

TEXAS RACING COMMISSION

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COMMITTEE ON RULES

Tuesday, September 24, 2013
10:30 a.m.
Texas Animal Health Commission
2105 Kramer Lane
Austin, Texas 78758

Agenda

The Committee will accept comments in response to the publication of the following rule proposal in the August 30, 2013, edition of the *Texas Register*.

- A. Proposal to Amend Rule 319.5, Report of Treatment by Veterinarians

The Committee will discuss the following requests for rule amendments:

- B. Proposal to Amend Rule 307.64, Penalties
- C. Proposal to Amend Rule 319.3, Medication Restricted

The Committee will conduct preliminary discussions regarding rulemaking and other actions necessary to implement Texas Racing Act Article 9A, Texas Derbies.

The Committee will discuss closing the rule reviews of the following chapters pursuant to Texas Government Code, § 2001.039:

- D. Chapter 309, Racetrack Licenses and Operations
- E. Chapter 311, Other Licenses

The Committee will discuss opening the following chapters for rule reviews pursuant to Texas Government Code, § 2001.039:

- F. Chapter 313, Officials and Rules of Horse Racing
- G. Chapter 315, Officials and Rules for Greyhound Racing

The public will be given an opportunity to address the Committee and identify any potential subjects that it would like placed on the agenda for discussion at a future Committee meeting.

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 319.5. REPORT OF TREATMENT BY VETERINARIANS

(a) Veterinarians who treat race animals shall maintain reports of the treatment in strict compliance with the requirements of the Texas State Board of Veterinary Medical Examiners.

Veterinarians shall make the report available to a steward, ~~or~~ judge or Commission veterinarian within 24 hours of a request.

(b) A report of treatment provided to the stewards, ~~or~~ racing judges or a Commission veterinarian pursuant to subsection (a) of this section becomes part of the confidential investigatory files of the Commission. ~~is confidential and its contents may not be disclosed except in a proceeding before the stewards or racing judges or the commission.~~

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 1 August 2013

***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 14 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:	TxRC Staff	Phone(s):	512-833-6699
E-mail address:		Fax number:	512-833-6907
Mailing address:	8505 Cross Park, Suite 110, Austin, Texas 78754-4552		

Check appropriate box(s)

Personal Submission *OR*

Submission on behalf of TxRC Staff
(Name of Organization)

If known, Proposed Change to Chapter: Chapter: 307 Rule: 64

If known, Proposed Addition to Chapter: Chapter: 307 Rule: 69

If known, Other Rules Affected by Proposal: Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

A. Brief Description of the Issue

The current rules regarding the fines and suspensions that stewards, racing judges, and the executive director may impose for violations of the Racing Act or Rules require updating to reflect recent statutory changes.

B. Discussion of the Issue and Problem

House Bill 1187 (83rd Legislature, Regular Session, 2013) increased the maximum penalties for violations of the Texas Racing Act. Under the bill, the \$5,000 cap on fines imposed by stewards and racing judges is raised to \$25,000, and the \$10,000 cap on fines imposed by the executive director is raised to \$100,000. The maximum period of suspension is increased to five years from from one year (if imposed by stewards or racing judges) or two years (if imposed by the executive director). Commission Rules 307.64 and 307.69 must be revised to reflect these increases, which take effect on September 1, 2013.

Rule 307.64, which outlines the penalties that stewards and racing judges may impose, currently establishes a maximum fine of \$5,000 and a maximum suspension of one year.

Rule 307.69, which outlines the penalties that the executive director may impose, currently establishes a maximum fine of \$10,000 and a maximum suspension of two years. H.B. 1187 raises the penalties that stewards and racing judges may impose to \$25,000 and five years and raises the penalties that the executive director may impose to \$100,000 and five years.

C. Possible Solutions and Impact

Revising the rules to reflect the increased penalties would bring the rules into conformity with the amended Act.

D. Support or Opposition

The Commission does not anticipate any opposition to this revision, which is necessitated by H.B. 1187.

E. Proposal

307.64. Penalties

(a) For each violation of the Act or a Rule, the stewards and racing judges may:

- (1) impose a fine of not more than \$25,000 [~~\$5,000~~]; and
- (2) suspend an occupational license for not more than five years [~~one year~~].

(b) A person against whom the stewards or racing judges have imposed a fine shall pay the fine to the Commission not later than 5:00 p.m. of the third calendar day after the day the person is informed of the ruling that imposed the fine.

