



TEXAS RACING COMMISSION

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Austin, TX 78711-2080
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Texas Racing Commission
Tuesday, January 21, 2020
10:30 a.m.
Texas Capitol Extension, Room E1.010
1100 Congress Avenue
Austin, TX 78701

AGENDA

I. CALL TO ORDER

Roll Call

II. PUBLIC COMMENT

III. GENERAL BUSINESS

- A. Election of Vice Chair
- B. Discussion and consideration of reports by the Executive Director and staff regarding administrative matters:
 - 1. Budget and finance
 - 2. Wagering statistics
 - 3. Enforcement

IV. PROCEEDINGS ON RULES

- A. Discussion and possible action to adopt the following rule items proposed in the November 15, 2019, issue of the *Texas Register*:
 - 1. new 16 TAC § 309.106, Transfers to Texas-Bred Incentive Fund
 - 2. amendments to 16 TAC § 311.2, Application Procedure
- B. Discussion and possible action to propose:
 - 1. amendments to 16 TAC § 311.1, Occupational Licenses

2. amendments to 16 TAC § 313.409, Jockey Mount Fees
3. amendments to 16 TAC § 309.206, Rails

V. PROCEEDINGS ON RACETRACKS

- A. Discussion and possible action regarding allocation of additional race days and race day fees under 16 TAC § 309.8
- B. Discussion and possible action regarding LRP Group, Ltd., et al. v. Texas Racing Commission et al.

VI. PROCEEDINGS ON THE HORSE INDUSTRY ESCROW ACCOUNT

Discussion and possible action to allocate funds in the horse industry escrow account to state horse breed registries under 16 TAC Chapter 303, Subchapter G

VII. PROCEEDINGS ON OCCUPATIONAL LICENSES

Discussion and possible action regarding:

- A. The proposal for decision in SOAH No. 0476-19-2614, Sigifredo Gonzalez Jr. v. Texas Racing Commission
- B. The proposal for decision in SOAH No 0476-19-6054, George Bryant v. Texas Racing Commission
- C. Motions for rehearing in SOAH No. 0476-18-1010, Judd Kearl v. Texas Racing Commission and SOAH No. 0476-18-1011, Jose Sanchez v. Texas Racing Commission

VIII. EXECUTIVE SESSION

The following items may be discussed and considered in executive session or open meeting, with any action taken in the open meeting:

- A. Under Texas Government Code § 551.071(1), the Commission may enter an executive session to seek the advice of its attorney regarding pending or contemplated litigation, or regarding a settlement offer.
- B. Under Texas Government Code § 551.071(2), the Commission may enter an executive session to discuss all matters identified in this agenda where the commission seeks the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. This may include, but is not limited to, legal advice regarding the Open Meetings Act, the Administrative Procedures Act, and the Texas Racing Act.
- C. Under Tex. Occ. Code § 2025.005, the Commission may enter an executive session to review security plans and management, concession, and totalisator contracts.

IX. SCHEDULING OF NEXT COMMISSION MEETING

X. ADJOURN

I. CALL TO ORDER

Roll Call

II. PUBLIC COMMENT

III. GENERAL BUSINESS

- A. Election of Vice Chair
- B. Discussion and consideration of reports by the Executive Director and staff regarding administrative matters:
 - 1. Budget and finance
 - 2. Wagering statistics
 - 3. Enforcement

[<<Prev Rule](#)[Next Rule>>](#)

Texas Administrative Code

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 303	GENERAL PROVISIONS
SUBCHAPTER A	ORGANIZATION OF THE COMMISSION
RULE §303.6	Commission Officers

(a) In January of even-numbered years, the commission shall elect one of the members to serve as vice-chair for a term of two years.

(b) In the event of a vacancy in the office of vice-chair, the vacancy shall be filled for the unexpired term on majority vote of the commission at the next regular meeting of the commission.

(c) In the absence of the chair and vice-chair from a meeting of the commission, the remaining members shall elect a pro-tem presiding officer who shall serve until the conclusion of the meeting or until the arrival of the chair or vice-chair.

