



Virginia
Regulatory
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Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Racing Commission
Virginia Administrative Code (VAC) citation	11 VAC 10-70-20, 11 VAC 10-70-30, 11 VAC 10-70-40, 11 VAC 10-70-60, 11 VAC 10-70-70, 11 VAC 10-70-80, 11 VAC 10-70-90, 11 VAC 10-70-170, 11 VAC 10-90-10, 11 VAC 10-90-30, and 11 VAC 10-90-50
Regulation title	Stewards and Appeals to the Commission
Action title	To make amendments to chapters 70 and 90 permanent.
Document preparation date	September 19, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The amendments to chapters 70 and 90 clarify the authority of the stewards appointed by the Virginia Racing Commission to enforce and interpret the Commission's regulations. The word "participant" has been added which provides that certain individuals associated with a horse that is entered to run in Virginia shall be considered as participants and come under the jurisdiction of the Commission. Additionally, the amendments provide the authority of the Commission to take disciplinary actions through stewards or at a meeting at which a quorum is present. These amendments are being made in order to conform with the changes that were made to the Code of Virginia as of July 1, 2005 as provided for in SB 1270 Virginia Racing Commission.

These amendments were made final on June 17, 2005 specifically for, and limited to the thoroughbred meeting held at Colonial Downs commencing on June 17, 2005 and ending on August 9, 2005. After expiring on August 9, 2005 at the end of the thoroughbred meet, the amendments were again made final by the Virginia Racing Commission specifically for and

limited to the harness meet which began on September 16, 2005 and continues until November 14, 2005. These final amendments made by the Virginia Racing Commission were exempt from the Virginia Administrative Process Act pursuant to 2.2-4002 (A) (18). The Virginia Racing Commission now wishes to make the amendments to these chapters permanent for all future racing meets conducted in the Commonwealth of Virginia.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 15, 2005, the Virginia Racing Commission voted to adopt the final amendments to 11 VAC 10-70-20, 11 VAC 10-70-30, 11 VAC 10-70-40, 11 VAC 10-70-60, 11 VAC 10-70-70, 11 VAC 10-70-80, 11 VAC 10-70-90, 11 VAC 10-70-170, 11 VAC 10-90-10, 11 VAC 10-90-30, and 11 VAC 10-90-50 (Stewards and Appeals to the Commission) as regulations, pursuant to the fast-track rulemaking process, at its regular monthly meeting.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The Virginia Racing Commission derives its statutory authority to promulgate regulations from the provisions of 59.1-369 of the Code of Virginia. The code states, in part, in subdivision 3, “The Commission shall promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

These amendments are being made in order to conform with the changes that were made to the Code of Virginia as July 1, 2005 as provided for in SB 1270 (Virginia Racing Commission). The amendments to chapters 70 and 90 are intended to clarify the authority of the stewards

appointed by the Virginia Racing Commission to enforce and interpret its regulations, which are designed to protect the health and welfare of the citizens of the Commonwealth of Virginia.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

These amendments were made final on June 17, 2005 specifically for, and limited to the thoroughbred meeting held at Colonial Downs commencing on June 17, 2005 and ending on August 9, 2005. After expiring on August 9, 2005 at the end of the thoroughbred meet, the amendments were again made final by the Virginia Racing Commission specifically for and limited to the harness meet which began on September 16, 2005 and continues until November 14, 2005. These final amendments made by the Virginia Racing Commission were exempt from the Virginia Administrative Process Act pursuant to 2.2-4002 (A) (18). The Virginia Racing Commission now wishes to make the amendments to these chapters permanent for all future racing meets conducted in the Commonwealth of Virginia. The commission wishes to use the fast-track process in order to ensure that the amendments will be permanent by the start of next year's thoroughbred meeting which will begin sometime in June of 2006. The commission believes that these amendments are noncontroversial in nature and does not expect to receive objections from anyone.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The word "participant" has been added which provides that certain individuals associated with a horse that is entered to run in Virginia shall be considered as participants and come under the jurisdiction of the Commission. Additionally, the amendments provide the authority of the Commission to take disciplinary actions through stewards or at a meeting at which a quorum is present.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;

- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.
- If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public is that the amendments provide additional rights of due process to a participant in a case which is appealed to the Commission. Because of the changes made to the code, the Commission now must find by a preponderance of the evidence that a violation has occurred whereas before it only had to have reason to believe that a violation had taken place in order to take disciplinary action against a participant. There will not be any disadvantages to the public by implementing the amended provisions.