307.69. Review by Executive Secretary

(a) Within fourteen days after a board of stewards or judges issues a written ruling under §307.63 of this title (relating to Ruling), the executive secretary may review the ruling and modify the penalty. A penalty modified by the executive secretary may include a fine not to exceed \$100,000 [~~\$10,000~~], a suspension not to exceed five years [~~two years~~], or both a fine and a suspension.

(b) The decision to modify a penalty must be on a form that includes:

(1) the full name, license type, and license number of the person who is the subject of the penalty modification;

(2) the original ruling number and the date the ruling was issued by the stewards or judges;

(3) the date the modified penalty was issued by the executive secretary;

(4) the modified penalty imposed;

(5) a statement of the reason for modifying the penalty;
and

(6) a statement informing the person of the person's right to appeal the ruling, with the modified penalty, to the Commission.

(c) In determining whether to modify a penalty, the executive secretary may consider, but is not limited to, the following reasons:

(1) to further the uniform and consistent treatment of similarly situated individuals; and

(2) to remedy rulings where the penalties available to the stewards or judges are insufficient to adequately address the violation.

(d) The decision to modify a penalty must be signed by the executive secretary.

(e) The executive secretary shall provide written notice to each person who is subject to a penalty modification decision under this section by:

(1) sending by certified mail, return receipt requested, a copy of the decision to the person's last known address, as found in the Commission's licensing files; or

(2) personal service by any Commission employee.

(f) An appeal of a ruling whose penalty has been modified under this section must be filed in accordance with §307.67 of this title (relating to Appeal to the Commission).

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: July 22, 2013

***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 14 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
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email: info@txrc.state.tx.us

Contact Information:

Name:	TxRC Staff	Phone(s):	512-833-6699
E-mail address:		Fax number:	512-833-6907
Mailing address:	8505 Cross Park, Suite 110, Austin, TX 78754-4552		

Check appropriate box(s)

<input type="checkbox"/>	Personal Submission <i>OR</i>
<input checked="" type="checkbox"/>	Submission on behalf of <u>TxRC Staff</u> (Name of Organization)

<input checked="" type="checkbox"/>	If known, Proposed Change to Chapter:	Chapter: <u>319</u>	Rule: <u>319.3</u>
<input type="checkbox"/>	If known, Proposed Addition to Chapter:	Chapter: _____	Rule: _____
<input type="checkbox"/>	If known, Other Rules Affected by Proposal:	Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____

A. Brief Description of the Issue

The national racing industry, led by the Jockey Club, the Racing Medication and Testing Consortium (RMTC), and the Association of Racing Commissioners International (ARCI), is moving towards uniform standards for medications and penalties. These uniform standards promote regulatory consistency across the country and reduce confusion among trainers and owners.

In order to adopt the national standards relating to nonsteroidal anti-inflammatory drugs (NSAIDs), the Commission's rules will require amendment.

B. Discussion of the Issue and Problem

The Drug Testing Standards and Practices Program of the Association of Racing Commissioners International (ARCI) has recently modified its Uniform Classification Guidelines and Recommended Penalties to include thresholds for 24 commonly used therapeutic medications. ARCI included these thresholds in order to promote uniformity in the medication rules nationally.

Executive Director Trout has already adopted most of the guidelines through his authority to promulgate drug classifications and enforcement guidelines under Rules 303.8 and 319.304, and his authority under Rule 319.3(d) to establish thresholds for *trace* levels of therapeutic drugs. However, three of the permissible drugs on ARCI's list are NSAIDs that leave more than trace levels in a horse's system. These NSAIDs are phenylbutazone, ketoprofen, and flunixin. While ARCI's thresholds for these medications are more than trace levels, the Racing Medication and Testing Consortium's guidance to ARCI has been that the proposed thresholds are low enough to prevent interference with the pre-race inspection or will not change the outcome of a race.

Commission Rule 319.3(b) currently provides that the maximum permissible concentration of phenylbutazone in a horse's serum or urine is 2.0 micrograms per milliliter. This level was lowered by the Commission from the previous standard of 5.0 micrograms per milliliter after ARCI lowered its recommended threshold level in 2011.