Source Note: The provisions of this §303.6 adopted to be effective November 15, 1988, 13 TexReg 5557; amended to be effective June 1, 1992, 17 TexReg 3728; amended to be effective January 1, 1999, 23 TexReg 12911

[List of Titles](#)[Back to List](#)[HOME](#)[TEXAS REGISTER](#)[TEXAS ADMINISTRATIVE CODE](#)[OPEN MEETINGS](#)

Texas Racing Commission

FYE 08/31/2020
Operating Budget Status
by LBB Expenditure Object/Codes

OBS-1

Strategy	Program Description	FY 2020 Annual Budget	FY 2020 Expended Thru 11/30/2019	FY 2020 Unexpended Bal 8/31/2020	With 25.0% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.1.1.	- FTE's = 4.00 <u>Regulate Racetrack Owners</u>				
Base Appr =	1001 Salaries and Wages	355,440.96	88,860.24	266,580.72	25.00%
\$ 373,628.00	1002 Other Personnel Cost	5,740.00	1,400.00	4,340.00	24.39%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 373,628.00	2005 Travel	3,350.00	521.71	2,828.29	15.57%
Budgeted =	2006 Rent Building	-	-	-	
\$ 373,628.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	9,097.04	1,799.90	7,297.14	19.79%
0.00	CB Computer Equipment	-	-	-	
0.00%	Total Strategy A.1.1.	373,628.00	92,581.85	281,046.15	24.78%
<i>Appropriated</i> A.2.1.	0 FTE's = 0 <u>Texas Bred Incentive</u>				
Acct 327	ATB Money Expended	3,130,000.00	609,897.32	2,520,102.68	19.49%
3,130,000.00	Total Strategy A.2.1.	3,130,000.00	609,897.32	2,520,102.68	19.49%
<i>Appropriated</i> A.3.1.	(0.05) FTE's = 5.50 <u>Supervise Racing and Licensees</u>				
Base Appr =	1001 Salaries and Wages	333,780.44	74,569.18	259,211.26	22.34%
\$ 465,909.00	1002 Other Personnel Cost	8,700.00	2,100.00	6,600.00	24.14%
Sup Appr =	2001 Prof Fees and Services	30,515.00	-	30,515.00	0.00%
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 465,909.00	2005 Travel	77,300.00	5,014.76	72,285.24	6.49%
Budgeted =	2006 Rent Building	-	-	-	
\$ 462,062.14	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	11,766.70	1,675.90	10,090.80	14.24%
(3,846.86)	CB Computer Equipment	-	-	-	
-0.83%	Total Strategy A.3.1.	462,062.14	83,359.84	378,702.30	18.04%
<i>Appropriated</i> A.3.2.	0.60 FTE's = 4.20 <u>Monitor Occupational Licensee Act.</u>				
Base Appr =	1001 Salaries and Wages	245,328.10	42,532.39	202,795.71	17.34%
\$ 303,586.00	1002 Other Personnel Cost	1,200.00	180.00	1,020.00	15.00%
Sup Appr =	2001 Prof Fees and Services	1,000.00	670.00	330.00	67.00%
\$ -	2003 Consumables	500.00	253.27	246.73	50.65%
Total Appr =	2004 Utilities	-	-	-	
\$ 303,586.00	2005 Travel	40,868.00	3,086.89	37,781.11	7.55%
Budgeted =	2006 Rent Building	-	-	-	
\$ 303,586.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	14,689.90	2,811.67	11,878.23	19.14%
\$ 0.00	CB Computer Equipment	-	-	-	
0.00%	Total Strategy A.3.2.	303,586.00	49,534.22	254,051.78	16.32%
<i>Appropriated</i> A.4.1.	0.20 FTE's = 3.20 <u>Inspect and Provide Emerg. Care</u>				
Base Appr =	1001 Salaries and Wages	191,800.08	32,950.02	158,850.06	17.18%
\$ 282,235.00	1002 Other Personnel Cost	3,360.00	840.00	2,520.00	25.00%
Sup Appr =	2001 Prof Fees and Services	70,700.00	11,300.00	59,400.00	15.98%
\$ -	2003 Consumables	300.00	-	300.00	
Total Appr =	2004 Utilities	-	-	-	
\$ 282,235.00	2005 Travel	38,085.00	3,691.66	34,393.34	9.69%
Budgeted =	2006 Rent Building	-	-	-	
\$ 312,422.08	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	8,177.00	744.25	7,432.75	9.10%
\$ 30,187.08	CB Computer Equipment	-	-	-	
10.70%	Total Strategy A.4.1.	312,422.08	49,525.93	262,896.15	15.85%

