


REGULATORY ANALYSIS FOR

For use in providing information to the Independent Regulatory Review Commission pursuant to Section 5 of the Regulatory Review Act and for providing information to the Governor's Task Force on Regulatory Relief pursuant to Executive Order 1982-2 and Section 612 of the Administrative Code.

PART I: IDENTIFYING INFORMATION

(1) Agency State Horse Racing Commission	(2) ID No. (Use Task Force No.) 34-63	Date Received by IRRC: #1982 09 SEP 14 11:04 AM '04
(3) Short Title Rules of Racing		
(4) Pa. Code Cite 58 Pa. Code, Chapter 163 & 165	(5) Agency Contact & Phone Number Benjamin H. Nolt, Jr. (717) 787-8744 Executive Secretary Wizner	
(6) Type (check one) <input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final-Omitted Regulation	(7) Is a 120 day Emergency Certification Attached: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) APPROVALS (Name & Date) Agency Head 	(Executive Agencies Only) Task Force _____	

PART II: BASIC ANALYSIS MATERIAL (Required by Sec. 5(a) of the Regulatory Review Act)

(9) Briefly explain the proposed regulation.

The regulations are intended to modify the outdated "coupled entry" rule which presently requires two or more horses owned or trained by the same persons to be entered as a coupled entry for purposes of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.

The regulations will also modify the definition of "Pennsylvania-bred horse" in the Breeders Fund Program require the 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.

(10) How does this regulation reduce costs of state and local government or private entities (business, consumers, etc.) within the Commonwealth?

This regulation will not reduce costs of state and local government or private entities, but will actually increase potential revenues to these entities.

(11) What is the statutory or other authority under which the regulation is proposed? (For state law cite Act and P.S. for federal law cite Act and U.S.C. For federal regulations cite C.F.R. or Federal Register. Be sure to cite court decisions, or consent decrees or attach copies of unpublished documents.)

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. §325.101-402).

(12) Why is this regulation needed?

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.

(13) What legal, accounting or consultant procedure will be required by the proposed regulation and who must comply with these procedures?

The amendments will not create any additional legal, accounting or consultant procedures.

(14) What additional reporting, record keeping and other paperwork will be required by the proposed regulation? (Attach copies of any available forms or reports which will be required in implementation of the proposed regulation.)

There is not additional reporting, record keeping or other paperwork required by these amendments.

(15) What is the suggested timetable for public comment, hearings, implementation, and what are various conformity deadlines (i.e. permits, licenses, etc.)?

The Commission believes these amendments should be adopted as soon as possible.

(16) What types of persons, businesses and organizations will be affected by the regulation?

No new persons, businesses or organizations will be affected by these amendments.

(17) What other regulations and State agencies will be affected by the regulation?

None.

PART III: REGULATORY FISCAL IMPACT (Required by Sec. 612 of the Administrative Code)

(18) Generally describe the costs imposed by this regulation upon state and local government.

There are no costs imposed by these amendments upon any state or local government.

(19) Are there Revenue Losses? Yes/No – NO
(Attach Statement of method used to estimate)

State () Local () _____ ()

	FY	FY	FY	FY	FY	FY

(20) Are there increased program costs? Yes/No – No
(Attach Statement of method used to estimate)

State () Local () _____ ()

	FY	FY	FY	FY	FY	FY

(21) What is the three-year expenditure history for programs affected by the regulation?
(Attach statement of method used to estimate)

State () Local () _____ ()

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

(22) Has any increased cost been included in the current budget? Yes/No – No
If no, how will funds be obtained?

There had been no increased cost.

(23) Generally describe the costs imposed by this regulation on private entities. (e.g. consumers, business, etc.)

No costs will be imposed by the amendment 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.

(24) What is the amount of reasonably measurable private costs? – None

	FY	FY	FY	FY	FY	FY

(25) Explain the types of benefits which arise from the regulations, and who receives these benefits.

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.

(26) If any of these benefits are measurable, what are their estimated value?

These benefits are not measurable.

	FY	FY	FY	FY	FY	FY

(27) Will the potential benefits outweigh the potential costs imposed? Explain.

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.

(28) Has the regulation been drafted in a manner which maximized the difference between potential benefits and potential costs? Explain.

