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Proposed Regulation Agency Background Document

Agency name	Virginia Racing Commission
Virginia Administrative Code (VAC) citation(s)	11VAC10-47-10, 11VAC10-47-20, 11VAC10-47-30, 11VAC10-47-40, 11VAC10-47-50, 11VAC10-47-60, 11VAC10-47-70, 11VAC10-47-80, 11VAC10-47-90, 11VAC10-47-100, 11VAC10-47-110, 11VAC10-47-120, 11VAC10-47-130, 11VAC10-47-140, 11VAC10-47-150, 11VAC10-47-160, 11VAC10-47-170, 11VAC10-47-180, 11VAC10-47-190, and 11VAC10-47-200
Regulation title(s)	Regulations Pertaining to Horse Racing With Pari-Mutuel Wagering
Action title	To Promulgate Regulations Pertaining to Historical Horse Racing
Date this document prepared	March 21, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The purpose of the proposed action is to implement the provisions of Chapter 811 of the 2018 Acts of Assembly, which authorizes historical horse racing at facilities licensed by the Virginia Racing Commission. The proposed regulations will address the requirements for an entity licensed to conduct pari-mutuel wagering on historical horse racing, including (i) the location and hours of operation, (ii) types and specifications of the terminals to be utilized, (iii) accounting and auditing, (iv) permits required for licensee employees, (v) simulcast operations, (vi) annual reporting, and (vii) implementation by a licensee of a program to promote responsible gaming and the program's minimum requirements.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

None

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Chapter 811 of the 2018 Virginia Acts of Assembly requires the Virginia Racing Commission to promulgate regulations to implement the provisions of the act to be effective within 180 days of its enactment.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

Chapter 811 of the 2018 Virginia Acts of Assembly requires the Virginia Racing Commission to promulgate regulations to implement the provisions of the act to be effective within 180 days of its enactment.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

The Virginia Racing Commission must promulgate these regulations in order to ensure the integrity and proper oversight of Historical Horse Racing in the Commonwealth of Virginia.

Ensuring the integrity of the Historical Horse Racing is very important because it protects the welfare of the citizens of Virginia wagering on the races. These regulations give the Virginia Racing Commission the authority to regulate and audit the results of the races to guarantee that no one has an advantage over anyone else and that the results of the historical races are accurate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed regulations will address the requirements for an entity licensed to conduct pari-mutuel wagering on historical horse racing, including (i) the location and hours of operation, (ii) types and specifications of the terminals to be utilized, (iii) accounting and auditing, (iv) permits required for licensee employees, (v) simulcast operations, (vi) annual reporting, and (vii) implementation by a licensee of a program to promote responsible gaming and the program's minimum requirements.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantages to the public are that these regulations will provide for the integrity and fairness of the Historical Horse Racing and give them a state agency to contact if they believe the races to be unfair or have an issue with something done improperly by the operator. The advantage to the Commonwealth is that the Virginia Racing Commission will have the authority to ensure that the Commonwealth and localities receive their Code mandated percentages of the wagering that takes place. The Virginia Racing Commission does not believe these regulations are disadvantageous to the public or the Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are not any applicable federal requirements relating to these proposed regulations.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

The proposed regulations should not have a material effect on any other state agencies.

Localities Particularly Affected:

The proposed regulations provide for the localities where historical horse racing takes place to receive a quarter of one percent of the amount wagered. At the present time, the amount that will be paid to each qualifying locality is indeterminate, but it should greatly benefit those localities in the future with much needed additional revenue.

Other Entities Particularly Affected:

The proposed regulations should not have a material effect on any other entities.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The proposed regulations allow for a new form of pari-mutuel wagering to take place in the Commonwealth. It is impossible to determine the amount of wagering that will be generated from this new form of wagering at the present time. The Virginia Racing Commission (VRC) is a non-general fund agency and will receive .75% of the total amounts wagered, which should provide a more than adequate amount of funds to support the regulatory functions to be performed by the VRC.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>N/A</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The Virginia Racing Commission (VRC) is a non-general fund agency and will receive .75% of the total amounts wagered. This should be more than enough to support the functions of the VRC and any excess will be transferred to the General Fund, thus benefitting the entire Commonwealth.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The proposed regulations provide for the localities where historical horse racing takes place to receive a quarter of one percent of the amount wagered. At the present time, the amount that will be paid to each qualifying locality is</p>
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	indeterminate, but it should greatly benefit those localities in the future with much needed additional revenue.
Benefits the regulatory change is designed to produce.	The revenue received by each locality may be used to fund various projects as determined by each locality.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The proposed regulations should not have a material effect on any other entities.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	N/A
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	N/A
Benefits the regulatory change is designed to produce.	N/A

