

West Virginia Racing Commission
Response to Public Comments

On June 5, 2023, the Racing Commission filed its proposed revisions to 178 CSR 1, *Thoroughbred Racing*. The comment period ended on July 6, 2023.

The Commission received public comments from Dr. Lori Bohenko, DVM, the State Veterinarian at Mountaineer Racetrack; the Charles Town Horsemen's Benevolent and Protective Association ("CTHBPA"); and Hollywood Casino at Charles Town Races ("HCCTR"). The comments were both supportive and in opposition to different sections of the rule. The Commission considered the public comments at its regular meeting on July 20, 2023.

The Commission provides the following response to the public comments:

(1) Dr. Bohenko suggested the addition of a rule limiting a thoroughbred to 4 race starts over any rolling 8-week period.

RESPONSE: The Commission elected not to include this new rule because the Racing Secretary already has the discretion over entries; the State Veterinarian may scratch a horse if necessary; and the rule may have unintended negative consequences.

(2) The CTHBPA made several comments within its public comment, both supportive certain changes and objecting to others. This Response focuses only on the sections to which the CTHPBA objected.

The CTHBPA objected to striking section 10.4 because it provides the only pre-race mechanism for an individual to lodge a claim for unpaid obligations secured by a horse.

RESPONSE: The Commission voted remove the strike-out and keep 10.4 in the rule, recognizing the need for the rule.

The CTHBPA objected to the new requirement in sections 22.1.b and 22.1.c for a race track to employ a second paramedic during racing hours because of the general shortage of paramedics. They believe the new requirement may cause race cancellations.

RESPONSE: After much deliberation, the Commission elected to remove the suggested change and keep the rule as it originally was. Maintaining safety is paramount, and the current rule achieves safety without increasing the chance of race cancellations.

The CTHBPA objected to the reduction in weight allowances for apprentice jockeys that is included section 28.2.e. They believe the new rule may impede aspiring jockeys from entering the field.

RESPONSE: The Commission agreed with the CTHBPA and returned the rule to the original weight allowances.

The CTHBPA objected to the change in section 28.6 relating to jockey mount fees. In the situation in which an owner engages more than one jockey for a race, the new language would have required that the owner pay the same fee to both the riding jockey and jockey who did not ride the horse in the race.

RESPONSE: The Commission elected to remove the new language and return the rule to its original language.

The CTHBPA objected to the new language in section 49.7.a. through 49.7.d. requiring certain paperwork and timelines be followed with respect to horses on Lasix.

RESPONSE: The new language was suggested by Dr. Bohenko who explained that the changes streamline the paperwork process for the parties. The Commission deferred to its State Veterinarian and elected to keep the new language in the rule.

The CTHBPA noted the need to maintain the new language in section 49.7.e. changing the minimum time frame for race-day administration of Lasix from 4 hours to 3 hours. Dr. Bohenko was present for the July 20, 2023, meeting and spoke against the change, noting that 4 hours is the industry standard.

RESPONSE: The Commission returned the rule to 4 hours to maintain consistency with the industry standard.

(3) HCCTR also objected to the new requirement in sections 22.1.b. and 22.1.c. relating to an additional paramedic during racing hours. Like the CTHBPA, the track noted the possibility that the new rule will force race cancellations.

RESPONSE: For the reason noted above, the Commission removed the requirement from the proposed rule.

HCCTR objected to the new requirement in section 23.5 that tracks have an emergency warning system on training tracks, not just the racing track.

RESPONSE: The Commission agreed with HCCTR and removed "training tracks" from the requirement.

Lastly, for the same reasons cited by the CTHBPA, HCCTR also objected to the proposed changes in the jockey mount fees set forth in section 28.6.

RESPONSE: For the reason noted above, the Commission elected to return the rule to the original language.



Moore, Joe K <joe.k.moore@wv.gov>

New Rule for WV Commissioner Consideration

1 message

Bohenko, Lori L <lori.l.bohenko@wv.gov>
To: Joe Moore <joe.k.moore@wv.gov>

Sun, Jun 25, 2023 at 9:13 PM

Joe,

I am respectfully requesting that the following new rule be added to the list of 2023 TB Rule Changes for the Commissioner's consideration.

RULE: A horse shall be limited to 4 race starts over any rolling 8 week period.

There is not a current rule which limits how often a thoroughbred can race in the state of WV. Although it is not uncommon for a trainer to run a horse back after a short rest and certain horses can handle the workload, it is not common to continue to race them many times at short intervals. Right now we are seeing many situations where horses are repeatedly entered and racing at 6-10 day intervals, putting them into a ratio of 5-6 starts over an 8 week period. This cumulative number of high speed furlongs in a short time period is a factor which can contribute to racing injuries and breakdowns.

