specified by this part;

(87) "Substantial evidence" means evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance;

(88) "Takeout" means the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule;

(89) "Totalisator" means the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds, and payoff prices to patrons at a pari-mutuel wagering facility;

(90) "Trial race" means part of a series of contests in which horses participate for the purpose of determining eligibility for a subsequent contest;

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

(92) "Week" means a calendar week;

(93) "Weigh in" means the presentation of a jockey to the Clerk of Scales for weighing after a race;

(94) "Weigh out" means the presentation of a jockey to the Clerk of Scales for weighing prior to a race;

(95) "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;

(96) "Winner" means the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards; and

(97) "Year" means a calendar year.

23 CAR § 357-102. Franchises and applications for racing dates.

Every franchise and every license to hold a meeting is granted upon the condition that the franchise holder shall accept, observe, and enforce the rules of the Arkansas Racing Commission, and it shall be the duty of each and every officer, director, and employee of said franchise holder to observe and enforce the rules.

23 CAR § 357-103. Applications for franchises.

Every application to become a franchise holder shall contain the following:

(1) Ownership and management.

(A) State the name of the applicant and indicate whether it is an individual, firm, association, partnership, or corporation.

(B) State the following information as to the applicant (if the applicant has a parent corporation, the same information must be submitted both for the parent and applicant corporation):

(i) State the year in which the applicant was organized, its form of organization, and the name of the state under the laws of which it was organized. Attach a copy of the articles and bylaws to the application;

(ii) State the classes of capital stock authorized, the amount authorized, and the amount outstanding as of the date not less than fifteen (15) days prior to the date of filing on the application. State the amount of dividends paid to stockholders during the five (5) years immediately preceding the application;

(iii) State the name and address of each person who owns, of record or beneficially, one (1) or more shares of any class of capital stock. This can be indicated in columnar forms as follows:

(a) Name and address;

(b) Class of stock owned;

(c) Type of ownership whether of record or beneficial;

(d) Amount owned; and

(e) Percent of the class of stock;

(iv) Describe briefly the terms of any voting trust in which any of the capital stock is held and the name, address, class, or stock, and number of shares of stock for all stock held in said voting trust;

(v) Describe briefly the terms of any proxy by which any of the capital stock is held, the holder of the proxy and the name, address, class of stock, and number of shares of stock for all stock held by said proxy;

(vi) State whether five percent (5%) or more of the applicant's assets, or five percent (5%) or more of any principal stockholders' stock, is encumbered by any long-term debt. Explain fully, by stating names and addresses of parties holding security interests or promissory notes from the applicant and the stockholders, where the stock is pledged as security, and outline the terms of the agreements creating the security interests;

(vii) Outline briefly the divided rights, voting rights, liquidation rights, preemptive rights, conversion rights, and redemption provisions. If the rights of holders of such stock may be modified otherwise than by a vote of majority or more of the shares outstanding, voting as a class, so state and explain briefly;

(viii) If the applicant was organized as a corporation within the past five (5) years, furnish the following information:

(a) The names of the promoters;

(b) The nature and amount of anything of value received or to be received by each promoter directly or indirectly from the applicant; and

(c) The nature and amount of any assets, services, or other consideration therefore received or to be received by the applicant;

(ix) List the names of all directors and officers of the applicant and all persons chosen to become directors or officers, and attach a personal history resume for each person named. Indicate all positions and offices with the applicant held by

each person named, and the principal occupation during the past five (5) years of each person named; and

(x) List all parents of the applicant showing the basis of control, and as to each parent, the percentage of voting securities owned, or other basis of control by any of its parents.

(C)(i) Attach to the application balance sheets and profit and loss statements for each of the three (3) fiscal years immediately preceding the application, or for the period of organization if less than three (3) years. If the applicant has not completed a full fiscal year since its organization or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year. Balance sheets, profit and loss statements, and all other financial statements required herein shall be prepared, audited, and certified by independent, certified public accountants in accordance with generally accepted accounting procedures and practices applied on a consistent basis. Any report containing exceptions of a material nature will not be considered to be certified.

(ii) State all loans by applicant in excess of one percent (1%) of the net income and describe fully the name of the borrower, amount of the loan, collateral, and terms.

(D) Briefly describe any pending legal proceedings to which the applicant or any of its subsidiaries or parent corporation is a party or of which any of their property is the subject.

Include the name of the court or agency in which the proceedings are pending, the date instituted and the principal parties thereto.

(E) State if the applicant or its directors, officers, policy-making manager, or principal stockholders have owned an interest in any firm, partnership, association, or corporation previously licensed by the Arkansas Racing Commission or are now engaged in the business of racing outside of the State of Arkansas (and explain, as applicable).

(F) Describe briefly and where practical state the approximate amount of any material interest, direct or indirect, of any officer, director, or principal stockholder of the applicant, or any associate of any of the foregoing persons in any material transactions during the last three (3) years, or in any material proposed transactions to which the applicant was, or is to be a party.

(G) State generally the principal purposes for which the net income received by the applicant is intended to be used, (whether it be for payment of dividend, retained earnings for enumerated purposes, or other purposes) and show the approximate percentage of the amount intended for each purpose.

(H) State all contracts by the applicant entered into within the year preceding the date of application, and all executory contracts not otherwise described pursuant to this part in which the consideration exceeds one percent (1%) of net income, and describe fully, including the names of the parties to the contract, amount of consideration, and terms.

(I)(i) List all direct remuneration paid by the applicant and its subsidiaries, if any, during the applicant's last fiscal year to:

(a) Each director and officer of the applicant whose aggregate direct remuneration exceeded ten thousand dollars (\$10,000), naming each such person;

(b) All directors of the applicant as a group without naming them;

(c) All officers of the applicant as a group without naming them; and

(d) All other persons whose aggregate remuneration exceeds ten thousand dollars (\$10,000), naming each such person.

(ii) As used in subdivision (1)(I) of this section, direct remuneration shall include salary, retirement benefits, automobile furnished, expenses reimbursed, and all other sums paid for the benefit of the officer, director, or other recipient.

(J) State whether the applicant, its officers, directors, and principal stockholders have complied with and are in compliance with 23 CAR § 357-105(a). If not in compliance, explain in full.

(2) Location and physical plant.

(A) State county and municipality of track.

(B) Give actual legal description of a site, names and addresses of the titleholders to the real property, and names and addresses of all persons holding mortgages or other security interests in the property.

(C) State the number of miles from the nearest population center, and describe briefly the transportation facilities serving that population's center.

(D) Indicate the exact dimensions of any track proposed.

(E) Describe the grandstand size and type construction. Submit at least one (1) copy of architect's plans or rendering showing details of any proposed constructions.

