



## TEXAS RACING COMMISSION

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Texas Racing Commission  
Committee on Rules  
Tuesday, July 14, 2009  
1:30 p.m.  
William P. Hobby Building  
333 Guadalupe  
Main Entrance, Room 102  
Austin, Texas 78701

## AGENDA

Discussion and public input relating to the following:

- A. Policies and Possible Rulemaking in Regard to Sunset Legislation Considered by the 81<sup>st</sup> Legislature.
- B. Rule proposals that have been posted in the *Texas Register* and are eligible for adoption at the next Commission meeting:
  1. Adoption of Amendment to § 309.355, Grading System
  2. Adoption of Amendment to § 309.363, Official Program
  3. Adoption of Amendment to § 309.307, Lures
  4. Adoption of New § 315.43, Track Superintendent
  5. Adoption of New § 315.44, Brakeman
- C. Rule proposals that the Commission may vote to publish in the *Texas Register* for comment at the next Commission meeting:
  1. Proposal to Amend § 311.104, Trainers
  2. Proposal to Amend § 313.41, Racing Secretary
  3. Proposal to Amend § 313.49, Starter
  4. Proposal to Amend § 315.59, Assistant Starter
  5. Proposal to Amend § 313.101, Entry Procedure

6. Proposal to Amend § 313.106, Closing Entries
7. Proposal to Amend § 313.301, Eligibility to Claim
8. Proposal to Amend § 313.406, Colors and Numbers
9. Proposal to Amend § 313.441, The Start
10. Proposal to Amend § 313.505, Workout Requirements
11. Proposal to Amend § 313.507, Employees of Training Facilities

D. Overview of Interstate Compacts for Pari-Mutuel Racing.

E. Solicitation of Input on Topics to be Addressed at the RCI Model Rules and Practices Committee Meeting on July 30, 2009.

## **ITEM A.**

# **POLICIES & POSSIBLE RULEMAKING IN REGARD TO SUNSET LEGISLATION**

- *STATUS OF SUNSET PROVISIONS*
- *ATTACHMENT 1 - SUNSET POLICY OPTIONS  
TXRC LICENSE REVIEW & RENEWAL PROCESS*
- *ATTACHMENT 2 - SUNSET POLICY OPTIONS  
SECURITY BONDS & DISCIPLINARY ACTION*
- *ATTACHMENT 3 - SUNSET POLICY OPTIONS  
LICENSING RACING INDUSTRY OCCUPATIONS*

## STATUS OF SUNSET PROVISIONS

I.	<b>SUNSET RECOMMENDATION</b>	<b>STATUS</b>
<b>Issue 1: The Commission lacks certain regulatory tools needed to oversee today's racing industry.</b>		
<b>Item #</b>	<b>Statutory Changes:</b>	
1	1.1 Require the Commission to review each racetrack license on a periodic basis and develop renewal criteria along with associated sanctions for failure to comply.	Opportunity for Rulemaking. See Attachment #1: Comparison Table – Racetrack Review & Renewal Process.
2	1.2 Clarify the Commission's revocation authority and ability to refuse to renew a racetrack license.	Opportunity for Rulemaking. See Attachment #2: Comparison Table – Security Bonds & Disciplinary Action.
3	1.3 Eliminate uncashed winning tickets as a source of Commission revenue.	Continue under existing statutory authority.
4	1.4 Clarify that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.	Chapter 47 of the Texas Penal Code provides a general prohibition against gambling, but specifically excludes from the prohibition any gambling that has been authorized by the Texas Racing Act. TRA § 11.01 permits pari-mutuel wagering only by an association within its enclosure. TRA § 11.011 specifically states that the Act does not permit wagering on simulcast races at any location other than a licensed racetrack that has been granted live race dates by the Commission. Despite these provisions of the Act and warning letters from the Attorney General's office to Internet-based wagering companies such as YouBet.com, some companies continue to accept online wagers from Texas residents. These companies have a variety of arguments based on federal law and the lack of clarity in the Texas Racing Act. Since criminal penalties may only be imposed by statute, it appears at this time that the agency cannot implement this recommendation by rule.
	<b>Management Action:</b>	
5	1.5. Direct the agency to adopt a plan to further integrate field staff into the Commission's overall racetrack enforcement plan.	Implemented
<b>Issue 2: Weaknesses exist in the Commission's approach to licensing racing industry occupations.</b>		
	<b>Statutory Changes:</b>	
6	2.1 Require the Commission to license only those individuals who can affect pari-mutuel racing.	Opportunity for Rulemaking. See Attachment #3: Comparison Table – Licensing Racing Industry Occupations.
7	2.2 Require the Commission to obtain criminal history reports every three years.	No draft rule is needed, already addressed by recently adopted Rule 311.3 which added new subsection (a)(4): "A person who desires to renew an occupational license must have submitted a set of fingerprints pursuant to this section within the three years prior to renewal or provide a new set of fingerprints for classification by the Federal Bureau of Investigation."

	<b>Management Action:</b>	
8	2.3 The Commission should develop a faster method of obtaining criminal history reports.	Implemented
9	2.4 The Commission should develop processes for overseeing practical examinations.	Implemented
10	2.5 The Commission should ensure that licensee oversight is consistent from racetrack to racetrack.	Implemented
<b>Issue 3: Texas has a continuing need for the Texas Racing Commission.</b>		
	<b>Statutory Change:</b>	
11	Continue the Texas Racing Commission for six years.	Commission Sunset Date is Sept. 1, 2011.
<b>Issue 4: The State no longer needs the Equine Research Account Advisory Committee</b>		
12	Abolish the TX Equine Research Account Advisory Committee (TERAAC) and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.	TERAAC Sunset Date is Sept. 1, 2011.

II.	OTHER PROVISIONS IN SB 1013 – ENGROSSED	NOTES
<b>Sunset Across the Board Recommendations</b>		
13	<b>SEC 2, §2.071. Conflict of Interest</b> – clean-up language to the prohibition on both Commission membership and employment of persons associated with racing/breeding trade associations. Prohibits registered lobbyists from Commission membership or from serving as general counsel to Commission.	May require amendment to current ethics policy.
14	<b>SEC. 3, §2.25. Use of Technology</b> - Commission must implement policy requiring the use of appropriate technological solutions including Internet to improve agency's ability to perform its functions.	Requires adoption of formal policy. Look for examples from other agencies. Use of technology and Internet are already implemented by agency.
15	<b>SEC. 4, §2.26. Negotiated Rulemaking and Alternate Dispute Resolution Procedures</b> – Commission must develop and implement policies for use of negotiated rulemaking procedures and alternate dispute resolution procedures.	Requires adoption of formal policies. Look for examples from other agencies.
<b>Differences between Introduced and Engrossed versions of Sunset Bill, including changes requested by TXRC.</b>		
16	<b>SEC.1, §1.03. Definitions</b> – Amends Section 1.03, Definitions, for definitions of Handicapper, Performance, and Handicapper Tournament.	TXRC requested. Added to engrossed version.
17	<b>SEC. 5, §3.07(b). Officials of Race Meetings</b> – Amends this subsection to allow Executive Director to modify the penalties imposed by the stewards or judges. Allows ED to increase the penalty to a fine of up to \$10,000 or a suspension of up to two years, or both.	TXRC requested. Added to engrossed version.
18	<b>SEC. 6, §3.09. Funding</b> - Amends Section 3.09 to revise the Commission's Method of Finance. Under the amended section, the legislature will fund the Commission's operating budget from General Revenue at the beginning of each fiscal year, and the Commission must reimburse General Revenue, including 2.75% in interest, by the end of that fiscal year. Also adds phrase "In times of fiscal emergency, the legislature may make a specific appropriation from general revenue that is not subject to the reimbursement requirements of this section." to Section 3.09(d).	TXRC requested. Added to engrossed version. Issue for 82 <sup>nd</sup> Legislative Session.
19	<del><b>SEC. 6, §6.032. Bond</b> – authorizes Commission to require a racetrack license holder – in addition to applicant for initial license – to post security in an amount determined by rule in order to ensure compliance with Act and rules. The security must be returned after conditions of security are met.</del>	This section was not included in engrossed version of bill. As a result, the bill removed all bond authority, even the current authority, from the Commission.
20	<b>SEC. 8, §5.011. Inactive Fees</b> , - permits the Commission to charge inactive licenses an annual fee that must be at least 50% greater than the annual fee on an active track of similar classification. Inactive fees must set on a sliding scale that increases based on the consecutive number of years that the license has been inactive. The commission may use all or a portion of the inactive fees to reduce the cost of live racing at active tracks.	The Commission has broad authority to establish fee structures. If the Commission considers the annual fee alone, the inactive Class 2 horse tracks each pay \$100,000 per year, which exceeds the Manor Downs' annual fee of \$15,000 by 667%. However, if the Commission considers all of the fees combined, the average active racetrack pays 374% of the average inactive racetrack. In 2008, each active racetrack paid an average of \$312,000 in total fees, while each inactive racetrack paid an average of \$83,333 in fees. The Commission by

		rule could restructure the fees to place a higher fee on the inactive licenses in order to reduce the costs of live racing at active tracks.
21	<p><b>SEC. 12, §6.0605. Ownership Transfer</b> - Requires the Commission to develop a process for expeditiously processing requests to transfer ownership of a racetrack license to a current Texas license holder who holds an active license and is in compliance with the rules and regulations. The transfer still requires a full DPS background check, but if the Commission has approved a previous background check of the buyer within the past 12 months, then the Commission may approve the transfer based on an update of the previous background check.</p>	Each of these provisions could be implemented through an amendment to existing Rule 309.151, Change of Ownership, Board of Directors, or Management Committee.

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**ATTACHMENT #1: SUNSET POLICY OPTIONS - TXRC LICENSE REVIEW & RENEWAL PROCESS**

ISSUE	CURRENT STATUTORY REQUIREMENT	SUNSET VERSIONS			COMMENTS
		INTRODUCED (HB 2081 & SB 1013)	SENATE ENGROSSED (CSSB 1013)	HOUSE - DRAFT FLOOR AMENDMENT (CSHB 2081)	
Renewal & Review Process, Review Schedule for Active Tracks	Added by HB 2701, 80th Legislature - 2007 §6.06(k), Racetrack Licenses; Grounds for Denial, Revocation, and Suspension. The commission shall review the ownership and management of a license issued under this article every five years beginning on the fifth anniversary of the issuance of the license.	SEC. 8, §6.0601: License Review & Renewal; Fees	SEC. 10, §6.0601: License Review & Renewal; Fees (subsection)	HOUSE - DRAFT FLOOR AMENDMENT (CSHB 2081) §6.0601: License Review & Renewal; Fees (subsection)	Current statute requires the Commission to adopt a review process.
Review Schedule for Inactive Tracks		(a) Requires Commission by rule to establish a racetrack license renewal and review process. (b) Requires review of active racetrack licenses not less than once every five years.	(b) Same as (a) in introduced version. (c) Active licenses must be reviewed not less than once every 10 years.	(b) Same as (a) in introduced version. (c) Active licenses to be reviewed only if Comm. determines that license holder has either repeatedly violated statute or rules or has violated them in a manner that causes significant harm to the public interest.	Although the Commission has not established an approach for reviewing inactive licenses, an approach could be established in rule.
Criteria for review		(c) Inactive licenses must be reviewed annually.	(d) Same as (c) in introduced version.	(d) Requires initial review of inactive license on the 2nd anniversary of license issuance date or the date license is designated as inactive. Review is annually thereafter. Same as (g) in engrossed version.	Current authority does not authorize a license renewal process, but the Commission could establish more specific standards for the revocation of a license.
		(f) For review of racetrack license or determination of license renewal, Commission must consider: 1) license holder's financial stability and ability to conduct live racing events and 2) other factors considered in the issuance of the original license.	(g) Same as (f) in introduced version except adds as criteria for consideration: 3) the license holder's ability to construct and maintain a racetrack facility. Also adds that other factors to be considered be "necessary."		

