

<h1 style="margin: 0;">Regulatory Analysis Form</h1>		<b>This space for use by IRRC</b> JUL 19 PM 3:31 IRRC Number: <b>1982</b>	
		IRRC Number: <b>1982</b>	
(1) Agency State Horse Racing Commission		(2) I.D. Number (Governor's Office Use)  34-63	
(3) Short Title  Rules of Racing			
(4) PA Code Cite  58 Pa. Code, Chapter 163 & 165		(5) Agency Contacts & Telephone Numbers  Primary Contact: Benjamin H. Nolt, Jr., Executive Secretary, State Horse Racing Commission (717) 787-1942  Secondary Contact: Jorge M. Augusto, Assistant Counsel, State Horse Racing Commission	
(6) Type of Rulemaking (check one)  Proposed Rulemaking Final Order Adopting Regulation <input checked="" type="checkbox"/> <b>X</b> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached?  No <input checked="" type="checkbox"/> <b>X</b> Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  <p>The regulations are intended to modify the outdated "coupled entry" rule which presently requires two or more horses owned or trained by the same persons to be entered as a coupled entry for the purposes of wagering. (i.e. a wager on one portion of the entry is a wager on the other portion.) The regulation will allow two or more horses trained by the same trainer, but owned by different owners to participate in the race as separate entries. The regulation will be consistent with several other racing jurisdictions.</p> <p>The regulations will also modify the definition of "Pennsylvania-bred horse" in the Breeders Fund Program requiring a foal to spend a minimum of 90 days in a facility in Pennsylvania within the year of foaling to be registered as a "Pennsylvania-bred" horse. This modification will prevent breeders from entering Pennsylvania simply to foal their horses and gain eligibility into the program, but immediately leave the Commonwealth without necessarily contributing to the commerce of the thoroughbred industry.</p>			

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 202(a) of the act of December 17, 1981 (P.L. 435, No. 135) known as the "Race Horse Industry Reform Act" (4 P.S. § 325.101- 325.402).

### Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments will eliminate out-dated rules of racing and make them more consistent with existing Commission regulations regarding coupled entries and the Pennsylvania Breeder's Fund Program.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Commission believes the amendments will help various trainers and patrons within Pennsylvania with regard to the coupled entries amendment. The amendment regarding the Breeder's Fund Program will assist the Fund Program in generating more commerce within Pennsylvania and ultimately, whatever monies remain, will lapse into the General Fund. The amendments will also clarify existing regulations and provide a more uniform and consistent application of the rules.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one in Pennsylvania will be adversely affected by the “coupled entry” rule changes.

Breeders from out-of-state may be adversely affected by the new “Pennsylvania bred” horse eligibility requirement if they wish to enter the Pennsylvania Breeder’s Fund Program.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

As to the “coupled entry” rule, participants currently comply and will continue to comply. Persons required to comply are owners, trainers and racing officials.

Breeders from out-of-state will be required to comply with the new “Pennsylvania bred” horse eligibility requirement if they wish to enter the Pennsylvania Breeder’s Fund Program.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

There was no public input in the drafting of the proposed regulation. The Thoroughbred Horsemen’s Association and Pennsylvania Breeder’s Association requested the respective amendments and helped draft the appropriate language set forth in the amendments.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No costs will be imposed by the amendments regarding “coupled entries”. There may be some costs imposed upon out-of-state horse breeders who wish to enter the Pennsylvania Breeder’s Fund Program in that they will have to remain in Pennsylvania for ninety days (90) after foaling their horse in order to meet the new “residency” requirement. The costs associated with the 90-day period will include items such as boarding, feeding and caretaking which are difficult to estimate.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs imposed by these amendments upon the local government.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs imposed by these amendments upon any state governments.

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. Not applicable

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

See answer to question 17.

### Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

There is no expenditure history for the existing regulations or the amendments.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The Commission, the Pennsylvania Thoroughbred Horsemen's Association and the Pennsylvania Horse Breeder's Association believe the benefits of the amendments will far outweigh any potential costs in that the 90-day requirement will generate added revenue and commerce to the Commonwealth.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Commission's existing regulations could only be amended through the regulatory process. Therefore, there are no nonregulatory alternatives.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

### **Regulatory Analysis Form**

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal standards that apply to these rule changes.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

We will now be conforming with other states by changing the "coupled entry" rules.

