

TEXAS RACING COMMISSION

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COMMITTEE ON RULES

Tuesday, August 31, 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, Proceedings before the Commission, and Chapter 321, Pari-mutuel Wagering.

- The Chapter 321 discussion will focus on the rule review activities undertaken to date, including a report on the discussions at the Pari-mutuel Advisory Committee meeting held on August 11-12 at Sam Houston Race Park.
- The Chapter 307 discussion will focus on a draft proposal to amend Commission Rule § 307.62, Disciplinary Hearings. The draft proposal will address the rules of evidence, the burden of proof, and the grounds for continuances at the hearing of a board of stewards or judges.

The Committee will also take up the following items:

- The Committee will discuss Equine Piroplasmiasis (EP), the current entry requirements at Texas racetracks, whether the Commission should amend Commission Rule 319.110, Health Certificate, to require testing for EP, and whether to request that the Texas Animal Health Commission adopt rules regarding EP.
- The Committee will discuss and accept input on a request by Lone Star Park to amend Commission Rule 313.110, Coupled Entries.

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

**Draft Proposals for Changes to
Chapter 307, Proceedings before the Commission**

**TEXAS RACING COMMISSION
COMMITTEE ON RULES – MEETING MATERIALS
AUGUST 31, 2010**

A. Review of Chapter 307, Proceedings before the Commission

Following the discussions on three areas of possible rule additions to Chapter 307 at the June 8, 2010, Committee on Rules meeting, the Committee asked staff to provide proposed language for consideration. The changes are to the following areas:

Rules of Evidence – Texas' rules do not address what standard stewards/judges should use in consideration of evidence. Consensus was to draft language similar to the RCI model rule, but include a portion of the New Mexico rule "Hearsay evidence alone is insufficient basis for a ruling."

Standard of Proof – Texas' rules also do not address what standard stewards/judges should use in consideration of the standard of proof. The group agreed to include the RCI Model Rule on standard of proof for consideration.

Continuances – Texas' rules do not provide guidance to the stewards/judges on what factors should be considered before granting a continuance to a hearing. However, in practice, the stewards/judges handling of continuances tracks the RCI Model Rule on Continuances. The attendees agreed with Commissioner Haywood's suggestion to add a phrase of "reasonable time" to the proposed change language.

The following proposed changes, which would be incorporated in Section 307.62, address these three areas. (The proposed language is in bold type.)

Section 307.62 Disciplinary Hearings:

- (a) Authority to Conduct. On their own motion or on receipt of a complaint regarding the actions of an occupational licensee, the stewards and racing judges may conduct a disciplinary hearing regarding the licensee's actions.
- (b) Notice of Hearing. Except as otherwise provided by the Rules, the stewards and racing judges shall provide written notice to a person who is the subject of a disciplinary hearing at least 10 calendar days before the hearing. Notice given under this subsection must state the nature of the charges against the person and the possible penalties that may be imposed. The person may waive his or her right to 10 days notice.
- (c) Rights of the Licensee. At a disciplinary hearing conducted by the stewards or racing judges, the person who is the subject of the disciplinary hearing has the following rights, all of which the person may waive:
- (1) the right to counsel;
 - (2) the right to present a defense;

- (3) the right to make an opening and closing statement;
- (4) the right to call witnesses; and
- (5) the right to cross-examine witnesses testifying against the person.

(d) Evidence.

(1) Each witness at a disciplinary hearing conducted by the stewards or racing judges must be sworn by the presiding steward or racing judge.

(2) To facilitate participation by licensees, the stewards and racing judges may permit witnesses to testify at a disciplinary hearing via telephone if the stewards or racing judges make reasonable assurances that the person testifying is who he or she purports to be.

(3) The stewards and racing judges shall make a record of a disciplinary hearing.

(4) The stewards and racing judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the stewards and racing judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The stewards shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The stewards and racing judges may admit hearsay evidence if the stewards and racing 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 and racing judges. Hearsay evidence that is not otherwise admissible under the exceptions of the Texas Rules of Evidence is an insufficient basis alone for a ruling.

(e) ***Burden of Proof***

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.

(f) ***Continuances***

(1) Upon receipt of a notice, a person may request a continuance of the hearing.

(2) For good cause shown, the stewards or racing judges may grant a continuance of any hearing for a reasonable period of time.

(3) The stewards or racing judges may at any time order a continuance on their own motion.

(g) Agreed Settlement. The person who is the subject of the disciplinary hearing may waive the right to a hearing and subsequent appeal and enter into an agreed settlement with the stewards or racing judges.