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ISSUE	CURRENT STATUTORY REQUIREMENT	SUNSET VERSIONS		NOTES
		INTRODUCED (HB 2081 & SB 1013)	SENATE ENGROSSED (CSSB 1013)	HOUSE - DRAFT FLOOR AMENDMENT (CSHB 2081)
Required Information from License Holders	Added by HB 2701, 80th Legislature - 2007 In performing the review, the Commission may require the license holder to provide any information that would be required to be provided in connection with an original license application.	(e) Commission may require license holder who is renewing license or who is subject to commission review to provide any information that would be required in connection with an original license application.	(f) Same as (e) in introduced version.	Current authority provides broad authority for the Commission to require information during a review of a racetrack's ownership and management.
Designation of Active Tracks	N/A	N/A	(a) Commission must designate each racetrack license as either active or inactive. In order to be designated as "active" license holder must: 1) hold live racing at the track; or 2) make significant efforts to engage in the construction of a racetrack or other good faith efforts preparatory to conducting live racing.	The current statute does not define "active" and "inactive" licenses. Commission Rule 309.8, Racetrack License Fees, distinguishes between the two on the basis of whether the racetrack is conducting any live and/or simulcast racing, or is conducting no racing at all. Further definition and designation could be added in rule under current TRA authority.
Expiration v. Renewal; Requirements for Inactive Tracks	(d) The Commission by rule may adopt a system under which racetrack licenses expire on various dates in a year or various years.	(e) The Commission by rule may adopt a system under which active racetrack licenses are renewed on various dates in a year or in various years.	(e) Commission by rule shall adopt a system under which inactive track license holders are required to meet standards in order to continue to hold an inactive license and to demonstrate progress towards obtaining a designation of "active."	Current statute provides that racetrack licenses are perpetual, but that they may be suspended or revoked. (TRA § 6.18(a))

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ISSUE	CURRENT STATUTORY REQUIREMENT	SUNSET VERSIONS	SUNSET VERSIONS		NOTES
	Added by HB 2701, 80th Legislature - 2007	INTRODUCED (HB 2081 & SB 1013)	SENATE ENGROSSED (CSSB 1013)	HOUSE - DRAFT FLOOR AMENDMENT (CSHB 2081)	
Renewal and Revocation; Active v. Inactive Tracks	(g) Commission may refuse to renew a racetrack license or may revoke a license if, after notice and hearing, the Commission determines that <i>allowing the license holder to hold the license is not in the best interests of the racing industry or the public.</i> (h) Commission may refuse to renew a racetrack license or may revoke a license, if after notice and hearing, <i>the Commission finds that the applicant has violated the Act or rules.</i>	<i>Distinguishes between active and inactive tracks:</i> (h) The Commission may refuse to renew an <i>inactive</i> racetrack license if it determines that: 1) continued holding of the license is not in the best interests of the racing industry or the public. (i) Requires Commission to renew an <i>active</i> racetrack license after completion of license review. Authorizes Commission to revoke active license if, after notice and hearing, the Commission finds that the license holder has violated statute or rule.	<i>Distinguishes between active and inactive tracks:</i> (h) The Commission may refuse to renew an <i>inactive</i> racetrack license if it determines that: 1) continued holding of the license is not in the best interests of the racing industry or the public; or 2) the license holder has failed to demonstrate progress towards obtaining an active designation. (i) Same as engrossed version.	<i>Distinguishes between active and inactive tracks:</i> (h) The Commission may refuse to renew an <i>inactive</i> racetrack license if it determines that: 1) continued holding of the license is not in the best interests of the racing industry or the public; or 2) the license holder has failed to demonstrate progress towards obtaining an active designation. (i) Same as engrossed version.	The current statute does not define "active" and "inactive" licenses. Commission Rule 309.8, Racetrack License Fees, distinguishes between the two on the basis of whether the racetrack is conducting any live and/or simulcast racing, or is conducting no racing at all. Further definition and designation could be added in rule under current TRA authority.
Fees	The commission shall charge fees for the review in amounts sufficient to implement this subsection.	(i) Requires Commission to set and collect renewal and review fees in amounts reasonable and necessary to cover costs of administration.	(j) Same as (i) in introduced version.	(j) Same as (i) in introduced version.	No additional rulemaking needed.
Stakeholders		(j) Commission shall consult with members of racing industry and other key stakeholders in developing the racetrack license renewal and review process.	(k) Same as (j) in introduced version.	(k) Same as (j) in introduced version.	The Commission could establish a stakeholders working group to participate in the development of the racetrack license review process.
Change of designation	N/A	(l) Allows the Commission to change the designation of a racetrack license as appropriate.	(l) Same as (l) in engrossed version.	(l) Same as (l) in engrossed version.	Would be included in new rules that further define active and inactive.

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ATTACHMENT #1: SUNSET BILL LANGUAGE - TXRC LICENSE REVIEW & RENEWAL PROCESS

SB 1013 - ENGROSSED, SEC. 10

Sec. 6.0601. LICENSE REVIEW AND RENEWAL; FEES.

(a) The commission shall designate each racetrack license as either active or inactive. The commission shall designate a racetrack license as an active license if the license holder:  
(1) holds live racing events at the racetrack; or  
(2) makes significant efforts to engage in the construction of a racetrack or other good faith efforts preparatory to conducting live racing.  
(b) The commission by rule shall establish a renewal and review process for racetrack licenses issued under this article.

(c) The commission shall review each racetrack license designated by the commission as active not less than once every 10 years, except as otherwise provided by this section.

(d) The commission shall annually review a racetrack license designated by the commission as inactive.

(e) The commission by rule may adopt a system under which active racetrack licenses are renewed on various dates in a year or in various years. For the year in which the license renewal date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee allocable to the number of months during which the license is valid. On renewal, the total license renewal fee is payable.

(f) The commission may require a license holder who is renewing a racetrack license or who is subject to commission review of the racetrack license to provide any information that would be required to be provided in connection with an original license application under this Act.

DRAFT FLOOR AMENDMENT - CSHB 2081

Sec. 6.0601. LICENSE REVIEW AND RENEWAL; FEES.

(a) The commission shall designate each racetrack license as either active or inactive. The commission shall designate a racetrack license as an active license if the license holder:  
(1) holds live racing events at the racetrack; or  
(2) makes significant efforts to engage in the construction of a racetrack or other good faith efforts preparatory to conducting live racing.

(b) The commission by rule shall establish a renewal and review process for racetrack licenses issued under this article.

(c) Except as otherwise provided by this section, the commission shall review a racetrack license designated by the commission as active only if the commission determines that the holder of the racetrack license has:

(1) repeatedly violated this Act or a commission rule; or

(2) violates this Act or a commission rule in a manner that causes significant harm to the public interest in racing.

(d) The commission shall conduct an initial review of each license designated by the commission as inactive on the second anniversary of date of the issuance of the license or the date the license is designated as inactive under Subsection (a). After the initial review, the commission shall annually review an inactive racetrack license.

(e) The commission by rule shall adopt a system under which holders of inactive racetrack licenses are required to meet standards established by the commission to continue to hold an inactive license and to demonstrate progress towards obtaining a designation of active under Subsection (a).

(f) The commission may require a license holder who is renewing a racetrack license or who is subject to commission review of the racetrack license to provide the information the commission determines is necessary to complete the review process, provided that the review conducted for the purposes of renewal may not be as extensive as the review

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conducted on an original license application under this Act.

(g) In reviewing a racetrack license or in determining whether to renew a racetrack license, the commission shall consider:

- (1) the license holder's financial stability and ability to conduct live racing events;
- (2) the license holder's ability to construct and maintain a racetrack facility and to conduct live racing; and
- (3) other necessary factors considered in the issuance of the original license.

(h) The commission may refuse to renew an inactive racetrack license if, after notice and a hearing, the commission determines that

- (1) under Subsection (g) of this section, allowing the license holder to hold the racetrack license is not in the best interests of the racing industry or the public; or
- (2) under Subsection (e), the holder of the inactive license has failed to demonstrate progress towards obtaining an active designation.

(i) The commission shall renew an active racetrack license after the commission completes the review of that license. The commission may revoke an active racetrack license under Section 6.0602 of this article if, after notice and a hearing, the commission finds that the license holder has violated this Act or a commission rule.

(j) The commission shall set and collect renewal and review fees in amounts reasonable and necessary to cover the costs of administering and enforcing this Act.

(k) The commission shall consult with members of the racing industry and other key stakeholders in developing the racetrack license renewal and review process under this section.

(l) The commission may change the designation of a racetrack license as appropriate.

(g) In reviewing a racetrack license or in determining whether to renew a racetrack license, the commission shall consider:

- (1) the license holder's financial stability and ability to conduct live racing events;
- (2) the license holder's ability to construct and maintain a racetrack facility and to conduct live racing; and
- (3) other necessary factors considered in the issuance of the original license.

(h) The commission may refuse to renew an inactive racetrack license if, after notice and a hearing, the commission determines under Subsection (g) of this section that allowing the license holder to hold the racetrack license is not in the best interests of the racing industry or the public.

(i) The commission shall renew an active racetrack license after the commission completes the review of that license. The commission may revoke an active racetrack license under Section 6.0602 of this Act if, after notice and a hearing, the commission finds that the license holder has violated this Act or a commission rule.

(j) The commission shall set and collect renewal and review fees in amounts reasonable and necessary to cover the costs of administering and enforcing this Act.

(k) The commission shall consult with members of the racing industry and other key stakeholders in developing the racetrack license renewal and review process under this section.

(l) The commission may change the designation of a racetrack license as appropriate.