The Commission's rules do not permit any level of ketoprofen or flunixin to be found in a horse's body. ARCI's recommended threshold for ketoprofen is 10 nanograms per milliliter of plasma or serum and the recommended threshold for flunixin is 20 nanograms per milliliter of plasma or serum. In addition, ARCI sets out lower thresholds for phenylbutazone and flunixin if they are found in conjunction with other NSAIDs, along with higher penalties if those thresholds are violated.

C. Possible Solutions and Impact

The Commission could delete subsection (b) of Rule 319.3 and amend Rule 319.3(d) to strike the word "trace." This would allow the executive director to set thresholds for any therapeutic medication, regardless of whether the amount constituted a trace level.

By allowing the executive director greater latitude in setting threshold levels for therapeutic medications, the Commission will be able to more quickly adopt any changes that ARCI makes to its recommendations.

Adopting the ARCI standards would also establish thresholds for ketoprofen and flunixin. However, if two or more NSAIDs are used in conjunction (stacked) and appear in the post-race test, ARCI's guidelines call for heavy penalties. To compare:

- the standard penalty for a first phenylbutazone violation (in a concentration of 2.1 to 9.9 mcg/ml) is a \$250 fine, with no suspension or loss of purse;
- the standard penalty for a first stacking violation (the presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 0.3 mcg/ml) is a minimum \$500 fine, 15 day suspension and loss of purse.

D. Support or Opposition

ARCI's model thresholds for therapeutic medications were initially proposed by the Racing Medication and Testing Consortium after consultation with the American Association of Equine Practitioners and The Jockey Club. These thresholds have been adopted by eight states: New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and Massachusetts.

The Committee on Rules discussed the proposal to amend Rule 319.9 at its meeting on July 30, 2013, and referred it to the Safety and Medication Working Group for further consideration.

The Safety and Medication Working Group discussed the proposed amendment at its meeting on September 10, 2103, at Lone Star Park. While the Working Group did not make a specific recommendation to the Rules Committee, it did express overall support for adopting ARCI's recommendations on Controlled Therapeutic Medications. In order to fully follow the ARCI recommendations, the current rules must be modified.

E. Proposal

RULE 319.3. MEDICATION RESTRICTED

(a) Except as otherwise provided by this section, a horse or greyhound participating in a race may not carry in its body a prohibited drug, chemical, or other substance.

~~(b) The maximum permissible plasma or serum concentration of phenylbutazone in horses is 2.0 micrograms per milliliter.~~

(b)(e) Furosemide at or below the approved tolerance level in a horse that has been admitted to the furosemide program is permissible. The approved tolerance level shall be published on the list of therapeutic drugs posted under subsection (d) of this section.

(c)(d) Levels ~~Trace levels~~ of drugs which are therapeutic and necessary for treatment of illness or injury in race animals are permissible, provided:

(1) the therapeutic drug is on a written list approved by the executive secretary, maintained by the commission veterinarian, and posted in the commission veterinarians' office; and

(2) the maximum permissible urine or blood concentration of the drug does not exceed the published limit, if any, on the written list of therapeutic drugs.

~~(d)~~(e) Except as otherwise provided by this chapter, a person may not administer or cause to be administered to a horse or greyhound a prohibited drug, chemical, or other substance, by injection, by oral or topical administration, by rectal infusion or suppository, by nasogastric intubation, or by inhalation, and any other means during the 24-hour period before the post time for the race in which the animal is entered.

~~(e)~~(f) A positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse or greyhound collected before or after the running of a race, subject to the rules of the commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.

Texas Racing Act

Article 9A. Texas Derbies

Sec. 9A.001. Texas Derbies.

- (a) The commission shall establish as Texas Derbies the following annual stakes races:
 - (1) one race open to three-year-old Thoroughbreds;
 - (2) one race open only to three-year-old Texas-bred Thoroughbreds;
 - (3) one race open to three-year-old quarter horses; and
 - (4) one race open only to three-year-old Texas-bred quarter horses.
- (b) For a Texas Derby open only to Texas-bred horses, the respective official state breed registries and the official horsemen's organization shall develop:
 - (1) the race conditions and entrance qualifications; and
 - (2) the preference system used to determine the race finalists.
- (c) Each class 1 racetrack that is awarded a Texas Derby that is not limited to Texas-bred horses shall develop for the derby:
 - (1) the race conditions and entrance qualifications; and
 - (2) the preference system used to determine the race finalists.
- (d) The race conditions and qualifications and preference systems developed for the Texas Derbies under Subsection (b) or (c) of this section are subject to review and approval by the executive secretary.
- (e) The commission shall set the date of and the location for each Texas Derby. Each Texas Derby must be held annually at the class 1 racetrack determined by the commission. The commission shall determine the location of each Texas Derby in consultation with:
 - (1) each class 1 racetrack;
 - (2) the official state breed registries; and
 - (3) the official horsemen's organization.
- (f) The commission may sell the right to name a Texas Derby. The commission shall deposit the proceeds from the sale of the right to name a Texas Derby into the Texas Derby escrow purse fund established under Section 9A.003 of this article.
- (g) The date of the initial Texas Derby may not be earlier than January 1, 2015. This subsection expires January 1, 2016.

