



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Washington Horse Racing Commission

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: Allows the use of oral fluids in pre-screen drug and alcohol testing.

Citation of existing rules affected by this order:

Repealed:
Amended: WAC 260-34 Drug and alcohol testing of licensees
Suspended:

Statutory authority for adoption: RCW 67.16.020

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 11-03-062 on January 18, 2011.
Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted: March 10, 2011

NAME (TYPE OR PRINT)
Douglas L Moore

SIGNATURE
Douglas L Moore

TITLE
Deputy Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 10, 2011
TIME: 12:23 PM

WSR 11-07-030

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>2</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>2</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	<u>2</u>	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 09-03-009, filed 1/8/09, effective 2/8/09)

WAC 260-34-020 Drug and alcohol violations. No licensee or applicant, while acting in an official capacity or participating directly in horse racing, will commit any of the following violations:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal controlled substance while on the grounds of any licensed race meet;

The alcohol concentration for persons on horseback may not be 0.02 percent or higher.

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance or possess an illegal controlled substance with intent to deliver;

(4) Possess an illegal controlled substance;

(5) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

(6) Refuse to submit to blood, breath, oral fluids, and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath, oral fluids, and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, will be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington will not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

WAC 260-34-030 Testing. (1) A steward of the horse racing commission, a commission security investigator or the executive secretary, may require any licensee or applicant to provide breath, blood, oral fluids, and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(a) When a steward or commission security investigator finds that there is reasonable suspicion to believe that the applicant or licensee has used or is under the influence of alcohol and/or any drug.

(b) When an applicant or licensee has a documented history of an unexplained positive test which indicates illegal drug usage or has a documented history of violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation within five years of conviction or release from a correctional institution for that violation. The term "correctional institution" shall include any prison, jail or similar institution in this state or elsewhere.

(c) When a steward or commission security investigator decides to test any licensee or applicant as a condition of any conditional or probationary license.

(d) When any person is riding a horse on the grounds of a licensed racing association.

(2) For licensees or applicants who are subject to a field screening urine, or oral fluid test under the provisions in this chapter, and whose test shows the presence of a controlled substance or alcohol, the field screening test results shall be confirmed by a laboratory acceptable to the commission.

(3) The result of a test conducted with a preliminary breath test (PBT) instrument (~~(approved by the state toxicologist in chapter 448-15 WAC or other breath test equipment approved under chapter 448-16 WAC)~~), or oral swab, shall constitute evidence of a violation of these rules. The results of such a test may be considered for purposes of determining whether the licensee or applicant has consumed alcohol, the level of alcohol concentration, and whether the licensee or applicant has violated a prohibition on the use or consumption of alcohol established in a conditional license.