The Pennsylvania Breeder's fund program is regarded as one of the best in the nation. The regulation does not place the Pennsylvania Breeder's Fund in competition with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Public input in the drafting stage was deemed unnecessary. There will be no public hearings regarding this regulation.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

There will be a minor change to the reporting requirement by out-of-state horse breeders. Those individuals will have to sign an affidavit verifying that they have complied with the 90-day requirement.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated date for the regulations to become effective is September 1999.

There is no deadline/sunset date for the regulations. Nevertheless, the amendments should be adopted as soon as possible.

(31) Provide the schedule for continual review of the regulation.

The horsemen's association and the breeder's association will continue to provide the Commission with input with respect to these amendments.



FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REV. DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality. Attorney General

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL: \_\_\_\_\_

Check if applicable  
Copy not approved. Objections  
attached.

Copy below is hereby certified to be a true and correct copy  
of a document issued, prescribed or promulgated by:

State Horse Racing Commission  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 34-63

DATE OF ADOPTION: \_\_\_\_\_

BY: Ben H. Nolt, Jr.  
Benjamin H. Nolt, Jr.

TITLE: Executive Secretary  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved  
form and legality. Executive or Inde-  
pendent Agencies.

BY: Sandra W. Stoner

7/8/99

DATE OF APPROVAL

(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney G-  
eral approval or objection within  
days after submission.

FINAL PROPOSED RULEMAKING  
State Horse Racing Commission  
58 Pa. Code Chapters 163 & 165  
Rules of Racing

**State Horse Racing Commission – Notice of Final Proposed Rulemaking**

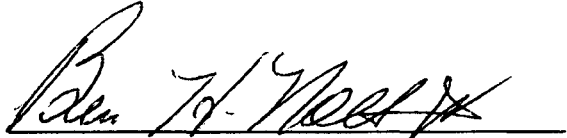
**Pa. Code Cite: 58 Pa. Code Chapters 163 & 165**

**Regulation Title: Rules of Racing**

**I.D. Number: 34-63**

**EXECUTIVE SECRETARY'S CERTIFICATION**

I, Benjamin H. Nolt, Jr. do hereby certify that I have reviewed this regulation and determined that the regulation is consistent with the principles outlined in Executive Order 1996-1.

  
Benjamin H. Nolt, Jr. Executive Secretary

**STATE HORSE RACING COMMISSION  
TITLE 58 – RECREATION  
58 PA. CODE, CHAPTER 163 and 165  
RULES OF RACING**

By this order, the State Horse Racing Commission (“Commission”), acting under authority conferred by section 202(a) of the Race Horse Industry Reform Act (4 P.S. §325.202(a)), hereby amends Chapters 163 and 165 (relating to rules of racing and administrative rules) of the Commission’s regulations.

The Commission reviewed this Order and considered its purpose and likely impact in accordance with Executive Order 1996-1, “Regulatory Review and Promulgation.” This Order will help clarify and update the present rules of racing and bring them into conformance with surrounding racing jurisdictions. This Order also addresses a compelling public interest and is otherwise in compliance with Executive Order 1996-1.

**NOTICE AND COMMENTS**

Notice of proposed rulemaking was published at 28 *Pa. Bulletin* 4797 (September 26, 1998). These regulations are being adopted with the changes to the proposed rulemaking. The Commission only received comments from one individual commentator and from the Honorable Senator Robert J. Thompson, Vice Chairman of the Senate State Government Committee. The Commission also received comments and suggested changes from the Independent Regulatory Review Commission (“IRRC”). The comments and the Commission’s response follow:

**Section 163.95. Coupled entries**

The individual commentator expressed his concern that the uncoupling of entries for horses entered by the same trainer could lead to “hidden ownership” of horses or other “devious acts.” The Commission presumes the individual commentator was in essence referring to possible collusion between trainers and jockeys to affect the outcome or fix the race. As the Commission explained in its proposed rulemaking, in today’s heavily regulated thoroughbred industry and in light of the extensive record-keeping requirements and significant investigative capabilities, the potential for “hidden ownership” or collusion has been greatly diminished, if not completely eradicated. Nevertheless, the Commission is ever mindful of its legislative mandate to protect the integrity of the sport and pari-mutuel wagering system for patrons in the Commonwealth. Accordingly, the Commission believes the benefit of the uncoupling amendment to the patron exceeds the potential risk of hidden ownership.

IRRC stated that the language of §163.95(b) was not consistent with the Commission’s overall intention of removing the restriction for trainers from the coupled entry rule. IRRC suggested appropriate language, which would be phrased in the positive and therefore, less confusing. The Commission agrees with IRRC’s suggested changes and has implemented those changes to subsection (b).

