



**WEST VIRGINIA  
SECRETARY OF STATE**

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**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR  
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY **Racing Commission**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **178-**

RULE NAME **Organization and Meeting Notices** **03**

CITE AUTHORITY **WV Code § 6-9A-3 and § 19-23-6(3)**

RULE IS LEGISLATIVE EXEMPT

**Yes**

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

**WV Code 29A-3-8**

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS

**Friday, July 22, 2016**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**

**Douglas P Buffington -- By my signature, I certify that I am the person authorized to file legislative rules,  
in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 178-03



Rule Id: 10119



Document: 27611

**TITLE 178  
PROCEDURAL RULES  
RACING COMMISSION**

**SERIES 3  
NOTICE AND CONDUCT OF MEETINGS**

**§178-3-1. General.**

1.1. Scope. -- This rule governs the procedure for meetings held by the West Virginia Racing Commission.

1.2. Authority. -- W. Va. Code §§ 6-9A-3 and § 19-23-6(3)

1.3. Filing Date. -- June 22, 2016

1.4. Effective Date. -- July 22, 2016

1.5. Amendment – This rule amends W. Va. 178 CSR 3, Racing Commission, Organization and Meeting Notices, filed December 20, 1982 and effective December 20, 1982.

**§178-3-2. Meetings.**

2.1. As required by West Virginia Code § 19-23-4(d), the West Virginia Racing Commission shall hold an annual meeting at its principal office at the seat of government in the month of January at which time it shall elect from its membership a chairman. In addition, regular meetings of the Commission may be held on the third Tuesday of each month at a time and location determined by the chairman and identified in the notice for the meeting. Provided, however, that the chairman may, upon due notice to the public, change the time, date and location of the Commission's regular meetings.

2.2. Special meetings may be held at such other times as may be necessary, as determined by the Commission and/or its chairman.

2.3. Emergency meetings, as that term is defined by West Virginia Code § 6-9A-2(2), may be held, as determined by the Commission and/or its chairman.

2.4. The chairman shall preside at all meetings at which he or she is present. If the chairman is absent from a meeting, another member may be designated to act as chairman *pro tem* and preside over the meeting.

2.5. The chairman or the chairman *pro tem* may make and second motions and may vote on all matters before the Commission at a meeting.

2.6. A majority of the Commission shall constitute a quorum at any meeting for the transaction of business.

2.7. The Executive Director of the Racing Commission shall electronically file a notice of each of the Commission's annual, regular and special meetings with the Secretary of State for publication on the Secretary of State's website and shall place each notice on the Commission's website. Each notice shall contain the date, time, place and purpose of the meeting and shall be filed or placed in a manner to allow each notice to appear on the Secretary of State's website and the Commission's website at least five business days prior to the date of the meeting.

2.8. The Executive Director of the Racing Commission shall electronically file a notice of an emergency meeting with the Secretary of State and place a notice on the Commission's website as soon as practicable prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

2.9. All meetings of the Commission are open to the public except as otherwise provided in West Virginia Code § 6-9A-4.

2.10. Upon a majority vote of the members present at any meeting, the Commission may go into executive session and exclude the public to discuss any agenda item that fits within the exceptions provided in West Virginia Code § 6-9A-4. Any action taken as a result of a discussion in executive session must be taken in open session except that the Commission may vote in executive session to give its attorney settlement authority for threatened or pending claims against the Commission. Provided that, pursuant to West Virginia Code § 6-9A-4(b)(11), if a settlement is reached, then the terms of the settlement agreement shall be reported by the Commission at an open meeting and entered into its meeting minutes within a reasonable time after the settlement is concluded.

2.11. Open meetings of the Commission shall be recorded using audio recording equipment. Copies of such audio recordings shall be available to the public within a reasonable time after the meetings.

2.12. A member of the public who disrupts a Commission meeting to the extent that the orderly conduct of the meeting is compromised, may be removed from a meeting in the discretion of the chairman.

### **§178-3-3. Agendas.**

3.1. At least three business days prior to the date of the meeting, an agenda for each annual, regular and special meeting shall be made available in the Commission's office and on the Commission's website. An agenda which has been issued at least three days in advance of a

meeting may be amended up to two days before the meeting. In calculating business days, the day of the meeting, as well as Saturdays, Sundays and legal holidays are excluded.

3.2. The agenda for an emergency meeting shall be made available in the Commission's office and on the Commission's website as soon as practicable prior to the meeting.

3.3. Items listed on a meeting agenda shall be stated in a specific manner so as to make the public aware of the particular matters to be dealt with at the meeting.