Sec. 9A.002. Inspection and Examination of Horse.

- (a) For each Texas Derby, the commission shall appoint a state veterinarian to conduct a prerace examination of each horse entered in the race to determine whether the horse is healthy and meets standards set by commission rule for racing.
- (b) The examination may include any procedure that the state veterinarian considers necessary to make the determination required by Subsection (a) of this section.
- (c) The examination may be conducted at any time before the race.

Sec. 9A.003. Texas Derby Escrow Purse Fund.

- (a) The commission shall establish a Texas Derby escrow purse fund.
- (b) The commission shall by rule establish a schedule of entrance fees for participants in each Texas Derby. A portion determined by the commission of each entrance fee shall be deposited in the Texas Derby escrow purse fund.

(c) Notwithstanding Section 3.09 of this Act or any other law, the commission by rule shall determine a portion of the fees, charges, and other revenue collected under this Act to be deposited to the credit of the Texas Derby escrow purse fund as reasonably necessary to maintain competitive purses for each Texas Derby.

(d) The commission by rule may assess under this Act additional charges and fees, including gate fees, to supplement the funds otherwise deposited in the Texas Derby escrow purse fund under this section.

(e) The commission may not:

(1) use funds from the accredited Texas-bred program under Article 9 of this Act or the escrowed purse account under Section 6.091(e) of this Act to fund the Texas Derby escrow purse fund; or

(2) order a breed registry to fund a purse for a Texas Derby, make contributions to the Texas Derby escrow purse fund, or pay the expenses of a Texas Derby race.

(f) Other than as provided by this section, no other state revenue may be deposited to the credit of the Texas Derby escrow purse fund.

CURRENT RULE REVIEWS CHAPTERS 309 & 311

Texas Government Code § 2001.039 requires state agencies to review all current rules to determine whether the reasons for initially adopting the rules continue to exist. The review must be conducted not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The state agency must readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.

On June 19, 2012, the Commission opened the review of Chapter 309, Racetrack Licenses and Operations. Notice of the review was published in the July 6, 2012, edition of the Texas Register (37 *TexReg* 5137). The Commission received no comments on the rule review in response to the notice other than the comments received in response to individual rule proposals.

On August 14, 2012, the Commission opened the review of Chapter 311, Other Licenses. Notice of the review was published in the August 31, 2012, edition of the Texas Register (37 *TexReg* 6943). The Commission received no comments on the rule review in response to the notice other than the comments received in response to individual rule proposals.

The Table of Contents for each chapter is attached. A notation has been placed beside each rule that has been repealed, added, or amended during the review process.

Staff recommends that the Commission readopt the remaining rules of Chapters 309 and 311.

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PROPOSED RULE REVIEWS CHAPTERS 313 AND 315

Texas Government Code 2001.039 directs each state agency to review, and consider for re-adoption, each of its rules every four years. During the review, the Commission must assess whether the reasons for adopting the rules continue to exist.

To formally initiate the rule review process, the Commission must vote at a public meeting to publish notice in the *Texas Register* of the Commission's intention to review specific rules. After the time for public comment has passed, the Commission will take one of the following actions in regard to the rules in Chapters 313 and 315: re-adoption, repeal, or re-adoption with revisions.

If the Commission readopts a rule (with no changes), notice of the re-adoption will appear in the *Texas Register* "Rules Review" section, but the text of the readopted rule will not be published.

Any proposed repeal of a rule or any proposed amendment to a rule will be published in the "Proposed Rules" section of the *Texas Register*, and will be the subject of an additional 30-day comment period.

The Table of Contents for Chapters 313 and 315 are attached below.

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

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