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**ATTACHMENT #2: SUNSET POLICY OPTIONS – SECURITY BONDS & DISCIPLINARY ACTION.**

ISSUE	CURRENT STATUTORY REQUIREMENT & RULE	SUNSET VERSIONS			COMMENTS
		INTRODUCED	SENATE ENGROSSED	HOUSE – DRAFT FLOOR AMENDMENT	
Security Bond	<p><b>TRA § 6.04(b)</b> Requires an applicant, before issuance of a license, to post security in an amount determined by the Commission to ensure compliance with the Act and the Rules. The security shall be returned after the conditions of the security are met.</p> <p><b>Rule 309.6(c)</b> The Commission may require a current association to post security if the association has not completed its racetrack or it failed to conduct live racing in the previous calendar year.</p>	<p><b>SEC 6, §6.032. Bond.</b> (a) Authorizes Commission to require a racetrack license holder – in addition to applicant for initial license - to post security in an amount determined by rule in order to ensure compliance with Act and rules. (b) lists all the acceptable types of security and requires that the security must be returned after conditions of security are met.</p>	<p><b>Sec. 6.032</b> is NOT included. As a result, this version removes all bond authority, even the current authority, from the Commission.</p>	<p>Same as engrossed version.</p>	<p>The current rule provides that forfeited bonds amounts go primarily to the breed associations and to the state's general revenue fund. This could be amended to provide that the state's portion goes instead to the Commission's general revenue dedicated account.</p>
Disciplinary Action	<p><b>Rule Sec. 309.9. Denial, Suspension and Revocation of Licenses.</b></p> <p>(b) Grounds for Denying, Suspending, and Revoking Licenses. (1)-(7) (No change.) (8) Unqualified. A license may be denied, suspended or revoked if the Commission determines that the licensee is unqualified, by experience or otherwise, to perform the duties required of a licensee under the Act or the Rules.</p>	<p><b>Sec. 6.0602. DISCIPLINARY ACTION.</b> (a) The commission by rule shall establish procedures for disciplinary action against a racetrack license holder. (b) If, after notice and hearing, the commission finds that a racetrack license holder or a person employed by the racetrack has violated this Act or a commission rule or if the commission finds during a review or renewal that the racetrack is ineligible for a license under this article, the commission may: (1) revoke, suspend, or refuse to renew the racetrack license; (2) impose an administrative penalty as provided under Section 15.03 of this Act; or (3) take any other action as provided</p>	<p>Same as introduced version.</p>	<p><b>Sec. 6.0602. DISCIPLINARY ACTION.</b> (a) Same as introduced version. (b) If, after notice and hearing, the commission finds that a racetrack license holder or a person employed by the racetrack has violated this Act or a commission rule in a manner that threatens public safety or the public's best interest or that is specified in Section 6.06 of this Act or if the commission finds during a review or renewal that the racetrack is ineligible for a license under this article, the commission may: (same as introduced version).</p>	<p>In the current rule, the term "unqualified", which is a ground for revocation or suspension, is not defined in the Act. The current rule could be amended to define "unqualified," e.g. not having a suitable site on which to conduct live racing or not constructing a facility suitable for live racing.</p>

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**SECURITY -CURRENT TXRC RULE**

**RULE §309.6 Order for Security for Compliance**

- (a) An association must post security in an amount determined by the Commission to adequately ensure:
- (1) the association's compliance with the Act and the Rules;
  - (2) the association's completion of the racetrack facilities on or before the date approved by the Commission;
  - (3) the start of simulcast racing on or before the date approved by the Commission; and
  - (4) the start of live racing on or before the date approved by the Commission.
- (b) Not later than 10 business days after the Commission issues its security order, the association must submit the security amount as directed.
- (c) If an association has no posted security and the association has not completed its racetrack facilities or has failed to conduct live racing in the previous calendar year, the Commission may:
- (1) approve a new date by which the association must complete its racetrack facilities;
  - (2) approve a date by which the association must begin simulcast racing;
  - (3) approve a date by which the association must begin live racing; and
  - (4) require the association to post security in amount determined by the Commission.
- (d) In determining the amount of the security that the association shall post, the Executive Secretary shall prepare a security estimate proposal to be submitted to the Commission for consideration. In preparing the security estimate proposal the Executive Secretary shall:
- (1) make security estimate calculations using wagering and operations data from:
    - (A) the association's application if the site location is the same as that provided in the original application; or
    - (B) updated data provided by the association at the request of the Executive Secretary.
  - (2) make security estimate calculations based on the following criteria:
    - (A) pari-mutuel tax due the general revenue fund from live wagering pools;
    - (B) pari-mutuel tax due the general revenue fund from simulcast same species wagering pools;
    - (C) pari-mutuel tax due the general revenue fund from simulcast cross-species wagering pools;
    - (D) the Racing Commission's general revenue dedicated account from live wagering pools and breakage;
    - (E) Texas Bred Incentive Program funds due the Racing Commission's general revenue dedicated account from simulcast same species wagering pools and breakage;
    - (F) Texas Bred Incentive Program funds due the Racing Commission's general revenue dedicated account from simulcast cross-species wagering pools and breakage.

**BOND - SB 1013 - INTRODUCED VERSION**

**SECTION 6. Article 6, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Section 6.032 to read as follows:**

**Sec. 6.032. BOND.** (a) The commission may require a holder of a racetrack license or an applicant for a racetrack license to post security in an amount determined by commission rule to adequately ensure the license holder's or applicant's compliance with this Act and commission rules.

(b) Cash, cashier's checks, surety bonds, irrevocable bank letters of credit, United States Treasury bonds that are readily convertible to cash, or irrevocable assignments of federally insured deposits in banks, savings and loan institutions, and credit unions are acceptable as security for purposes of this section. The security must be:

(1) conditioned on compliance with this Act and commission rules adopted under this Act; and

(2) returned after the conditions of the security are met.

(G) race day fees due the Racing Commission's general revenue dedicated account from live wagering as detailed under Section 309.8, Racetrack License Fees; and

(H) race day fees due the Racing Commission's general revenue dedicated account from simulcast wagering as detailed under Section 309.8, Racetrack License Fees.

(e) Cash, cashier's checks, surety bonds, irrevocable bank letters of credit, United States Treasury bonds that are readily convertible to cash, or irrevocable assignments of federally insured deposits in banks, savings and loan institutions, and credit unions are acceptable as security for purposes of this section. Interest earned on a United States Treasury bond or on an irrevocable assignment of a federally insured deposit is not subject to the assignment and remains the property of the association.

(f) If an association fails to conduct simulcast racing by the date approved by the Commission, the Commission shall forfeit to the state's general revenue fund and to the Texas Bred Incentive Programs that portion of the security that is appropriate for the amount of revenue lost to those funds. Exceptions to this requirement may be allowed only if the delay in performing is caused by conditions that are beyond the control of the association and which are not due to an act, omission, negligence, recklessness, willful misconduct, or breach of contract or law by the association. Such conditions include, but are not limited to, natural disasters, war, riots, crime, issuance of injunction or other court order, issuance of an order by an environmental or other agency, or strike.

(g) If an association fails to conduct live racing by the date approved by the Commission, the Commission shall forfeit to the state's general revenue fund and to the Texas Bred Incentive Programs that portion of the security that is appropriate for the amount of revenue lost to those funds. Exceptions to this requirement may be allowed only if the delay in performing is caused by conditions that are beyond the control of the association and which are not due to an act, omission, negligence, recklessness, willful misconduct, or breach of contract or law by the association. Such conditions include, but are not limited to, natural disasters, war, riots, crime, issuance of injunction or other court order, issuance of an order by an environmental or other agency, or strike.

(h) If an association is liable to the Commission for any accrued fees, penalties or interest, the Commission may forfeit any portion of the security that is appropriate for those fees, penalties or interest.

(i) After the association completes its first live race meet after posting security under this section, the Commission shall return the remaining security to the association.

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**ATTACHMENT #3: SUNSET POLICY OPTIONS – LICENSING RACING INDUSTRY OCCUPATIONS**

ORIGINAL SUNSET RECOMMENDATION & AGENCY RESPONSE	SUMMARY OF SUNSET BILL LANGUAGE (same in all versions of bill)	ELEMENTS OF DRAFT RULE	COMMENTS
<p>The recommendation would require the Commission to license only those directly involved with pari-mutuel racing. The Commission would continue to license occupations that need significant access to the backside of a racetrack or restricted areas of the frontside as part of their job duties. The Commission would retain authority over non-licensed frontside employees through their employers. Racetracks would be responsible for ensuring employees' compliance with the Racing Act and Rules of Racing.</p> <p>The agency agreed with this recommendation but stated that the agency should retain the authority to require racetrack associations to conduct background checks and the authority to audit those background checks to ensure that individuals employed at the racetrack have clean criminal histories.</p>	<p><b>SEC. 14, 7.01, License Required.</b> Prohibits a person from engaging in any occupation for which Commission rules require a license without first obtaining license.</p> <p>Requires Commission by rule to categorize the occupations of racetrack employees and determine which of those afford the employee an opportunity to influence racing with pari-mutuel wagering.</p> <p>Requires the following employees to be licensed: those who work in an occupation that affords an opportunity to influence racing/pari-mutuel wagering and an employee who will likely have significant access to the backside of a track or to restricted frontside areas.</p> <p>Authorizes Commission to impose disciplinary action against a racetrack for violations of the Act or rules by an employee.</p>	<p><b>Proposed new Rule 309.169, Unlicensed Employees.</b> Require associations to conduct background checks of all unlicensed employees whose primary place of employment will be on association grounds. Associations must conduct checks of new employees before or within three days of hire. All employees must be checked at least every three years. The association must maintain records of all background checks and those records are subject to inspection by the Commission.</p> <p><b>Proposed modification to existing Rule 311.1, Occupational Licenses.</b> Clarify that only employees who have no opportunity to influence pari-mutuel racing and who have no significant access to any restricted areas may be employed without a license.</p>	<p>To examine the effect of implementing the Sunset recommendation, staff analyzed records from FY 2007. The analysis showed that there were 35 individuals who failed to disclose criminal convictions on their license applications but who could have been employed under the Sunset recommendation. Twenty of these individuals had convictions for felonies or crimes of moral turpitude that make them unqualified to work in any capacity at a racetrack under the current rules. By conducting background checks, the Commission was able to quickly recover the licenses from these individuals.</p>

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**ITEM B.**

**RULE PROPOSALS AS POSTED IN  
TEXAS REGISTER**

**JULY 10, 2008**

**ELIGIBLE FOR ADOPTION**

1 **Sec. 309.355.Grading System.**

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

3 (c) The racing secretary shall use seven grades of AA, A, B, C,  
4 J, D, and M. Grade M is for maidens of any age and Grade J is  
5 for winning maidens.

6 (d)-(e) (No change.)

7 (f) The racing secretary shall advance a greyhound that wins a  
8 maiden race to Grade J. The racing secretary shall advance a  
9 greyhound that wins a Grade J race to Grade C. On request by a  
10 kennel owner or trainer, the racing secretary may regrade  
11 [~~advance~~] a greyhound that finishes second, third, or fourth in  
12 a maiden or a Grade J race to Grade D or C. For a greyhound  
13 regraded on request under this subsection, an association shall  
14 place the letter "M" or "J" after the greyhound's name in the  
15 racing program.

16 (g)-(n) (No change.)

17 [~~(o) A greyhound that has advanced from Grade M and has been~~  
18 ~~dropped from further racing without winning another official~~  
19 ~~start may be requalified after a period of 30 days.]~~

20 (o) [~~(p)~~] If a maiden fails to finish in the top four positions  
21 in six consecutive starts, the maiden may not race again at the  
22 race meeting until it requalifies. If the maiden fails to finish  
23 in the top four positions in the two starts after requalifying,  
24 the maiden may not race again at the race meeting.

1 **Sec. 309.363.Official Program.**

2 (a) (No change.)

3 (b) The official program must contain at least two past  
4 performances for each greyhound scheduled to race. The program  
5 must also contain, for each greyhound scheduled to race:

6 (1)-(10) (No change.)

7 (11) the Texas-bred emblem if the greyhound is an accredited  
8 Texas-bred; and

9 (12) [~~+11~~] other information to enable the public to properly  
10 judge the greyhound's ability.

11 (c) (No change.)

Title 16, Part VIII

Chapter 309. Racetrack Licenses and Operations

Subchapter D. Greyhound Racetracks

Division 1. Facilities and Equipment

1 **Sec. 309.307. Lures.**

- 2 An association shall provide an inside dual equipped lure with  
3 an extendable arm and an audible squawker at the escape.

1 **Sec. 315.43.Track Superintendent.**

2 (a) The track superintendent shall ensure that the racetrack is  
3 properly maintained. The track superintendent shall ensure that  
4 all track equipment is operable for all races and during  
5 training hours.

6 (b) The track superintendent may designate a representative to  
7 serve in the track superintendent's absence, subject to the  
8 approval by the executive secretary.

1 **Sec. 315.44.Brakeman.**

2 The brakeman shall ensure that the lure is stopped on the

3 designated revolution on the racetrack at the end of each race.

**ITEM C.**

**RULE PROPOSALS FOR  
POSSIBLE PUBLICATION**

1 **Sec. 311.104. Trainers.**

2 (a) Licensing.

