



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Horse Racing Commission

<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 12-23-026 ; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).	<input type="checkbox"/> Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) WAC 260-84 Penalties

Hearing location(s):
 Auburn City Council Chambers
 25 W. Main
 Auburn, WA 98002

Date: March 8, 2013 Time: 9:30 a.m.

Submit written comments to:
 Name: Douglas L Moore
 Address: 6326 Martin Way Suite 209
 Olympia, WA 98516-5578
 e-mail doug.moore@whrc.state.wa.us
 fax (360) 459-6461 by (date) March 6, 2013

Assistance for persons with disabilities: Contact
 Patty Sorby by March 6, 2013
 TTY (360) 459-6462 or () _____

Date of intended adoption: March 8, 2013
 (Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Updates the penalty matrix to reflect current WAC's and adopts new penalties for the possession and use of marijuana due to the passage of I-502.

Reasons supporting proposal: WAC's have been amended and the current matrix was incorrect in some circumstances.

Statutory authority for adoption: RCW 67.16.020

Statute being implemented:

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

DATE
2/1/2013

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: February 01, 2013

TIME: 8:21 AM

WSR 13-04-047

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization)

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Douglas L Moore	6326 Martin Way Suite 209 Olympia, WA 98516-5578	(360) 459-6462
Implementation.... Robert J Lopez	6326 Martin Way Suite 209 Olympia, WA 98516-5578	(360) 459-6462
Enforcement..... Robert J Lopez	6326 Martin Way Suite 209 Olympia, WA 98516-5578	(360) 459-6462

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared. Not applicable

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain: Not applicable

AMENDATORY SECTION (Amending WSR 12-05-042, filed 2/10/12, effective 3/12/12)

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

Class A and B Licensed Facilities			
	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 ;) <u>260-28-250</u> and <u>260-36-150</u> (; 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)	Suspension (riding days)	
Rider's misuse of (whip) <u>crop</u> WAC 260-52-040	Warning to \$2500		

Class A and B Licensed Facilities			
	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	<u>Warning to \$200</u>	\$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
Trainer failure to report proper identity of horses in their care WAC 260-28-295	\$50	\$100	\$200
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300

Class C Licensed Facilities			
	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 ;) 260-28-250 and 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

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Jockey easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$500 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	\$100 to \$500 and/or suspension (riding days)		
Rider's misuse of ((whip)) crop WAC 260-52-040	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	<u>Warning to \$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

Class A, B and C Licensed Facilities			
	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

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to ride in a safe or prudent manner WAC 260-80-145	Warning	\$50	\$50 - subsequent offenses \$50 plus possible suspensions
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		
Pending felony charges or conviction - ineligible for licensing WAC 260-36-120(2)	Denial, suspension or revocation of license		
Failure to divulge a felony conviction WAC 260-36-050	\$100 to \$250		
False information or failure to provide accurate and complete information on application WAC 260-36-050	Warning to \$250		
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		
Financial responsibility WAC 260-28-030	Suspension of license until debt is satisfied (suspension may be stayed with a mutual payment agreement and licensee remains compliant with agreement)		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine when due (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	Immediate ejection from the grounds and permanent revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	Immediate ejection from the grounds and permanent revocation		
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
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).

(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 11-03-053, filed 1/14/11, effective 2/14/11)

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 - Five-day suspension;~~

- ~~(b) Second offense - Thirty-day suspension;~~
- ~~(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;~~
- ~~(b) Second offense - One-year suspension; 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;~~
- ~~(c) Third offense - One-year suspension; 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.~~

~~(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 - Three to thirty-day suspension;~~
- ~~(c) Third offense - Thirty-day to one-year suspension; 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 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 and revocation.~~

~~(8)) (1) Be under the influence of or affected by intoxicating liquor and/or drugs, or have within their body any illegal controlled substance in violation of WAC 260-34-020 (1) and (5):~~

- ~~(a) First offense - Warning to one-day suspension;~~
- ~~(b) Second offense - Three-day suspension;~~

(c) Third offense - Thirty-day suspension;

(d) Subsequent offenses (within five years) - One-year suspension.

(2) Be under the influence of or affected by intoxicating liquor and/or drugs, or having within their body any illegal controlled substance, while on horseback, in violation of WAC 260-34-020 (1) and (5):

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

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - Thirty-day to one-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(3) Engage in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2):

(a) First offense - Five-day suspension;

(b) Second offense - Thirty-day suspension;

(c) Third offense - One-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(4) Engaging in the illegal sale or distribution of a controlled substance, including marijuana, or possess an illegal controlled substance, including marijuana with intent to deliver in violation of WAC 260-34-020(3), revocation and immediate ejection from the grounds.

(5) Possess an illegal controlled substance, including marijuana if under the age of twenty-one, and excluding marijuana if twenty-one years or older in violation of WAC 260-34-020(4):

(a) First offense - Thirty-day suspension;

(b) Second offense - One-year suspension; and

(c) Third offense - Revocation.

(6) Possession of marijuana over the age of twenty-one, WAC 260-34-020(5):

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

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - Thirty-day to one-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(7) Possession of 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 in violation of WAC 260-34-020(6):

(a) First offense - Three-day suspension;

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - One-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(8) Refusal to submit to blood, breath, oral fluids, and/or urine testing, in violation of WAC 260-34-020(7), immediate ejection for the grounds and a one-year suspension to revocation.

(9)(a) For violations of WAC 260-34-020 (1) (~~and~~), (4), or (5), 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 finds that the licensee or applicant failed to comply with the conditions required in (a)(iii) of this subsection, the board of stewards may impose the original suspension. 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))~~ (10) 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))~~ (11) 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))~~ (12) 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.