This rule would not preclude a trainer from running his horse at close intervals. It would only limit the number of times he/she could do it over an 8 week period.

--
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July 6, 2023

West Virginia Racing Commission
900 Pennsylvania Ave Suite 533
Charleston WV 25302
Attn: Joe Moore, Executive Director

VIA Email to: joe.k.moore@wv.gov

Re: Comments of Charles Town HBPA (Horsemen s Benevolent and Protective Association) to
Proposed 178 CSR 1, WV Rules of Thoroughbred Racing

Dear Mr. Moore:

Thank you and the WV Racing Commission members for the chance to comment on proposed changes to 178 CSR 1. I do so on behalf of my client, Charles Town HBA, hereinafter referred to as CTHBPA. Thanks are also extended for your efforts and that of the WV Racing Commission in developing the proposed revisions to 178 CSR 1, and for your work in overseeing the activity of Thoroughbred racing in West Virginia. Thoroughbred racing in Charles Town, West Virginia has a well-documented history of contribution to the sport of horse racing nationally and regionally, as well as being a significant contributor to the economic vitality of Jefferson County and surrounding areas that extends well beyond the activity of Thoroughbred racing. From the Thoroughbred breeding, training, and the related agricultural pursuits in the area, to the thousands of jobs associated with those providing goods and services in support of the Thoroughbred population, it is the engine driving the local economy. It is for the many individuals and families reliant upon this economic engine that the effect of revisions to the rules governing its existence is vitally important to our state.

CTHBPA Comments are as follows:

1. Section 5.3 revises the current rule by providing flexibility beyond the required mandatory two clerks in granting to the WVRC authority to allow as many clerks as are necessary to carry out the duties required to be performed by racing clerks. CTHBPA would support this proposed change provided it is further conditioned on the proposition that there must be, at a minimum, sufficient staff to meet the need to maintain the Charles Town Licensing Office open during morning Thoroughbred training hours, evening racing periods and to handle overflow on premier race days, i.e. Charles Town Classics, WV Breeders Classics and similar premier racing events that may emerge in the future. Presently there is one full-time license clerk and 2 part-time contracted clerks who provide limited availability to allow for the full-time clerk to utilize personal leave or sick days.
2. Regarding proposed changes to Sections 8.10.b and 8.10.d, CTHBPA is uncertain as to whether this proposed change is supported by the Charles Town Stewards, but feel it important that if this change is officially adopted by the WV Legislature, that stewards must have the ability to investigate questions raised as to the "exact identification or ownership, or identity of the actual

trainer of the thoroughbred,” and exercise the removal of such from the stewards’ list “when, in the opinion of the stewards, proof of exact identification, and/or ownership, or identity of the

Letter to Joe Moore

Page 2

July 5, 2023

actual trainer has been established.” It would also seem logical that the term “actual trainer” be defined so that there is no discrepancy as to the meaning of the term. Moreover, CTHBPA believes investigative authority along with enforcement authority, in the Stewards should be clearly articulated.

3. CTHBPA endorses the changes provided for in Sections 9.2.a and 9.2.b as such measures are in the best interest of the health, safety, and welfare of the equine athletes. Veterinarians serving the Thoroughbred population at Charles Town commonly utilize the “5-way” vaccinations and CTHBPA endorses such a standard that should be followed by all.

4. Striking the provisions of Section 10.4 of the existing rule, while understandable as policy, fails to recognize that at least part of the current rule serves a valid purpose. Because “bookkeepers” are not equipped to pass judgment on the validity of unpaid obligations, the mere filing of such claims of unpaid obligations do serve as a reference to Stewards, who, in turn, do have the ability to affect a dispositive action in adjustment of winnings earned by a Thoroughbred at a given race. Hence, additional thought and language to address this nuance of Thoroughbred racing practice should be considered.

5. The provisions of Section 22.1.b and 22.1.c relating to mandatory minimum requirements for certified paramedics and emergency medical services onsite during racing events, while laudatory, could be the catalyst for race cancellations, noting that the minimum criteria may be difficult to meet through no fault of the Association because of shortages of certified paramedics and emergency medical personnel and equipment. Often this could be the case due to circumstances external to the racetrack environment occurring in the neighboring communities. Again, while laudatory, perhaps some work can be done on the language to achieve the objective of having adequate emergency medical services, which is reasonably accomplished at this time, without risking racing dates important to the Association and the CTHBPA.

6. CTHBPA endorses all the changes in Sections 22.4 and 22.5 relating to gaps and gates, believing that the same brings West Virginia into conformity with industry standards.

