

TEXAS RACING COMMISSION

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COMMITTEE ON RULES

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

Texas Department of Public Safety
Criminal Law Enforcement Building
6100 Guadalupe, Building E, Auditorium
Austin, Texas 78752

Agenda

The Committee will meet to discuss the Rule Reviews of Chapters 307 and 321. It will also accept public comment on one rule proposal.

- The Chapter 307 discussion will include a comparison of other racing jurisdictions' provisions relating to stewards' hearings and the amount of the bond required to file an appeal to the Commission. This discussion will also address the issue of trainers assuming race day responsibilities for horses that are not under the trainers' ongoing care, supervision, and custody.
- The Chapter 321 discussion will focus on the rule review activities undertaken to date and the ongoing preparations for the Pari-Mutuel Advisory Committee meeting to be held on June 22.
- The Committee will discuss and accept input on the proposal to amend Commission Rule §303.93, Quarter Horse Rules. This proposal was published in the May 14, 2010, edition of the Texas Register for public comment and will be eligible for adoption at the July 7, 2010, Commission meeting.

The public will be given an opportunity to address the Committee and identify any subjects, whether discussed at previous meetings or not, that it would like placed on the agenda for discussion at a future committee meeting.

ITEM A.

RULE REVIEW UPDATE

Rule Review of Chapter 307, Proceedings before the Commission

CHAPTER 307 RULE REVIEW
RULES OF EVIDENCE – STEWARDS’ HEARINGS

Authority	Relevant Provision
RCI MODEL RULE	Due Process & Hearings – Chapter 3 – F. Evidence (2) 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/judges 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.
Texas	Not addressed.
Arkansas	Not addressed.
Arizona	Not addressed.
California	Appearance and Evidence at Hearing. At the hearing before the Board, its referee or Hearing Officer, the applicant is entitled to appear in person and/or by counsel, and such evidence as is necessary and proper to resolve the issues presented shall be received. The applicant may file a written answer or statement in which he may controvert any point at issue, and may present any argument or evidence for consideration. Any association may appear as a party of interest in the matter and at the hearing if it so desires.
Florida	Conduct of Hearing/Evidence. (a) Oral testimony shall be taken only on oath or affirmation. Stewards and judges shall administer oaths and examine witnesses. (b) Each party shall have the right to present evidence relevant to the issues; to cross-examine opposing witnesses; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence presented against it. (c) Any relevant evidence shall be admitted if it is the sort of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Irrelevant and unduly repetitious evidence shall be excluded.
Kentucky	The state steward shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

Louisiana	<p>A. The commission shall adopt the rules under R.S. 4:191 through R.S. 4:197 to protect and promote the public interest, including the orderly and efficient conduct of horse racing, fairness and justice in horse racing, and the peaceful enjoyment of horse racing by the members of the public.</p> <p>B. Except as otherwise provided in R.S. 4:191 through R.S. 4:197, the commission's hearings, practice, procedures, determinations, and orders shall be governed by Chapter 13 of Title 49.</p>
New Mexico	<p>Proceedings before the stewards: Evidence. The stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. The stewards 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. Hearsay evidence alone is insufficient basis for a ruling.</p>
New York	Not addressed.
Oklahoma	<p>Testimony and Evidence at Hearing Every person called to a hearing before the Stewards concerning an alleged rule violation shall be allowed to present testimony, produce witnesses, cross-examine witnesses, and present documentary evidence in accordance with the rules of privilege recognized by law.</p>

STANDARD OF PROOF – STEWARDS’ HEARINGS

Authority	Relevant Provision
RCI MODEL RULE	Due Process & Hearings – Chapter 3 – F. Evidence 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.
Texas	Not addressed.
Arkansas	The Stewards shall have the power to interpret the Rules and to decide all questions not specifically covered by them.
Arizona	Not addressed.
California	Not addressed.
Florida	Not addressed.
Kentucky	Not addressed.
Louisiana	Except as otherwise provided in R.S. 4:191 through R.S. 4:197, the commission's hearings, practice, procedures, determinations, and orders shall be governed by Chapter 13 of Title 49.
New Mexico	Proceedings before the stewards: Evidence. 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.
New York	Not addressed.
Oklahoma	Not addressed in rule. By state court decision, the stewards use a “clear and convincing evidence” standard of proof.

CONTINUANCES – STEWARDS’ HEARINGS

Authority	Relevant Provision
RCI MODEL RULE	<p>Due Process & Hearings – Chapter 3 –E. Continuances</p> <p>(1) Upon receipt of a notice, a person may request a continuance of the hearing.</p> <p>(2) The stewards/judges may grant a continuance of any hearing for good cause shown.</p> <p>(3) The stewards/judges may at any time order a continuance on their own motion.</p>
Texas	Not addressed.
Arkansas	<p>The licensee shall be summoned to a meeting of the Stewards called for the purpose of investigating suspected or alleged violations by the licensee, at which all Stewards shall be present. The licensee may request a continuance for good cause, but a continuance shall not stay any intermediate condition, limitation or restriction.</p>
Arizona	Not addressed.
California	<p>The stewards may refer any matter within their jurisdiction to the Board when the penalty the stewards have jurisdiction to impose is insufficient when a hearing cannot be held under the conditions or in the manner prescribed, when a hearing is impractical due to conclusion of the meeting, or for other good and sufficient cause, and they may order the suspension of the licensee pending further Order of the Board. In such event, the Board shall accept the matter for hearing and adjudication or such other action as the Board deems to be in the best interests of justice.</p>
Florida	Not addressed.
Kentucky	<p>(1) All applications for continuance made prior to a hearing shall be in writing, shall set forth the reasons for the continuance, and shall be filed with the authority after giving notice of the application by mail or otherwise to all parties or their representative. At the time of the hearing, applications for continuance may be made orally. If requested, and in the manner prescribed by the authority, the party applying for the continuance shall substantiate the reasons contained in the application.</p> <p>(2) If an application is made for continuance due to illness of an applicant, licensee, witness, or counsel, the application shall be accompanied by a medical certificate attesting to such illness and inability.</p> <p>(3) An application for continuance of any authority hearing shall be received by the authority at least ninety-six (96) hours prior to the time fixed for a hearing. An application received by the authority within the ninety-six (96) hour period shall not be granted unless a satisfactory arrangement in writing is made with the authority for the payment of all expenses resulting from the continuance. However, the commission may waive payment of the expenses for extenuating circumstances.</p> <p>(4) If the authority approves the application for continuance, the authority</p>