IRRC also asked the Commission to explain the Commission’s rationale for prohibiting a trainer from having more than two horses in the same race, but not an owner. Proposed §163.95(d), which specifically prohibits trainers from entering more than two horses, has been proposed by the Commission to bring its regulations into conformity with surrounding racing jurisdictions. As previously stated, while the

Commission believes the benefit of updating the “coupled entry” rules outweighs the potential for collusion or the appearance of collusion, the Commission nevertheless believes that certain reasonable controls, such as those in §163.95(d) should be implemented and/or maintained.

**Section 165.531. Definitions.**

IRRC suggested the Commission clarify the definition of “breeder.” The Commission concurs with IRRC’s suggested language and has implemented the changes accordingly. Additionally, IRRC questioned how the Commission arrived at the “90-day” period set forth in the definition of “Pennsylvania-bred horse” and specifically, whether the 90-day period is a sufficient limitation to assure that a foal qualifies as a Pa-bred horse. After consultation with the Pennsylvania Breeding Fund Advisory Board and the Pennsylvania Horse Breeders Association (PHBA), the Commission concluded that 90 days would be a reasonable compromise period. The Commission believed that a period less than 90 days might not ensure a substantial contribution to this Commonwealth’s commerce. Likewise, the Commission believed that a period more than 90 days might become too onerous on the Fund program participants.

As previously explained, the Commission’s existing regulations simply require that the horse be foaled in this Commonwealth in order to qualify for the Breeders Fund Program and the program’s entitlements. Due to the monetary success of the program, out-of-state breeders have been quick to take advantage of the overly broad definition of a Pa-bred without contributing to this Commonwealth’s thoroughbred industry. The Commission believes the amendment will modify the current trend and help ensure the continued success of the Breeders Fund Program.

Senator Robert J. Thompson and IRRC questioned how the PHBA, which is responsible for the registration and records for Pa-Bred horses, will determine that owners and breeders have met the conditions of the 90-day period. The breeder and/or an authorized agent is solely responsible for submitting information regarding the foal and all pertinent information regarding the “90-day” period by way of an application/affidavit. The breeder or his agent must specifically provide and attest to information regarding the farm at which the mare or foal domiciled for at least 90 days during the calendar year of foaling. The application/affidavit makes clear the consequences to the breeders or his agent if the information provided is fraudulent. This form has been approved by the Commission.

Senator Thompson and IRRC also suggested the Commission incorporate the eligibility requirements which must be met by the breeders into the regulations. The Commission is not inclined to do so. The Commission believes the foal application/affidavit clearly and adequately explains the “requirements” for registration as a Pa-bred: 1.) The horse must foaled in Pennsylvania; and 2.) The foal or dam must spend a minimum of 90 days at a facility in Pennsylvania. These requirements only affect those individuals who wish to voluntarily participate in the Breeders Fund Program. Accordingly, the Commission does not believe it is necessary to add further regulation or add the application/affidavit to the existing regulations.

**Section 165.118(j). Trifecta.**

IRRC suggested that, for purposes of clarity, the Commission delete its proposed language and simply add a cross-reference to § 163.95 (relating to coupled entries) which

which would clarify what horse would have to run as a coupled entry. The Commission agrees with IRRC's suggested changes and has implemented them accordingly.

## **FISCAL IMPACT**

### ***COMMONWEALTH***

The Commission has determined that the amendments will have no adverse fiscal impact on the Commonwealth.

### ***POLITICAL SUBDIVISIONS***

The amendments will not have any direct fiscal impact on political subdivisions.

### ***PRIVATE SECTOR***

The amendments will not have any negative fiscal impact on the private sector within the Commonwealth. There may be limited fiscal impact upon out-of-state breeders who enter this Commonwealth to become eligible for the Breeders' Fund Program. Such an impact should be offset as a result of the commerce generated with the new 90-day requirement for the dam and foal, which will have to be met to qualify for the Pennsylvania-bred registration.

### ***GENERAL PUBLIC***

The amendments will not have any fiscal impact on the general public. The amendments will, however, bring the Commission's regulations relating to coupled entries into conformity with the other surrounding racing jurisdictions.

## **PAPERWORK REQUIREMENTS**

The amendments will not generate any new substantial paperwork for the public or the Commonwealth.