(F) Describe briefly the efforts made to ensure the security, safety, and comfort of patrons and license holders.

(G) State the availability of fire protection and adequacy of law enforcement and police protection.

(H) Indicate the parking lot capacity and describe the construction and type of parking facilities.

(I) Indicate the number and type of construction of stables and other areas, indicating capacities and fire prevention facilities for all areas.

(J) Indicate the provisions for facilities for owners and other racing personnel.

(K) Describe the arrangements for food and drink concession, indicating the names and addresses of concessionaires and the terms of the concession contracts. Attach copy of contract.

(L) Describe any concessions, clubs, or other special facilities for patrons.

(3) Racing operation.

(A) Indicate by actual dates the racing days requested by the applicant.

(B) Indicate the kind of racing to be conducted.

(C) Describe the pari-mutuel operation in general and indicate in particular the terms of the pari-mutuel ticket sales.

(4) Economic and other aspects of track location.

(A) Describe briefly climatic conditions prevalent during the proposed racing season.

(B) Indicate the population of the local area and the growth trend. Indicate the potential market, including tourists, transients, and patrons from neighboring areas.

(C) Indicate the principal sources of local income, showing the percentage from farming and ranching, industrial, professional and services, and military and other governmental sources.

(D) Indicate the effect of competition with other racetracks in and out of the state and with other sports or recreational facilities in the area. State in detail what effect the competition from other racetracks will have on the availability of the racing stock and track personnel.

(E) Indicate what effect opposition from area residents will have on the economic outlook for the proposed track.

23 CAR § 357-105. Duties and obligations.

(a)(1) No applicant, officer, director, or principal stockholder of the applicant, nor any officer or director of any corporation which is a principal stockholder of the applicant, nor any spouse or lineal heir of any such person, nor any corporation in which the applicant or an officer, director, or principal stockholder of the applicant holds stock, shall, directly or indirectly, in the name of or on behalf of the applicant, promise or offer to give or cause or procure to be promised, offered, or given, any money, goods, present, or reward, or any promise, contract, undertaking, obligation, or security for the payment or delivery of any goods, money, present, or reward or any other thing of value whatsoever, to:

(A) Any member of the Arkansas Racing Commission;

(B) Employees of the commission; or

(C) Any spouse, lineal heir, or employee of any member of the commission or any corporation in which any member of the commission is a principal stockholder, with the intent to influence the action or decision of any such person on any question, matter, cause, or proceeding concerning the applicant, which may be pending or which may hereafter in the future be brought before any such person in his official capacity.

(2) No officer, director, or principal stockholder of the applicant, nor any officer or director of any corporation which is a principal stockholder of the applicant, nor any spouse or lineal heir of any such person, nor any corporation in which an officer, director, or principal stockholder is a principal stockholder shall:

(A) Contract with the applicant, except for bona fide contract for salaries for directors and officers actually serving as such or for professional services actually rendered; or

(B) Provide goods or services that are ultimately sold to applicant's patrons.

(3) Upon application to the commission, but prior to entering into any such contract or doing any such business or making any such payment or contribution, the provisions of subdivisions (a)(1) and (2) of this section may be waived by the commission in its discretion if the proposed contract or the proposed business or any proposed payment or contribution is under the circumstances advantageous to the applicant in the conduct of its business of thoroughbred horse racing.

(4) No license shall be granted to any applicant if the applicant or any officer, director, or principal stockholder of the applicant has been convicted of a felony by any court of record of any state or country.

(b) No applicant shall enter into any contract in which the term exceeds three (3) years or the consideration exceeds five percent (5%) of the net income of the applicant for the year immediately preceding the date of the contract without first submitting advance written notice thereof to the commission.

(c) Minutes of the meetings of stockholders and directors of the applicant shall be made available to the commission, but copies thereof need not be filed as a matter of record in the office of the commission.

(d)(1) The original and six (6) copies of all applications, notices, and other matters required by this part shall be filed with the:

Arkansas Racing Commission
1515 Building
1515 West 7th Street, Suite 505
Little Rock, Arkansas 72203
(Post Office Box 3076, Little Rock, Arkansas, 72203)

(2) One (1) additional copy shall be submitted to each commissioner at the commissioner's address of record on file in the office of the commission.

(3) All applications, notices, and other matters shall be verified, under oath, and all copies shall be manually signed in ink.

(e) Members of the commission and its designated representatives shall have the right of full and complete entry to any and all parts of the grounds and facilities of the franchise holder licensed to conduct racing in Arkansas.

(f) Each franchise holder shall provide and install within its grounds:

- (1) An office for the use of the commission and its officials;
- (2) Stands for racing officials, which shall be maintained in positions commanding an uninterrupted view of the entire racing strip and which shall be subject to approval of the commission;
- (3) A suitable telephone system between the racing officials; and
- (4) A first aid room in the grandstand.

(g)(1) No franchise holder shall permit the making of handbooks on the grounds.

(2) Any person who bets with or through any such handbook shall be ejected from the grounds and refused admission to the grounds of all other licensed franchise

holders in Arkansas, and in the case of an owner or trainer, the entries of said owner or trainer shall be refused for all Arkansas tracks.

(h)(1) With prior approval of the commission and consistent with applicable federal law, a franchise holder may enter into agreements and arrangements with other parties pursuant to which its patrons may wager on races run at other racetracks which are shown live by television or otherwise at locations on the grounds at the Arkansas racetrack at any time or times during the calendar year, and agreements and arrangements whereby its races are shown live at other racetracks and locations. Such agreements and arrangements shall specify all financial, wagering, distribution, and other details, which shall govern.

(2) The franchise holder may conduct pari-mutuel wagering at locations on the grounds of the licensed racetrack of the franchise holder on races run at other racetracks, even if the races are not shown live to patrons at the franchise holder's premises for any reason, including, but not limited to, lapses in satellite transmission, power outage, store-and-forward digital network nodes, buffering spooling, or other electronic delays or re-transmission, or due to races being run at times when the franchise holder's premises are not open to the public; provided that transmission delays or replays shall not compromise the integrity of pari-mutuel wagering by the franchise holder's patrons wagering on such races, and provided that the terms, conditions, formats, content, and agreements relating to such races and any delays or replays thereof must be satisfactory to the commission.

(i) Any official or other employee of a franchise holder or any owner or trainer who unlawfully solicits bets from the public by correspondence or other methods on any entry that is to run on a track in Arkansas shall be suspended.

(j) No person who has been convicted of a felony by a court for illegal sales, possession, or giving away of narcotics shall be granted a license without prior approval of the commission.

