

**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION  
Statutory Authority: 3 Delaware Code, Section 10103 (3 Del.C. §10103)**

**ORDER**

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting one of two proposed amendments to the Commission's Rules. Following notice and a public hearing on January 11, 2005, the Commission makes the following findings and conclusions:

**Summary Of The Evidence**

1. The Commission posted public notice of the proposed amendments in the December 1, 2004 *Register of Regulations* and for two consecutive weeks in the Delaware Capital Review and Delaware State News. The Commission proposed to enact a new Rule 11.14.1.5 to provide for a recommended fine of \$1,000 for owners or trainers who scratch their horses in Delaware in order to race in another jurisdiction. The Commission also proposed to amend Rule 19.3.1.1 to require that persons filing appeals before the Commission must pay a \$150 nonrefundable fee to cover court reporter fees.

2. The Commission received no written comments prior to the public hearing. The Commission held a public hearing on January 11, 2005. Steward Fritz Burkhardt stated that, on proposed Rule 11.14.1.5, the stewards would initially look to the trainer as the person responsible for any scratch of a horse. Commissioner Decker stated that the owner or trainer could be responsible, depending on who entered the horse. Larry Samuel of the Jockeys' Guild stated that there could be instances where the Race Secretary would request that a trainer enter a horse and then later allow the horse to scratch. In such cases, the Race Secretary would sign the slip authorizing the scratch.

3. Regarding proposed Rule 19.3.1.1, Administrator of Racing John Wayne stated that the proposed rule change is the same as the existing Harness Racing Commission Rule. Mr. Wayne stated that there is a lot of labor involved in sending out notices in connection with appeals. Mr. Wayne stated that the proposed \$150 fee would cover the court reporter's fee. Commissioner Patterson stated that it would be more accurate to revise the proposed rule to reference "administrative expenses or the court reporter's fee."

**Findings Of Fact And Conclusions**

4. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

5. The Commission has considered the public comments at the January 11, 2005 public hearing. The Commission finds that Rule 11.14.1.5 should be adopted in its current form. The Rule addresses the serious problem of trainers or owners scratching a horse in Delaware in order to race the same horse in another jurisdiction. The Rule contains a recommended \$1,000 fine which the Commission finds is necessary for this type of conduct. The Rule would also properly penalize the party who is responsible for scratching the horse in Delaware so that the horse can race in another jurisdiction.

6. The Commission concludes that Rule 19.3.1.1 should not be adopted in its current form. The rule as proposed should be amended to refer to a nonrefundable fee of \$150 to cover the cost of the court reporter and the costs of administrative expenses. The Commission will submit a new proposed Rule 19.3.1.1 for publication in the *Register of Regulations*.

7. The Commission concludes that the proposed amendment to Rule 11.14.1.5 should be adopted in order for this agency to achieve its statutory duty to effectively regulate thoroughbred racing pursuant to 3 **Del.C.** § 10103. The Commission concludes that the proposed Rule 19.3.1.1 should not be adopted at this time and will be resubmitted for publication.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on March 1, 2005.

Bernard Daney, Chair	Date
Duncan Patterson, Commissioner	Date
H. James Decker, Commissioner	Date
Debbie Killeen, Commissioner	Date

## Rule Amendments of the Delaware Thoroughbred Racing Commission

### Rule 11.14.1.5 Scratches and Rule 19.3.1.1 Applications for Review

#### 11.0 Entries, Subscriptions, Delegations

- 11.1 Entering Required:
- 11.1.1 No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the Licensee without notice or reason given therefor.
- 11.2 Procedure for Making Entries:
- 11.2.1 It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Commission's Veterinarian or Stewards on official forms from that State prior to entry.
- 11.2.2 All entries, subscriptions, declarations and scratches shall be lodged with the Racing Secretary and shall not be considered as having been made until received by the Racing Secretary who shall maintain a record of time of receipt of same.
- 11.2.3 Every entry must be in the name of such horse's registered Owner, as completely disclosed and registered with the Racing Secretary under these Rules and made by the Owner, Trainer or a person deputized by such Owner or Trainer.
- 11.2.4 Every entry must be in writing, or by telegraph promptly confirmed in writing, except that an entry may be made by telephone to the Racing Secretary but must be confirmed in writing should the Stewards, the Racing Secretary or an assistant to the Racing Secretary so request.
- 11.2.5 Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age color, sex, sire, dam and broodmare sire, as reflected by such horse's registration certificate.
- 11.2.6 No horse may race unless correctly identified to the satisfaction of the Stewards as being the horse duly entered;
- 11.2.7 In establishing the identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the Owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.
- 11.2.8 At the time of entering a horse, the Trainer of such horse or his representative, must declare to the Racing Secretary or his representative, whether the horse will race on any medication permitted by these Rules and shall not deviate from such declaration.
- 11.2.9 Within the discretion of the Stewards, a list of horses so declared to race on medication may, in whole or in part, be announced, released for publication or otherwise made public without liability for the accuracy thereof.
- 11.2.10 In order to claim an apprentice allowance at the time of entry, an Apprentice Jockey must be designated by name.
- 11.2.11 No alteration may be made in any entry after the closing of entries, except that an error may be corrected.
- 11.2.12 No horse may be entered in two races to be run on the same day.
- 11.3 Limitation as to Spouses:  
Repealed 1/6/92.
- 11.4 Mutuel Entries:
- 11.4.1 All horses entered in the same race and owned wholly or in part by the same owner or spouse thereof shall be joined as a mutuel entry and a single betting interest. Horses shall be regarded as having a common owner when an owner of one horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, has an ownership interest in another horse, either as an individual or as a licensed shareholder of a partnership or as a licensed shareholder of a corporation. No trainer of any horse shall have any ownership interest in any other horse in the same race unless such horses are coupled as a single wagering interest.
- 11.4.2 No owner shall have more than one horse start in a trifecta or twin-trifecta race. No mutuel entry shall start in a trifecta or twin-trifecta race. However, the Stewards may, in their discretion, permit mutuel entries to start in stakes races and simulcast races when there is trifecta wagering.