7. Additional sections to the existing rule, 22.12. Racetrack and Racing Surface Data Collection, Recordkeeping, and Submission, and 22.13. Racetrack Surface Monitoring causes West Virginia to be compliant with uniform industry standards. They are best practices and should be followed. However, in order to implement the requirements of Rule 22.13.d.4, CTHBPA suggests that the WVRC cause a standard practices document to be created and, further, create a committee to include a representatives from each West Virginia Thoroughbred track with consideration to inclusion of a Racing Secretary, State Vet, Track Superintendent, HBPA representative, Jockey Guild representative and perhaps others as warranted to be part of any such committee. The importance of maintaining competent racetrack surfaces cannot be understated.

8. CTHBPA endorses the changes proposed in Sections 23.1 and 23.5 of the rules. The provisions in Section 23.5 are essential to ensure the safety of both human and equine elements of the Thoroughbred racing events. Again, these proposed changes represent best practice policies.

Letter to Joe Moore

Page 3

July 5, 2023

9. CTHBPA endorses the change contained in Section 24.4.b as logical and advantageous in addressing labor needs at WV Thoroughbred racetracks.

10. CTHBPA endorses the changes of Section 24.13 of the rule as essential safety measures for the protection of racing for those involved on the track before, during and after races.

11. CTHBPA opposes the changes contained in what is now identified as Section 28.2.e of the rule as relates to weight allowances for apprentice jockeys. It is the position of CTHBPA that the reduction in weight allowances shrinks the available jockey pool and prevents those aspiring to become jockeys an opportunity to gain the experience essential to establishing a racing career. It might also be noted that the shrinking of the jockey pool in this fashion is also an anti-competitive measure in terms of market entry for aspiring jockeys. Should the proposed changes to jockey weights be adopted, the likely circumstance will be that trainers will be limited in the number of apprentices they will hire for the purpose of riders getting the experience they need to achieve jockey status. In other words, it becomes a barrier to entry for aspiring riders and a handicap for trainers who need to develop new jockeys to work in West Virginia. The current system works as is and should be left in place as is.

12. Regarding the changes in Section 28.2.m, CTHBPA lodges no objection, but notes that the implementation of this change should be monitored to assure that enough jockeys are available and that the pool of jockeys for racing at Charles Town remains adequate to meet the demand for racing sustainable to meet the requirements of 180 days of live racing annually per statute.

13. CTHBPA strenuously objects to the proposed changes in Section 28.6 relating to Jockey Mount Fees. The effect of the proposed change is to double the actual share of winnings to which the service of a jockey is allocated based on performance, although split equally with a jockey who performs no service during the conduct of the race. The practical analysis is that the practice of determining which available jockey is selected for execution of a race is not one which is steeped in the formality of written contract. Owners/trainers seek out the best available jockey, but jockeys often initiate a change by walking away from an owner/trainer in favor of another horse perceived to have a higher chance of winning. While either circumstance occurs only occasionally, it is industry practice. Thoroughbred racing at all levels is a competitive sport, but the standards of conduct are primarily established through industry custom and practice. Owners, however, are the bedrock of live racing. They make truly risky investments that, unfortunately, do not have a high percentage of return on investment on an individual horse basis. In addition to acquisition or breeding costs, some horses, after 2 years or more of receiving feed, lodging, medical care, and training, never make it to a race. Doubling the labor cost on the very occasional circumstance where there is a change in jockeys for whatever reason and placing the decision on a steward who is not vested in the issue between jockey and owner/trainer as to why there was a change in jockeys, the circumstances leading up to the change, who initiated the change, what prior commitment was made one way or the other, becomes yet another set of disputed circumstances

to which the stewards must devote substantial time and energy to address a subject between competing business interests, which has nothing to do with the outcome of the race previously judged by the stewards. There is little fairness whatsoever in the proposed change and it leads to

Letter to Joe Moore

Page 4

July 5, 2023

significant alteration to current practice without sufficient consideration to the adverse ramifications it can cause to the quality of Thoroughbred racing in West Virginia. Does it act as a deterrent to attracting high quality horses to West Virginia tracks? Does it cause owners and trainers to concentrate their efforts to tracks in other nearby jurisdictions to avoid the risk of paying double the jockey share of winnings? Does it create contested environments over which WV stewards will spend considerable time adjudicating and resolving? From the perspective of the CTHBPA, this proposed change in the rule should be taken under advisement by the WV Racing Commission rather than advanced further in the rulemaking process. There are far too many potential unintended consequences to be considered before proceeding. At a minimum, the term "engages" as in section 28.6.c should be defined and "The fee to be paid is equal to that earned by the jockey who rode the horse," should not be fixed in that there could be factual circumstances which would justify something less. There could be contributory actions on the part of the jockey, which would disallow part or all of such a penalty. The actors involved should have some element of objectivity within the policy so that they know not just the rules of the game but matters to be taken into consideration by those who just their actions. Again, this is a subject that needs to have a better understanding of its ramifications for the live racing industry in West Virginia and to balance the interests of those involved from a fairness perspective.