(k) No person or horse ruled off or under suspension by any recognized turf authority, any licensing body in any country or any horse franchise holder, shall be

admitted to the grounds of any franchise holder except that a jockey temporarily suspended for a minor offense shall not be denied admittance to the track.

(l) When a person is ruled off any course or suspended by any recognized turf authority, any licensing body of any state or country or any thoroughbred horse franchise holder, every horse owned in whole or in part by the person shall be ineligible to be entered or to start in any race until said horse has been reinstated either by the rescission of the owner's suspension or by its transfer through bona fide sale to an ownership acceptable to the stewards.

(m)(1) When a person is ruled off any course or suspended by any recognized turf authority, any licensing body of any state or country or any thoroughbred horse franchise holder, any horse which is under the person's care, management, training, or superintendence shall not be qualified to be entered or to start in any race until said horse has been reinstated by the rescission of said person's suspension or by the placement of the horse in the hands of a licensed trainer, with such transfer approved by the stewards.

(2) If a trainer's suspension exceeds thirty (30) days, a transfer of the trainer's horses during the period of suspension to a family member or employee of the trainer will not be approved except under extraordinary circumstances, as determined by the stewards.

(n) When a person is ruled off any course or suspended by any recognized turf authority, any licensing body of any country, or any racing franchise holder, the person shall not be qualified, whether acting as an agent or otherwise, to subscribe for or 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 rescinding of that person's suspension.

(o) A thoroughbred horse or stable ruled off or under suspension by any recognized turf authority, any licensing body of any state or country, or any racing franchise holder shall not be permitted to race on any Arkansas track where this part is in force during the continuance of such ruling.

(p) During the term of disqualification of any participant in racing, it shall be the duty of the franchise holder to see to it that the privileges of the participant's admission

badge are revoked and that the participant is kept off of the grounds, unless otherwise permitted to enter under certain conditions and at certain times as may be provided for elsewhere in this part.

(q) Violators of any rule will be subject to ejection from the grounds and/or to fine, suspension, or ruling off.

(r) Each franchise holder shall police its grounds at all times in such a manner as to preclude the admission of any person in and around the stables excepting those having bona fide business or duly licensed by the commission.

(s) Each franchise holder shall furnish to the commission the names and addresses of all persons ejected by the franchise holder from its grounds, together with the offense or offenses alleged against them and any other material information relating thereto.

(t) The officials of the race meetings, in making decisions, shall be guided by the practices and procedures that are recognized and established in the conduct of all properly authorized race meetings.

(u) Racing franchise holders shall exclude from the paddock, in the interest of public safety, all those persons who have no immediate business with the entries, except the members of the commission, its staff and special representatives, and those having special permission from the franchise holder.

(v) Each franchise holder running a race meeting shall keep a separate account to be known as the owner's account and shall not mingle any of the funds therein with the general funds of the franchise holder.

(w) Sufficient funds shall be maintained in said account to cover all moneys due owners in regard to purses, stakes, rewards, and deposits.

(x) Racing franchise holders shall make prompt written acknowledgment of stake nominations and subscriptions.

(y) All daily programs sold at the racetrack must contain a prominent notice that there is an information window where complaints may be made or filed in writing, and the exact locations of these windows must be set forth in said notice. Daily programs sold during the live racing meet shall contain a:

(1) Notice that the racetrack is licensed by the commission and operates under its rules; and

(2) Listing of the members and manager of the commission, officers, and directors of the franchise holder, and racing officials for the race meeting.

(z) A franchise holder shall maintain in good service a satisfactory totalisator.

(aa)(1) The commission may require a franchise holder to install and maintain in good service a satisfactory photographic device, and where installed it shall be required that all finishes be recorded by the said photographic devices.

(2) However, in the event of any mechanical difficulty or insufficient light for a picture to be taken, the Placing Judges shall decide the order of finish, which decision shall be final.

(bb) When finishes are so recorded, each entry in each race shall wear a number of adequate size on the side which at the finish will be towards the camera, corresponding to his number on the official program.

(cc)(1) All portions of purse money earned by horses competing in stakes races shall be made available to the owners of such horse following the clearance of chemical analysis results from those horses who have undergone chemical analysis in such stakes races.

(2) All portions of purse money for horses running in overnight races shall be made available to the owners of such horses on the next racing day following the day such horses competed and earned purse money.

(3) Provided, however, any purse money earned by any horse in any race may be ordered by the stewards to be withheld, pending a hearing and resolution of all appeals, should the chemical analysis of the horse indicate the presence of a drug, except as allowed in 23 CAR § 357-108, or for any other good cause indicating that the horse involved (or its owner, trainer, or jockey) may have violated any rule of the commission, or otherwise engaged in any conduct which reasonably warrants withholding the purse under the circumstances.

(4) Provided, further, however, should the chemical analysis of any sample of a horse entitled to a share of the purse indicate the presence of a drug, except as

allowed by 23 CAR § 357-108, the purse may be revoked at any time up to nine (9) months following the race and ordered redistributed by the commission.

(5) The failure of the owner or jockey of the horse testing positive for the presence of a drug to repay the funds to the proper person or persons as ordered by the commission shall result in the suspension and/or revocation of the owner's or jockey's license.

(6) The money shall be repaid to the proper person or persons for distribution as soon as possible after recovery.

(7) After the period of nine (9) months following the race, all tests and obligations shall be void.

(dd)(1) Every franchise holder shall carry on its books an account which shows the total due on outstanding unredeemed mutuel tickets, which represents the winning tickets not presented for payment. Further, every franchise holder shall at all times maintain adequate funds to pay said outstanding tickets.

(2) Live races.

(A) With respect to live races run at the franchise holder's racing facility during the franchise holder's live race meeting, all winning pari-mutuel tickets not presented to the franchise holder for redemption on or before the one hundred eightieth day next following the last racing day of the live racing meet shall be void as provided in Arkansas Code § 23-110-406(b).

(B) All moneys represented by such void pari-mutuel tickets shall be distributed as provided in Arkansas Code § 23-110-406(b).

(3) Simulcast races.

(A) With respect to races run at other racing facilities and simulcast at the franchise holder's racing facility, all winning pari-mutuel tickets on such simulcast races run on or after the first day of the live racing meet through the last day of the live racing meet (the "last live race meeting day") not presented to the franchise holder for redemption on or before the one hundred eightieth day next following such last live race meeting day shall be void, and all winning pari-mutuel tickets with respect to such simulcast races run after the last live race meeting day through the day immediately

preceding the first day of the next live racing meet (such day immediately preceding the first day of the next live racing meet hereafter referred to as the "last simulcast season day") not presented to the franchise holder for redemption on or before the one hundred eightieth day next following such last simulcast season day shall be void.