## **REGULATORY REVIEW**

Under section 5(a) of the Regulatory Review Act ("Act"), the act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.5(a)), the Commission submitted a copy of the Notice of Proposed Rulemaking published at 28 *Pa. Bulletin* 4797 (September 26, 1998) on September 14, 1998 to the Independent Regulatory Review Commission (IRRC) and to the chairpersons of the House and Senate Standing Committees on State Government for review and comment. In compliance with 5(b.1), the State Horse Racing Commission also provided IRRC and the Committees with copies of all comments received.

In preparing this Final Form Regulation, the State Horse Racing Commission has considered all comments received from IRRC, the Committees and the public. This Final Form Regulation was (deemed) approved by the Committees on \_\_\_\_\_ and was (deemed) approved by IRRC on \_\_\_\_\_, in accordance with Section 5(c) of the Act.

## **CONTACT PERSON**

Further information is available by contacting the State Horse Racing Commission, Room 304, Agriculture Building, 2301 N. Cameron Street, Harrisburg, PA 17110-9408. Attention: Benjamin H. Nolt, Jr., Executive Secretary, Telephone No. (717) 787-1942.

## **FINDINGS**

The State Horse Racing Commission finds:

(1) That public notice of intention to adopt the amendments encompassed by this Order has been given under Section 201 and 202 of the Act of July 31, 1968 (P.L. 769,



No. 240)(45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.

(2) That a public comment period was provided as required by law and that all comments received were considered.

(3) That the adoption of the amendments in the manner provided by this Order is necessary and appropriate for the administration of the authorizing statutes.

**ORDER**

The State Horse Racing Commission, acting under the authorizing statutes orders:

(1) That the regulations of the State Horse Racing Commission, 58 Pa. Code, Chapter 163 and 165 are hereby amended.

(2) That the State Horse Racing Commission shall submit this Order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(3) That the State Horse Racing Commission shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) That this Order shall be effective upon publication in the *Pennsylvania Bulletin*.

By the State Horse Racing Commission

BENJAMIN H. NOLT, JR.,  
EXECUTIVE SECRETARY

ANNEX A

PART IV. HORSE RACING COMMISSION

CHAPTER 163. RULES OF RACING

ENTRIES AND SUBSCRIPTIONS

**§163.95. Coupled entries.**

(a) The term “entry” means a horse made eligible to run in a race. When starters in a race include two or more horses owned [or trained] by the same person, [trained in the same stable or trained by the same management,] they shall be coupled as an entry, with no exceptions. A wager on one horse in the entry shall be a wager on all horses in the entry. If a race is split in two or more divisions, horses in an entry shall be seeded in separate divisions, but the divisions in which they compete and their post positions shall be drawn by lot.

(b) Horses owned wholly or in part by the same TRAINER, person or the spouse of the person [or trained by the same trainer] shall be coupled and run as an entry. [A trainer may not have any ownership interest in any other horse in the same race unless the horses are coupled as a single wagering interest.]

\* \* \* \* \*

(d) Starters in a race which include two horses of different ownership trained by the same person, trained in the same stable or trained by the same management may not be coupled as an entry and shall constitute separate wagering interests. In no case may more than two horses having common trainer ties as defined in this section start in a race.

**PENNSYLVANIA BREEDERS' FUND PROGRAM**

**§163.531. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Breeder* - A breeder is the owner of the dam at the time of foaling. [and when held under a lease or in partnership, only the lease or partnership will be recognized for purposes of which it is filed with the Jockey Club.] WHEN A HORSE IS HELD UNDER A LEASE OR PARTNERSHIP REGISTERED WITH THE JOCKEY CLUB THEN THE LEASE OR PARTNERSHIP WILL BE DEEMED TO BE THE OWNER.

*Pennsylvania-bred horse* - A Pennsylvania-bred horse is a thoroughbred horse foaled in Pennsylvania, which during the year of foaling, the foal or its dam spent a minimum of 90 days at a facility in this Commonwealth and is subsequently registered with the Pennsylvania Horse Breeders Association and the Jockey Club.

\* \* \* \* \*

**§163.532. Eligibility for Pennsylvania-bred races.**

To be eligible for preferences in races in which registered Pennsylvania-breds are preferred and to be eligible for entry in races which are restricted by condition to registered Pennsylvania-breds, a horse shall be registered as a Pennsylvania-bred with the Pennsylvania Horse Breeders Association at the time of entry. [To be eligible for the registration, the horse shall have been foaled in this Commonwealth.]