3 (1) Except as otherwise provided by this subsection, a trainer  
4 must obtain a trainer's license before the trainer may enter a  
5 horse or greyhound in a race. A trainer may enter a horse or  
6 greyhound in a stakes race without first obtaining a license,  
7 but must obtain a license before the horse or greyhound may  
8 start in the stakes race. Except as otherwise provided by this  
9 section, to be licensed by the Commission as a trainer, a person  
10 must:

11 (A) be at least 18 years old;

12 (B) submit a minimum of two written statements from licensed  
13 trainers, veterinarians, owners, or kennel owners, attesting to  
14 the applicant's character and qualifications;

15 (C) interview with the board of stewards or judges;

16 (D) [+B] satisfactorily complete a written examination  
17 prescribed by the Commission; and

18 (E) [+C] satisfactorily complete a practical examination  
19 prescribed by the Commission and administered by the stewards or  
20 racing judges or designee of the stewards or racing judges.

21 (2) Examinations.

22 (A) [~~The standard for passing the written examination must~~  
23 ~~be printed on the examination.~~] A \$50 non-refundable testing fee  
24 is assessed for administering the written and practical  
25 examinations. The fee is due and payable at the time the [~~first~~]  
26 ~~written~~ examination [~~appointment~~] is scheduled. If the applicant  
27 fails the written or practical examination, the applicant will  
28 be allowed to retake it once without an additional fee. The  
29 applicant must pay a \$50.00 non-refundable testing fee to

1 schedule an examination after each retest. A minimum of 48  
2 hours advance notice is required to reschedule an examination  
3 appointment without loss of the testing fee. An applicant who  
4 fails to timely reschedule an examination appointment must pay a  
5 new testing fee to reschedule the appointment. A steward or  
6 judge may waive the additional fee if, in the opinion of the  
7 steward or judge, the applicant shows good cause for the failure  
8 to timely reschedule an examination appointment.

9 (B) The standard for passing the written examination must be  
10 printed on the examination. An applicant who fails the written  
11 examination may not reschedule the written examination again  
12 before the 90<sup>th</sup> [60<sup>th</sup>] day after the applicant failed the written  
13 examination. An applicant who fails the written examination for  
14 a second or any subsequent time may not reschedule the written  
15 examination for 180 calendar days after the last failure and the  
16 applicant must pay an additional \$50 non-refundable testing fee.  
17 After successful completion of the written exam an applicant has  
18 365 calendar days to successfully complete the practical exam.

19 (C) An applicant who fails the practical examination may not  
20 reschedule the practical examination again before the 180th day  
21 after the applicant failed the practical examination. An  
22 applicant who fails the practical examination for a second time  
23 may not reschedule another practical examination for 365  
24 calendar days after the day the applicant failed the second  
25 practical examination and the applicant must pay an additional  
26 \$50 non-refundable testing fee.

27 (D) The Commission may waive the requirement of a written  
28 and/or practical examination for a person who has a current  
29 license issued by another pari-mutuel racing jurisdiction. If a

Texas Racing Commission  
Title 16, Part VIII  
Chapter 313. Officials and Rules of Horse Racing  
Subchapter A. Officials  
Division 3. Duties of Other Officials

Page 3 of 13

1 person for whom the examination requirement was waived  
2 demonstrates an inability to adequately perform the duties of a  
3 trainer, through excessive injuries, rulings, or other behavior,  
4 the stewards or racing judges may require the person to take the  
5 written and/or practical examination. If such a person fails the  
6 examination, the stewards or racing judges shall suspend the  
7 person's license for 90 days with reinstatement contingent upon  
8 passing the written and/or practical examination.  
9 (3)-(4) (No change.)  
10 (b)-(k) (No change.)

1 **Sec. 313.41. Racing Secretary.**

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

3 (c) In handicap races, the racing secretary shall assign weight  
4 to each horse and shall post the weights in handicaps before the  
5 end of [~~10:30 a.m. on~~] the day set for publication of the  
6 assigned weights.

1 **Sec. 313.49. Starter.**

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

3 (d) The starter shall assign the stall positions to the  
4 assistant starters [~~at random~~]. The starter may not notify the  
5 assistant starters of their respective stall positions for a  
6 race more than 10 minutes before post time for the race.

7 (e) (No change.)

1 **Sec. 313.59. Assistant Starters**

2 (a) The assistant starters shall be supervised by the starter.  
3 The assistant starters shall load the horses into the starting  
4 gate and, when required, head the horses in the starting gate.

5 (b) With respect to an official race, the assistant starters  
6 shall not:

7 (1) handle or take charge of any horse in the starting gate  
8 without the expressed permission of the starter;

9 (2) impede the start of a race;

10 (3) apply a whip or other device, with the exception of  
11 steward-approved twitches, to assist in loading a horse into the  
12 starting gate;

13 (4) slap, boot, or otherwise dispatch a horse from the  
14 starting gate;

15 (5) strike or use abusive language to a jockey; or

16 (6) accept or solicit any gratuity or payment other than  
17 his/her regular salary, directly or indirectly, for services in  
18 starting a race.

Title 16, Part VIII

Chapter 313. Officials and Rules of Horse Racing

Subchapter B. Entries, Scratches, And Allowances

Division 1. Entries

1 **Sec. 313.101. Entries.**

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

3 (c) An entry must be made in writing, [~~may be made~~] by  
4 telephone, or by facsimile to the racing secretary, but must be  
5 confirmed in writing should the stewards or racing secretary so  
6 request. [~~not later than three hours before post time for the~~  
7 ~~first race on the day the entry is to run.~~]

8 (d)-(e) (No change.)

Title 16, Part VIII

Chapter 313. Officials and Rules of Horse Racing

Subchapter B. Entries, Scratches, And Allowances

Division 1. Entries

1 **313.106. Closing Entries.**

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

3 (d) If a race is canceled because of insufficient entries, the  
4 racing secretary may split any overnight race or write a  
5 substitute race in place of the canceled race. Where an  
6 overnight race is split, forming two or more separate races, the  
7 racing secretary shall give notice of not less than 15 minutes  
8 before such races are closed to grant time for making additional  
9 entries to such split races.

10 (e) (No change.)

1 **Sec. 313.301. Eligibility to Claim.**

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

3 (c) If the person making a claim is a minor, the claim must be  
4 co-signed by a licensed adult parent or guardian of the minor. A  
5 parent or guardian who co-signs a claim is liable for the claim.  
6 A claim made by a minor that is not co-signed in accordance with  
7 this subsection is invalid.

Title 16, Part VIII

Chapter 313. Officials and Rules of Horse Racing

Subchapter D. Running of the Race

Division 1. Jockeys

1 **Sec. 313.406. Colors and Number.**

2 (a) A horse starting in a race must carry a conspicuous saddle  
3 cloth number [~~and shall carry a head number,~~] corresponding to  
4 its number in the official program. Quarter Horses, Paints, and  
5 Appaloosas shall, and Thoroughbreds and Arabians may, wear head  
6 numbers that correspond to their numbers in the official  
7 program.

8 (b) The jockey for a horse starting in a race shall be properly  
9 attired for riding in the race and wear:

10 (1) the racing colors provided by the owner of the horse  
11 the jockey is to ride, plus white riding pants, boots, and a  
12 number on the right shoulder corresponding to the mount's number  
13 as shown on the saddle cloth, head number if provided, and in  
14 the official [~~daily~~] program; and

15 (2) an A.S.T.M. approved safety helmet [~~a helmet of a type~~  
16 ~~approved by the executive secretary~~] while mounted on any horse  
17 at a licensed racetrack.

18 (c) (No change.)

1 **Sec. 313.441. The Start.**

2  
3 (a) The starter is responsible for assuring that each  
4 participant receives a fair start.

5 (b) A horse is considered a starter for all purposes when the  
6 stall doors of the starting gate open in front of the horse at  
7 the time the starter dispatches the horses in a valid start.

8 ~~[(b) The stewards shall declare a horse a non-starter if the~~  
9 ~~stewards determine the horse was left at the post because the~~  
10 ~~horse was not in the starting gate stall or the starting gate~~  
11 ~~malfunctioned.]~~

12 (c) If, when the starter dispatches the field, any door at the  
13 front of the starting gate stalls should not open properly due  
14 to a mechanical failure or malfunction or should any action by  
15 any starting personnel directly cause a horse to receive an  
16 unfair start, the stewards may declare such a horse a non-  
17 starter.

18 (d) Should a horse, not scratched prior to the start, not be in  
19 the starting gate stall thereby causing it to be left when the  
20 field is dispatched by the starter, the horse shall be declared  
21 a non-starter by the stewards.

22 (e) Should an accident or malfunction of the starting gate, or  
23 other unforeseeable event, compromise the fairness of the race  
24 or the safety of race participants, the stewards may declare  
25 individual horses to be non-starters, exclude individual horses  
26 from all pari-mutuel pools, or declare a "no contest" and refund  
27 all wagers except as otherwise provided in the rules involving  
28 multi-race wagers.

1 **Sec. 313.505 Workout Requirements**

2 (a) (No change.)

3 (b) The person riding a horse in an official workout [~~and the~~  
4 ~~person bringing a horse to a licensed training facility for an~~  
5 ~~official workout~~] must hold a valid Commission license as a  
6 jockey or apprentice jockey. [~~in the appropriate category.~~]

7 (c) The horse identifier shall identify each horse before each  
8 official workout. The original registration papers for each  
9 horse that is to work, or a copy that satisfies the horse  
10 identifier, must be submitted to the horse identifier before the  
11 horse's initial workout at the facility to permit the identifier  
12 to record the horse's color, gender, markings, and tattoo  
13 number, if applicable. The horse identifier shall inspect all  
14 documents of ownership, registration, or breeding necessary to  
15 ensure the proper identification of the horse. The  
16 identification procedures used at the training facility are  
17 subject to the approval of the executive secretary. The  
18 individual serving as the horse identifier may serve as timer or  
19 starter also, with the approval of the executive secretary. The  
20 timer may not serve as the starter.

21 (d)-(h) (No change.)

1 **313.507 Employees of Training Facilities.**

2 (a) The general manager and chief executive officer of a  
3 licensed training facility must obtain a training facility  
4 [~~employee~~] general manager license from the Commission. The  
5 license fee for a training facility employee, including a  
6 general manager license, is defined in section 311.5 [~~license is~~  
7 ~~\$20~~]. A training facility employee license may be denied,  
8 suspended, or revoked for any of the grounds listed in the Act,  
9 \$7.04.