3.4. Any discussion of an item of Commission business that may ultimately lead to or result in official action at that meeting, or at some future meeting, shall be on the agenda of the meeting at which the discussion is held.

3.5. In the discretion of the chairman, the order of items contained on a meeting agenda may be changed in the course of a meeting as circumstances require.

3.6. Any member of the public may request that an item be put on the agenda of a Commission meeting. Provided that, it shall be within the discretion of the chairman whether a requested agenda item is placed upon a Commission agenda.

#### **§178-3-4. Participation in Meetings Using Technology.**

4.1. Members of the Commission may participate in meetings by telephone or other electronic conferencing except when the Commission is acting as a hearing body. A speaker phone or other audio and/or video device shall be used at the meeting site to enable those present, including the public, to hear and/or see the members who are attending and participating by telephone or other electronic conferencing.

4.2. The Commission may allow members of the public to listen to or participate in open meetings by telephone or other electronic conferencing. A telephone call-in number or other information allowing members of the public to participate in the meeting may be posted on the Racing Commission's website in advance of the meeting.

4.3. A member of the public who listens to or participates in open meetings by telephone or other electronic conferencing shall mute the microphone on his or her telephone or other device so that background or ambient noise does not interfere with the conducting of the Commission's meeting. Provided that, if a member of the public is called upon by the chairman to speak at the meeting, he or she may enable the microphone on their telephone or other device to speak.

4.4. If members of the public listening to or participating in an open meeting by telephone or other electronic conferencing interfere with the orderly operation of a Commission meeting by failing to mute their microphones or by other actions that hinder the Commission's

meeting, the chairman may require that the offending member or members be disconnected from participation or require that the telephone or other electronic conferencing be disabled entirely.

#### **§178-3-5. Meeting Materials.**

5.1. The Racing Commission's Executive Director shall prepare a compilation of informational materials pertaining to items on each Commission's meeting agenda to be distributed to the Commission in advance of each meeting. Such materials shall be distributed to the Commission in a manner so as to allow sufficient time for each Commission member to review the information prior to a scheduled meeting.

5.2. A member of the public may submit informational materials pertaining to an item on a Commission meeting agenda to the Commission's Executive Director for distribution to and consideration by the Commission. The Commission and/or the Executive Director may establish a deadline for submission of such informational materials prior to a meeting. Any informational materials received after a deadline established by the Commission and/or the Executive Director may not be considered by the Commission.

#### **§178-3-6. Public comments.**

6.1. In the discretion of the chairman, the Commission may have a public comment period to allow members of the public to address the Commission during a meeting. Provided that, the chairman may choose to allow a member of the public to speak to coincide with a topic on the agenda, if the speaker's comments pertain to an agenda item.

6.2. The Commission may provide a sign-in sheet in advance of a meeting to allow members of the public to sign up to speak during a public comment period.

6.3. The chairman may reasonably limit the amount of time that each member of the public has to provide public comment during a Commission meeting.

6.4. The Commission shall not deliberate and/or take action on any topic addressed by a member of the public that is not on the meeting agenda. Provided that, the Commission may, in its discretion, direct that any topic raised by a member of the public during a meeting be placed on the agenda for a future meeting to allow the Commission to deliberate and/or take action on it.

#### **§178-3-7. Media.**

7.1. Pursuant to West Virginia Code § 6-9A-9, any radio or television station is entitled to broadcast all or any part of an open Commission meeting. Provided that, the Commission may regulate the placement of equipment necessary for broadcasting, photographing, filming or recording a meeting so as to prevent undue interference with the meeting. Provided further that, if the Commission determines in good faith that the size of the meeting room is such that all of the members of the public present and the equipment and personnel necessary for broadcasting,

photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then it may require pooling of equipment and the personnel operating it.

**§178-3-8. Committees and Subcommittees.**

8.1. Any committee, subcommittee or other subunit formed or appointed by the Commission to make decisions for or recommendations to the Commission shall be subject to the requirements of the Open Governmental Proceedings Act, West Virginia Code §§ 6-9A-1 *et seq.*, and this procedural rule.

**§178-3-9. Minutes.**

9.1. The Commission shall prepare written minutes of all Commission open meetings.

9.2. A copy of the minutes of open meetings shall be available to the public within a reasonable time after the meetings and shall include the following information:

9.2.a. The date, time, and place of the meeting;

9.2.b. The name of each Commission member present or absent;

9.2.c. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and,

9.2.d. The results of all votes and, upon the request of a member, the vote of each member, by name.