The primary advantage of these amendments to the agency is the use of the word “participant” as defined in 59.1-365 of the Code of Virginia. The amended regulations will now apply to not only permit holders but participants as well. Once a horse is entered to run in Virginia, all owners, trainers, jockeys, and drivers associated with that horse are considered participants and come under the jurisdiction of the Commission and its stewards and are subject to regulations of the Commission and sanctions it or its stewards may impose and as a result increases the jurisdiction of the Virginia Racing Commission. The proposed action will not create any disadvantages to the Virginia Racing Commission or the Commonwealth of Virginia.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	NONE
Projected cost of the regulation on localities	NONE
Description of the individuals, businesses or other entities likely to be affected by the regulation	Participants in horse racing as described in 59.1-365 of the Code of Virginia.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There will be approximately 4,500 racing participants affected each year which includes about 600 small businesses.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other	There will be no additional costs to the participants as a result of the amendments to

administrative costs required for compliance by small businesses.	these chapters.
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

None noted.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed changes will have no impact on the institution of the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10-70-20			The word "Three" was eliminated as the commission hires three stewards for the thoroughbred meeting and three stewards for the harness meeting. Currently only one steward works both meetings and therefore the commission actually hires more than three stewards each year. Also it is clarified that the steward's authority goes beyond the end of a particular meeting as hearings may take place after a particular meeting has ended and that any of the stewards may handle any issues regarding the satellite wagering facilities in Virginia. Lastly, new language was added to clarify the qualifications required to become a steward in Virginia.

10-70-30			This section was amended to allow for any of the stewards to preside at a hearing pertaining to the operation of the satellite wagering facilities in Virginia.
10-70-40			The two old sections titled "Authority" and "General powers" were combined into one titled "General powers and authority". The primary propose of these amendments was to better clarify and define exactly what the powers and authorities of the stewards are as they relate to horseracing activities in Virginia.
10-70-60			The words "on the infield results board" have been deleted in 3 places in case of a power outage or any other instance that would cause the infield board to malfunction. A list of possible penalties that may be imposed by the stewards has been added. The wording for these penalties was created by the Joint Model Rules Committee of RCI and NAPRA, the two regulatory governing bodies in North America.
10-70-70			"Trainers and Owners" was added to the people that may lodge an objection after the completion of a race. This was always the case but the commission wanted to clarify this point. The word "participant" in addition to a permit holder was added to the people that may not withdraw a protest without the permission of the stewards.
10-70-80			The wording of this section was changed to accommodate an instance where the commission would hire a full-time steward to work the entire year through. As the number of race days in Virginia continue to increase, this is a very real possibility and the commission wanted the regulations to reflect this possible change in policy.
10-70-90			The term "substitute steward" will replace "deputy steward" only because the term deputy steward is not really the proper term for this position and is not used in the industry. This is a wording change only and does not change the meaning of this section.
10-70-170			The phrase "holder of a permit" is replaced with "person being disciplined" to reflect the steward's authority over all participants in racing and not just licensees. This section has also been changed to require that all disciplinary actions taken by the stewards shall be provided in writing and sent by certified mail and that the stewards use all reasonable efforts to obtain acknowledgement of receipt by the recipient.
10-90-10			The title of this section was changed from "Generally" to "Request for review; stay" to better reflect the subject matter of this section. The first change was made to include participants to the people who may contest a disciplinary action by the stewards including the denial of a

			<p>permit. The second change includes the words “denial of a license or permit” to make it clear that this is an action that shall not be stayed unless the commission so orders. The other changes to this section require that a request for stay must be in writing and must be acted upon within 72 hours of the delivery of the request. Also, the request for stay may only be granted by the chairman of the commission or a commissioner designated by the chairman and not by the executive secretary. Lastly, if a stay is granted, it will only be effective until the next regularly scheduled commission meeting. The additional wording in the last half of this section ensures the participant involved a timely decision regarding a stay by the commission if so warranted and better defines the process of requesting a stay.</p>
10-90-30			<p>The words “of or denial of a permit” were deleted to include all disciplinary actions in this section. The wording in the last line of this section was changed to include participants as people who are included in this section.</p>
10-90-50			<p>One of the main changes to this section is that reviews involving the outcome of a race or riding/driving infractions shall be conducted on the record of the steward’s proceedings and that riding/driving infractions in any race are considered violations of the commission’s regulations. All other reviews will be de novo, which means basically that it is like a brand new case in which new evidence may be submitted. Wording was added in item number 2 to clarify what the commission may do with a written decision prepared by an independent hearing officer. Wording was added in item number 3 to require that a notice of a commission review must be sent not only to the person requesting the review, but also any other parties involved or who may be affected by the decision and what items are to be included in the notice. Wording was changed in item number 4b to include all participants to be consistent with the rest of the regulation. In item number 5a additional wording was inserted to include the hearing officer as people that may issue subpoenas or request the production of appropriate relevant evidence. Item number 5h was deleted as this is covered in item number 4a making it redundant and not necessary for this section. Changes to item number 6 were made to make it clear that reviews involving riding or driving infractions will not be de novo as discussed earlier. The additional wording in item number 7 was done to clarify when additional evidence may be introduced in a review of riding or driving infractions and the procedures to be followed if this new evidence requires a new, additional, or supplemental hearing.</p>