

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Racing Commission

Department Department of Finance and Administration

Contact Byron Freeland (attorney) E-mail bfreeland@mwlaw.com Phone 501-688-8810

Statutory Authority for Promulgating Rules Ark. Code Ann. 23-110-204

Rule Title: Rule 1231 B. 3.

Intended Effective Date

(Check One)

Date

<input checked="" type="checkbox"/> Emergency (ACA 25-15-204)	Legal Notice Published	_____
<input type="checkbox"/> 10 Days After Filing (ACA 25-15-204)	Final Date for Public Comment	_____
<input type="checkbox"/> Other _____ (Must be more than 10 days after filing date.)	Reviewed by Legislative Council	_____
	Adopted by State Agency	_____

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Byron Freeland

bfreeland@mwlaw.com

01-02-18

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Byron Freeland
Signature

501-688-8810

Phone Number

bfreeland@mwlaw.com

E-mail Address

Attorney for Arkansas Racing Commission

Title

01-02-18

Date

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Finance and Administration
DIVISION Arkansas Racing Commission
DIVISION DIRECTOR John Campbell
CONTACT PERSON Byron Freeland (attorney)
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 N/A
PRESENTER E-MAIL N/A

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 B. 3.
2. What is the subject of the proposed rule? TOC 2 threshold testing level
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? 01/12/2018
When does the emergency rule expire? 05/12/2018

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 mark-up and summary.

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 amendment is necessary to ensure that graded stakes races at Oaklawn meet the requirements of all certified and graded races in the U.S.**

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.)

01-12-2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. N/A

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached.

14. 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. None

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Finance & Administration

DIVISION Arkansas Racing Commission

PERSON COMPLETING THIS STATEMENT Byron Freeland (attorney)

TELEPHONE 501-688-8810 **FAX** 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 B. 3.

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:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

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

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

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

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

Next Fiscal Year

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

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

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

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.

EMERGENCY RULE
Rule 1231 B. 3. Amendment Summary

This emergency rule was adopted in 2016 for the 2016 Oaklawn race meet. The rule was required in order to have Oaklawn's stakes races certified on a national level. All racing jurisdictions must comply with the 37.0 requirement or risk losing the certification of certain designated stakes races. The Rule merely lowers the permitted TCO₂ level in the blood of a horse from 39.0 millimole per liter to 37.0 millimole per liter. The ARC will likely adopt this Rule on a permanent basis after the 2017 Oaklawn race meet, which ends on April 14, 2018.

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.