Texas Racing Commission

FYE 08/31/2020
Operating Budget Status
by LBB Expenditure Object/Codes

OBS-2

Strategy	Program Description	FY 2020 Annual Budget	FY 2020 Expended Thru 11/30/2019	FY 2020 Unexpended Bal 8/31/2020	With 25.0% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.4.2.	- FTE's = 2.60				
	<u>Administer Drug Testing</u>				
Base Appr =	1001 Salaries and Wages	144,455.76	34,235.16	110,220.60	23.70%
\$ 206,721.00	1002 Other Personnel Cost	620.00	120.00	500.00	19.35%
Sup Appr =	2001 Prof Fees and Services	500.00	-	500.00	0.00%
\$ -	2003 Consumables	200.00	64.79	135.21	32.40%
Total Appr =	2004 Utilities	-	-	-	
\$ 206,721.00	2005 Travel	40,613.00	4,025.82	36,587.18	9.91%
Budgeted =	2006 Rent Building	-	-	-	
\$ 200,705.60	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	14,316.84	677.94	13,638.90	4.74%
\$ (6,015.40)	CB Computer Equipment	-	-	-	
-2.91%	Total Strategy A.4.2.	200,705.60	39,123.71	161,581.89	19.49%
<i>Appropriated</i> B.1.1.	- FTE's = 5.00				
	<u>Occupational Licensing</u>				
Base Appr =	1001 Salaries and Wages	186,483.84	46,620.96	139,862.88	25.00%
\$ 344,130.00	1002 Other Personnel Cost	4,760.00	1,120.00	3,640.00	23.53%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	2,500.00	1,144.00	1,356.00	45.76%
Total Appr =	2004 Utilities	-	-	-	
\$ 344,130.00	2005 Travel	14,600.00	902.38	13,697.62	6.18%
Budgeted =	2006 Rent Building	-	-	-	
\$ 321,141.10	2007 Rent Machine	2,000.00	393.75	1,606.25	19.69%
Difference	2009 Other Operating Cost	110,797.26	11,669.36	99,127.90	10.53%
\$ (22,988.90)	CB Computer Equipment	-	-	-	
-6.68%	Total Strategy B.1.1.	321,141.10	61,850.45	259,290.65	19.26%
<i>Appropriated</i> B.1.2.	- FTE's = 0				
	<u>Texas OnLine</u>				
Base Appr =	1001 Salaries and Wages	-	-	-	
\$ 17,500.00	1002 Other Personnel Cost	-	-	-	
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 17,500.00	2005 Travel	-	-	-	
Budgeted =	2006 Rent Building	-	-	-	
\$ 17,500.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	17,500.00	2,131.00	15,369.00	12.18%
\$ -	CB Computer Equipment	-	-	-	
0.00%	Total Strategy B.1.2.	17,500.00	2,131.00	15,369.00	12.18%
<i>Appropriated</i> C.1.1.	- FTE's = 4.00				
	<u>Monitor Wagering and Audit</u>				
Base Appr =	1001 Salaries and Wages	230,205.20	57,337.59	172,867.61	24.91%
\$ 260,794.00	1002 Other Personnel Cost	8,700.00	2,160.00	6,540.00	24.83%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 260,794.00	2005 Travel	6,000.00	467.21	5,532.79	7.79%
Budgeted =	2006 Rent Building	-	-	-	
\$ 260,358.28	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	15,453.08	2,380.04	13,073.04	15.40%
\$ (435.72)	CB Computer Equipment	-	-	-	
-0.17%	Total Strategy C.1.1.	260,358.28	62,344.84	198,013.44	23.95%