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for

small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Chapter 811 of the 2018 Virginia Acts of Assembly requires the Virginia Racing Commission to promulgate regulations to implement the provisions of this act. There are not any viable alternatives for this action as it is mandated by Chapter 811 of the 2018 Virginia Acts of Assembly.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The Virginia Racing Commission must promulgate these regulations in order to ensure the integrity and proper oversight of Historical Horse Racing in the Commonwealth of Virginia. Lessening the standards on the licensee would compromise the integrity and oversight of this new form of pari-mutuel wagering. Small businesses should not be affected by these proposed regulations.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
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Timothy Sumer	Requesting more information about regulations.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration. Agency will offer to provide more information to this person by email.
Richard Peters, Town of Vinton	Would like the regulations to use the Metropolitan Statistical Area in determining the maximum number of terminals allowed in a specific locality.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.
Justin Davison, Vinton Area Chamber of Commerce	Would like the regulations to use the Metropolitan Statistical Area in determining the maximum number of terminals allowed in a specific locality.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.
Chris Linkous	Would like the regulations to use the Metropolitan Statistical Area in determining the maximum number of terminals allowed in a specific locality.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.
Jill Loope, Roanoke County Economic Development	Would like the regulations to use the Metropolitan Statistical Area in determining the maximum number of terminals allowed in a specific locality.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.
Beth Doughty, Roanoke Regional Partership	Would like the regulations to use the Metropolitan Statistical Area in determining the maximum number of terminals allowed in a specific locality.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.
Joyce Waugh, Roanoke Regional Chamber	Would like the regulations to use the Metropolitan Statistical Area in determining the maximum number of terminals allowed in a specific locality.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.
John Hannum, Virginia Equine Allianace	Would like the regulations to allow for the Virginia Racing Commission to have the ability to increase the total number of terminals permitted in the Commonwealth.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.
Ken Larking, Town of Danville	Would like the regulations to use the Metropolitan Statistical Area in determining the maximum number of terminals allowed in a specific locality.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest

		concerning this important issue and your comment will be taken into consideration.
Keith C. Rogers, Jr., Town of Dumfries	Would like the regulations to use the Metropolitan Statistical Area in determining the maximum number of terminals allowed in a specific locality.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.
Arthur Watson, Castle Hill Gaming	Would like the regulations to encourage variation and competition of Historical Horse Racing terminals and for the Virginia Racing Commission to have the ability to increase the total number of terminals permitted in the Commonwealth.	Thank you for your comments on the proposed Historical Horse Racing regulations. The Virginia Racing Commission appreciates your time and interest concerning this important issue and your comment will be taken into consideration.

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the Virginia Racing Commission is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email to Kimberly Mackey, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, Kimberly.Mackey@vrc.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
10	Definitions		Clarifies the terms for a better understanding by licensees, staff, and the public.
20	Pari-mutuel wagering; generally		Provides authorization to issue licenses.
30	Observance of regulations		Outlines responsibilities of licensee to ensure proper observance and compliance with the regulations.
40	Requirements for wagering on historical horse racing		Provides requirements for licensee and terminals to protect integrity and validity.
50	Location and hours of operation of terminals used for wagering on historical horse racing		Outlines the location, physical layout, and age restrictions on the Historical Horse Racing area.
60	Payouts from pari-mutuel pools generated by wagering on historical horse racing		Provides requirements for wagering payouts to ensure that licensee conforms to the regulations.
70	Commission approval of historical horse racing games and displays		Outlines the process of submitting a request to offer a multiple wager on a historical horse race.
80	Equipment required for pari-mutuel wagering on historical horse races		Outlines the technical requirements for the wagering terminals.
90	Requirements for tickets or vouchers used in historical horse racing		Specifies requirements for printed vouchers.
100	Accounting and occurrence meter requirements		Provides requirements for various accounting and occurrence meters.

110	Historical horse race specifications and selection requirements		Provides requirements for the selection and details of each race.
120	Wagering terminal historical race display		Provides detailed requirements for the display of the wagering terminals.
130	Required reports for wagering on historical horse races; audit and inspection by the commission		Outlines the availability and required data to be included on the financial reports.
140	Permits required		Provides requirements the permitting of all employees involved in wagering on Historical Horse Racing.
150	Filing of application; fee		Sets forth the process and filing fee for a Historical Horse Racing application.
160	Required information		Outlines the required information to be included with a Historical Horse Racing application.
170	Duration of license; transfer		Sets forth the effective term of the license and rules for the transfer of a license.
180	Simulcast operations		Outlines the requirements of a satellite wagering facility that offers wagering on Historical Horse Racing.
190	Significant infrastructure limited licensee operations		Outlines certain conditions of a significant infrastructure limited licensee relating to race days and number of terminals.
200	Responsible gaming		Sets forth the requirements of a program to promote responsible gaming to be implemented by the licensee.

If the regulatory change is intended to replace an emergency regulation, and is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre**-emergency regulation.

These Proposed Regulations are identical to the Emergency Regulations that were published in Volume 35, Issue 5 of the Virginia Register on October 29, 2018.