14. As to the proposed change in Section 30.2.e, relating to the composition of the panel to conduct test regarding qualifications of blacksmiths, the position of CTHBPA is that the panel used to conduct blacksmith qualification tests should have at least one veterinarian on its panel, it understands the limitations of doing so because of a scarcity of veterinarians. For that reason, it does not oppose the proposed change, but believes the industry is better served if the language were such that in the event a member of the veterinarian community is unavailable or unwilling to serve as a member of the panel, the stewards may substitute an appointment of a person qualified via experience with Thoroughbred horses as a member of the panel.

15. CTHBPA endorses the proposed change to Section 38.5 and believes it adds additional opportunities for claimed horses within a brief window of time when racing opportunities are unavailable at a West Virginia racetrack.

16. CTHBPA endorses the proposed change to Section 39.1.h of the rule.

17. CTHBPA endorses the proposed change to Section 41.2.g relating to horses that have been scratched from a race due to sickness after the passage of five days following an event in which the horse was scratched or excused, and the horse has been removed from the veterinarian's list by a Racing Commission veterinarian.

18. CTHBPA supports the enhancements in jockey equipment provided for in proposed changes in Section 45.3.b and 45.3.c. The changes promote safety for the jockeys and should be promulgated.

19. Section 45.7.f.2 reflects a proposed change that is endorsed by CTHBPA. It places responsibility on any licensee to “take action to ensure that devices [electrical or mechanical devices] are not being used,” to increase or retard the speed of a horse. To date, this current rule relating to this Letter to Joe Moore
Page 5
July 5, 2023

subject has rarely, if ever, been applied. The proposed change imposes a compulsory obligation on any licensee to “take action to ensure that devices are not being used.” While that language may be lacking in specifics, it opens the door to further addressing a subject that has, apparently, not been actively addressed in practice.

20. CTHBPA supports the proposed change to Section 46.2.d as a means of expediting the posting and processing of objections filed by a jockey post-race.

21. As to the multiple proposed changes to the provisions of Section 49.7.a through 49.7.d of the rules, CTHBPA opposes, and strenuously objects to the rather complete overhaul of the current processes involving LASIX as a treatment to prevent bleeding in the lungs of Thoroughbred horses. It is the view of CTHBPA that the proposed changes constitute an additional layer of bureaucracy and administrative effort for horsemen, track management and veterinarians that is unnecessary. It clearly is intended to reduce the utilization of LASIX, which CTHBPA finds to be not in the best interests of the Thoroughbred racing stock at Charles Town. It is strongly urged that the West Virginia Racing Commission revisit the proposed changes in this section of the rule with involvement and input from the affected constituencies of veterinarians, horse owners and trainers, track management and jockey leaders.

22. Regarding the proposed changes in Section 49.7.e, CTHBPA is supportive of the proposed changes, noting that there is no scientific evidence that there is any performance enhancing properties in the use of race day LASIX. West Virginia Racing Commission Chairperson, Ken Lowe, has spoken of this fact multiple times in public forums. Specifically, the proposed changes in Section 49.7.e.1 create the flexibility to deal with various delays that often occur in race schedules which do result in scheduled races commencing well after the four-hour recommended efficacy for a LASIX treatment has expired. Reasons for this are varied and unpredictable. Such things as an accident on the track, a malfunction of equipment, weather conditions and changes in simulcast schedules occur without notice. To accommodate for these delays, some flexibility is created by virtue of the proposed changes in Section 49.7.e.1, while retaining sufficient oversight of the administration of the furosemide to the horse. It is noted that there could become issues associated with the specific gravity levels referenced in Section 40.7.e.10.A and 49.7.e.10.B, as accredited laboratories utilized within the processes required are oriented toward the changes made in the rule.

23. Regarding the proposed changes in Section 49.8 with reference to “Bleeder List,” CTHBPA has no objection.

24. As to the proposed changes in Sections 52.3.d.1 and 52.3.d.2, CTHBPA endorses these changes to reflect the distinction between “illness” of a horse and “unsoundness, injury or any other assessment or determination by a Racing Commission veterinarian that warrants withdrawal from

the race." It is believed this should cause more involved and rigorous review prior to removal from the Veterinarian's list of horses not permitted to race.

