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**TEXAS RACING COMMISSION  
COMMITTEE ON RULES**

*Meeting Report*

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**Texas Department of Public Safety  
Bldg. E, First Floor Auditorium  
Austin, TX**

**June 8, 2010  
1:30 p.m.**

Attending were Commissioners Ann O'Connell and Scott Haywood, Commission staff and representatives from Texas racetrack associations, breed registries, the Texas Horsemen's Partnership, and other interested parties. Commissioner O'Connell chaired the meeting.

**A. Rule Review Update:**

1. Review of Chapter 307, Proceedings before the Commission

Staff suggested four possible rule additions to Chapter 307. As a starting point for discussions, the group reviewed information showing the Racing Commissioner's International (RCI) Model Rules and those of other states on each issue.

- Rules of Evidence – Texas' rules do not address what standard stewards/judges should use in consideration of evidence. The discussions centered on hearsay evidence and to what extent it should be allowed.

Stakeholder Input: Stakeholders liked New Mexico's "*Hearsay evidence alone is insufficient basis for a ruling.*" A stakeholder volunteered to research why that language was added to the New Mexico rule as otherwise it tracks the RCI Model Rule.

Following a robust discussion, the consensus was to circulate language similar to the model rule, including adding the statement from the New Mexico rule, for the stakeholders' consideration.

The RCI Model Rule on evidence reads: *The stewards/judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the stewards/judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The stewards/judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The stewards/judges may admit hearsay evidence if the stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the stewards/judges. Hearsay evidence alone is insufficient basis for a ruling.*

- Standard of Proof – Texas' rules do not address what standard stewards/judges should use in consideration of the standard of proof.

Stakeholder Input: Stakeholder's agreed with staff's suggestion to circulate the RCI Model Rule for stakeholders' consideration.

The RCI Model Rule reads: *The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.*

- Continuances – Texas' rules do not provide guidance to the stewards on what should be considered before granting a continuance to a hearing. Staff advised the group that the stewards handling of continuances actually tracks the RCI Model Rule. Commissioner O'Connell asked whether a person could ask for multiple continuances in order to delay their hearing and thereby continue to participate in racing. Staff responded that continuances are usually not for very long – days or weeks.

Stakeholder Input: Stakeholders had no objections to Commissioner Haywood's suggestion to use the RCI Model Rule to draft a proposed rule with the addition of adding a phrase of "reasonable time" or something similar to discourage anyone from intentional delay tactics.

The RCI Model Rule reads: *(1) Upon receipt of a notice, a person may request a continuance of the hearing. (2) The stewards/judges may grant a continuance of any hearing for good cause shown. (3) The stewards/judges may at any time order a continuance on their own motion.*

- Care, Supervision and Custody (Program Trainers) – This issue involves a trainer assuming race day responsibilities for horses that are not under the trainer's ongoing care, supervision and custody. At some point, it becomes a transparency and integrity issue – as a person may be wagering based on the trainer listed in the program, when in fact, that person has not actually trained the horse. RCI Model Rules do not address the issue, although California and Oklahoma specifically identify Program Trainers in regard to worker's compensation.

Stakeholder Input: Stakeholders discussed how one could separate 'paper' trainers from 'real' trainers; the reasonable amount of time a trainer should be possession of the horse; integrity issues; and liability issues.

Staff emphasized the need to further involve both trainers and stewards in the policy discussion to determine the relevant factors that would be considered in determining if a violation had occurred. Commissioner O'Connell emphasized the importance of this issue, especially to the wagering public, and asked that stakeholders provide feedback and suggestions at the next Rules Committee meeting.

## 2. Review of Chapter 321, Pari-mutuel Wagering

Staff will present its review of stakeholder's proposed changes to Chapter 321 at the next meeting of the Texas Pari-Mutuel Advisory Committee on June 22. (Update: At

the June 22 meeting, stakeholders discussed their desire to add two new wagering pools – the Penta-Fecta, commonly referred to as the Super-High-Five, – and the Fortune Six. Stakeholders also suggested modifications to the Select 3, 4, or 5 Wager’s handling of a late scratch and to review the claim for payment process. Four separate stakeholder committees were formed. Each committee will submit suggested revisions to staff by July 31 in preparation for the next meeting Pari-Mutuel Advisory Committee meeting on August 11 – 12.)

The fully vetted proposed chapter changes will be submitted Committee on Rules at the next meeting on August 31. Proposed changes endorsed by the Committee on Rules will be submitted for the Commission’s consideration at the September meeting for publication in the Texas Register, with possible adoptions at the November meeting.

**B. Rule Proposals:**

1. Texas Quarter Horse Association Proposed Change to §303.93(f)(3)(D), Quarter Horse Rules

At the April 4, 2010, Commission meeting, the Commission voted to publish the TQHA’s proposed rule revision to §303.93(f)(3)(D). The change moves the payout schedule for the Accredited Texas Bred payments to the end of a meet instead of making payments every four weeks during a race meet. A minor technical change will be included in the final version that will be considered for adoption at the July 7, 2010, meeting. Staff reported the change is non-substantive and does not require a reposting before considering it for adoption.

THE NEXT MEETING OF THE COMMITTEE ON RULES IS TENTATIVELY SCHEDULED FOR TUESDAY, AUGUST 31.

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