Texas Racing Commission

FYE 08/31/2020
Operating Budget Status
by LBB Expenditure Object/Codes

OBS-3

Strategy	Program Description	FY 2020 Annual Budget	FY 2020 Expended Thru 11/30/2019	FY 2020 Unexpended Bal 8/31/2020	With 25.0% of Year Lapsed % of Budget Expended
<i>Appropriated</i> D.1.1.	1.00 FTE's = 7.00 <u>Central Administration</u>				
Base Appr =	1001 Salaries and Wages	442,572.10	94,637.26	347,934.84	21.38%
\$ 723,926.00	1002 Other Personnel Cost	7,600.00	1,560.00	6,040.00	20.53%
Sup Appr =	2001 Prof Fees and Services	25,500.00	2,401.34	23,098.66	9.42%
\$ -	2003 Consumables	8,000.00	1,354.99	6,645.01	16.94%
Total Appr =	2004 Utilities	51,000.00	9,081.15	41,918.85	17.81%
\$ 723,926.00	2005 Travel	9,000.00	1,467.44	7,532.56	16.30%
Budgeted =	2006 Rent Building	105,470.00	26,235.87	79,234.13	24.88%
\$ 739,435.28	2007 Rent Machine	1,700.00	1,414.06	285.94	83.18%
Difference	2009 Other Operating Cost	88,593.18	19,871.11	68,722.07	22.43%
\$ 15,509.28	CB Computer Equipment	-	-	-	0.00%
2.14%	Total Strategy D.1.1.	739,435.28	158,023.22	581,412.06	21.37%
<i>Appropriated</i> D.1.2.	- FTE's = 3.80 <u>Information Resources</u>				
Base Appr =	1001 Salaries and Wages	242,587.76	40,160.51	202,427.25	16.56%
\$ 546,788.00	1002 Other Personnel Cost	3,180.00	780.00	2,400.00	24.53%
Sup Appr =	2001 Prof Fees and Services	191,702.00	130,671.00	61,031.00	68.16%
\$ -	2003 Consumables	500.00	-	500.00	0.00%
Total Appr =	2004 Utilities	-	-	-	0.00%
\$ 546,788.00	2005 Travel	2,400.00	92.00	2,308.00	3.83%
Budgeted =	2006 Rent Building	500.00	-	500.00	0.00%
\$ 531,271.19	2007 Rent Machine	-	-	-	0.00%
Difference	2009 Other Operating Cost	90,401.43	25,942.03	64,459.40	28.70%
\$ (15,516.81)	CB Computer Equipment	-	-	-	0.00%
-2.84%	Total Strategy D.1.2.	531,271.19	197,645.54	333,625.65	37.20%
<i>Appropriated</i> D.1.3.	FTE's = 39.30 <u>Other Support Services</u>				
Base Appr =	1001 Salaries and Wages	-	-	-	-
\$ 6,655,217.00	1002 Other Personnel Cost	-	-	-	-
Sup Appr =	2001 Prof Fees and Services	-	-	-	-
\$ -	2003 Consumables	-	-	-	-
Total Appr =	2004 Utilities	-	-	-	-
\$ 6,655,217.00	2005 Travel	-	-	-	-
Budgeted =	2006 Rent Building	-	-	-	-
\$ 6,652,109.68	2007 Rent Machine	-	-	-	-
Difference	2009 Other Operating Cost	-	-	-	-
\$ (3,107.32)	CB Computer Equipment	-	-	-	-
-0.05%	Total Strategy D.1.3.	-	-	-	-
\$ 3,525,217	Regulatory Program Operating Budget	3,522,109.68	796,120.60	2,294,986.41	22.60%
\$ 3,130,000	TX Bred (Fund 327) Operating Budget	3,130,000.00	609,897.32	2,520,102.68	19.49%
\$ 6,655,217	Total M.O.F. (TXRC Acct. 597 & GR)	6,652,109.68	1,406,017.92	4,815,089.09	21.14%
	Total All Programs Operating Budget				

Texas Racing Commission

FYE 08/31/2020
Operating Budget Status
by LBB Expenditure Object/Codes

OBS-4

Strategy	Program Description	FY 2020 Annual Budget	FY 2020 Expended Thru 11/30/2019	FY 2020 Unexpended Bal 8/31/2020	With 25.0% of Year Lapsed % of Budget Expended
\$ -	1.75 FTE's = 39.30				
<i>Appropriated</i>	Direct Expense of Regulatory Programs				
	1001 Salaries and Wages	2,372,654.24	511,903.31	1,860,750.93	21.58%
	1002 Other Personnel Cost	43,860.00	10,260.00	33,600.00	23.39%
	2001 Prof Fees and Services	319,917.00	145,042.34	174,874.66	45.34%
	2003 Consumables	12,000.00	2,817.05	9,182.95	23.48%
	2004 Utilities	51,000.00	9,081.15	41,918.85	17.81%
	2005 Travel	232,216.00	19,269.87	212,946.13	8.30%
	2006 Rent Building	105,970.00	26,235.87	79,734.13	24.76%
	2007 Rent Machine	3,700.00	1,807.81	1,892.19	48.86%
	2009 Other Operating Cost	380,792.44	69,703.20	311,089.24	18.30%
	CB Computer Equipment	-	-	-	0.00%
\$ 3,525,217	Total Direct Expense of Regulatory Program	3,522,109.68	796,120.60	2,725,989.08	22.60%
\$ 3,130,000	FTE's = - Direct Expense of TX Bred Program	3,130,000.00	609,897.32	2,520,102.68	19.49%
\$ 6,655,217	1.75 FTE's = 39.30 Total Direct Expense of All Programs	6,652,109.68	1,406,017.92	5,246,091.76	21.14%
\$ -	Indirect Expense of All Programs				
<i>Un-Appropriated</i>	OASI Match	181,508.05	38,510.88	142,997.17	21.22%
	Group Insurance	260,000.00	62,046.59	197,953.41	23.86%
	State Retirement	188,090.89	41,374.45	146,716.44	22.00%
	Benefit Replacement	2,053.72	-	2,053.72	0.00%
	ERS Retiree Insurance	414,000.00	104,271.35	309,728.65	25.19%
	SWCAP GR Reimburse	-	-	-	0.00%
	Unemployment Cost	916.49	916.49	-	100.00%
	Other	-	-	-	-
\$ 1,046,569	Total Indirect Expense of All Programs	1,046,569.15	247,119.76	799,449.39	23.61%
\$ 7,701,786	Total Direct and Indirect Expense of All Programs	7,698,678.83	1,653,137.68	6,045,541.15	21.47%

