



# 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:** Amends several penalty guidelines to reflect current practice. Also, removes most required automatic referrals to the commission.

**Citation of existing rules affected by this order:**

Repealed:  
 Amended: WAC 260-84 Penalties  
 Suspended:

**Statutory authority for adoption:** RCW 67.16.020

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 10-24-002 on November 18, 2010.  
 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:** January 13, 2011

**NAME (TYPE OR PRINT)**  
Douglas L Moore

**SIGNATURE**

**TITLE**  
Deputy Secretary

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: January 14, 2011**  
**TIME: 8:51 AM**

**WSR 11-03-053**

**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:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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>1</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	<u>1</u>	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	<u>1</u>	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 09-05-066, filed 2/13/09, effective 3/16/09)

**WAC 260-84-060 Penalty matrixes.** (1) The imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

<b>Class A and B Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$100	\$200	\$300
Unlicensed or improperly licensed personnel WAC 260-28-230, 260-36-150, and 260-28-295	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$75	\$100	\$200
Failure of jockey to report correct weight WAC 260-32-150	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$50	\$100	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$500 and/or suspension (riding days) ((and possible fine))	Suspension (riding days)	
Rider's misuse of whip WAC 260-52-040	Warning to \$2500		

<b>Class A and B Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	\$200	\$200 to \$300	\$200 to \$500
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
<u>Trainer failure to report proper identity of horses in their care WAC 260-28-295</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel WAC 260-28-230, 260-36-150, and 260-28-295	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$25	\$50	\$100
Failure of jockey to report correct weight WAC 260-32-150	\$25	\$50	\$100
Failure of jockey to appear for films WAC 260-24-510	\$25	\$50	\$100
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Jockey easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to <del>\$(750)</del> <u>500</u> and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	<u>\$100 to \$500 and/or suspension (riding days) ((and possible fine))</u>		
Rider's misuse of whip WAC 260-52-040	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	<del>\$(100)</del> <u>50</u>	\$100 to \$200	\$200 to \$300
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$100
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$25	\$50	\$100
Failure to obtain permission for equipment change WAC 260-44-010	\$25	\$50	\$100
Failure to report performance records WAC 260-40-100	Warning to \$25	\$50	\$100
Failure to submit gelding report WAC 260-28-295	\$50	\$100	\$200

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$50	\$100	\$250 and/or suspension
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$200	\$500	\$1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$50	\$100	\$200
Failure to ride in a safe or prudent manner WAC 260-80-145	<del>\$(50)</del> <u>Warning</u>	<del>\$(100)</del> <u>50</u>	<del>\$(200)</del> <u>\$50 - subsequent offenses \$50 plus possible suspensions</u>

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Use of improper, profane, or indecent language WAC 260-80-130	Warning to \$200	\$200 to \$300	\$300 to \$500
Failure to complete temporary license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - licensing WAC 260-36-080	License canceled		
<del>((False application)) Pending felony charges or conviction - ineligible for licensing WAC ((260-36-050)) 260-36-120(2)</del>	<del>(((\$50 to \$250 and/or possible)) Denial, suspension or revocation of license</del>		
Failure to divulge a <del>((misdemeanor or gross misdemeanor)) felony conviction</del> WAC 260-36-050	<del>((Warning to)) \$100 to \$250</del>		
<del>((Failure to divulge a felony)) False information or failure to provide accurate and complete information on application</del> WAC 260-36-050	<del>(((\$100)) Warning to \$250 ((and/or denial, suspension, or revocation of license))</del>		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		
Failure to pay proper industrial insurance premium(s) WAC 260-36-220 and 260-36-230	In addition to being required to pay the full industrial insurance premium, the trainer will be assessed a fine equal to fifty percent of the <u>total</u> premium <del>((due))</del>		
Failure to pay L&I payment agreement (per contract)	Immediate suspension until premium paid and \$50 fine for each quarter payment is late		
Financial responsibility WAC 260-28-030	<del>((Resolution with mutual agreement between the parties - failure to comply with the agreement will result in immediate))</del> <u>Suspension of license until debt is satisfied (suspension may be stayed with a mutual payment agreement and licensee remains compliant with agreement)</u>		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine <del>((within 7 days of ruling conference)) when due</del> (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	Immediate ejection from the grounds( <del>(; 1 year suspension, and mandatory referral to commission for)</del> ) <u>and permanent revocation</u>		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	Immediate ejection from the grounds( <del>(; 1 year suspension, and mandatory referral to commission for)</del> ) <u>and permanent revocation</u>		
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction within the calendar year, absent mitigating circumstances. The stewards may impose more stringent penalties if aggravating circumstances exist. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3) (a). ~~((For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year, or revocation.))~~