11.4.3 Except with the permission of the Stewards, no more than two horses having such common ties through ownership as to require them to be joined as a mutuel entry may be entered in a purse race. When making such double entry, a preference for one of the horses may be made.

11.4.4 In no case may two horses having common ties through ownership start in a purse race to the exclusion of a single interest.

Revised: 6/19/92

11.5 Subscriptions:

11.5.1 Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare such subscription prior to closing.

11.5.1.1 Joint subscription and entries may be made by any one of the joint Owners of a horse and each such Owner shall be jointly and severally liable for all payments due thereon.

11.5.1.2 Death of a horse or a mistake in its entry, when such horse is eligible, does not release the subscriber or transferee from liability for all stakes fees due thereon. No fees paid in connection with a subscription to a stakes race that is run shall be refunded.

11.5.1.3 Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry or right of entry thereunder; all rights, privileges and obligations shall attach to the successor Owner, including the legal representatives of the decedent.

11.5.1.4 When a horse is sold privately, sold at public auction or claimed, stakes engagements for such horse shall be transferred automatically with such horse to its new Owner, except that if such horse is transferred to a person whose registration is suspended or otherwise unqualified to race or enter such horse, then subscriptions shall be void as of the date of such transfer.

Rule 11.4 Rev. July 1977

Rule 11.4 Rev. July 1978

11.5.1.5 All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the conditions for such stakes race. In the event a stakes race is not run for any reason, all such subscription fees paid shall be refunded.

11.6 Closings:

11.6.1 Entries for purse races and subscriptions to stakes races shall close at the time designated by the Licensee in the previously published conditions for such races. If a race is not split, no entry, subscription or declaration shall be accepted after such closing time, except that in the event of an emergency or if a purse race fails to fill, then the Racing Secretary may, with the approval of a Steward, extend such closing time.

11.6.2 If the hour of closing is not specified for stakes races, then subscriptions and declarations therefor may be accepted until midnight of the day of closing, provided they are received in time for compliance with every other condition of such race.

11.6.3 Entries which have closed shall be compiled without delay by the Racing Secretary and, along with declarations, be posted.

11.7 Number of Starters in a Race:

11.7.1 The maximum number of starters in any race shall be limited to the number of starting positions afforded by the Licensee's starting gate and such extensions thereof as can be positioned across the width of the track at the starting point for such race. Such maximum number of starters shall be further limited by the number of horses which, in the opinion of the Stewards, considering the safety of the horses and riders and the distance from the start of the first turn, can be afforded a fair and equal start.

11.7.2 If any purse race in the printed condition book fails to fill, then the Licensee may cancel or declare off such race.

11.8 Split or Divided Races:

11.8.1 In the event a race is cancelled or declared off, the Licensee may split any race programmed for the same day and which may previously have been closed.

11.8.2 When a purse race is split, forming two or more separate races, the Racing Secretary shall give notice thereof not less than 15 minutes before such races are closed so as to grant time for the making of additional entries to such split races.

11.8.3 Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made and in the absence of specific prohibition by such conditions:

11.8.3.1 Horses originally joined as a mutuel entry shall, to the greatest extent possible, be placed in different divisions of a split race;

11.8.3.2 Division of other entries in any split race may be made according to age, sex or weight, except that such entries not so divided shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of such split race.

11.9 Post Positions:

11.9.1 Post positions for all races shall be determined by lot drawn in the presence of those making the entries for such race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for such split race. The Racing Secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two or more horses joined as a single betting interest.

11.10 Also Eligible List:

11.10.1 If the number of entries for a purse race exceeds the number of horses permitted to start in such race, then the names of as many as six (6) additional horses may be drawn as provided in Rule 11.9. The names drawn shall be posted, in the order they were drawn, as "also eligible" to start.

11.10.2 After any horses have been excused from a purse race at scratch time, the starting and post position of such horses as needed from the also-eligible list shall be determined by the order in which they appear on the entry sheet.

Revised: 10/26/95

11.10.3 Any Owner or Trainer of any horse on the also-eligible list who does not wish to start such horse in such race shall so notify the Racing Secretary prior to scratch time for such race and such horse shall forfeit any preference to which it may have been entitled.