(B) All moneys represented by any such void pari-mutuel tickets shall be distributed by the franchise holder as provided in Arkansas Code § 23-110-406(b) in the same manner as uncashed winning pari-mutuel tickets with respect to live races run at the franchise holder's racing facility.

(ee) No person shall be allowed to wager in violation of any law of the State of Arkansas.

23 CAR § 357-106. Corrupt, fraudulent, and prohibited practices.

(a) Employees of the Arkansas Racing Commission, including but not limited to stewards, judges, auditors, investigators, racing commission office manager, veterinarians, secretaries, bookkeepers, gatemen and their assistants, and any person acting in the capacity of a racing official shall not wager money or anything of value on races at the track at which they are employed or acting.

(b) No one interested in the results of the race, either because of ownership of any entry, or of his or her sire or dam, because of bets or otherwise, shall act as a racing official in respect to that race.

(c) Racing officials while serving during any race meeting in such capacity shall not engage in the following:

(1) Participate in the sale or purchase or ownership of any horse racing at the race meeting;

(2) Be involved in any way in the purchase or sale of any contract on any jockey racing at the race meeting;

(3) Sell or solicit horse insurance on any horse racing at the race meeting, or make any other business sales or solicitation not a part of the official's duties;

(4) Wager on the outcome of any race; or

(5)(A) Accept or receive money or anything of value for such official's assistance in connection with his or her duties.

(B) Racing officials shall include those officials who are approved and designated by the commission as racing officials for each live race meeting.

(d) Any person subject to this part shall report to the stewards all observed violations of this part.

(e) No person shall enter, cause to be entered, or start an entry that the person knows or believes to be ineligible or disqualified.

(f) If a person wrongfully gives or offers money, shares in a bet, or provides other benefit to any person having official duties in relation to a race, or if a person having official duties in relation to a race wrongfully accepts or offers to accept moneys, shares in a bet or other benefit, or if any person fraudulently offers or receives any amount of money for the declaring any entry out of a purse or stake, then any such person shall be in violation of this subsection.

(g) No person licensed as a jockey at Oaklawn Park shall be owner or part owner of any horse racing at Oaklawn.

(h) No jockey riding in a race, nor his or her attendant, shall make any wager nor shall any wager be made on the behalf of a jockey or his or her attendant on any horse other than the horse ridden by said jockey in such race.

(i) No person shall offer or give a jockey any money or other benefit in connection with a race, unless said person is the owner or trainer of the horse ridden in said race by said jockey.

(j) No person shall assume or pay, directly or indirectly, a fine imposed upon a jockey, provided, however, the commission may authorize the payment of such fine by the owner or trainer of the horse ridden by the jockey at the time of the infraction resulting in such fine.

(k) No transfer of any thoroughbred horse shall be made for the purpose of avoiding ineligibility or disqualifications.

(l)(1) A thoroughbred horse, starting in a race, shall not be shod with ordinary or training shoes or turn down shoes, or be allowed to start a race without shoes, unless the stewards grant permission to run without shoes prior to the race.

(2) Horses entered to race or training at Oaklawn Park are prohibited from wearing:

- (A) Toe grabs with a height greater than four millimeters (4 mm);
- (B) Bends;
- (C) Jar caulks;
- (D) Stickers; or
- (E) Any other appliance worn on the front shoes.

(m) No person shall tamper or attempt to tamper with any thoroughbred horse in such a way as to affect his or her speed in a race, nor shall he or she counsel or in any way aid or abet any such tampering.

(n) Bar plates may be used only with the consent of the stewards.

(o) No electrical or mechanical device or other expedient designed to increase or decrease the speed of a horse, or that would tend to do so, other than the ordinary whip, shall be possessed by anyone or applied by anyone to a horse at any time on the grounds of a franchise holder during a race meeting, whether in a race or otherwise, provided this subsection is not intended to preclude any pre-race external treatments permitted under 23 CAR § 357-106(s)(3).

(p)(1) While within the confines of a racetrack, its buildings, or on the grounds, no person, other than a veterinarian licensed by the commission, shall have in his or her possession any equipment for hypodermic administration.

(2) Non-injectable medication prescribed by a properly licensed veterinarian for an existing condition may be possessed.

(q)(1) No person shall administer, permit, or authorize the administration of any drug, narcotic, stimulant, tranquilizer, depressant, local anesthetic, steroids, NSAIDS, or any substance which interferes with recognized testing procedures, except as permitted by 23 CAR § 357-108, in any manner whatsoever, internally or externally, to any horse

within twenty-four (24) hours of the scheduled post time of the race in which the horse is entered to run.

(2) The administration of any drugs or chemical substance shall be done at the risk of the person or persons administering, authorizing, or permitting the administration, and all such persons shall assume the risk that if the horse tests positive after an analysis by the Commission Chemist, it shall be a violation of 23 CAR § 357-109(b), whether the drug or chemical substance was administered before or after twenty-four (24) hours prior to the scheduled post time.

(r) See separate appendix for Rules 1217, 1217.1, 1217.2, 1217.3, 1217.4, and 1217.5, including Uniform Classification Guidelines for Foreign Substances and Recommended Penalties.

(s)(1) Any trainer, attendant, owner, veterinarian, or other person who shall participate in the illegal administration of any drug, medication, or chemical substance to any horse entered in a race, or otherwise tamper with an entered horse for the purpose of enhancing or retarding the performance of such a horse, shall be punished to such an extent as the stewards rule.

(2)(A) Upon receipt of a positive laboratory report, the stewards shall direct that no undistributed money earned by the positive horse be awarded pending a final determination of the matter.

(B) Distributed purse money may be ordered returned by the stewards.

(C) If it is determined that a violation has occurred, the purse money will be ordered forfeited and redistributed among the other horses in the race as determined by the stewards.

(D) Pari-mutuel wagering shall not be affected by purse money redistribution.