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty will include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the parimutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, 260-84-100, 260-84-110, 260-84-120, and 260-84-130.

(6) The executive secretary or stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a referral will not preclude commission action in

any matter. An executive secretary's or stewards' ruling will not prevent the commission from imposing a more severe penalty.

AMENDATORY SECTION (Amending WSR 09-05-066, filed 2/13/09, effective 3/16/09)

**WAC 260-84-065 Licensees--Drug and alcohol penalties.** (1) Engaging in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2).

(a) First offense - ~~((thirty-day))~~ five-day suspension; ~~((and))~~

(b) Second ~~((or subsequent))~~ offense - ~~((one-year))~~ thirty-day suspension ~~((and referral to the commission for revocation));~~

(c) Third offense - one-year suspension; and

(d) Subsequent offense, (within five years) - revocation.

(2) Possessing 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, other than marijuana in violation of WAC 260-34-020(5); or possessing or having within their body while on the grounds of a licensed race meet any illegal controlled substance, in violation of WAC 260-34-020 (1) or (4).

(a) First offense - thirty-day suspension; ~~((and))~~

(b) Second offense - one-year suspension ~~((and referral to the commission for revocation)); and~~

(c) Third and subsequent offenses - revocation.

(3) Possessing any equipment, products or materials of any kind, which are used or intended for use in ingesting, inhaling or otherwise introducing into the human body marijuana, in violation of WAC 260-34-020(5); or possessing or having within their body marijuana, an illegal controlled substance, while on the grounds of any licensed race meet, in violation of WAC 260-34-020(1).

(a) First offense - three-day suspension;

(b) Second offense - thirty-day suspension; ~~((and))~~

(c) Third ~~((or subsequent))~~ offense~~((s))~~ - one-year suspension ~~((and referral to commission for revocation)); and~~

(d) Subsequent offenses - revocation.

(4) Being under the influence of or affected by intoxicating liquor and/or drugs in violation of WAC 260-34-020(1), excluding persons on horseback.

(a) First offense - warning to one-day suspension;

(b) Second offense - three-day suspension;

(c) Third offense - thirty-day suspension; and

(d) Subsequent offenses - one-year suspension ~~((and referral to commission for revocation)).~~

(5) Being under the influence of or affected by intoxicating liquor and/or drugs, and being on horseback in violation of WAC 260-34-020(1).

(a) First offense - warning to three-day suspension;

(b) Second offense - (~~up to a~~) three to thirty-day suspension; (~~and~~)

(c) Third offense - (~~up to a~~) thirty-day to one-year suspension (~~and referral to commission for revocation~~); and

(d) Subsequent offenses - revocation.

(6) Refusing to submit to a drug or alcohol test, in violation of WAC 260-34-020(6) will result in immediate ejection from the grounds and a penalty of a one-year suspension (~~plus referral to the commission for~~) or revocation.

(7) Possessing any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal controlled substance or possessing an illegal controlled substance with intent to deliver on the grounds of any licensed race meet in violation of WAC 260-34-020 (3) or (5), immediate ejection from the grounds (~~, a one-year suspension plus referral to the commission for~~) and revocation.

(8)(a) For violations of WAC 260-34-020 (1) and (4), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators.

