

This is an amendment to 15.2.1 NMAC, Section 7, effective 03/14/18

15.2.1.7 DEFINITIONS:

P. Definitions beginning with the letter "p":

- (1) **"Paddock"** is an enclosure in which contestants scheduled to compete in a contest are confined prior to racing.
- (2) **"Pari-mutuel system"** is the manual, electromechanical, or computerized system and all software (including the totalisator, account betting system and offsite betting equipment) that is used to record bets and transmit wagering data.
- (3) **"Pari-mutuel wagering"** is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.
- (4) **"Patron"** is a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.
- (5) **"Payout"** is the amount of money payable to winning wagers.
- (6) **"Performance"** is a schedule of races run consecutively as one program.
- (7) **"Person"** is one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver, syndicate, or any other legal entity.
- (8) **"Positive test"** means the result of a test, conducted as provided in these rules on an official sample, which indicates the presence of any prohibited substance.
- (9) **"Post position"** is the pre-assigned position from which a horse will leave the starting gate.
- (10) **"Post time"** is the scheduled starting time for a contest.
- (11) **"Prima facie evidence"** is evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue.
- (12) **"Private barn"** is a barn and real property owned or leased by a trainer in which stalls are provided for races at a licensed New Mexico racetrack and who have direct access to a New Mexico racetrack.
- (13) **"Profit"** is the net pool after deduction of the amount bet on the winners.
- (14) **"Profit split"** is a division of profit amongst separate winning betting interests or winning betting combinations resulting in two or more payout prices.
- (15) **"Program Trainer" is a licensed trainer who solely for the purpose of the official race program, is identified as the trainer of a horse that is actually under the control of and trained by another person who may or may not hold a current trainer's license in any jurisdiction.**
- (16) **"Prohibited substance"** is any drug, chemical, or other substance which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability, including
 - (a) stimulants or depressants or other substances as defined by the association of racing commissioners international; or

- (b) that may interfere with testing procedures; or
- (c) that is a therapeutic medication present in excess of established acceptable levels; or
- (d) that is present in the horse in excess of levels that could occur naturally; or
- (e) that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.

~~(16)~~ (17) "**Program**" is the published listing of all contests and contestants for a specific performance.

~~(17)~~ (18) "**Protest**" is a written complaint alleging that a horse is or was ineligible to race.

~~(18)~~ (19) "**Purse**" is the total cash amount for which a race is contested whether paid at the time of the race or at a future date.

This is an amendment to 15.2.1 NMAC, Section 9, effective 03/14/18.

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

B. Proceedings before the stewards:

(9) Appeals.

(a) A person who has been aggrieved by a ruling of the stewards may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b) An appeal under this section must be filed not later than 10 days after the date of the ruling. If the deadline falls on a Saturday, Sunday or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday or legal holiday. The appeal must be received by noon, at the main commission offices or with the stewards who issued the ruling and must be accompanied by a fee in the amount of \$500. The fee must be in the form of cash, a cashier's check, money order or personal check.

(c) The commission may fine a license holder in the amount up to \$2,500 after considering an appeal if based on the evidence the appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious. Failure of an appealing party to appear at a noticed hearing or withdraw their appeal without providing five business days notice prior to the hearing date, may result in the non appearing appealing party being fined up to \$1,000.

(d) An appeal must be in writing on a form prescribed by the commission. The appeal must include the name, address, telephone number and signature of the person making the appeal; and a statement of the basis for the appeal.

(e) On notification by the commission that an appeal has been filed, the stewards shall forward to the commission the record of the proceeding on which the appeal is based, and a statement of the reasons for their rulings.

(f) If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the person shall pay the fine in accordance with these rules.

This is an amendment to 15.2.1 NMAC, Section 10, effective 03/14/18.

15.2.1.10 RULEMAKING PROCEDURES:

B. PROCEEDINGS BY COMMISSION:

(1) No rule or regulation, or amendment or repeal thereof, shall be adopted by the commission until after a public hearing by the commission, except as provided herein for emergency regulations. The commission shall allow all interested persons reasonable opportunity to present written materials and to speak in favor of their positions as they pertain to proposed rules. The commission may designate a hearing officer to take evidence. The commission may hold more than one hearing on proposed rules and may hold hearings at any location in the state. A record, consisting of at least written minutes or a tape recording, shall be made of all proceedings at the hearing.

(2) Notice of rulemaking hearings shall be ~~[given at least 20 days prior to the hearing date and shall state the subjects, time and place of the hearing and the manner in which interested persons may submit their views. The notice shall also state where copies of proposed rules may be obtained by the public. The notice shall be published in a newspaper of general circulation in the state and the commission shall mail copies of the notice to all persons who have made a written request to the commission for advance notice of such rulemaking hearings.]~~ provided to the public not later than 30 days prior to the hearing date. The notice shall include:

- (a) a summary of the full text of the proposed rule;
- (b) a short explanation of the purpose of the proposed rule;
- (c) a citation to the specific legal authority authorizing the proposed rule and the adoption of the proposed rule;
- (d) information on how a copy of the full text of the proposed rule may be obtained;
- (e) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- (f) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and,
- (g) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained. The notice shall be published in a newspaper of general circulation in the state and the commission shall send by electronic mail copies of the notice to all persons who have made a written request to the commission for advance notice of such rulemaking hearings. The notice must also be published in the New Mexico register.

(3) Rules are effective ~~[upon their filing at the state records center and]~~ the date they are published in the New Mexico register ~~unless a later date is otherwise provided by law or in the rule. The agency shall file the adopted rule with the state records administrator or the administrator's designee within 15 days [provided that rules shall not be filed with the records center sooner than five calendar days]~~ from the date of adoption. This provision does not apply to emergency rules.

(4) ~~[If the commission determines that an emergency exists which requires immediate action it may adopt, amend or repeal a rule and cause its filing immediately with the state records center. An emergency is a direct and immediate need to preserve public peace, health, safety or general welfare. The rule shall be effective immediately upon such filing. An emergency rule shall be noted as such on the copies filed with the records center. A statement of the necessity for the emergency rule shall be contained within the emergency rule. The emergency rule shall not continue in effect longer than 30 days unless within that time the commission commences proceedings to adopt the rule under the standard provisions of these rules. If the commission commences such proceedings the emergency rule shall remain in effect until a permanent rule takes effect or until the proceedings are otherwise completed. In no event shall an emergency regulation remain in effect for more than 120 days.]~~ If the commission finds that the time required to complete the rulemaking procedures would cause an imminent peril to the public health, safety or general welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law, then the agency shall provide to the public a record of any such finding and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within one hundred eighty days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued.

(5) Any interested person may request in writing that the commission adopt, amend or repeal a rule. ~~[Within 120 days of receipt of the written request,]~~ The commission shall either initiate formal proceedings to consider the proposed rule or issue a written statement of its reason for denial of the request to consider it.