



**RULE-MAKING ORDER
PERMANENT RULE ONLY**

**CR-103P (October 2017)
(Implements RCW 34.05.360)**

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: April 16, 2018

TIME: 8:40 AM

WSR 18-09-060

Agency: Washington Horse Racing Commission

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: Update penalties for phenylbutazone overages to reflect amended permitted threshold levels. Adds a penalty for a violation of a adopted level for cobalt in a post race sample..

Citation of rules affected by this order:

New: WAC 260-84

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 67.16.020

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-05-015 on February 8, 2018 (date).

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:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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| Federal statute: | New | ___ | Amended | ___ | Repealed | ___ |
| Federal rules or standards: | New | ___ | Amended | ___ | Repealed | ___ |
| Recently enacted state statutes: | New | ___ | Amended | ___ | Repealed | ___ |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| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

The number of sections adopted on the agency's own initiative:

| | | | | | |
|-----|-----|---------|---|----------|-----|
| New | ___ | Amended | 1 | Repealed | ___ |
|-----|-----|---------|---|----------|-----|

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

| | | | | | |
|-----|-----|---------|---|----------|-----|
| New | ___ | Amended | 1 | Repealed | ___ |
|-----|-----|---------|---|----------|-----|

The number of sections adopted using:

| | | | | | | |
|--------------------------------|-----|-----|---------|-----|----------|-----|
| Negotiated rule making: | New | ___ | Amended | 1 | Repealed | ___ |
| Pilot rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Other alternative rule making: | New | ___ | Amended | ___ | Repealed | ___ |

Date Adopted: April 13, 2018

Name: Douglas L Moore

Title: Executive Secretary

Signature:



AMENDATORY SECTION (Amending WSR 14-03-055, filed 1/13/14, effective 2/13/14)

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 or improper conduct WAC 260-36-120 or 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 or 260-36-260 | \$100 | \$200 | \$300 |
| Unlicensed or improperly licensed personnel WAC 260-36-150 and 260-36-260 | \$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 and 260-44-080 | \$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 crop WAC 260-52-045 | Warning to \$2500 | | |
| Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030 | Warning to \$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 |
| 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 or 260-36-260 | \$50 | \$100 | \$150 |
| Unlicensed or improperly licensed personnel WAC 260-36-150 and 260-36-260 | \$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 |
| 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 crop WAC 260-52-045 | Warning to \$2500 | | |
| Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030 | Warning to \$50 | \$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 260-36-250 | 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 | | |
| Failure to divulge a pending felony charge or a felony conviction WAC 260-36-050 and 260-36-120 | \$100 to \$250 | | |
| False information or failure to provide accurate and complete information on application WAC 260-36-050 or 260-36-120 | 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 |
| 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 15-07-058, filed 3/16/15, effective 4/16/15)

WAC 260-84-110 Penalties for uniform classifications. (1) Penalties will be assessed against any person found to be responsible or party to the improper administration of a drug or the intentional administration of a drug resulting in a positive test. In assessing penalties under this section, violations in the last three hundred sixty-five days for Category "B," "C," and "D" penalties from Washington and all recognized racing jurisdictions will be considered. For Category "A" penalties, lifetime violations in Washington and all recognized racing jurisdictions will be considered.

(a) The following are recommended penalties for violations of a drug carrying a Category "A" penalty:

| First Offense | Second Offense | Third Offense |
|---|--|---|
| Up to a one-year suspension and up to a fine of \$1500 absent mitigating circumstances. DQ and loss of purse. | One-year suspension and up to a fine of \$2500 absent mitigating circumstances. DQ and loss of purse. Referred to commission for additional consideration. | Revocation of license and a fine of \$2500 absent mitigating circumstances. DQ and loss of purse. |

(b) The following are recommended penalties for violations of a drug carrying a Category "B" penalty:

| First Offense | Second Offense (365-day period) | Third Offense (365-day period) |
|--|--|---|
| Zero to a fifteen-day suspension and up to \$500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances. | Up to a thirty-day suspension and up to \$1000 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances. | Minimum sixty-day suspension and up to \$2500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances. |

(c) The following are recommended penalties for violations of a drug carrying a Category "C" penalty, overages for permitted NSAIDs, (except phenylbutazone), and no furosemide when reported:

| First Offense | Second Offense (365-day period) | Third Offense (365-day period) |
|--|--|---|
| Minimum written warning to maximum \$500 fine. | Minimum written warning to maximum \$750 fine. | Minimum \$500 fine to maximum \$1000 fine. Possible DQ and loss of purse. |

(d) The recommended penalty for a violation involving a drug that carries a Category "D" penalty is a written warning. Multiple violations may result in fines and/or suspensions.

(e) The recommended penalty for a finding of an overage of cobalt:

| <u>Levels between 26 ppb to 49 ppb</u> | <u>Level 50 ppb or greater</u> <u>First Offense</u> <u>(365-day period)</u> | <u>Level over 50 ppb or greater</u> <u>Second Offense</u> <u>(365-day period)</u> |
|---|---|---|
| <u>Horse placed on official veterinarian list until providing a sample under 26 ppb</u> | <u>Zero to a fifteen-day suspension and up to \$500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.</u> | <u>Up to a thirty-day suspension and up to \$1000 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.</u> |

(2) A lesser penalty may be imposed if a majority of the stewards determine that mitigating circumstances, as outlined in WAC 260-84-090 exist.

AMENDATORY SECTION (Amending WSR 15-07-058, filed 3/16/15, effective 4/16/15)

WAC 260-84-120 Penalties relating to multiple NSAIDs and phenylbutazone. (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:

~~((a) For overnight and nongraded stakes races:))~~

| 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)) > 2.0 but < 3.5 mcg/ml | Warning | Fine not to exceed \$300 | Fine not to exceed \$500 |
| ((>6.5 but <10.0 mcg/ml)) > 3.5 but < 7.0 mcg/ml | Fine not to exceed \$300 | Fine not to exceed \$500 | Fine not to exceed \$1000 |
| ((>10.0 mcg/ml)) > 7.0 mcg/ml | Fine not to exceed \$500 | Fine not to exceed \$1000 | Fine not to exceed \$2500 and possible suspension |

~~((b) For graded stakes races:)~~

| Concentration | 1st offense within 365 days | 2nd offense within 365 days | 3rd and subsequent offenses within 365 days |
|-----------------------|-----------------------------|--|---|
| >2.0 but < 4.9 mcg/ml | Fine not to exceed \$300 | Fine not to exceed \$500 | Fine not to exceed \$1000 and 7-day suspension |
| >5.0 mcg/ml | Fine not to exceed \$500 | Fine not to exceed \$1000 and 7-day suspension | Fine not to exceed \$2500 and 15-day 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 include 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.