(h) Failure to Appear. The stewards or racing judges may suspend the license of a person who fails to appear at a disciplinary hearing after receiving written notice of the hearing until the matter is adjudicated.

(i) Summary Suspension. If the stewards or racing judges determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards or racing judges may enter a ruling summarily suspending the license, without a prior hearing. A summary suspension takes effect immediately on issuance of the ruling. If the stewards or racing judges suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than three calendar days after the day the license is suspended. The licensee may waive his or her right to a hearing on the summary suspension within the three-day period.

ITEM B.

Equine Piroplasmosis

1. Overview of Equine Piroplasmosis in the Regulation of Horse Racing
2. Comparison of Equine Piroplasmosis Testing and Inspection Requirements

Equine Piroplasmosis in the Regulation of Horse Racing in Texas

Equine Piroplasmosis (EP) is a tick-borne blood parasite of horses and other equines. Ticks carrying the parasites may be moved via hay, bedding, feed and vegetation.

The disease is transmitted via tick bites or through mechanical transmission by improperly disinfected needles or surgical instruments.

Once infected, an equine can take 7 to 22 days to show signs of illness. While piroplasmosis can be a fatal disease, many horses may display vague signs of illness, such as fever, inappetance or jaundice. Mild forms of the disease cause equines to appear weak and show lack of appetite. Signs of the acute phase include fever, anemia, jaundiced mucous membranes, a swollen abdomen, and labored breathing. More acute cases can occur where EP is not common and horses have not built up a resistance to the disease.

Currently, there is no vaccine for EP; in endemic regions, symptoms of EP are treated with drugs. Preventing the transfer of blood between animals through biting ticks or surgical instruments is crucial to preventing the transmission of EP.

Horses that survive this acute phase typically become carriers. They recover from the disease and show no symptoms but still harbor the infective organism and can pass the disease to other horses through infected needles and surgical instruments.

In January 2010, Texas Animal Health Commission (TAHC) hosted a meeting with 32 representatives from 20 Texas equine industry groups to discuss the status of piroplasmosis in the state. Risk procedures for positive and exposed horses were discussed, and input sought on how the state should further respond in terms of surveillance, movement requirements, and identification of positive horses.

In June 2010, TAHC formally adopted rules regarding the identification of positive horses.

Starting in February, 2010 at Manor Downs and through Retama Park's meet that begins on September 3, 2010, all of the Texas horse race tracks conducting meets required either proof of a negative test or a Certificate of Veterinary Inspection dated within the past 45 days that includes a statement by the signing veterinarian that states, "***I have inspected these horses, they do not display clinical signs and have not tested positive for Equine Piroplasmosis. I have also prescribed and supervised the treatment for ticks with an approved synthetic pyrethroid spray product.***"

Effective July 26, 2010, Lone Star Park is requiring negative tests results for *T. Equi* and *B. cabilli* forms of the disease for all horses entering the backside of the racetrack.

Sam Houston Race Park has notified the Commission they will adopt a similar requirement if they run their 2010 Thoroughbred dates.

Additionally, as of August 16, 2010, Retama Park is requiring negative results for quarter horses and paints entering their grounds for works. Horsemen have been notified that beginning on October 24, 2010, the day after the Thoroughbred meet ends, all horses on the grounds or entering Retama Park grounds must have documentation of negative tests results for both *Theileria equi* and *Babesia caballi*.

Other jurisdictions have adopted formal EP requirements through a variety of mechanisms, including statutes, rules, directives, notices, and orders. In some cases, the requirements have been adopted by the racing authority and in other cases by the state's animal health regulatory agency. The requirements address a variety of issues, including the types of testing, the required laboratory, the testing timeframe, the form of the certificate, whether an examination and attestation by a veterinarian is required, tick treatment requirements, and re-entry requirements.

Lone Star Park New Entry Policy

The following new entry requirements will be in place beginning on Monday, July 26, 2010. This policy is for all horses shipping into the stable area of Lone Star Park regardless of their origin.

A negative Piroplasmosis cElisa test for Theileria equi and Babesia caballi that has been performed in the last year will now be mandatory.

Horses currently stabled on the grounds will also have to provide negative tests to the racing office no later than Wednesday, August 4, 2010.

And as usual you must also provide the stable gate a negative Coggins test within the past twelve months and have a valid health certificate dated within 45 days when entering the stable area.



LONE STAR PARK
at Grand Prairie™

Retama Park

ATTENTION HORSEMEN

NEW ENTRANCE REQUIREMENTS

The following **NEW** entry requirements for Quarter Horses and Paints will be in place beginning on **Monday, August 16, 2010**. This policy is for Quarter Horses and Paints shipping into the stable area of Retama Park for work outs, regardless of their origin.