(iii) Have no violations of chapter 260-34 WAC.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards (~~, after a conference,~~) finds that the licensee or applicant failed to comply with the conditions required in (a)(iii) of this subsection, the board of stewards (~~(has discretion to)~~) may impose the original suspension (~~(authorized by this rule)~~). If the failure to comply with the conditions of the stay is a violation of chapter 260-34 WAC, the board of stewards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

(9) Any licensee or applicant who tests positive (presumptive

or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

(10) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

(11) Any licensee or applicant who has an alcohol concentration of 0.02 percent or higher while on horseback is prohibited from being on horseback until his/her alcohol concentration is below 0.02 percent.

AMENDATORY SECTION (Amending WSR 08-05-086, filed 2/15/08, effective 3/17/08)

**WAC 260-84-100 Furosemide penalties.** (1) Penalties will be assessed against any person found to be responsible or party to the improper administration of furosemide or failure to administer furosemide when required, in chapter 260-70 WAC (~~as follows:~~).

The penalties may include a fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may (~~be referred to the commission for further action, which may~~) include ((an)) additional fines, and/or suspension, or revocation of license.

(2) Equine medication violations from Washington and all recognized racing jurisdictions, will be considered when assessing penalties.

AMENDATORY SECTION (Amending WSR 08-05-086, filed 2/15/08, effective 3/17/08)

**WAC 260-84-120 Penalties relating to permitted medication.**

(1) Should the laboratory analysis of serum or plasma taken from a horse show the presence of more than one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of these rules the following penalties will be assessed:

(a) For a first offense within a three hundred sixty-five day period - Fine not to exceed \$300;

(b) For a second offense within a three hundred sixty-five day period - Fine not to exceed \$750;

(c) For a third offense within a three hundred sixty-five day

period - Fine not to exceed \$1,000.

(2) Should the laboratory analysis of serum or plasma taken from a horse show the presence of phenylbutazone in excess of the quantities authorized by this rule, the following penalties will be assessed:

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
> 5.0 but < 6.5 mcg/ml	Warning	Fine not to exceed \$300	Fine not to exceed \$500
> 6.5 but < 10.0 mcg/ml	Fine not to exceed \$300	Fine not to exceed \$500	Fine not to exceed \$1000
> 10.0 mcg/ml	Fine not to exceed \$500	Fine not to exceed \$1000	Fine not to exceed \$2500 and possible suspension

(3) Detection of any unreported permitted medication, drug, or substance by the primary testing laboratory may be grounds for disciplinary action.

(4) As reported by the primary testing laboratory, failure of any test sample to show the presence of a permitted medication, drug or substance when such permitted medication, drug or substance was required to be administered may be grounds for disciplinary action, which may include a fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may (~~be referred to the commission for further action, which may~~) include (~~an~~) additional fines and/or suspension or revocation.

(5) In assessing penalties for equine medication, prior offenses will count regardless of whether the violation(s) occurred in Washington or another recognized racing jurisdiction, and regardless of the prior concentration level.

AMENDATORY SECTION (Amending WSR 08-05-086, filed 2/15/08, effective 3/17/08)

**WAC 260-84-130 Penalties for prohibited practices.** For a person or persons found to be responsible for violation of WAC 260-70-545, including the treating veterinarian, the following penalties will be assessed:

(1) For violations of WAC 260-70-545, except WAC 260-70-545 (4) (b);

(a) For first offense - Thirty day suspension and \$1,000 fine;

(b) For second offense - Sixty day suspension and \$2,000 fine;

(c) For third offense - One year suspension, \$2,500 fine; and (~~a mandatory referral to the commission~~)

(d) For subsequent offense(s) - Revocation of license and a \$2500 fine.

(2) For violations of WAC 260-70-545(4), the person or persons found to be responsible for the violation, including the treating veterinarian (~~will be suspended for one year, pay~~) a \$2,500 fine and (~~referred to the commission~~) revocation of license.