11.10.4 Where entries are closed two racing days prior to the running of a race, any horse on an also-eligible list, which has also been drawn into a race as a starter for the succeeding day, shall not be given an opportunity to be drawn into the earlier race for which he had been listed as also-eligible.

11.11 Preferred List; Stars:

11.11.1 The Racing Secretary shall maintain a list of horses which were entered but denied an opportunity to race because eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. Horses so eliminated shall be awarded a preference "star" for each such elimination. As to drawing in from the also-eligible list to subsequent races of similar distance and similar conditions, such horses shall be given preference over horses with fewer number or no preference stars.

11.11.2 No preference shall be given a horse otherwise entitled thereto for a race if such horse is also entered for a race on the succeeding day.

11.11.3 No preference shall be given a horse otherwise entitled thereto for a race unless preference is claimed at the time of entry by indicating same on the entry with the word "preferred".

11.12 Arrears:

11.12.1 No horse may be entered or raced if the Owner thereof is in arrears as to any stakes fees due by such Owner, or is indebted in any sum to Licensee, except with the approval of the Racing Secretary. (Also, see Rule 6.11).

11.13 Declarations:

11.13.1 Withdrawal of a horse from a race before closing thereof by the Owner or Trainer or person deputized by either, such being known as a "declaration", shall be made in the same manner as to form, time and procedure as provided for the making of entries. Declarations and scratches are irrevocable. No declaration fee shall be required by any Licensee.

11.14 Scratches:

11.14.1 Withdrawal of a horse from a race after closing thereof by the Owner or Trainer or person deputized by either, such being known as a "scratch", shall be permitted only under the following conditions:

11.14.1.1 A horse may be scratched from a stakes race for any reason at any time up until 45 minutes before post time for that race.

11.14.1.2 No horse may be scratched from a purse race without approval of the Stewards and unless such intention to scratch has been filed in writing with the Racing Secretary or his assistant at or before the time conspicuously posted as "scratch time". Scratch of one horse coupled in a mutuel entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the Stewards to allow both horses to remain in the race until a later appointed scratch time therefor.

11.14.1.3 In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. Horses that are not physically disabled or sick may be scratched only with the permission and in the manner prescribed by the Stewards.

11.14.1.4 Entry of any horse which has been scratched or excused from starting by the Stewards because of a physical disability or sickness shall not be accepted until the expiration of three calendar days after such horse was scratched or excused.

11.14.1.5 The Stewards will review all cases in which a horse is entered to run at a licensed track in Delaware, while appearing in the entries in another racing jurisdiction, during the five day entry period for Delaware. It shall be a violation of these Rules for a licensee to scratch a horse entered to race in Delaware in order for said horse to race in another jurisdiction within the five day entry period. Violations of this Rule, absent mitigating circumstances, will be subject to fines of not less than \$1,000 and no more than \$2,500. This rule shall not pertain to Handicap and Stake races.

**4 DE Reg. 179 (7/1/00)**

**19.0 Hearings, Reviews and Appeals**

19.1 Procedure Before Stewards:

19.1.1 Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

19.1.2 The notice required by the preceding subsection shall include:

19.1.2.1 Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

19.1.2.2 The time and place of hearing.

19.1.2.3 The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.

19.1.3 All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

19.1.4 The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

**7 DE Reg. 316 (9/1/03)**

19.1.5 All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

19.1.6 If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.

19.2 Review and Appeal:

19.2.1 Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

19.3 Application for Review:

19.3.1 An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

19.3.1.1 Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee of \$250 ~~[plus an additional fee of \$150 to cover the cost of the court reporter's attendance. The Commission, for just cause, may refund the \$250 portion of the filing fee. In no event shall the advance payment of the court reporter's fee be refunded;]~~

19.3.1.2 Contain the signature of the applicant and the address to which notices may be mailed to applicant;

19.3.1.3 Set forth the order or ruling requested to be reviewed and the date thereof;

19.3.1.4 Succinctly set forth the reasons for making such application;

19.3.1.5 Request a hearing;

19.3.1.6 Briefly set forth the relief sought; and

19.3.1.7 Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and

19.3.1.8 Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

19.4 Disposition of Review Application:

19.4.1 After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

19.5 Commission Hearing:

19.5.1 If the Commission grants any such application for review, before holding any hearing thereon, it shall:

19.5.1.1 Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:

19.5.1.1.1 Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.

19.5.1.1.2 Except to applicant, a copy of the application for review.

19.5.2 The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

19.5.3 The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

19.5.4 The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

19.5.5 The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

19.5.6 If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.

19.5.7 Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

19.5.8 False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

19.5.9 All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

19.5.10 The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

19.5.11 All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

19.5.12 The Commission may take official notice of technical facts or customs or procedures common to racing.

19.5.13 The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

19.5.14 Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling

shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

19.5.15 The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.6 Continuances:

19.6.1 All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

19.6.2 When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

19.6.3 An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

19.6.4 If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

**3 DE Reg. 1541 (5/1/00)**

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission are available from the Registrar's Office.**

**8 DE Reg. 1289 (3/1/05)**