(3)(A) External non-invasive treatments such as icing, massage therapy, use of magnetic blanket or vibrator, or equine chiropractic treatments may be administered prior to the time the horse is required to be in the paddock for any race in which the horse is entered, provided, however, such permitted external treatments shall not include any activity involving:

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- (i) Any incision or piercing of the skin;
 - (ii) The application of extracorporeal shock wave therapy or radial pulse wave therapy otherwise prohibited by Rule 1217.3; or
 - (iii) The use of any prohibited drug or other prohibited substance.
- (B)(i) No device designed to produce localized anesthesia at the site or underlying tissues may be used on a horse after 6:00 p.m. on the day immediately prior to any day the horse is an entry in a race.
- (ii) The application of extracorporeal shock wave therapy and radial pulse wave therapy must comply with Rule 1217.3.
- (C)(i) Any person performing any equine chiropractic services on the grounds of the association shall consult with a veterinarian licensed by the commission regarding the chiropractic services to be performed, and shall conduct such services in compliance with applicable Arkansas law governing such services.
- (ii) In addition, any person performing any equine chiropractic services on the grounds of the association must be licensed as a vendor by the commission, and must have such further licenses if and to the extent required by applicable Arkansas law.
- (D)(i) Any machine or other device to be used in connection with any chiropractic treatment on any horse on the grounds of the association must be registered with and approved by the commission or its designee before use.
- (ii) Any machine or other device producing localized anesthesia or electronic or other similar shock wave used in connection with any treatment on any horse on the grounds of the association, including, without limitation, any laser, ultrasound, and nerve stimulator devices, e.g., "TENS" machine, must be registered with and approved by the commission or its designee before use.
 - (iii) Customarily used vibrators, magnetic blankets, and magnetic boots are not required to be so registered.
 - (iv) No machine or other device which produces localized anesthesia at the site or underlying tissues lasting more than twelve (12) hours shall be approved

unless use is limited to such lead times before racing as the official veterinarian shall determine is necessary for the anesthesia effect to properly dissipate.

(E) Use of any machine or other device required to be registered with the commission or its designee under subdivision (s)(3)(D) of this section on a horse on the grounds of the association must be reported to the official veterinarian on the prescribed form not later than the time prescribed by the official veterinarian.

(t) Any franchise holder, owner, trainer, or other licensee employing persons at Oaklawn Jockey Club who fails to hire qualified persons for the job duties assigned to said employer's employees or fails to adequately supervise, direct, or train the employees so employed by said employer may be fined, suspended, or excluded.

(u) Any time a horse is disqualified from a race for any reason, the purse money won by that horse shall be redistributed unless the commission finds that there are special circumstances justifying the owner, trainer, or jockey sharing in the purse.

23 CAR § 357-107. Total dissolved carbon dioxide testing.

(a) **Definitions.** As used in this section:

(1) "Bicarbonate loading" or "milkshaking" are terms used to describe the administration of bicarbonate of soda (sodium bicarbonate or NaHCO_3) or other substances that affect total dissolved carbon dioxide levels, administered through a nasogastric tube or by any other means, which shall be deemed to have an adverse effect on the horse by changing its normal physiological state through elevation of blood total dissolved carbon dioxide; and

(2) "Nasogastric tube" means any tube which can be inserted through the nose that extends into the stomach.

(b) **Procedures.**

(1) The state veterinarian may draw blood samples from a horse for the purpose of obtaining a TCO₂ (total dissolved carbon dioxide) concentration level.

(2) Blood samples for TCO₂ shall be drawn at the discretion of the State Veterinarian.

(3) The TCO₂ level in the blood shall not exceed thirty-seven millimoles per liter (37.0 mmol/L).

(4) In the event a sample drawn from a horse contains an amount of TCO₂ which exceeds the levels described above, the following penalties shall apply:

(A) The first time the laboratory reports an excessive TCO₂ level, the trainer shall be fined one thousand dollars (\$1,000) and the purse shall be redistributed;

(B) The second time the laboratory reports an excessive TCO₂ level, the stewards shall suspend the trainer for the duration of the race meeting plus ten (10) days or for a period not to exceed six (6) months, whichever is greater, impose a fine of up to one thousand five hundred dollars (\$1,500), with redistribution of the purse, and shall refer the case to the Arkansas Racing Commission; and

(C) For each subsequent report of an excessive TCO₂ level, the stewards or commission may suspend the trainer for up to one (1) year and impose a fine of up to two thousand five hundred dollars (\$2,500), with redistribution of the purse.

(5) There shall be no split sample testing on blood samples drawn for purposes of TCO₂ testing.

(6) No licensee other than veterinarians shall possess a nasogastric tube, as described herein, on the premises under the jurisdiction of the commission.

23 CAR § 357-108. Medication: Furosemide (Lasix).

(a)(1)(A) Except as otherwise provided in subsection (e) of this section, furosemide may be administered intravenously to a horse, which is entered to compete in a race, in accordance with this section, 23 CAR § 357-109, and Subsection E. of Rule 1217 of the Appendix to this part.

(B) Except under the instructions of the official veterinarian or the racing veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide shall be permitted only after the official veterinarian has placed the horse on the furosemide list.

(C) In order for a horse to be placed on the furosemide list, the following process must be followed.

(2) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide they shall notify the official veterinarian or his or her designee, using the prescribed form, that they wish the horse to be put on the furosemide list.

(3) The form must be received by the official veterinarian or his or her designee by the proper time deadlines so as to ensure public notification.

(4)(A) A horse placed on the official furosemide list must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list.

(B) The request must be made to the official veterinarian or his or her designee, on the proper form, no later than the time of entry.

(C) A horse that has not been administered furosemide at the required time mistakenly may be allowed to race, without furosemide, with the approval of the:

(i) Official veterinarian; and

(ii) Stewards.

(5)(A) After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of sixty (60) calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian.

(B) If a horse is removed from the official furosemide list a second time in a three-hundred-sixty-five-day period, the horse may not be placed back on the list for a period of ninety (90) calendar days.

(C) However, for purposes of this subdivision (a)(5), the removal of a horse from the furosemide list in order for the horse to participate in a Lasix-free race shall be disregarded.

(b) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is utilized:

(1) Furosemide shall be administered at the direction of the official veterinarian no less than four (4) hours prior to post time for the race for which the horse is entered;

(2) A horse qualified for furosemide administration must be brought to the detention barn within time to comply with the four-hour administration requirement specified above;

(3) The dose administered shall not exceed two hundred fifty milligrams (250 mg) nor be less than one hundred fifty milligrams (150 mg), provided, with approval of the official veterinarian, a dose of up to five hundred milligrams (500 mg) may be administered;

(4) Furosemide shall be administered by a single, intravenous injection; and

(5) After treatment, the horse shall be required by the Arkansas Racing Commission to remain in the detention barn in the care, custody, and control of its trainer or the trainer's designated representative under association and/or commission security supervision until called to the saddling paddock.

(c) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized:

(1) Furosemide shall be administered no less than four (4) hours prior to post time for the race for which the horse is entered;

(2) The furosemide dosage administered shall not exceed two hundred fifty milligrams (250 mg) nor be less than one hundred fifty milligrams (150 mg), provided, with approval of the official veterinarian, a dose of up to five hundred milligrams (500 mg) may be administered;

(3) Furosemide shall be administered by a single, intravenous injection; and

(4) The trainer of the treated horse shall cause to be delivered to the official veterinarian no later than one (1) hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission:

(A) The name of the horse, racetrack name, and the date and time the furosemide was administered to the entered horse;

(B) The dosage amount of furosemide administered to the entered horse;
and

(C) The printed name and signature of the attending licensed veterinarian who administered the furosemide.