**§163.533. [Eligibility of breeders for awards.] (Reserved)**

[In order for a Pennsylvania-bred horse to be eligible to earn an award for its breeder, under section 17.1(b)(3) of the act of December 11, 1967 (P.L. 707, No. 331) (15 P.S. § 2667.1) (Repealed), in a race conducted by a pari-mutuel permit holder in this Commonwealth, the horse shall be registered as a Pennsylvania-bred with the Pennsylvania Horse Breeders Association prior to entry for the race.]

**§163.534. [Eligibility of owners of Pennsylvania sires for awards.] (Reserved).**

[In order for a sire of this Commonwealth to be eligible to earn an award for its owner, under section 17.1(b)(4) of the act of December 11, 1967 (P.L. 707, No.331) (15 P.S. § 2667.1) (Repealed), the sire shall have been registered as a sire of this Commonwealth with the Pennsylvania Horse Breeders Association during each breeding season when the sire covered the dams that, as a result of that cover, produced Pennsylvania-breds. A sire of this Commonwealth not registered with the Pennsylvania Horse Breeders Association prior to 1975 may be registered with the Pennsylvania Horse Breeders Association, for years prior to 1975 if registered by December 31, 1975. To be eligible for a sire award, it is not necessary that the foal entitling the sire owner to the award be itself registered but only that it have been foaled in this Commonwealth by a sire registered as set forth in this section.]

**§163.537. [Records of expenses.] (Reserved).**

[The Pennsylvania Breeders Association will maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Commission, on the basis of which the Commission may disburse advances. The quarterly estimated statements of expenses and

advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Commission. The Commission will thereafter review them and after approval of allowable items shall then reimburse the Pennsylvania Breeders Association for expenses the Commission finds reasonable and appropriate to this program. If advances on account of expenses exceeds actual expenses as approved at the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses.]

## **CHAPTER 165. ADMINISTRATIVE RULES**

### **Subchapter E. PARI-MUTUEL WAGERING**

#### **§165.118. Trifecta.**

(j) Coupled entries and fields are [prohibited] allowed in Trifecta races AS SET FORTH IN §163.95 (RELATING TO COUPLED ENTRIES). [at the discretion of the Commission or its designee.]

title insurance company or to an agent of a title insurance company for title insurance and who at the time of the application are not licensed agents for a title insurance company, compensation, consideration, benefit or remuneration directly or indirectly.

[ (b) The payment of compensation, consideration, benefit or remuneration shall be deemed to be an illegal rebate and inducement, except that a title insurance company or an agent of a title insurance company may pay to an attorney at law in good standing (but not to an approved attorney of the title insurance company) or a real estate broker licensed in this Commonwealth, a cash commission for procuring a title insurance for a client in a real estate transaction, if the cash commission is not in excess of that set forth in the schedule of commissions filed by the title insurance company with the Insurance Department. ]

#### § 125.3. Increasing the charge or fee.

Increasing the charge or fee for a title insurance policy by an amount and [ payment of ] returning any or all of the added amount [ or increase ] to [ anyone ] any person is an illegal rebate and inducement.

*(Editor's Note: The Department is proposing to delete §§ 125.5—125.9 as they currently appear in the Pennsylvania Code at pages 125-2 and 125-3 (serial pps. (143746) and (143747).)*

#### §§ 125.5—125.9. (Reserved).

(Pa.B. Doc. No. 98-1553. Filed for public inspection September 25, 1998, 9:00 a.m.)

## STATE HORSE RACING COMMISSION

[58 PA. CODE CHS. 163 AND 165]  
Rules of Racing

The State Horse Racing Commission (Commission) acting under the authority conferred by section 202(a) of the Race Horse Industry Reform Act (4 P.S. § 325.202(a)) (act), hereby proposes to amend Chapters 163 and 165 (relating to rules of racing; and administrative rules) of the Commission's regulations.

Chapter 163 of the Commission's regulations governs all of the facets of racing including matters such as, entries, licensing of owners, trainer and jockeys, racing violations, medication/drug violations, the power of the Board of Stewards and the Breeders Fund Program. Chapter 163 also includes the Commission's regulations regarding racing entries. Specifically, the Commission proposes to amend §§ 163.95 and 163.531 (relating to coupled entries; and definitions). The proposed amendments will help clarify and update the present rules of racing and bring them into conformance with surrounding racing jurisdictions.