Original documentation of a negative Piroplasmosis cElisa test for both Theileria equi and Babesia caballi that has been performed in the last year will now be MANDATORY !!!

And as usual to be admitted to the stable area you must also provide the stable gate original documentation of a negative Coggins test within the past twelve months and have a valid original Certificate of Veterinary Inspection (health certificate) dated within 45 days.

Any horse(s) stabled on the grounds presently or shipping in for the Thoroughbred meet will have to have documentation of a negative test by Sunday, October 24, 2010.

And as usual to be admitted to the stable area you must also provide the stable gate original documentation of a negative Coggins test within the past twelve months and have a valid original Certificate of Veterinary Inspection (health certificate) dated within 45 days.

AND

Until the mandatory date of October 24, 2010 has occurred a signed statement by the accredited veterinarian stating "I personally inspected this animal and it does not display clinical signs of Equine Piroplasmosis and I have inspected and treated for ticks with an approved synthetic spray product". This statement shall be included on the original Certificate of Veterinary Inspection (health certificate).

If you have any questions please contact your Texas Horsemen's Partnership Representative or the Race Office.

COMPARISON OF EQUINE PIROPLASMOSIS TESTING AND INSPECTION REQUIREMENTS

State	Testing Required	Required by:	Effective Date	Test Timeframe	Test for Theileria equi	Test for Babesia caballi	Require Vet Statement Re Inspection for Ticks	Require Treatment for Ticks	Notes
Arizona	No								
Arkansas	Yes - for horses from county with Piroplasmosis	Notice (AR State Veterinarian+)		Within 30 days	Does not specify	Does not specify	Does not mention	Does not mention	
California	No								
Colorado (Racetrack specific requirement)	Yes - All horses (Specifies Ames Lab)	Notice (Division of Racing Events)	3/24/2010	Within 30 days	Yes	Yes	Yes	No	Horses leaving track must have NEW negative test to re-enter
Florida	Yes - for all Texas horses	Rule (Dept of Agriculture & Consumer Services)	11/18/2009	Within 30 days	Yes	No	Yes- CVI within 14 days of entry	Yes - within 14 days of entry	
Iowa (Racetrack specific requirement)	Yes - All horses	Rule (Iowa Racing & Gaming Commission)	8/10/2010	Within 180 days	Yes	Yes	No	No	
Kentucky	Yes - All Texas horses*, & all horses entering Red Mile & all horses entering Kentucky Horse Park during WEG	Memorandum (Dept of Agriculture)	6/10/2010	Within previous 12 months	Yes	Yes	No mention	No mention	*Texas horses must test negative for T. equi and have entry permit issued by KY Dept. of Ag.
Louisiana	Unofficially, Yes - All horses - per Dr. David		Expected effective dates 9/1/2010-9/1/2010-Fair Grounds	Within previous 12 months					There may be some exceptions

COMPARISON OF EQUINE PIROPLASMOSIS TESTING AND INSPECTION REQUIREMENTS

State	Testing Required		Effective Date	Test Timeframe	Test for Theileria equi	Test for Babesia caballi	Require Vet Statement Re Inspection for Ticks	Require Treatment for Ticks	Notes
Michigan	Yes – All horses coming from any state with diagnosed case of EP		5/18/2010	Within previous 12 months & tested on or before 5/18/2010	Does not specify Negative by c-Elisa or IFA	Does not specify Negative by c-Elisa or IFA	Yes	Required only if evidence of live ticks	
Missouri	Not at this time								Per phone call to State Animal Commission
Montana	No	Memorandum (Dept of Livestock)	5/6/2010						Texas horses require statement: The equine do not originate from one of the Piroplasmosis affected or quarantined premises in Texas. Horses originating from one of those areas must have specific approval for entry.
New Mexico (Racetrack specific requirement)	Yes – All horses entering racetracks	Statute & Rule (N.M. Livestock Board)	3/30/2010	Within previous 12 months	Yes	No	No mention	No mention	Horse from affected county must have been cleared by TAHC and approved by New Mexico State Vet
Oklahoma	Yes – All horses entering racetracks	Notice & Directive (OK Horse Racing Commission)	Effective 8/1/2010	Within previous 12 months	Yes	Yes	No mention	No mention	Suggest tattoo number be included on submittal form
Oregon	Yes - All Texas horses	Notice (Dept of Agriculture)	12/15/2009	Within 30 days	Yes	Yes	No mention	No mention	
Pennsylvania	Yes - All Texas horses	Order (Dept of Agriculture)	12/20/2009	Within 30 days	Yes	Yes	No mention	No mention	Entry permit
Washington	Yes - All Texas horses	Notice (Dept of Agriculture)	11/16/2009	Within 30 days	Does not specify	Does not specify	No mention	No mention	Must be quarantined upon arrival & retested within 60 – 90 days.