(d)(1) Test results must show a detectable concentration of the drug in the post-race serum, plasma, or urine sample.

(2)(A) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis.

(B) The specific gravity shall not be below one and ten thousandths (1.010).

(C) If the specific gravity of the urine is found to be below one and ten thousandths (1.010) or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed.

(3)(A) Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below one and ten thousandths (1.010).

(B) Concentrations may not exceed fifty nanograms (50 ng) of furosemide per milliliter of serum or plasma, or one hundred nanograms (100 ng) of furosemide per milliliter of serum or plasma if the official veterinarian has approved a dose of up to five hundred milligrams (500 mg) of furosemide.

(e) The franchise holder may prohibit the administration of furosemide to horses entered in the following races, by so stating in the conditions of the race:

(1) A stakes race, including races designated as graded stakes by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association or its successor, as necessary for the stakes race to remain eligible for graded status; and

(2)(A) Races for horses three (3) years of age, as necessary for horses participating in the race to be entitled to accumulate points based on their performance in the race for eligibility ranking to run in the Kentucky Derby and Kentucky Oaks.

(B) If the franchise holder so prohibits the administration of furosemide to horses entered in any of the above-referenced races, such race shall be referred to as a "Lasix-free race".

(C) With respect to any horse participating in a Lasix-free race, it shall constitute a violation of this subsection if the horse's post-race sample of urine, serum, or plasma tests positive for furosemide at any level of detection indicating use within the forty-eight-hour period prior to the Lasix-free race.

(D) Such violation shall be deemed to constitute a violation under Penalty Category "B" of the ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties Model Rule set forth in Rule 1217.5 in the Appendix to this part, with resulting consequences and penalties to the horse, owner, and trainer as set forth therein for Penalty Category "B" violations.

23 CAR § 357-109. Lasix administration — 2015.

(a)(1)(A) The Commission Veterinarian shall designate the veterinarians (each referred to herein as a "designated Lasix veterinarian") authorized to administer Lasix (furosemide) as independent contractors to horses on the grounds of the franchise holder not less than four (4) hours before the published post time for the race in which the horse is entered to run.

(B) The number of veterinarians designated by the Commission Veterinarian as designated Lasix veterinarians shall not be more than the number reasonably necessary, in the reasonable judgment of the Commission Veterinarian, to appropriately and efficiently administer Lasix (furosemide) on a timely basis to horses on the grounds of the franchise holder as contemplated by this part.

(C) A designated Lasix veterinarian must:

(i) Be a veterinarian licensed and in good standing to practice veterinary medicine under the laws of Arkansas, have sufficient experience, reasonably satisfactory to the Commission Veterinarian, performing veterinary services for horses, including administration of Lasix (furosemide); and

(ii) Have a current malpractice insurance policy in effect with coverage customary for veterinarians performing veterinary services on the grounds of the franchise holder and shall provide to the Commission Veterinarian a customary certificate of insurance in a form acceptable to the Commission Veterinarian.

(2) A designated Lasix veterinarian may not perform other veterinary services on the grounds of the franchise holder, or for any horse entered or expected to be entered to race at Oaklawn during the then-current racing season, except:

(A) Administration of Lasix (furosemide) as contemplated by this section;

(B) Assisting as independent contractors in pre-race exams with consent of the Commission Veterinarian; or

(C) To address emergency situations.

(3)(A) The fee charged by the designated Lasix veterinarians for Lasix (furosemide) administration shall not exceed the fair market fee for such services.

(B) The fees charged by the designated Lasix veterinarian for Lasix (furosemide) administration shall be billed to the applicable horse owner's account with the Horsemen's Bookkeeper and paid through the Horsemen's Bookkeeper.

(4) Except as otherwise provided in subdivision (e)(5) of this section, no veterinarian or other person, except a designated Lasix veterinarian, may administer Lasix (furosemide) to any horse on the day the horse is scheduled to race prior to the running of the race, or after 6:00 p.m. on the day immediately before such race day.

(5) In the event of a shortage or other unavailability of a sufficient number of designated Lasix veterinarians to appropriately and efficiently administer Lasix (furosemide) on a timely basis to horses on the grounds of the franchise holder as contemplated by this section, the Arkansas Racing Commission or stewards may authorize any licensed veterinarian to administer Lasix (furosemide) to horses under this section and other applicable rules of the commission.

(b)(1)(A) The trainer shall be responsible for and be the absolute insurer of the condition of an entry the trainer enters regardless of the acts of the third parties.

(B) Should the chemical analysis of saliva, urine, or blood specimen detect the presence of any drug, medication, or chemical substances, including but not limited

to narcotics, stimulants, tranquilizers, depressants, steroids, NSAIDS not specifically permitted by 23 CAR § 357-106(r) and 23 CAR § 357-108, or any substance which interferes with testing procedures, the trainer of the horse may, in the discretion of the stewards, subject to appeal to the commission, be fined, suspended, and ruled off the track.

(C) In addition, any other person responsible for the care or attendance of the horse may be penalized as determined by the stewards or commission.

(2)(A) A licensed assistant trainer shall assume the same duties and responsibilities as imposed on the holder of a trainer's license.

(B) The designation of an assistant trainer shall not relieve the trainer's absolute responsibility for the condition of the entry, but shall, in addition, place the assistant trainer under such absolute responsibility.

(C) It is the intent of this section that both the trainer and the assistant trainer may, in the discretion of the stewards or commission, be fined, ruled off, or otherwise penalized under the absolute insurer rule for the same incident or infraction.

(3) The trainer shall be responsible for:

(A) Using the services of those veterinarians licensed by the commission to attend horses that are on association grounds; and

(B) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary.

(c) Any person who has been convicted by any court having proper jurisdiction of the possession or use of narcotics may be denied a license or be ruled off.

(d) At the beginning of each racing season, the commission may employ a chemist for the purpose of making chemical analysis of saliva or other excretions or body fluids taken by the Commission Veterinarian from any entry running on any track operating under a franchise from the commission.

(e) If after a race a sample of hair, saliva, or other excretions or body fluids is to be taken by the Commission Veterinarian from a horse that has competed in the race, nothing shall be administered or given in any manner whatsoever to the said horse

(except with the permission of and in the presence of the Track Veterinarian or Commission Veterinarian) until the Commission Veterinarian obtains the sample.

(f) The Commission Veterinarian, at his or her discretion, may administer a diuretic to any horse from which a urine sample is to be taken in order to expedite the test of the horse, unless the trainer of the horse shall have expressly requested otherwise in a signed statement delivered to the Commission Veterinarian prior to the administration by the Commission Veterinarian of the diuretic to the horse.