Not applicable.

(29) List the alternative regulatory approaches which were considered and reasons for rejecting these alternatives.

The Commission's existing regulations could only be amended through the regulatory process.

(30) How will this regulation reduce or minimize paperwork, legal accounting, reporting or paperwork requirements?

These amendments will not reduce or minimize paperwork, but merely provide an updated and more uniform regulation.

(31) What provisions are included in the regulation to meet the special needs of affected groups or persons? If no such provisions are included, explain why.

The affected groups or persons in these amendments have participated in the drafting of these proposed amendments and fully support the Commission's modification thereof.

(32) What plan has been developed to evaluate the effectiveness of the regulation after its implementation? What sunset date, if any, has been assigned?

No sunset date has been assigned. However, both the horsemen's association and the breeder's association will continue to provide the Commission input with respect to these amendments.

PART IV: OTHER INFORMATION (Required by Sec. 5(a) of the Regulatory Review Act and Executive Order 1982-2.)

(33) Is there a deadline for action? Why? If there is no deadline, when should the regulation be adopted and what are the consequences of delay. (Attach copies of documents supporting the need for a deadline.)

There is no deadline for action. Nevertheless, the amendments should be adopted as soon as possible.

(34) Is this regulation mandated by federal law or court order? Yes/No (Attach copies of orders, consent decrees, settlement memos, federal regulations, letter or agreement, etc.)

No.

(35) Upon what information is the need for this regulation based? What studies, hearings, or other research has been conducted?

The Thoroughbred Horsemen's Association and the Pennsylvania Breeder's Association requested the respect amendments and help draft the appropriate language set forth in the amendments.

(36) What steps, if any, were taken in the development of this regulation to provide public and legislative participation?

Public input in the drafting stage was deemed unnecessary. However, there will be a public comment period during the regulatory process.

(37) Will current litigation be affected by this regulation? Yes/No If so cite cases and explain.

No.

FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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LEGISLATIVE REFERENCE BUREAU
PENNSYLVANIA

DO NOT WRITE IN THIS SPACE

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

[Signature]

DEPUTY ATTORNEY GENERAL

SEP 03 1998

DATE OF APPROVAL

If applicable
not approved. Objections
rec.

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

State Horse Racing Commission

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 34-63

DATE OF ADOPTION

BY:

[Signature]
Benjamin H. Nolt, Jr.

TITLE:

Executive Secretary

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independ-
ent Agencies.

[Signature]

7/8/98

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(State Indispensable Title)

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

Proposed Regulation
State Horse Racing Commission
58 Pa. Code Chapters 163 & 165
Rules of Racing

**TITLE 58. RECREATION
STATE HORSE RACING COMMISSION
(58 Pa. Code, Chapters 163 & 165)
RULES OF RACING**

The State Horse Racing Commission (“Commission”) acting under the authority conferred by §202(a) (4 P.S. §325.202(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 - 402) (“Act”), hereby proposes to amend Chapters 163 and 165 of the Commission’s regulations relating to the rules of racing.

Chapter 163 (Rules of Racing) of the Commission’s regulations governs all of the facets of racing including such particular matters 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 relating to coupled entries and §163.531 relating to the Pennsylvania Breeder’s Fund Program. The proposed amendments will help clarify and update the present rules of racing and bring them into conformance with surrounding racing jurisdictions.

SUMMARY OF 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 amendment will eliminate an out-dated rule of racing and make it more consistent with §163.119 (58 Pa. Code

§163.119) of the Commission's regulations relating to entries in a race of the same ownership. Additionally, the proposed amendment will bring the Commission's regulation into parity with Delaware and Florida racing jurisdictions.

Specifically, the coupled entry rule (§163.95) 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 in order 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 such 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 Pennsylvania. The Fund, by providing monetary awards to breeders, stallion owners and owners of registered Pennsylvania-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 Pennsylvania in order for the horse to be eligible for program registration and all its entitlements. The definition was originally designed to simplify matters for Pennsylvania breeders unfamiliar with such incentive programs and which would attract breeders from surrounding states to come to Pennsylvania 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 Pennsylvania simply to foal their horse (and gaining eligibility into the program) and immediately leaving the Commonwealth without necessarily contributing to the commerce of Pennsylvania'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 ninety days at a facility in Pennsylvania. The PHBA and the Commission believe the proposed amendment will modify the current trend and ensure that Fund program participants contribute more significantly to Pennsylvania commerce than the current definition requires.