10 (b) No Change

11 (c) No Change

**ITEM D.**

**OVERVIEW OF INTERSTATE  
COMPACTS FOR  
PARI-MUTUEL RACING**

**PROVIDED BY  
THE COUNCIL OF  
STATE GOVERNMENTS**



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# Interstate Compacts

## Overview & Use

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The Council of State Governments

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## **What is an Interstate Compact?**

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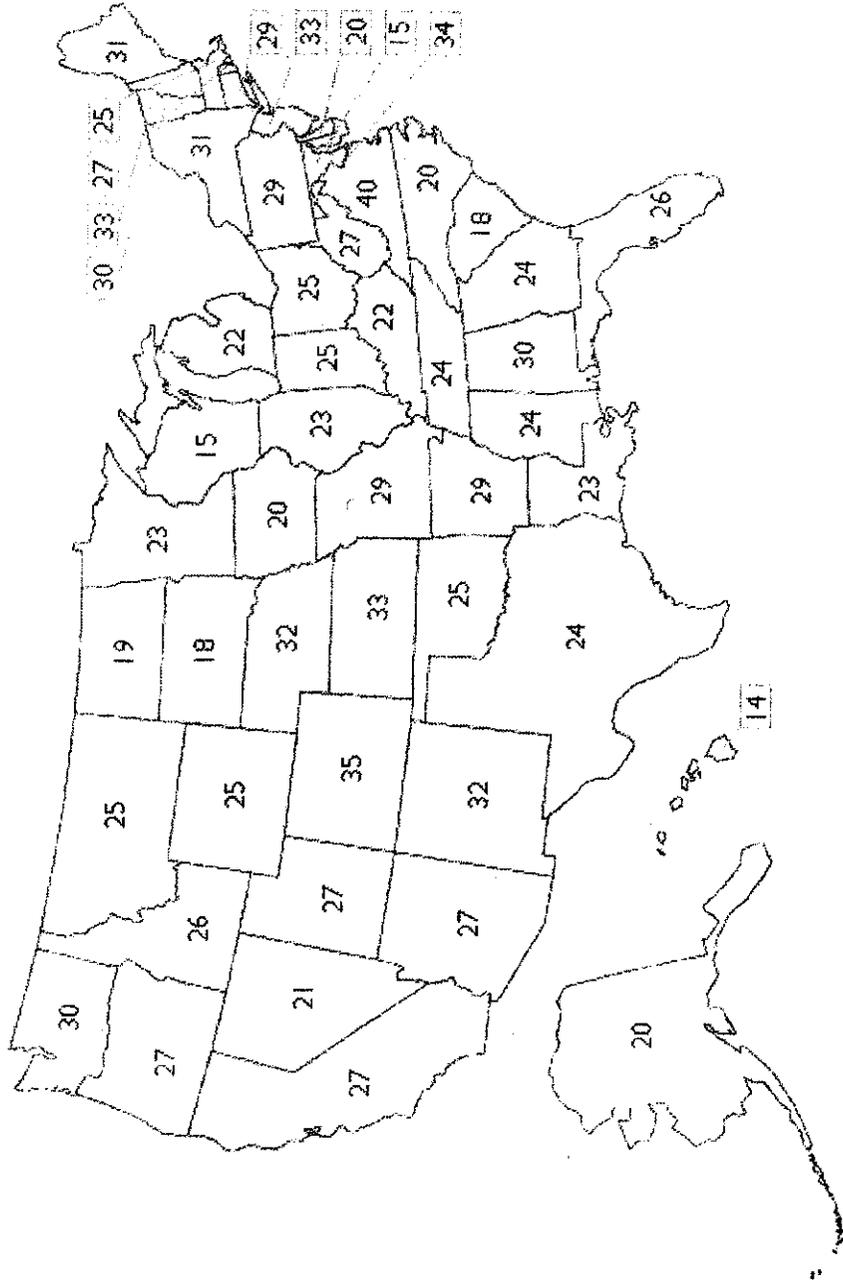
- **Contract between states**
- **Creates independent, multistate authorities to address issues**
- **Establishes uniform guidelines and standards among the states**
- **Creates economies of scale**
- **Responds to national priorities with one voice**
- **Retains state sovereignty over issues belonging to the states**

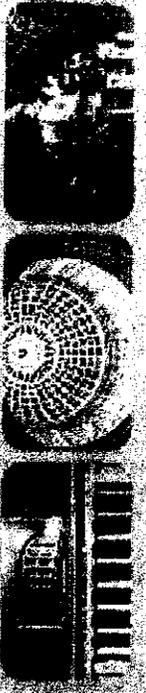
D-2



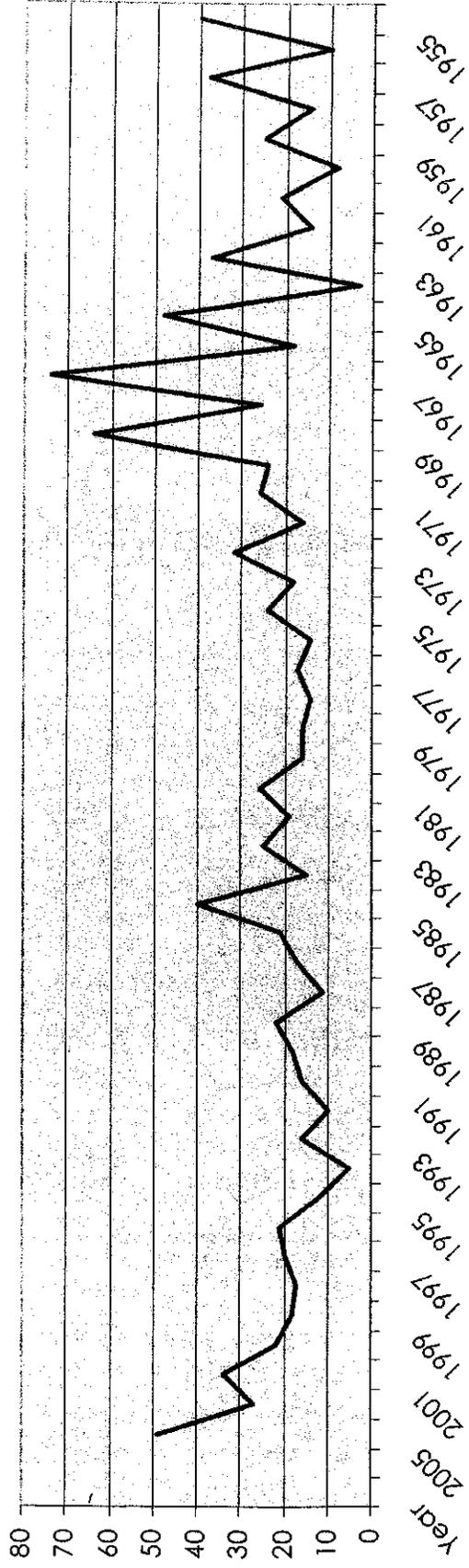
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# Interstate Compact Membership





Interstate Compact Enactments, 1955 to 2005



Year *	Compacts Enacted						
2005	49	1994	5	1978	14	1962	14
2002	27	1993	16	1977	17	1961	21
2001	34	1992	10	1976	14	1960	8
2000	22	1991	16	1975	24	1959	25
1999	18	1990	18	1974	18	1958	14
1998	17	1989	22	1973	32	1957	38
1997	20	1988	11	1972	16	1956	10
1996	21	1987	17	1971	26	1955	40
1995	12	1970	16	1963	37		

\* no data for 2003, 2004

# Interstate Compacts

## - Key Benefits -

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1. **Effectiveness and efficiency**
  - Goal achievement with lower costs (*economies of scale*)
2. **Flexibility and autonomy compared to national policy**
  - “One size does not fit all”
3. **Dispute settlement among the states**
4. **State sovereignty**
  - Protection against “coercive regulatory federalism”
5. **Cooperative behaviors leading to “win-win” situations**
6. **Threats of Federal preemption or mandates**
  - Disparate state regulatory statutes
  - Technology development
  - Lobbying by other special interest groups

## **Interstate Compacts - Operational Benefits -**

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- National data & information sharing systems
- Enhanced enforcement and compliance mechanisms
- Uniform compact language and rules
- National office and staff (*if necessary*)
- Effective governance structures
- Centralized national training
- Uniform operations and procedures
- National interface with external stakeholders / national organizations
- Coordination with other interstate compacts



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# Other Forms of Multistate Cooperation

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## **Multistate Legal Actions**

- Joint legal actions
- Tobacco settlement by NAAG

## **Uniform State Laws**

- National Conference of Commissioners on Uniform State Laws (NCCUSL)
- No involvement with "collective action" per se

## **Administrative Agreements**

- Executive agencies
- Formal or informal

## **Interstate Compact for Adult Offender Supervision**

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- 50 state compact (w/ DC, PR, VI)
- Controls movement of parolees & probationers between states
- Over 300,000 state-to-state transfers annually
- Drafted in 1937; updated in 2000
- Adopted by 35 states in less than 30 months (3 legislative cycles)
- National Commission (rulemaking, oversight, training)
- State Councils for in-state promotion and coordination
- Fully operational and independent w/ national staff
- [www.interstatecompact.org](http://www.interstatecompact.org)



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## **Interstate Compact on Educational Opportunity for Military Children**

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- 10 state compact (AZ, CO, CT, DE, FL, KS, KY, MI, MO, OK; as of July 2, 2008)
- Creates educational equity for the children of military families faced with multiple moves between schools
- Over 650,000 active duty military children
- Enrollment, Eligibility, Placement, Graduation
- Drafted in 2007
- Adopted by 10 states in less than 6 months (1 legislative cycle)
- National Commission (rulemaking, oversight, training)
- State Councils for in-state promotion and coordination
- Full operation – Fall 2008



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## **Interstate Compact Development**

### **- 5 Keys to Success -**

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- Inclusive Process
- Effective "Sales Pitch"
- Broad-Based Marketing Strategy
- Network of Champions
- Proactive Transition Plan



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# Interstate Compact Development

## - Key Players -

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### State Government

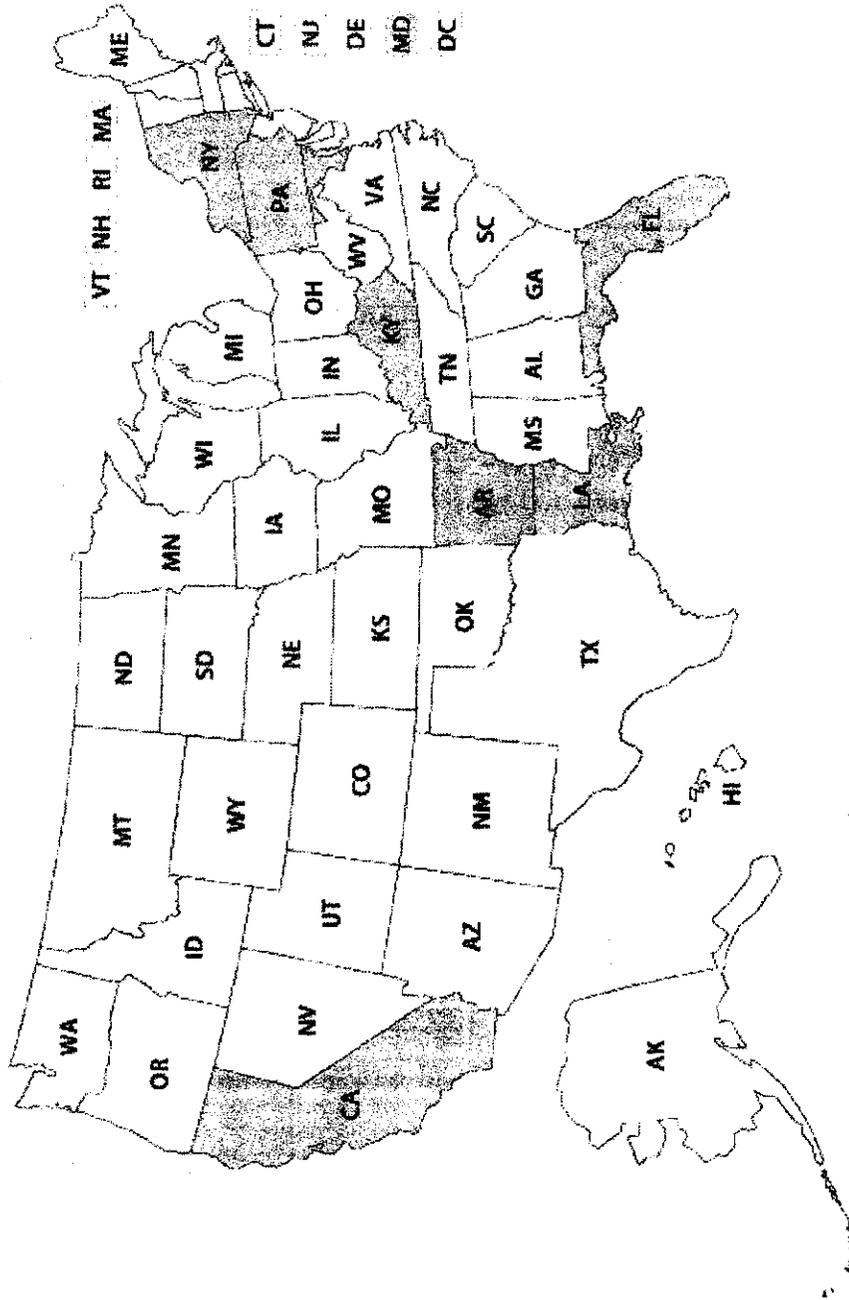
- Governors and policy staff
- Elected executive officials
- Executive agency directors
- Legislative leaders
- Legislators and staff
- Legislative Service Agency directors