(g)(1) Every owner or his or her authorized agent or trainer of any entry shall immediately, upon request by the commission, submit any entry of which he or she is the owner or authorized agent or trainer to any veterinarian designated by the commission for such examination or tests as said veterinarian may deem advisable.

(2) The Commission Veterinarian may detain an entry as long as he deems necessary in order to obtain a specimen.

(h)(1) During the taking of the samples by the Commission Veterinarian, the owner or trainer in each instance must be present and witness the procedure.

(2) If for any reason the owner or trainer cannot be present, he or she must first advise the Commission Veterinarian in writing of the name of the person to act as his or her witness when the sample is taken.

(i)(1) The sample so taken shall be immediately sealed in a container in the presence of the owner, trainer, or witness, and evidence of such sealing must be noted thereon by the signature of the owner, trainer, or witness.

(2) The owner, trainer, witness, or chemist appointed by them shall have the right and opportunity to witness the examination and testing of said specimen by the Commission Chemist, provided that a written request for same, signed by the owner or trainer, is submitted to the Commission Veterinarian at the time of the taking of the specimen.

(3) Thereupon, said owner or trainer will receive written notification of the time and place of such examination and testing, and in such event the seal of the container containing said specimens shall not be disturbed by the Commission Chemist until the time so appointed and in the presence of the chemist selected by the owner or

trainer, if said chemist selected by the owner or trainer is present at the time and place so appointed for the examination and testing.

(j) Upon such sealing of the container containing the specimens, the container shall be encased and deposited in a large-size carrying case, all of which shall be stored and kept while at the racetrack.

(k) Any such carrying case shall be properly locked with an individual lock, the keys to which shall only be in possession of the Commission Veterinarian and the Commission Chemist.

(l) The franchise holder shall make provisions for suitable space, with a door equipped with proper lock and keys, where such specimens can be stored by the Commission Veterinarian.

(m) The Commission Veterinarian shall be in control and custody of all specimens until they are transported to the Commission Chemist.

(n) The Commission Veterinarian and Commission Chemist shall each keep, in addition to the record placed on the containers containing the specimen, separate individual records showing date, track, race, entry, name of owner, name of trainer, name of witness, name of guard, name of transportation agent who delivered the specimen to the Commission Chemist, and the time and date of receipt by the Commission Chemist, analysis made, and result thereof.

(o) Every franchise holder and all officials and employees thereof shall give every possible aid and assistance to any department, bureau, divisions, officer, agent, inspector, or any other person connected with the United States government or with the State of Arkansas or any local authority who may be investigating or prosecuting any such person they may suspect of being guilty of possessing any drug, hypodermic needles, batteries, or other similar appliances.

(p) Any horse that has been the subject of a fraudulent practice or other violation of this part may be disqualified by the stewards for no longer period than the remainder of the calendar year.

(q)(1)(A) Any horse exhibiting a positive response to a test for the presence of clenbuterol or other beta-2 agonists, or any antibodies of any blood doping agent,

including, but not limited to, Erythropoietin, Darbepoetin, Oxyglobin, and Hemopure, (a “blood doping agent”) shall be ineligible to start or race until the owner or trainer, at his or her own expense, provides proof, in a form and substance acceptable to the stewards, of a subsequent negative test result for the presence of clenbuterol or other beta-2 agonists and antibodies of blood doping agents from a laboratory approved by the commission, provided any such test sample and test must be obtained and conducted under collection and test procedures acceptable to the Commission Veterinarian.

(B) The beta-2 agonists and blood doping agents to be tested for shall include clenbuterol, Erythropoietin, Darbepoetin, Oxyglobin, Hemopure, and such other beta-2 agonists and blood doping agents determined from time to time by the Commission Veterinarian.

(2) Notwithstanding any inconsistent provision of this part, the trainer of the horse shall not be subject to application of the trainer’s responsibility penalty based solely on a finding by the laboratory that the beta-2 agonist or blood doping agent first detected in the initial positive test remains present in the horse in a subsequent sample taken from that horse for purposes of any subsequent test for beta-2 agonists and blood doping agents performed on the horse in an effort to determine the horse’s re-eligibility to start and race again pursuant to subdivision (q)(1) of this section.

23 CAR § 357-110. Complaints.

(a) If any owner, trainer, attendant, or any person uses profane or indecent language to officials or otherwise disturbs the peace on the grounds of the franchise holder, he or she shall be liable for a fine, suspension, or both, or shall be ruled off.

(b) The stewards may fine, suspend, or rule off any person who has violated the rules of the Arkansas Racing Commission or state or federal law.

(c) Should any licensee of the commission incur expenses while racing at any licensed track and wrongfully refuse to pay the same when due and payable, or within a reasonable time after demand, such licensee shall be deemed guilty of conduct

detrimental to the best interest of racing, and for such reason may be suspended until proper restitution is made.

(d)(1) Complaints against an official or officials shall be made to the stewards in writing, signed by the complainant or complainants.

(2) Complaints charging any infraction of any law of the State of Arkansas or rule of the commission may be made by any person, but if the complainant is an owner, trainer, or authorized agent and if he or she fails to substantiate the charge, he or she may be liable for a fine, suspension, or any other appropriate sanction.

(3) All such complaints shall be reported to the commission, together with the action taken on them by the stewards.

(e) The stewards shall take notice of corrupt and fraudulent practices and other infractions of the laws or rules of the commission.

(f)(1) Stewards may exclude from all places under their control any person who has been excluded by the appropriate horse racing authority of any other state, territory, or country from racing facilities located in such other state, territory, or country.

(2) Stewards may decline to license, or may suspend any license theretofore granted to, and may exclude any person who they find has violated any of this part, provided any such suspension and exclusion shall be for a period not exceeding the license year and may fine any such licensee any amount up to and including two thousand five hundred dollars (\$2,500).

(3) All fines shall be paid to the commission.

(4) If the stewards are of the opinion that the violation or violations involved warrant greater punishment, they shall so report to the commission.

(5) The stewards shall make daily reports in writing to the commission of the rulings.

(g)(1) When any licensee, horse, or stable is suspended by the stewards, such suspension shall immediately become effective on all other tracks under the jurisdiction of the commission until such time as the case in question is decided upon by the commission.

(2) The license of anyone ruled off of any Arkansas track for fraud or fraudulent practice, or for violation of any of the rules of racing of the commission shall thereby be revoked.

(3) When a person is ruled off for any fraudulent practice in relation to a particular horse wholly or partly belonging to him or her, he or she shall return all money or prizes that such horse has fraudulently won.

(4)(A) Fines must be paid within forty-eight (48) hours.