ITEM C.

**Consideration of and Input on
Lone Star Park's Request to Change
Commission Rule 313.110, Coupled Entries**

TEXAS RACING COMMISSION

COMMITTEE ON RULES

Date of Request: 6/19/2010

Request for Proposed Change to an Existing Rule or Addition of a New Rule to the Rules of Racing

Please submit this information to the attention of the Executive Director *at least 21 days* in advance of the next scheduled Committee on Rules meeting. An electronic form is available to assist in your submission or feel free to add additional pages as necessary in order to provide as much detail as possible. Filing this request does not guarantee that your proposal will be considered by the Committee on Rules.

Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, TX 78754-4552
Phone: 512/833-6699 Fax: 512-833-6907
email: info@txrc.state.tx.us

Contact Information:

Name:	Bart Lang	Phone(s):	972-237-5046
E-mail address:		Fax number:	972-237-1155
Mailing address:	1000 Lone Star Parkway, Grand Prairie, TX 75050		

Personal Submission OR

Submission on behalf of Lone Star Park

(Name of Organization)

If known, Proposed Change to Chapter: 313, Rule 110 (b)

If known, Proposed Addition to Chapter: _____

If known, Other Rules Affected by Proposal: _____

A. Brief Description of the Issue

We would like to revise the rule concerning coupling of entries in order to increase the number of betting interest available in some races.

B. Discussion of the Issue and Problem

Provide background on the issue to build context. Address the following:

- *What specific problems or concerns are involved in this issue?*
- *Who does the issue affect?*
- *What existing model rules relate to this issue?*
- *Provide relevant quantitative or statistical information if possible.*

With the nationwide decrease in horse population it becomes ever more important to maximize the available horse population into the most betting interests as possible.

C. Possible Solutions and Impact

Provide possible recommendations to solve the problem. Include details on each proposed solution such as:

- *What solution does this proposal provide?*
- *How will the solution fix the problem?*
- *How will the change affect any entities or stakeholders?*
- *How will you or your organization be affected by the proposed change?*
- *What are the benefits of the proposed change?*
- *What are the possible drawbacks of the proposed change?*
- *Identify possible fiscal impact of the recommended change.*

This would increase betting interests in a race and therefore increase handle and therefore revenue to all parties.

D. Support or Opposition

Please identify any affected stakeholder groups that expressed support or opposition. (These stakeholders may include the racetracks, breed registries, owners, kennel owners, trainers, jockeys, veterinarians, or others.)

- *For those stakeholder groups that have expressed an opinion, please list the points on which they agree or disagree, and the arguments they have expressed.*
- *Are there any affected stakeholder groups that have not been consulted on this proposal?*
- *Please submit any formal letters of support or opposition by stakeholder groups.*

The Texas Horsemen Partnership supports this proposed rule change.

E. Proposal

Provide rule language you are proposing. If you are proposing that current rule language be eliminated, please strikeout the language to be deleted. Please show new language with underlined text.

We would propose the rule read like this:

If two horses entered in a race are owned in whole or in part by the same individual or entity, the entry shall be coupled as a single wagering interest.

We propose eliminating this phrase:

or if the trainer owns an interest in either horse,

TEXAS RULES OF RACING

Proposed change:

§313.110 Coupled Entries

- (a) Not more than two horses that have common interests through ownership, training, or lease may be entered in an overnight race, unless the race is divided.
- (b) If two horses entered in a race are owned in whole or in part by the same individual or entity, ~~or if the trainer owns an interest in either horse,~~ the entry shall be coupled as a single wagering interest.

RCI MODEL RULE

ARCI-010-010 Entries And Nominations

D. Coupled Entries

- (1) Two or more horses which are entered in a race shall be joined as a mutuel entry and single betting interest if they are owned or leased in whole or in part by the same owner or are trained by a trainer who owns or leases any interest in any of the other horses in the race, except that entries may be uncoupled in stakes races.

- (2) No more than two horses having common ties through ownership or training may be entered in an overnight race. Under no circumstances may both horses of a coupled entry start to the exclusion of a single entry. When making a coupled entry, a preference for one of the horses must be made.