Letter to Joe Moore

Page 6

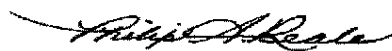
July 5, 2023

In conclusion, CTHBPA appreciates the efforts of the WV Racing Commission in administering the activities of live racing in West Virginia at a time when the challenges of operating in the live racing environment have become exceedingly stressful as a consequence of federal intervention via HISA (Horseracing Integrity and Safety Act) in what has heretofore been a state regulation driven activity. Further, it is equally important that evenly balanced public policy governing live racing reflect the needs of the host communities where live racing resides, particularly, Charles Town and Jefferson County, West Virginia, where thousands of Thoroughbreds and dozens of breeding farms exist. The Thoroughbreds give reason for general farming beyond Thoroughbred farms. Farming to raise hay, straw, and soybeans generates jobs and income for families as money flows from owners and trainers of Thoroughbreds to more general farming interests for those commodities. Farming in Jefferson County is the catalyst for significant economic impact in. Approximately 2000 people in the Jefferson County area hold licenses from the West Virginia Racing Commission to work at the Charles Town track. Banks, farm supply stores, farm equipment dealers, retailers of all descriptions, convenience stores, hotels, restaurants, veterinarians and related personnel, blacksmiths, jockeys, exercise riders, stable hands and more in Jefferson County and surrounding area derive significant financial benefit from the operation of live racing. It is estimated that nearly 3000 jobs in the area are dependent on live racing.

For the sake of the jobs and families dependent on those jobs, the health of the local economy and the investments made in agricultural pursuits in West Virginia's eastern panhandle, including owners, breeders and trainers of Thoroughbred horses, it is vital that the laws, rules and regulations imposed on horse racing be thoroughly vetted and reasonably applied to champion the activity and to make it as safe for human actors and as humane for the equine athletes as is possible. Those objectives are not mutually exclusive.

Again, with thanks and respect for the work of the West Virginia Racing Commission, on behalf of Charles Town HBPA, I herewith provide you with public comments on the published changes to 178-1 of the Code of State Regulations.

Respectfully Submitted,



Philip A. Reale

For Charles Town HBPA

CC: Jim Miller, Pres. CTHBPA
Maria Catignani, Ex. Dir. CTHBPA

From: **MCINTOSH, CHARLES** <CHARLES.MCINTOSH@pennentertainment.com>
Date: Thu, Jul 6, 2023 at 4:55 PM
Subject: Rules
To: Joe K. Moore (joe.k.moore@wv.gov) <joe.k.moore@wv.gov>

Attached are HCCTR comments regarding the proposed rule changes.

Charlie McIntosh

Director of Racing Operations



Hollywood Casino at Charles Town Races

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PROPOSED RULES CHANGES

COMMENTS

Section 22.1.b and 22.1.c: The suggested requirement for two (2) certified paramedics during racing could prove difficult for the association to staff. HCCTR has operated in a very safe manner and has been able to respond to medical emergencies operating with one certified paramedic for some time. The reality is there is a shortage of certified paramedics much like the shortage of large animal veterinarians. In addition, Charles Town is a compact facility located within 3-4 minutes from Jefferson Memorial Hospital. In the event our certified paramedic is needed for transport, because of our close proximity to the hospital, racing can be paused until the return of the ambulance. We can foresee this requirement for two certified paramedics during racing resulting in cancellation of racing performances. Suggest wording to the effect that the WVRC approve staffing levels necessary to ensure each association has adequate medical staffing.

Section 23.5: Propose eliminating "and training tracks" from the wording. While HCCTR has an operational emergency warning system in place for our racetrack, our training track does not. The training track is 3/8th of a mile in circumference and just 45' in width with a clear view through the infield. One has a clear line of sight from anywhere on the training track.

Section 28.6.c: Propose leaving the wording as is. This change creates an excessive monetary penalty for the owner. For example, in certain stake races should the horse win it is possible an owner would be required to pay thousands. The winning jockey for Charles Town Classic receives \$60,000, with this rule it would be possible the owner would be required to pay an additional \$60,000. Furthermore, it is not as cut and dried when determining whether a trainer has engaged more than one rider or "call".

Section 38.5: Support the addition of wording in this section.

Section 46.2.d Support the change allowing us to expedite the time adjudicating a claim of foul and therefore time in between races and also becoming more uniform within the country.

Section 49.7.f.1: With the ongoing debate regarding Lasix and resulting in differing rules allowing for Lasix in certain jurisdictions and not allowing it in others especially in certain races this will allow the trainers to compete in more equitable manner. Support the change.