(B) Delinquents may be summarily suspended.

(C) All fines shall be collected by the commission.

(D) An unpaid fine may not be rescinded by the stewards except with the approval of the commission.

(h)(1) No racing official other than the stewards and the commission shall have the authority to impose a fine or suspension for violation of the rules or state law.

(2) In instances where the individual rule does not specify the amount of the fine, the stewards may impose a fine in the amount of two thousand five hundred dollars (\$2,500), and the commission may impose fines in the amount authorized by Arkansas law.

(i) Any persons, firms, associations, or corporation penalized or disciplined under the law or under this part, or who is otherwise aggrieved by any action, proceeding, or decision of a racing official or franchise holder licensed by the commission may appeal to the commission for a review of such action, proceeding, or decision by requesting a hearing before the commission, which may take whatever action it deems appropriate.

(j) Appeals to the commission must be filed in writing at the office of the commission within three (3) days after the date of said action, proceeding, or imposition of said discipline or penalty.

(k) Appeals to the commission shall be signed by the person making it, and must set forth his or her reasons for believing he or she is entitled to a hearing.

(l) All papers filed with the commission shall be the property of the commission.

(m)(1) An appeal from any action, proceeding, or decision of a racing official or franchise holder shall not serve to stay or otherwise affect such action, proceeding, or

decision until the appeal has been acted upon by the commission, unless otherwise ordered by the commission or by a court of competent jurisdiction.

(2)(A) An appeal from any action, proceeding, or decision of a racing official or franchise holder, hearings on misconduct of jockeys, owners, or trainers, applications for franchises, licenses, or dates to conduct race meetings, and similar matters shall be heard by the commission at an informal hearing on not less than twenty-four (24) hours' notice.

(B) Minutes of said hearings shall be kept by the commission, which minutes need not be verbatim.

(3) All other hearings conducted by the commission shall be formal hearings and governed by the following practices and procedures:

(A) **Pleadings.**

(i) Pleadings before the commission shall be by application or complaint, answer, motion, and reply.

(ii) All pleadings shall be typewritten and unless otherwise required by law, filed in duplicate with one (1) additional copy mailed to each member of the commission at his or her address of record;

(B) **Transcript.**

(i) The proceedings shall be reported and transcribed by a qualified court reporter.

(ii) However, a transcript of the proceedings shall be made at the expense of the commission only if directed by the chair or any two (2) commission members.

(iii) Minutes of the proceedings shall be maintained by the commission and need not be verbatim; and

(C) **Notice.** Except as otherwise provided by law, not less than twenty-four (24) hours' notice of the proceedings shall be served upon the applicant, all other parties, and such persons that have requested notice of the proceedings in writing, which request shall be directed to the chair of the commission.

(4) Formal and informal hearings shall be governed by the following practice and procedures:

(A) **Attorneys.** Any person or party affected by the proceedings shall be entitled to represent himself or herself or be represented by an attorney at law to be retained at his or her expense, provided, however, the chair may prohibit an attorney from practicing before the commission on a showing that such attorney has personally engaged in conduct in violation of the laws of the State of Arkansas pertaining to thoroughbred horse racing or rules of the commission;

(B) **Service of complaint and notice.**

(i) Service of all notices and complaints shall be accomplished by sending same to such person or his or her agent for service.

(ii) The complaint or notice must be sent by certified or registered United States mail addressed to the recipient, with return receipt requested, or by service by an officer authorized to serve process.

(iii) A proof of service shall be filed with the commission;

(C) **Depositions.** Upon application to the chair, the chair may cause depositions of witnesses to be taken in such manner as he may direct;

(D) **Public hearings.** All hearings before the commission shall be open to the public;

(E)(i)(a) **Subpoena.** Any party to a hearing before this commission, including an applicant, may on written or oral motion to the chair and the commission, its attorney, or any commissioner request the issuance of a subpoena, both ad testificandum and duces tecum, for any witness to appear before the commission.

(b) Upon receiving the request, the chair shall issue the requested subpoena directed to the sheriff of the county of the witness's residence or any other officer authorized by law to serve process, requiring him or her to summon the person named therein to attend at a particular time and place to testify as a witness.

(c) It may, when the chair so directs, require the witness to bring with him or her any book, writing paper, document, tape, record, or other thing under his or her control.

(d) The subpoena shall be served and the return made as provided by law for the circuit courts of this state.

(e) Any witness subpoenaed shall attend and give evidence until the matter before the commission is decided or such witness is discharged by the chair.

(f) The failure to appear and be sworn shall be punished as provided by law.

(ii) In any case not provided for by this section with regard to the issuance of subpoenas, the law of Arkansas with regard to subpoenas issued by the circuit courts of this state shall apply;

(F)(i) **Conduct of hearing.** The chair shall have the power:

(a) To preserve and enforce order during any proceeding before the commission;

(b) To administer oaths;

(c) To rule upon all questions arising during the course of the hearing;

(d) To hold conferences before and during the hearing for the settlement or simplification of issues;

(e) To make or recommend decisions;

(f) To compel the attendance and testimony of the witness;

(g) To require the production of books, papers, documents, and other evidence; and

(h) Generally, to regulate and guide the course of the pending proceeding.

(ii) In the absence of the chair, a majority of the remaining members of the commission may select one (1) of their number to act as chair, and the acting chair shall thereupon be authorized to discharge the duties of chair.

(iii) Except as otherwise provided by law for the conduct of hearings by the commission, the hearings shall be conducted as prescribed for adjudication and rule making under the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.;

(G) **Appearance.** Unless incapacitated, a person placing a claim or defending a privilege before the commission shall appear in person, and may not be excused from answering questions directed by the commission or its attorney and supplying information thereto;

(H) **Consolidation of issues.** Hearings involving several applicants or complaints having a common issue may be joined and heard together at the discretion of the commission;

(I) **Action by commission.**

(i) All orders, findings of fact, rulings, and other formal action taken by the commission during the course of a hearing or at the conclusion thereof shall be in writing and a copy furnished to all parties and persons that have requested notice pursuant to subdivision (m)(3)(C) of this section.

(ii) Any member of the commission may submit a minority or supplemental report or dissent.

(iii) Orders of the commission and all pleadings and applications shall be maintained on permanent file by the commission for public inspection; and

(J) **Costs.** The commission may tax appropriate costs to any person or party.

(5)(A) Any person or party shall, upon written application to the commission, be entitled to a formal hearing upon posting a bond for costs thereof.

(B) The provisions of this section are severable.

(6) Following the hearing, the commission may, at its discretion:

(A) Uphold the decision of the stewards;

(B) Overturn the decision of the stewards; or

(C) Reduce or increase any penalties assessed by the stewards in their ruling.