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February 20, 2017

VIA HAND DELIVERY

Ms. Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

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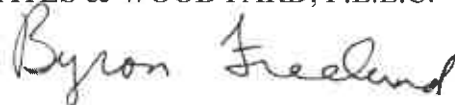
Re: Arkansas Racing Commission – Questionnaires for Proposed Rules

Dear Ms. Davis:

Please find enclosed one Questionnaire for Filing Proposed Rules and Regulations with the Arkansas Legislative Council and Joint Interim Committee on behalf of the Arkansas Racing Commission. Let me know if you need anything further on this Questionnaire.

Best regards,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.



Byron Freeland

BF:sel
Enclosure

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Department of Finance & Administration
DIVISION Arkansas Racing Commission
DIVISION DIRECTOR John Campbell
CONTACT PERSON Byron Freeland
ADDRESS Mitchell, Williams Law Firm, 425 W. Capitol Ave., Suite 1800,
Little Rock, AR 72201
PHONE NO. 501-688-8810 FAX NO. 501-918-7810 E-MAIL bfreeland@mwlaw.com
NAME OF PRESENTER AT COMMITTEE MEETING Byron Freeland
PRESENTER E-MAIL bfreeland@mwlaw.com

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Rule 1231 Total Dissolved Carbon Dioxide Testing
The existing rule included 39.0 millimole per liter if the horse is competing on furosemide (lasix) or other permitted medication known to affect TCO₂, which was removed. It is now limited to 37.0 millimole per liter in all cases
2. What is the subject of the proposed rule? is now limited to 37.0 millimole per liter in all cases
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. N/A
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? February 11, 2017
- When does the emergency rule expire? April 30, 2017

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. N/A

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. N/A

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up." See attached summary and mark up.**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. 23-110-204

7. What is the purpose of this proposed rule? Why is it necessary? This change was necessary to ensure that graded stake races meet the requirements of TOBA, and will be certified as complying with all requirements for 2017.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.dfa.arkansas.gov/offices/racingcommission

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

N/A

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

February 11, 2017

12. Do you expect this rule to be controversial? Yes No

If yes, please explain. N/A

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

The Commission does not expect any comments.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Finance & Administration
DIVISION Arkansas Racing Commission
PERSON COMPLETING THIS STATEMENT Byron Freeland
TELEPHONE NO. 501-688-8810 **FAX NO.** 501-918-7810 **EMAIL:** bfreeland@mwlaw.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule 1231 Total Dissolved Carbon Dioxide Testing

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following: **N/A**

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation? **NONE**

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule? **NONE**

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. **NONE**

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected. **NONE**

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Rule 1231 B 3 Amendment Summary

The existing rule included 39.0 millimole per liter if the horse is competing on furosemide (lasix) or other permitted medication known to affect TCO₂, which was removed. It is now limited to 37.0 millimole per liter in all cases.

Rule 1231 B 3 Mark Up

1231. Total Dissolved Carbon Dioxide Testing

A. Definitions

1. *Bicarbonate Loading or Milkshaking* -- terms used to describe the administration of bicarbonate of soda (sodium bicarbonate or NaHCO₃) or other substances that affect total dissolved carbon dioxide levels, administered through a nasogastric tube or by any other means, which shall be deemed to have an adverse effect on the horse by changing its normal physiological state through elevation of blood total dissolved carbon dioxide.
2. *Nasogastric Tube* -- any tube which can be inserted through the nose that extends into the stomach.

B. Procedures

1. The state veterinarian may draw blood samples from a horse for the purpose of obtaining a TCO₂ (total dissolved carbon dioxide) concentration level.
2. Blood samples for TCO₂ shall be drawn at the discretion of the State Veterinarian.
3. The TCO₂ level in the blood shall not exceed: 37.0 millimole per liter.
~~a. 39.0 millimole per liter if the horse is competing on furosemide (lasix) or other permitted medication known to affect TCO₂;~~
~~b. 37.0 millimole per liter if the horse is not competing on furosemide (lasix) or other permitted medication known to affect TCO₂;~~
4. In the event a sample drawn from a horse contains an amount of TCO₂ which exceeds the levels described above, the following penalties shall apply:
 - a. The first time the laboratory reports an excessive TCO₂ level, the trainer shall be fined \$1,000 and the purse shall be redistributed.
 - b. The second time the laboratory reports an excessive TCO₂ level, the stewards shall suspend the trainer for the duration of the race meeting plus 10 days or for a period not to exceed 6 months, whichever is greater, impose a fine of up to \$1,500, with redistribution of the purse, and shall refer the case to the commission.

c. For each subsequent report of an excessive TCO₂ level, the Stewards or Commission may suspend the trainer for up to one year and impose a fine of up to \$2,500, with redistribution of the purse.

5. There shall be no split sample testing on blood samples drawn for purposes of TCO₂ testing.

6. No licensee other than veterinarians shall possess a nasogastric tube, as described herein, on the premises under the jurisdiction of the commission.

Rule 1231 B 3 As Adopted

1231. Total Dissolved Carbon Dioxide Testing

A. Definitions

1. *Bicarbonate Loading or Milkshaking* -- terms used to describe the administration of bicarbonate of soda (sodium bicarbonate or NaHCO_3) or other substances that affect total dissolved carbon dioxide levels, administered through a nasogastric tube or by any other means, which shall be deemed to have an adverse effect on the horse by changing its normal physiological state through elevation of blood total dissolved carbon dioxide.

2. *Nasogastric Tube* -- any tube which can be inserted through the nose that extends into the stomach.

B. Procedures

1. The state veterinarian may draw blood samples from a horse for the purpose of obtaining a TCO_2 (total dissolved carbon dioxide) concentration level.

2. Blood samples for TCO_2 shall be drawn at the discretion of the State Veterinarian.

3. The TCO_2 level in the blood shall not exceed 37.0 millimole per liter.

4. In the event a sample drawn from a horse contains an amount of TCO_2 which exceeds the levels described above, the following penalties shall apply:

a. The first time the laboratory reports an excessive TCO_2 level, the trainer shall be fined \$1,000 and the purse shall be redistributed.

b. The second time the laboratory reports an excessive TCO_2 level, the stewards shall suspend the trainer for the duration of the race meeting plus 10 days or for a period not to exceed 6 months, whichever is greater, impose a fine of up to \$1,500, with redistribution of the purse, and shall refer the case to the commission.

c. For each subsequent report of an excessive TCO_2 level, the Stewards or Commission may suspend the trainer for up to one year and impose a fine of up to \$2,500, with redistribution of the purse.

5. There shall be no split sample testing on blood samples drawn for purposes of TCO_2 testing.

6. No licensee other than veterinarians shall possess a nasogastric tube, as described herein, on the premises under the jurisdiction of the commission.