### External Stakeholders

- National Associations / Groups
- Media
- Academic / Scientific Researchers
- Industry
- Federal agencies

# Focus: National vs. Targeted

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# Interstate Compacts - Development -

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## *Model Process*

### **Advisory Board**

- Composed of state officials, stakeholders, issue experts
- Examine the issues and current policy spectrum of issue
- Examine best practices and alternative structures
- Establish recommendations as to the content of an interstate compact

### **Drafting Team**

- Composed of 5-8 state officials, stakeholders, issue experts (typically some overlap w/ Advisory)
- Craft interstate compact solution based on Advisory Group recommendations
- Circulate draft compact to specific states and relevant stakeholder groups for comment

### **Final Product**

- Drafting team considers comments and incorporates into compact
- Final product circulated to Advisory Group
- Released to states for consideration

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# Interstate Compact Development

## - *Drafting Considerations* -

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### General Considerations

- Definitions
- Purpose statements
- Internal Organization & Governance

### What to include? What can be 'sold'?

- Degree of Complexity
- What Terms Are Fundamental
- Regulatory Issues
- Amendments/Bylaws/Rulemaking

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# Interstate Compacts - Education & Enactment -

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## *Model Process*

### **Education**

- Develop comprehensive *Resource Kit* and other print promotional materials
- Develop informational Internet site with state-by-state tracking and support documents
- Convene "National Legislative Briefing" to educate state legislators and other key state officials

### **State Support**

- Develop network of champions (state legislators, Governors, etc.)
- Provide on-site technical support and assistance (state-by-state via network)
- Provide informational testimony to legislative committees considering the compact

### **State Enactments**

- Track and support state enactments
- Prepare for transition and implementation of compact
- Provide requested support as needed

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# Interstate Compacts - Transition & Operation -

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## *Model Process*

### **Transition**

- Enactment threshold met
- State notification
- Interim Executive Board appointed
- Interim Committee's established (*if needed*)
- Convene first Compact meeting

### **Operation**

- Ongoing state control and governance
- Staff support
- Annual meeting
- Long-term enhancements / upgrades

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## **Interstate Compacts** **- Bottom Line -**

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- **Self-interests v. Cooperative Behaviors**
- **Individual v. Collective Actions**
- **Disparity v. Uniformity**
- **State Rivalry v. State Alliance**
- **Competition v. Cooperation**
- **“Federalism without Washington”**

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## Additional Questions

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**[www.csg.org](http://www.csg.org)**

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## **Interstate Compacts: A Useful Tool for Power Sharing Among States.** Richard Masters

Former U.S. Supreme Court Justice Felix Frankfurter referred to interstate compacts as one of the "axioms of modern government." In a historic court decision in which the court upheld the validity of a state's authority to enter into compacts and delegate authority to an interstate agency, he...

...called such state action as "a conventional grant of legislative power." (1) Throughout the history of the United States, interstate compacts have been used to define and redefine the relationships of states and the federal government on a broad range of issues. Up until 1969, interstate compacts were used mostly to settle boundary disputes, disposition of land between two adjoining states, and resolve other issues, including natural resources conservation, utility regulation, and public transportation. (2) Today there are almost 200 compacts in effect. Most of the compacts being developed involve some interstate regulatory matter and are designed for regional or national participation. (3)

Given the continued movement to decentralization of government activities and increased state responsibilities in the U.S. federal system, our increasingly mobile society, and the increasing number of state problems that exceed unilateral solution by one state, interstate compacts continue to enjoy wide appeal as an effective tool for resolving national-state and interstate conflicts and problems in intergovernmental relations. Among the most recent of these enactments are the Emergency Management Assistance Compact, the Interstate Insurance Product Regulation Compact, the Interstate Mining Compact, the Interstate Passenger Rail Compact, and the Nurse Licensure Compact.

### **Toward More Formalized Administration**

Whether a given compact should establish a special administrative structure depends on the subject matter and scope of the agreement. In boundary disputes and water allocation, implementation of the compacts was left to state personnel and considered an extension of their regular duties. (4) Later, many compacts went one step beyond and, while not creating an administrative structure, provided for the appointment of "compact administrators" acting in concert with their counterparts to promulgate rules and regulations to carry out the terms of the compact. Informal, professional, trade-like associations were formed that informally developed the rules to carry out the terms of the compact. (5)

Compacts formed for the purpose of providing regional and national legal channels for intergovernmental action require a more formal governing structure. In most cases, a state-created interstate commission that is a sub-federal, supra-state governing body is being advanced. Without such an agency, the efficacy of the rules governing the administration of a compact is questionable and often not enforceable between states. Associations of "compact administrators" have questionable legal standing to develop rules or lack the political clout to ensure compliance. In many states, the rules developed by these associations are not recognized. The creation of an interstate commission--through a specific grant of a state's sovereign authority to it--provides a formal regulatory scheme for the development of rules and enforcement of the compact. Numerous provisions of the compact detail the powers and duties of the interstate commission. What's important is that the rulemaking process of the interstate commission must substantially conform to the principles of due process provided in the federal or state administrative procedure acts. Such administrative agencies act as supra-state, sub-federal bodies accountable to the collective member states. (6) Many older compacts have been, or are being revised, in order to create such interstate commissions, recognizing the deficiencies in the old compacts and other recent compacts have also used interstate commissions as a mechanism for implementing and regulating interstate compacts. (7)

#### The Future

Increasingly, interstate compacts hold the promise for states to solve their own problems without federal intervention. "History demonstrates that states are most at risk of federal preemption when they fail to timely and effectively address supra-state, sub-federal problems." (8) Formal compacts creating intermediate governing authorities allow states to create fair and efficient ways of addressing interstate issues. They provide a "shared power" approach that allows states to preserve their sovereignty over problems which, while transcending individual state boundaries, should remain under the jurisdiction of "the several states." As state and federal decision-makers realize the benefits offered by compacts, they are likely to continue to be an increasingly used and valued form of interstate cooperation.

*Richard Masters is general counsel to the Interstate Commission for Adult Offender Supervision; Elizabeth Oppenheim is director of Interstate Affairs at the American Public Human Services Association.*

1 See, *West Virginia, ex rel. Dyer vs. Sims*, 341 U.S. 22 (1951).

2 Patricia S Florestano, *Interstate Compacts: The Invisible Area of Interstate Relations*, Schaefer Center for Public Policy, University of Baltimore, Sept. 1993.

3 Michael Buenger, Richard Masters, The Interstate Compact on Adult Offender Supervisions: Using Old Tools to Solve New Problems, Roger Williams University Law Review, Fall 2003.

4 Zimmerman and Wendell, The Law and Use of Interstate Compacts, The Council of State Governments, 1976.

5 Examples of compacts having such an administrative structure included the Interstate Compact on Juveniles, The Interstate Compact on the Placement of Children, and the Interstate Compact for the Supervision of Parolees and Probationers.

6 Michael Buenger, Richard Masters, The Interstate Compact on Adult Offender Supervisions: Using Old Tools to Solve New Problems, Roger Williams University Law Review, Fall 2003.

7 Ibid.

8 Ibid.

## **ITEM E.**

# **RCI MODEL RULES AND PRACTICES COMMITTEE MEETING ON JULY 30, 2009**

1. **Proposed Rule Change on Jockey Fees – *text and background***
2. **Proposed Rule Change on Use of the Riding Crop in Flat Places – *no text, background***
3. **Proposed Amendment to Effective Date of Mandatory Trainer CE Rule – *text***
4. **Proposed Changes to Post Mortem Exams of Horses Rule – *text***
5. **Proposed Changes to Rules about Drug Testing of Horses – *text***

ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL  
MODEL RULES AND PRACTICES COMMITTEE MEETING

THURSDAY, JULY 30, 2009, 9:00 AM -5:00 PM

AGENDA

Call to Order

Introduction of Committee Members and other Attendees

Minutes of April, 20, 2009 Committee Meeting p 2

Report of Subcommittee on Proposed SPMO Certification Rule pp3-21

Rick Goodell, assistant counsel, NY State Racing and Wagering Board, Chairman

Report of Subcommittee on Proposed Changes to Safety Vest Rule p 22

Hugh Gallagher, Delaware Harness Racing Commission, Chairman

John Wayne, Delaware Thoroughbred Racing Commission, Vice Chairman

Proposed Rule Change on Jockey Fees p 23-33

Proposed Rule Change on Use of the Riding Crop in Flat Races p 34

Proposed Amendment to effective date of Mandatory Trainer CE Rule p 35

Proposed Changes to Post Mortem Exams of Horses Rule p 36

Proposed Changes to Rules about Drug Testing of Horses pp37-38

Discussion of Changes to Jockeys Weighing In Before and After the Races p 39

Discussion of Uses of Hyperbaic Oxygen Chambers pp 40-43

Lisa Underwood, Kentucky Horse Racing Commission

Discussion of Racing Compacts p 45

Rick Goodell, assistant legal counsel, NY State Racing and Wagering Board

Discussion of Recommended Penalty Guidelines for Medication Violations pp46-51

Charla Ann King, Texas Racing Commission

Discussion of Out of Competition Testing of Horses pp 52-58

Lisa Underwood, Kentucky Horse Racing Commission

Report on June 24-25 Greyhound Model Rules Subcommittee

Charla Ann King, Texas Racing Commission

Discussion of Possible Topics for Next Meeting p 59

Discussion of Date(s) and Location(s) of Next Meeting(s)

Philadelphia area in mid September and/or Tucson, Arizona, in early December

Larry B. Eliason  
Chairman

Hugh Gallagher  
Vice Chairman

Rick Goodell  
Vice Chairman

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# #1 JOCKEY MOUNT FEES

## RCI MODEL RULES COMMITTEE PETITION FOR NEW RULE OR CHANGE TO EXISTING RULE

### Contact Information:

Jeff Johnston, Regional Manager  
The Jockeys' Guild  
103 Wind Haven Dr., Suite 200  
Nicholasville, KY 40356  
(859) 547-8084  
(859) 495-0443 fax  
[jeff@jockeysguild.com](mailto:jeff@jockeysguild.com)

### A. Brief Description of the Issue

Jockey Mount fees are listed as an ARCI Model Rule. The current schedule is outdated and has only been amended once since the introduction of ARCI Model Rules. Jockey mount fees for losing mounts have effectively been cut in half by the failure to adjust them for the cost of living for so many years. In addition, the mount fee schedule format was introduced before there was exotic wagering that included places lower than third. The current scale therefore does not provide appropriate incentives to protect people who wager on those horses.