#### Summary of Proposed Major Amendments

##### Entries and Subscriptions

##### Section 163.95 (Coupled entries)

At the request of the Pennsylvania Thoroughbred Horsemen's Association (THA), the Commission proposes

to amend the so-called "coupled entry" rule. The proposed amendment will eliminate an outdated rule of racing and make it more consistent with § 163.119 (relating to double entry in the same ownership) of the Commission's regulations. Additionally, the proposed amendment will bring the Commission's regulation into parity with Delaware and Florida racing jurisdictions.

Specifically, the coupled entry rule is activated when an owner or trainer attempts to enter more than one horse in the same race. An "entry" as defined in the Commission's regulations is a horse, which is made eligible to run in a particular race. That entry is thereafter known as a "starter." As presently promulgated, when an owner or trainer enters two or more horses in the same race, the two horses are combined as one entry for purposes of betting. Thus, a wager placed on one horse is considered a wager on both horses (the entry). Historically, two or more horses owned or trained by the same persons were coupled to avoid any potential collusion between the owner or trainer and the jockeys of the two horses, which could affect the outcome of the race. Today, in this heavily regulated industry the potential for collusion has been greatly diminished, if not completely eradicated.

The practical effect of the proposed amendment is to "uncouple" the entry in the race but only as to trainers. Thus, when two or more horses entered in a race are trained by the same trainer, the two horses may race as an independent or uncoupled entry, which has been shown to increase betting interest with the public. The coupled-entry requirement however, will remain in effect as to horses owned wholly or in part by the same person.

##### Pennsylvania Breeder's Fund Program

##### Section 163.531 Definitions.

At the request of the Pennsylvania Horse Breeders Association (PHBA), the Commission proposes to amend the regulations governing the Pennsylvania Breeders' Fund Program (Fund), which was established in 1974. Historically, the Fund was designed to stimulate and sustain the Commonwealth's thoroughbred breeding industry, whose product would in turn, support live racing programs at the licensed thoroughbred racetracks by providing, in essence, an incentive to breed horses in this Commonwealth. The Fund, by providing monetary awards to breeders, stallion owners and owners of registered Pennsylvania-bred (Pa-Bred) horses, offers the thoroughbred industry economic advantages to help offset the high-risk enterprise of breeding racehorses. The Fund is financed by 7/10 of 1% of the total thoroughbred pari-mutuel handle. It provides for individual award payments, purse bonus supplements, PA-Bred stakes races and expenses incurred by the PHBA in its role as program administrator. Additionally, an amount equal to 1/3 of 1% of each thoroughbred racetrack's daily pari-mutuel handle is utilized in conjunction with Fund moneys by that racetrack to provide for owner bonuses earned by PA-Bred horses racing there.

As presently promulgated, the definition of "Pennsylvania-bred horse" requires only that the foaling occur in this Commonwealth for the horse to be eligible for program registration and all its entitlements. The definition was originally designed to simplify matters for Commonwealth breeders unfamiliar with the incentive programs and which would attract breeders from surrounding states to come to this Commonwealth and breed horses. However, due to increased sums of PA-Bred moneys as a result of off-track wagering facilities, full card simulcasting and the downsides being experienced in

breeding programs in surrounding states, out-of-State breeders are now quick to take advantage of the overly-broad definition of a PA-Bred. Out-of-State breeders are entering this Commonwealth simply to foal their horse (and gaining eligibility into the program) and immediately leaving this Commonwealth without necessarily contributing to the commerce of this Commonwealth's thoroughbred industry. The proposed rulemaking will amend the definition by requiring that during the year of foaling, the foal or its dam spend a minimum of 90 days at a facility in this Commonwealth. The PHBA and the Commission believe the proposed amendment will modify the current trend and ensure that Fund program participants contribute more significantly to this Commonwealth's commerce than the current definition requires.

Finally, the Commission will also propose to amend or entirely delete several other sections, including § 163.537 (relating to records of expenses) within the Breeders Fund Program to clarify and update, when appropriate, the language of the regulations relating to such matters as the registration, eligibility, appeals and awards of Pa-Bred horses. Specifically, § 163.537, which was promulgated in the mid-1970s prior to the enactment of Race Horse Industry Reform Act in 1981 (4 P. S. §§ 325.101—325.402), presently requires the PHBA to submit quarterly estimates to the Commission. This is inconsistent with section 325.223(g) of the act (4 P. S. § 325.223(g)), which only requires annual estimates. The Commission and the Pennsylvania Breeding Fund Advisory Board propose to delete this section because of this inconsistency and because they believe section 325.223(g) of the act adequately addresses the expense-records requirement.