	shall set a date for the continued hearing.
Louisiana	Not addressed.
New Mexico	Continuances. (a) Upon receipt of a notice, a person may request a continuance of the hearing. (b) The stewards may grant a continuance of any hearing for good cause shown. (c) The stewards may at any time order a continuance on their own motion.
New York	Not addressed.
Oklahoma	Not addressed by rule. It has been customary for the stewards to grant one continuance when a hearing is set for good cause.

**CARE, SUPERVISION AND CUSTODY
(PROGRAM TRAINERS)**

Authority	Relevant Provision
RCI MODEL RULE	Not addressed.
Texas	Not addressed.
Arkansas	(c) No trainer shall assign any of the trainer's duties or responsibilities to any person that is disqualified or ineligible to participate in racing or is not appropriately licensed. (d) No trainer shall assume any of the above responsibilities for a horse not under his/her active care, custody and supervision.
Arizona	Trainers shall refuse to act on behalf of any participant at a licensed track if they have reason to believe, in the exercise of reasonable discretion, that such a participant is not licensed by the Department.
California	Program Trainer Prohibited. No licensed trainer, for the purpose of avoiding the requirements for workmen's compensation insurance as set forth in this article, shall place any horse in the care of or attendance of any other person.
Florida	Not addressed.
Kentucky	Not addressed.
Louisiana	Not addressed.
New Mexico	Not addressed.
New York	Not addressed.
Oklahoma	Program Trainer Prohibited No licensed Trainer, for the purpose of avoiding his/her responsibilities or insurance requirements as set forth in the rules of this Subchapter, shall place any horse in the care or attendance of any other Trainer. Trainer Responsibility (c) No Trainer duty or responsibility, whether listed in (a) or (b) of this Section or not, may be assigned to any person who is ineligible to hold a license or who is under suspension in this or any other racing jurisdiction. (d) No licensed Trainer shall assume any of the responsibilities described in this Section for a horse not under his/her active care, supervision or custody.

ITEM B.

RULE REVIEW UPDATE

Rule Review of Chapter 321, Pari-Mutuel Wagering



Chapter 321 Review Proposed Time Line

	Apr-10	May-10	Jul-10
April 4, 2010:	TxRC Rules Committee Updated on Chapter 321 Review		
May 14, 2010:	TxRC Awarded Contract to BMM Compliance BMM Compliance will provide assistance in review of the technical areas of Chapter 321 and will assist in drafting a set of wagering terminal standards for consideration.		
June 8, 2010:	TxRC Rules Committee Updated on Chapter 321 Review		
June 8, 2010:	Last date to submit recommended changes or additions to the Texas Pari-Mutuel Advisory (TPMA) Committee to review as part of the Chapter 321 review process		
June 15, 2010:	Compiled list of submissions distributed to TPMA Committee for review and comments		
June 22, 2010:	TPMA Committee meets Review submissions on recommended rule changes or additions: Determine if another meeting is needed prior to August TPMA Meeting		
July 31, 2010:	BMM Compliances' written recommendations due		
Aug. 10-15, 2010:	TPMA Committee meets Reviews BMM Compliances recommendations and ask questions of BMM Compliances' technical staff		
August 31, 2010:	TxRC Rules Committee Meeting Submit recommendations on revisions and additions to Chapter 321		
Sept. 14, 2010:	Commission Meeting Reviewed & Revised Chapter 321 on agenda for proposal		
Nov. 16, 2010:	Commission Meeting Reviewed & Revised Chapter 321 on agenda for adoption		

ITEM C.

RULE PROPOSAL

*Texas Quarter Horse Association's Proposed Change to § 303.93
(f)(3)(D), Quarter Horse Rules*

1 **Sec. 303.93. Quarter Horse Rules.**

2 (a)-(e) (No change.)

3 (f) Procedure for the Payment of ATB Awards

4 (1)-(2) (No change.)

5 (3) Procedures for Payment of Awards

6 (A)-(C) (No change.)

7 (D) TQHA shall maintain records of all ATB racing stock
8 that earn awards. At the completion of a race [~~period not to~~
9 ~~exceed four racing weeks~~] meeting, TQHA will begin the process
10 to generate awards checks for the owners, breeders, and the
11 stallion owners corresponding to those ATB racing stock by
12 apportionment according to the percentages expressed in
13 subparagraph (C) of this paragraph. The awards for each race
14 shall be divided 50% to first place, 30% to second place, and
15 20% to third place. Upon receipt of the ATB funds from the
16 commission for the race meeting [~~period~~], TQHA shall disburse
17 the awards by U.S. mail. [~~For race meets less than 18 days in~~
18 ~~duration the TQHA reserves the right to consolidate ATB awards~~
19 ~~into one payout upon completion of the race meet.~~]