### B. Discussion of the Issue

- **Provide background on the issue to build context.**  
For many years, the Jockeys' Guild and the horsemen's groups have been parties to an agreement for jockey fees to be applicable in the absence of a special agreement to the contrary. Most states, excluding California and Illinois, have adopted the ARCI Model Rule for jockey mount fees. Recently, the Jockeys' Guild and representative horsemen's groups have entered into new agreements with regard to jockeys' fees, but no commission has yet to change its rule to reflect those new agreements.
- **What specific problems or concerns are involved in this issue?**  
Some horsemen's groups are seeking to avoid negotiations because there is a regulation regarding jockey mount fees. In addition, some states have rejected joint requests from the Guild and the representative horsemen's group because there is a specific regulation regarding mount fees. Many states are now looking into the issue and would appreciate guidance from the ARCI.
- **Who does the issue affect?**  
The primary groups affected by this rule change would be the owners who pay the jockey fees and the jockeys who receive them. Another group that is affected is the betting public. A change in the rule to add incentives for positions included in certain bets will give a better perception to gamblers that their interests are protected by incentives for jockeys who finish in those positions.

- **What existing model rules relate to this issue?**

ARCI-008-030 Jockeys

**G. Jockey Mount Fees**

In the absence of a contract or special agreement, jockey mount fees shall be as follows:

PURSE	WINNING MOUNT	SECOND PLACE MOUNT	THIRD PLACE MOUNT	LOSING (OTHER) MOUNT
\$599 and Under	\$33	\$33	\$33	\$33
\$600-\$699	\$36	\$33	\$33	\$33
\$700-\$1,499	10% of Win Purse	\$33	\$33	\$33
\$1,500-\$1,999	10% of Win Purse	\$35	\$33	\$33
\$2,000-\$3,499	10% of Win Purse	\$45	\$40	\$38
\$3,500-\$4,999	10% of Win Purse	\$55	\$45	\$40
\$5,000-\$9,999	10% of Win Purse	\$65	\$50	\$45
\$10,000-\$14,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$50
\$15,000-\$24,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$55
\$25,000-\$49,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$65
\$50,000-\$99,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$80
\$100,000 and Up	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$105

Adopted in Version 1.4 ARCI 8/27/02 NAPRA 10/2/02

**C. Possible Solutions and Impact**

The Jockeys' Guild proposes an amendment to the current ARCI Model Rule that brings jockey mount fees more in line with what they were in 1985, the last time fees were increased except for a \$5 increase in 2000. In an effort to appease horsemen and not inhibit ownership at tracks that offer lower purse structures, we are including in our proposal a tiered structure that lists jockeys fees according to the purse distribution at the track. This amendment will effectively increase jockey mount fees to a more realistic level and allow jockeys to earn fees that will more appropriately pay them for the job they do and the risks they take. It will also not add an unjustified burden on the owners, especially those racing at tracks with purses that make it difficult to cover the expenses of racehorse ownership.

The proposed changes will certainly benefit the jockeys, but may also benefit other industry participants. Increased jockey fees will help jockeys cover expenditures that will increase safety such as new helmets, vests, stirrups, and riding crops. Many jockeys today are not making enough money through losing mount fees to cover the costs of new and improved safety equipment and are foregoing the improvements and allowing their

standard equipment such as stirrups, girths, and goggles to become worn to the point they are unsafe. Increasing fees should provide jockeys the necessary income to cover the costs of these expenditures. This could keep the injury rates to jockeys down and possibly result in lower insurance premiums to racetracks. Increasing fees for losing mounts will also provide additional incentives to jockeys to ride in races they otherwise might skip because of the risk and chance of earning very little money. This should provide for higher quality and safer racing. More experienced jockeys with better equipment may again affect the injury rates at tracks and result in lower premiums. More experienced jockeys could also result in lower injury rates to horses and a more positive outlook on racing.

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

Many state affiliates of the THA and HBPA have already entered into new contracts with the Jockeys' Guild and asked for commission approval to implement the new agreements. However, some state commissions and horsemen's groups are reluctant to enter into or allow such agreements because minimum fees are mandated by a state regulation. States that have been involved in negotiations have expressed their support for increases in jockey mount fees and most horsemen's groups have been sympathetic and willing to discuss the issue. Commissions such as Oklahoma have set up committees to address the problem and develop a recommendation for their commission to begin the rule change process. Some commissioners and horsemen's representatives have asked for an industry recommendation or have hesitated to discuss the issue without a recommendation from ARCI.

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

ARCI-008-030 Jockeys

**G. Jockey Mount Fees**

In the absence of a contract or special agreement, jockey mount fees shall be as follows:

PURSE	WINNING MOUNT	SECOND-PLACE MOUNT	THIRD-PLACE MOUNT	LOSING-OTHER MOUNT
\$500 and Under	\$33	\$33	\$33	\$33
\$600-\$699	\$36	\$33	\$33	\$33
\$700-\$1,499	10% of Win Purse	\$33	\$33	\$33
\$1,500-\$1,999	10% of Win Purse	\$35	\$33	\$33
\$2,000-\$3,499	10% of Win Purse	\$45	\$40	\$38
\$3,500-\$4,999	10% of Win Purse	\$55	\$45	\$40
\$5,000-\$9,999	10% of Win Purse	\$65	\$60	\$45
\$10,000-\$14,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$50
\$15,000-\$24,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$55
\$25,000-\$49,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$65
\$50,000-\$99,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$80
\$100,000 and Up	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$105

**Class "A" Tracks**

PURSE	WINNING MOUNT	SECOND MOUNT	THIRD MOUNT	FOURTH MOUNTS	OTHER MOUNTS
up to \$9,999	10%	\$125	\$110	\$105	\$100
\$10,000 to \$24,999	10%	\$175	\$125	\$110	\$100
\$25,000 to \$49,999	10%	5%	5%	\$125	\$100
\$50,000 to \$99,999	10%	5%	5%	\$150	\$100
\$100,000 and up	10%	5%	5%	5%	\$105

**Class "B" Tracks**

PURSE	WINNING MOUNT	SECOND MOUNT	THIRD MOUNT	FOURTH MOUNTS	OTHER MOUNTS
up to \$9,999	10%	\$125	\$100	\$90	\$80
\$10,000 to \$24,999	10%	5%	\$100	\$95	\$85
\$25,000 to \$49,999	10%	5%	5%	\$125	\$95
\$50,000 to \$99,999	10%	5%	5%	\$150	\$100
\$100,000 and up	10%	5%	5%	5%	\$105

**Class "C" Tracks**

PURSE	WINNING MOUNT	SECOND MOUNT	THIRD MOUNT	FOURTH MOUNTS	OTHER MOUNTS
up to \$9,999	10%	\$100	\$90	\$80	\$70
\$10,000 to \$24,999	10%	5%	\$100	\$90	\$80
\$25,000 to \$49,999	10%	5%	5%	\$100	\$90
\$50,000 to \$99,999	10%	5%	5%	\$125	\$100
\$100,000 and up	10%	5%	5%	5%	\$105

\*\* Track classification shall be based on daily average purses.  
 Class "A" Track daily average purse distribution  $\geq$  \$250,000  
 Class "B" Track daily average purse distribution \$100,000 - \$249,999  
 Class "C" Track daily average purse distribution  $<$  \$100,000

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**F. Do any racing jurisdictions currently have a version of this rule in effect? If yes, please attach copies of those rules.**

Copies of agreements in place currently:

NYRA	(Class "A")
Chicago	(Class "B")
Iowa	(Class "B")
Indiana	(Class "B")

**G. Review the Model Rules and identify any other Model Rules this change would affect and submit proposed amendments to those rules to comply with changes that would be made by this proposal.**

No other Model Rules would be affected.

**H. Final Comments**

The Jockeys' Guild understands the pressures facing the horse racing industry today and sympathizes with the owners when they say, "it is not the right time". However, the hard truth is that jockey mount fees have not kept up with the cost of living and leaves jockeys today riding for losing mount fees that are inadequate and insufficient to cover the cost of proper equipment and general living expenses. Seventy percent of the jockeys today do not earn enough money to cover costs of things they should be investing in such as health insurance, temporary disability insurance, and retirement savings. Each jockey can expect to miss six weeks of riding during the upcoming year due to injury and needs to earn enough on a weekly basis to cover insurance costs and time off for recovery. Jockeys in some racing jurisdictions earn less than \$20 for each mount they ride and are foregoing expenditures for safety equipment and supplies that potentially puts their life further at risk, as if they needed anything more.

The fact that there has only been one \$5 increase in mount fees in 25 years is hard to imagine when expenses for everything else associated with racing, i.e. daily rates for training, shoeing, vet care, exercise and pony people, have doubled and in some cases tripled. Because the ARCI Model Rules lists standard mount fees, and state commissions have almost unanimously adopted the model rule, the jockeys remain riding for a scale that is outdated and insufficient to cover necessary expenses and adequately provide for themselves and their families.

The Jockeys' Guild feels the proposed scale addresses concerns of horsemen that feel any additional increases will drive owners out of the business. By providing a tiered scale based on purse structure, jockeys can be adequately compensated and owners will only incur additional costs of less than one half of one percent.

**New York Proposal  
(NYRA)  
(effective April 2,  
2008)**



PURSE	WINNING MOUNT	SECOND MOUNT	THIRD MOUNT	FOURTH MOUNTS	FIFTH MOUNTS	OTHER MOUNTS
up to \$14,999	10%	5%	5%	\$100	\$100	\$100
\$15,000 to \$24,999	10%	5%	5%	\$100	\$100	\$100
\$25,000 to \$49,999	10%	5%	5%	\$100	\$100	\$100
\$50,000 to \$99,999	10%	5%	5%	\$100	\$100	\$100
\$100,000 and up	10%	5%	5%	\$105	\$105	\$105



**Illinois Proposal (effective 5/9/2008)**

PURSE	WINNING MOUNT	SECOND MOUNT	THIRD MOUNT	FOURTH MOUNTS	FIFTH MOUNTS	OTHER MOUNTS
up to \$9,999	10%	\$100	\$95	\$90	\$85	\$80
\$10,000 to \$14,999	10%	5%	\$100	\$95	\$90	\$85
\$15,000 to \$24,999	10%	5%	\$125	\$100	\$95	\$90
\$25,000 to \$49,999	10%	5%	5%	\$105	\$100	\$95
\$50,000 to \$99,999	10%	5%	5%	\$110	\$105	\$100
\$100,000	10%	5%	5%	\$125	\$110	\$105

and up

**Iowa proposal (approved August 2008)(effective 2009)**

PURSE	WINNING MOUNT	SECOND MOUNT	THIRD MOUNT	FOURTH MOUNTS	OTHER MOUNTS	\$ LM increase
up to \$12,499	10%	\$75+2%	\$75+2%	\$75+2%	\$75	\$25-\$30
\$12,500 to \$24,999	10%	5%	\$75+2%	\$75+2%	\$75	\$20
\$25,000 to \$49,999	10%	5%	5%	\$80+2%	\$80	\$15
\$50,000 to \$99,999	10%	5%	5%	\$90+2%	\$90	\$10
\$100,000 and up	10%	5%	5%	5%	\$105	\$0

**Indiana proposal (approved 5-21-08)**



Jockey Fee Schedule: 1/1/2009 – 12/31/2009

PURSE	WINNING MOUNT	SECOND MOUNT	THIRD MOUNT	OTHER MOUNTS
\$5,000 to \$9,999	10%	\$95	\$80	\$75
\$10,000 to \$14,999	10%	5%	\$85	\$80
\$15,000 to \$24,999	10%	5%	\$100	\$85
\$25,000 to \$49,999	10%	5%	5%	\$95
\$50,000 to \$99,000	10%	5%	5%	\$110
\$100,000 and up	10%	5%	5%	\$135

## 2009 SCALES IN PLACE

**States with Health & Welfare Benefits through Legislation:**

Delaware – *Senate Bill 338* - \$350,000 annually  
 New Jersey – *NJSA 5:-129 5.5.151* - \$150,000 annually  
 Pennsylvania - *2004 Pennsylvania Statute 1406* - \$250,000 annually

**California Tracks: Legislation (Losing Mount fees for California tracks are lower due to the following additional benefits)**

- *Funding from Unchased tickets of approximately \$1 million for health and welfare benefits for California Riders effective 1995.*
- *2008 Approximately \$1 million per year will be provided by ADW to establish a pension plan for California jockeys. Assembly Bill AB765*

Assembly Bill AB765 (2008)	2008	2010	2012
Del Mar	\$55	\$65	\$75
Fairplex	\$55	\$65	\$75
Golden Gate	\$55	\$65	\$75
Hollywood Park	\$55	\$65	\$75
Los Alamitos	\$55	\$65	\$75
Santa Anita	\$55	\$65	\$75

*2% increase for unplaced mounts*

The following is a list of tracks with increases in minimum losing mount fees and their effective dates which were approved by the local Horsemen's organization.