#### *Section 165.118(j) (Trifecta)*

For purposes of uniformity and consistency, this section is proposed to be amended to delete the existing restriction regarding coupled entries in Trifecta races. The Commission does not believe there is any further legitimate reason to continue this restriction, especially in light of the preceding proposed amendment.

#### *Fiscal Impact*

##### *Commonwealth*

The Commission has determined that the amendments will have no adverse fiscal impact on the Commonwealth.

##### *Political Subdivisions*

The proposed amendments will not have any direct fiscal impact on political subdivisions.

##### *Private Sector*

The proposed amendments will not have any negative fiscal impact on the private sector within this Commonwealth. There may be limited fiscal impact upon out-of-State breeders who enter this Commonwealth to become eligible for the Breeders' Fund Program. The impact should be offset as a result of the commerce generated with the new 90-day requirement for the dam and foal, which will have to be met to qualify for the Pa-Bred registration.

##### *General Public*

The proposed amendments will not have any fiscal impact on the general public. The proposed amendments will, however, bring the Commission's regulations relating to coupled entries and the Breeders' Fund Program into conformity with the other racing jurisdictions.

#### *Paperwork Requirements*

The proposed amendments will not generate any new substantial paperwork for the public or the Commonwealth.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 14, 1998, the Commission submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate State Government Committees. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1.

If IRRC has objections to any portion of the proposed amendments, it must notify the Commission within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Commission, the General Assembly and the Governor of objections raised.

#### *Contact Person*

Individuals interested in commenting on the proposed amendments or who require further information may contact Benjamin H. Nolt, Jr., Executive Secretary, State Horse Racing Commission, Room 304 Agriculture Building, 2301 N. Cameron Street, Harrisburg, PA 17110-9408, (717) 787-5196, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

BENJAMIN H. NOLT, Jr.,  
Executive Secretary

Fiscal Note: 34-63. No fiscal impact; (8) recommends adoption.

#### **Annex A**

#### **TITLE 58. RECREATION**

#### **PART IV. HORSE RACING COMMISSION**

#### **CHAPTER 163. RULES OF RACING**

#### **ENTRIES AND SUBSCRIPTIONS**

#### **§ 163.95. Coupled entries.**

(a) The term "entry" means a horse made eligible to run in a race. When starters in a race include two or more horses owned [ or trained ] by the same person, [ trained in the same stable or trained by the same management, ] they shall be coupled as an entry, with no exceptions. A wager on one horse in the entry shall be a wager on all horses in the entry. If a race is split in two or more divisions, horses in an entry shall be seeded in separate divisions, but the divisions in which they compete and their post positions shall be drawn by lot.

(b) Horses owned wholly or in part by the same person or the spouse of the person or trained by the same trainer shall be coupled and run as an entry. A trainer may not have any ownership interest in any other horse in the same race unless the horses are coupled as a single wagering interest.

(d) Starters in a race which include two horses of different ownership trained by the same person, trained in the same stable or trained by the same management may not be coupled as an entry and shall constitute separate wagering interests. In no case may more than two horses having common-trainer ties as defined in this section start in a race.

**PENNSYLVANIA BREEDERS' FUND PROGRAM**

**§ 163.531. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Breeder*—A breeder is the owner of the dam at the time of foaling and when held under a lease or in partnership, only the lease or partnership will be recognized for purposes of which it is filed with the Jockey Club.

*Pennsylvania-bred horse*—A Pennsylvania-bred horse is a thoroughbred horse foaled in [ Pennsylvania ] this Commonwealth, which during the year of foaling, the foal or its dam spent a minimum of 90 days at a facility in this Commonwealth and is subsequently registered with the Pennsylvania Horse Breeders Association and the Jockey Club.

**§ 163.532. Eligibility for Pennsylvania-bred races.**

To be eligible for preferences in races in which Pennsylvania-breds are preferred and to be eligible for entry in races which are restricted by condition to registered Pennsylvania-breds, a horse shall be registered as a Pennsylvania-bred with the Pennsylvania Horse Breeders Association at the time of entry. [ To be eligible for the registration, the horse shall have been foaled in this Commonwealth. ]

**§ 163.533. [ Eligibility of breeders for awards ] (Reserved).**

[ In order for a Pennsylvania-bred horse to be eligible to earn an award for its breeder, under section 17.1(b)(3) of the act of December 11, 1967 (P. L. 707, No. 301) (15 P. S. § 2667.1) (Repealed), in a race conducted by a pari-mutuel permit holder in this Commonwealth, the horse shall be registered as a Pennsylvania-bred with the Pennsylvania Horse Breeders Association prior to entry for the race. ]