Finally, the Commission will also amend or entirely delete several other sections, including §163.537 (relating to records of expenses) within the Breeders Fund Program to clarify and update, where appropriate, the language of the regulations relating to such matters as the registration, eligibility, appeals and awards of Pennsylvania-bred horses. Specifically, §163.537, which was promulgated in the mid-1970s prior to the enactment of Race Horse Industry Reform Act in 1981, presently requires the Breeders Association to submit “quarterly” estimates to the Commission. This is inconsistent with §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 §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 will 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 proposed amendment above.

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 Pennsylvania to become eligible for the Breeders' Fund Program. Such an impact should be offset as a result of the commerce generated with the new ninety (90) day requirement for the dam and foal, which will have to be met in order 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 and the Breeders' Fund Program into conformity with the other 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, the act of June 30, 1989 (P.L. 73, No. 19)(71 P.S. §§745.1 – 745.15), the agency submitted a copy of the proposed amendments on

September 14, 1998, to the Independent Regulatory Review Commission (IRRC) and to the Chairmen of the House State Government Committee and the Senate State Government Committee. In addition to submitting the proposed amendments, the agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1.

If IRRC has any objections to any portion of the proposed amendments, it must notify the agency within 30-days after the close of the public comment period. Such notification shall specify the regulatory review criteria, which have not been met by that portion. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of objections raised.

CONTACT PERSON

Individuals interested in further information may contact Benjamin H. Nolt, Jr., Executive Secretary, State Horse Racing Commission, Room 304 Agriculture Building, 2301 N. Cameron Street, Harrisburg, Pennsylvania 17110-9408. Telephone (717)787-5196.

**BENJAMIN H. NOLT, JR.
EXECUTIVE SECRETARY**

ANNEX "A"
RULES OF RACING
CHAPTERS 163 & 165

* * *

CHAPTER 163

§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 not 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. No trainer shall have any ownership interest in any other horse in the same race unless such horses are coupled as a single wagering interest.
- (c) If one horse is scratched after the betting is under way, the remaining horse shall run as a betting entry.
- (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 shall 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.

* * *

§163.531. Definitions.

Breeder - A breeder is the owner of the dam at the time of foaling and when held under a lease or in partnership, only such 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, which during the year of foaling, the foal or its dam spent a minimum of ninety (90) days at a facility in Pennsylvania 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] must 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.

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 of for the race.]

[\$163.534. Eligibility of owners of Pennsylvania sires for awards.

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.]

[\$163.535] §163.533. Records of registration.

* * *

[\$163.536] §163.534. Appeals.

* * *

[\$163.537. Records of expenses.

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.]

[§163.538] **§163.535. Purses and awards.**

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CHAPTER 165

* * *

§165.118. Trifecta.

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



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
LEGAL OFFICE

September 14, 1998

The Independent Regulatory Review Commission
14th Floor
333 Market Street
Harristown II
Harrisburg, PA 17120

RE: PROPOSED RULEMAKING
Department of Agriculture
State Horse Racing Commission
58 Pa. Code Chapters 163 & 165
Rules of Racing
I.D. No. 34-63

Dear Sir or Madam:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate State Government Committees and to the Legislative Reference Bureau on this date.

If I may be of further information, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "Jorge M. Augusto".

Jorge M. Augusto
Assistant Counsel

Enclosures

JMA:ajm

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TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 34-63
SUBJECT: Rules of Racing
AGENCY: State Horse Racing Commission

98 SEP 14 PM 4:04
INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X 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
9/14	<u>Eileen Krick</u>	HOUSE COMMITTEE ON STATE GOVERNMENT
9/14	<u>Thomas Heller</u>	
9/14	<u>H. Do</u>	SENATE COMMITTEE ON STATE GOVERNMENT
9/14	<u>M Ernst</u>	
9/14/98	<u>Kim C Garner</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
9/14/98	<u>Mayra Garces</u>	LEGISLATIVE REFERENCE BUREAU

September 4, 1998