Aqueduct	\$100	Effective April 2, 2008
Belmont	\$100	Effective April 2, 2008
Saratoga	\$100	Effective April 2, 2008
Atlantic City	\$100	Effective April 16, 2009
Meadowlands	\$100	Effective October 1, 2009
Monmouth Park	\$100	Effective May 9, 2009
Philadelphia Park	\$100	Effective June 2008

Arlington Park	\$80	Effective May 9, 2008
Hawthorne Race Course	\$80	Effective May 9, 2008

Calder Race Course	\$55-7/8/08	\$75	Effective January 15, 2009
Gulfstream Park	\$55-7/8/08	\$75	Effective January 15, 2009
Delaware Park		\$75	Effective April 25, 2009
Indiana Downs	\$60-5/26/08	\$75	Effective January 1, 2009
Hoosier Park	\$60-5/26/08	\$75	Effective January 1, 2009
Louisiana (Entire State)	<i>\$50 purses under 5,000</i>	<i>up to \$115</i>	Effective May 13, 2009
Charles Town		\$75	Effective February 23, 2009
Penn National		\$75	Effective August 20, 2008
Prairie Meadows	Additional 2% for 4 <sup>th</sup> place	\$75	Effective April 24, 2009

Fairmount Park	\$55	Effective August 4, 2008
Finger Lakes	\$55	Effective October 29, 2007
Tampa Bay Downs	\$55	Effective December 5, 2008

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Turf Paradise	\$55	Effective January 1, 2009
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Yavapai Downs	\$50	Effective May 23, 2009
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**The National H.B.P.A., Inc.**  
NATIONAL HEADQUARTERS

870 Corporate Drive, Suite 300; Lexington, KY 40503 - 5419  
(859) 259-0451 - Telephone (859) 259-0452 - Facsimile  
email: racing@hbpa.org

*President & Chairman*  
Joseph Santanna

Monday, June 1, 2009

*Chief Executive Officer*  
Remi Bellocq

**Via Email and U.S. Mail**

*First Vice-President*  
Robin Richards

Mr. Jeff Johnston  
Regional Representative  
Jockeys' Guild, Inc.  
103 Wind Haven Drive, Suite 200  
Nicholasville, KY 40356

*Regional Vice Presidents*  
Bill Walmsley  
Dave Benson  
Leroy Gessmann

*General Counsel*  
Douglas L. McSwain

Dear Jeff:

*Veterinary Advisor*  
Dr. Thomas Tobin

Pursuant to our discussion after the WSS meeting last week, let me reiterate again that the National HBPA still maintains its position against a national model rule governing jockey mount fees through a proposed national fee schedule.

*Insurance Advisor*  
Tom Metzen, Jr.

While, as you have stated, a model rule has existed before, we feel that regardless of any existing national jockey mount fee guideline prescribed by a model rule, the recommendation of a mount fee schedule to local or state racing regulators is, nonetheless, best left to the local horsemen and riders.

No national fee schedule can replace the ability of the local horsemen and riders, who work side by side each day, to understand the economic conditions both parties face in that region.

We do agree that over the past six months, many of these local discussions regarding increased mount fees have been difficult in some jurisdictions. Nonetheless, in the vast majority of cases both parties - horsemen and riders - have been able to eventually recommend to their racing regulators mount fee increases agreeable to both without unduly burdening horsemen who are increasingly struggling in these difficult economic conditions.

Letter to Jeff Johnston

6/1/09

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Again, this has been done without the need for a national model rule.

Yet, we also agree that a better dialog needs to exist between our two national organizations. We may not agree on various issues, but we can and should agree on a way for our representatives to formally gather each year to work toward finding common ground in the areas which are vital to our constituents.

Thus, I propose that we begin preparations for a ½ day summit meeting in conjunction with the 2009 University of Arizona Symposium on Racing scheduled for December 7<sup>th</sup> thru December 10<sup>th</sup> at the Westin La Paloma hotel in Tucson, Arizona.

In fact, the National HBPA is planning to hold its winter convention there as well from December 4<sup>th</sup> to December 7<sup>th</sup>. My understanding is that the Jockeys' Guild will also be holding its winter meeting during that week so my hope is that we can plan and schedule a principals meeting of Jockeys' Guild and National HBPA representatives around those dates.

Let me know if this seems reasonable and how you and the Jockeys' Guild would like to proceed?

Sincerely,



Remi Bellocq  
CEO  
National HBPA

cc: Joe Santanna, President and Chairman, National HBPA  
Terry Meyocks, National Manager Jockeys' Guild  
Larry Eliason, Chairman, ARCI Model Rules Committee

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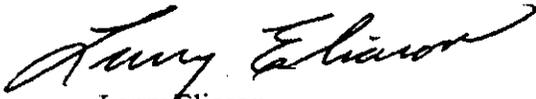
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## #2 RIDING CROP

Riding crop proposal.

At the time this packet was being prepared for distribution I had not received a formal proposal from the proponent(s) of changes to the flat racing riding crop rule.

Based on informal conversations that I have had with the primary proponent I anticipate that the proposal will focus on the use or style of using the crop (for example not striking from above the shoulders) which the committee has discussed in previous meetings.



Larry Eliason  
Chairman  
ARCI Model Rules and Practices Committee

# #3 MANDATORY TRAINER CE RULE

I propose that Model Rule ARCI 008-020 A (4) be amended to read as follows:

008-020 Trainers

A. Eligibility

(4) Beginning no later than January 1, ~~2010~~, 2011, in order to maintain a current license a trainer must complete at least four (4) hours per calendar year of continuing education courses approved by the ARCI or the commission in that jurisdiction.

The reason for the suggested change is simple. As of late April only one jurisdiction- South Dakota- had adopted the model rule cited above or was in the process of adopting it. We are now less than six months from January 1, 2010, and in many jurisdictions it can take six months to promulgate an administrative rule. This proposed change would move the effective date of the rule back one year.

The ARCI Continuing Education Committee has held at least one meeting by telephone conference call and one in person meeting in April at the ARCI Convention. That committee has a huge task to develop criteria for ARCI approval of courses and to recommend a system or method of record keeping so that commission licensing personnel will know whether or not a trainer has completed the required continuing education when the trainer applies for license renewal.



Larry Eliason  
Chairman  
ARCI Model Rules and Practices Committee

# #4 POSTMORTEM EXAMS OF HORSES

## Proposal #10 Postmortem Examinations

Propose the following changes to Chapter 11 (Equine Veterinary Practices, Health and Medication), Section 30:

### ARCI-011-030 Physical Inspection of Horses

#### C. Postmortem Examination

- (1) The Commission ~~may conduct~~ shall require a postmortem examination of any horse that ~~is injured in this jurisdiction while in training dies or in competition and that subsequently expires or is destroyed, is euthanized on association grounds.~~ In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.
- (2) The Commission may conduct a postmortem examination of any horse that ~~expires while housed on association grounds dies or is euthanized at recognized training facilities within this jurisdiction.~~ Post mortem examinations should be conducted based on recommendations of the American Association of Equine Practitioners. Trainers and owners shall be required to comply with such action as a condition of licensure.
- (3) The Commission may take possession of the horse upon death for postmortem examination. If possible, the Commission should collect blood, urine and/or other bodily fluids immediately after the horse dies or is euthanized and all shoes and equipment on the horse's legs should be left on the horse. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for analysis. ~~Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's expense.~~
- (4) The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation.
- (5) ~~The cost of Commission ordered postmortem examinations, testing and disposal shall be borne by the Commission.~~

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# #5 HORSE DRUG TESTING

## **ARCI-011-023 Testing**

### **A. Reporting to the Test Barn**

- (1) The official winning horse and any other horse ordered by the Commission and/or the stewards shall be taken to the test barn to have a blood and urine samples taken at the direction of the official veterinarian.
- (2) The Racing Medication and Testing Consortium recommends that the horses that should be designated for blood and urine sample collection are:
  - o All winners
  - o First three in any stakes
  - o Betting favorites that finish in last two places
  - o Second or third place horses at 20-1 or longer odds
  - o Three stewards' discretionary selections based on probable cause & random selection

The Racing Medication and Testing Consortium recommends that the horses that should be designated for blood and urine sample testing are:

- o Winners at 10-1 or longer odds plus stake winner & up to half of other winners in order to test at least 50% of the winners
  - o Second & third place horses in stakes
  - o Betting favorites that finish in the last two places
  - o Second & third place horses at 20-1 or longer odds
  - o Two stewards' discretionary selections based on probable cause & random selection
- (3) Random or extra testing may be required by the stewards or the Commission at any time on any horse on association grounds.
  - (4) Unless otherwise directed by the stewards or the official veterinarian, a horse that is selected for testing must be taken directly to the test barn.
  - (5) A track security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of 18-years-old, be currently licensed by the Commission, display their Commission identification badge and have a legitimate reason for being in the test barn area.

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#4 Sample Collection

The McKinsey Report called for an objective system to select horses for drug testing that would help ensure the integrity of racing by providing effective deterrence at the lowest feasible cost. The recommended policy guidelines called for a system that

- o Targets cheaters who profit by capturing purses and/or betting payoffs
- o Ensures a positive public perception by focusing on the most visible targets – winners and unexpectedly good and bad performers
- o Collects as few samples as possible without sacrificing effectiveness
- o Provides clear direction to stewards while preserving the flexibility to select additional horses if necessary.

McKinsey recommended reducing the number of horses collected and tested from two per race on average, which was the practice in 1991, to an average of 1.5 per race. After discussions with a number of regulators and stewards, there was concern about not collecting and testing all winners which is the rule and/or statute in all states. Given this consideration and the McKinsey recommendation, I would suggest the following:

Horses to be collected:

- o All winners
- o First three in any stakes
- o Betting favorites that finish in last three places
- o Second or third place horses at 20-1 or longer odds
- o Two randoms per day
- o Two probable causes per day

Samples to be tested:

- o Winners at 10-1 or longer odds plus stake winner & up to half of other winners in order to test at least 50% of the winners
- o All probable causes
- o One random
- o Second & third place horses in stakes
- o Second & third place horses at 20-1

The term "probable cause" would be defined as the trainer or owner having a recent history of a medication rule violation or multiple medication rule violations in the last five years, credible information that the horse had received a prohibited substance, the trainer's has a win percentage significantly above the average, and/or horses in his care demonstrating significant form reversals.