**§ 163.534. [ Eligibility of owners of Pennsylvania sires for awards ] (Reserved).**

[ In order for a sire of this Commonwealth to be eligible to earn an award for its owner, under section 17.1(b)(4) of the act of December 11, 1967 (P. L. 707, No. 331) (15 P. S. § 2667.1) (Repealed), the sire shall have been registered as a sire of this Commonwealth with the Pennsylvania Horse Breeders Association during each breeding season when the sire covered the dams that, as a result of that cover, produced Pennsylvania-breds. A sire of this Commonwealth not registered with the Pennsylvania Horse Breeders Association prior to 1975 may be registered with the Pennsylvania Horse Breeders Association, for years prior to 1975 if registered by December 31, 1975. To be eligible for a sire award, it is not necessary that the foal entitling the sire owner to the award be itself registered but only that it have been foaled in this Commonwealth by a sire registered as set forth in this section. ]

**§ 163.537. [ Records of expenses ] (Reserved).**

[ The Pennsylvania Breeders Association will maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Commission, on the basis of which the Commission may disburse advances. The quarterly estimated statements of expenses and advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Commission. The Commission will thereafter review them and after approval of allowable items shall then reimburse the Pennsylvania Breeders Association for expenses the Commission finds reasonable and appropriate to this program. If advances on account of expenses exceeds actual expenses as approved at the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses. ]

**CHAPTER 165. ADMINISTRATIVE RULES**

**Subchapter E. PARI-MUTUEL WAGERING**

**§ 165.118. Trifecta.**

\* \* \* \* \*

(j) Coupled entries and fields are [ prohibited ] allowed in Trifecta races, at the discretion of the Commission or its designee.

\* \* \* \* \*

[Pa.B. Doc. No. 98-1554. Filed for public inspection September 25, 1998, 9:00 a.m.]





COMMONWEALTH OF PENNSYLVANIA  
**DEPARTMENT OF AGRICULTURE**  
LEGAL OFFICE

July 19, 1999

The Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17120

**RE: FINAL-FORM REGULATION**  
**State Horse Racing Commission**  
**58 Pa. Code Chapters 163 & 165**  
**Rules of Racing**  
**I.D. No. 34-63**  
**Proposed Rulemaking: 28 Pennsylvania Bulletin 4797 (September 26, 1998)**  
**Final-Form Regulation approved by Office of General Counsel: July 8, 1999**

Dear Sir or Madam:

Please find enclosed a copy of the above referenced final-form regulation. This material includes copies of the Preamble, Annex "A" and Regulatory Analysis Form. A copy of the proposed regulation, as it appeared in the above referenced edition of the *Pennsylvania Bulletin*, is also enclosed.

I respectfully request the Independent Regulatory Review Commission review and approve the above referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

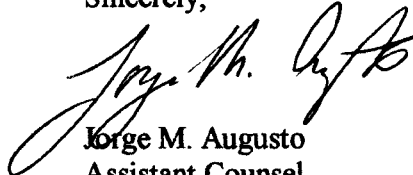
The Commission's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to applicable Legislative Committees (the House and Senate State Government), and have been mailed to each commentator on this date.

ROOM 201  
2301 NORTH CAMERON STREET  
HARRISBURG, PA 17110-9408  
717-787-8744  
FAX 717-787-1270

Independent Regulatory Review Commission  
Page Two  
July 19, 1999

The Commission will provide you with any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your attention to this matter.

Sincerely,



Jorge M. Augusto  
Assistant Counsel

Enclosures

JMA:ajg

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

<b>I.D. NUMBER:</b>	34-63	99 JUL 19 PM 3:31
<b>SUBJECT:</b>	Rules of Racing	STATE HORSE RACING COMMISSION
<b>AGENCY:</b>	STATE HORSE RACING COMMISSION	STATE HORSE RACING COMMISSION

**TYPE OF REGULATION**

Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a.                      With Revisions                      b.                      Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
7/19/99	<i>Donald A. ...</i>	HOUSE COMMITTEE ON STATE GOVERNMENT
7-19-99	<i>Alina ...</i>	
7/19/99	<i>...</i>	SENATE COMMITTEE ON STATE GOVERNMENT
7/19/99	<i>Valerie D. Hoover</i>	
7/19/99	<i>Jiri ...</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

July 13, 1999