Source Of Funds	Agency Method Of Finance	FY 2020 Projected Revenue	FY 2020 Actual Revenue Thru 11/30/2019	N/A	With 25.0% of Year Lapsed % of Revenue Collected
	Regulatory Program MOF:				
Acct. 597	Cash Balance Carry Forward	\$ 70,000.00	\$ 70,000.00		n/a
Acct. 597	Live Race Day Fees	\$ -	\$ -		
Acct. 597	Simulcast Race Day Fees	\$ 2,568,224.11	\$ 604,920.88		
Acct. 597	Annual License Fees (Active & Inactive)	\$ 1,923,436.74	\$ 925,936.50		48.14%
Acct. 597	Outs	\$ -	\$ -		
Acct. 597	Occupational License Fees and Fines	\$ 555,750.00	\$ 125,225.75		22.53%
Acct. 597	Other Revenue	\$ 18,000.00	\$ 1,094.72		6.08%
Acct. 1	GR Funds	\$ -	\$ -		
	Sub-Total Regulatory Prgm. MOF	\$ 5,135,410.85	\$ 1,727,177.85		33.63%
	Texas Bred Program MOF:				
Acct. 327	Cash Balance Carry Forward	\$ -	\$ -		
Acct. 327	Breakage and 1% Exotic	\$ 3,130,000.00	\$ 609,897.32		19.49%
Acct. 327	Other	\$ -	\$ -		
	Sub-Total Texas Bred Prgm. MOF	\$ 3,130,000.00	\$ 609,897.32		19.49%
All Sources	Total MOF	\$ 8,265,410.85	\$ 2,337,075.17		28.28%
	MOF Estimated to Exceed or (Fall-Short of Covering) Direct & Indirect Expenses of Operating Budget	\$ 566,732.02	\$ 683,937.49		



Fiscal Year 2020 Operational Budget

Updated: December 16, 2019
Thru: November 30, 2019

Summary of Operating Revenue

By Revenue Type:	Budget	Collected	Suspended	Uncollected Balance	%
Accounts 597 & 327 Racing Commission - GRD	\$ 8,265,411	\$ 2,337,075	\$ -	\$ 5,928,336	72%
Account 1 - State of Texas - GR	\$ -	\$ -	\$ -	\$ -	
TOTAL - ALL REVENUES	\$ 8,265,411	\$ 2,337,075	\$ -	\$ 5,928,336	72%

Summary of Appropriated Operating Expenses

	Budget	Expended	Encumbered	Unexpended Balance	%
1001 - Salaries and Wages:	\$ 2,372,654	\$ 511,903	\$ -	\$ 1,860,751	78%
1002 - Other Personnel Cost:	\$ 43,860	\$ 10,260	\$ -	\$ 33,600	77%
2001 - Professional Fees and Services:	\$ 319,917	\$ 145,042	\$ -	\$ 174,875	55%
2003 - Consumable Supplies:	\$ 12,000	\$ 2,817	\$ -	\$ 9,183	77%
2004 - Utilities:	\$ 51,000	\$ 9,081	\$ -	\$ 41,919	82%
2005 - Travel:	\$ 232,216	\$ 19,270	\$ -	\$ 212,946	92%
2006 - Rent Building:	\$ 105,970	\$ 26,236	\$ -	\$ 79,734	75%
2007 - Rent Machine and Other:	\$ 3,700	\$ 1,808	\$ -	\$ 1,892	51%
2009 - Other Operating Expense:	\$ 380,792	\$ 69,703	\$ -	\$ 311,089	82%
4000 - Grants (ATB now Fund 327 - 86th Leg. Ses.)	\$ 3,130,000	\$ 609,897	\$ -	\$ 2,520,103	81%
5000 - Capital Expenditures:	\$ -	\$ -	\$ -	\$ -	0.00%
TOTAL - APPROPRIATED OPERATING EXPENDITURES	\$ 6,652,110	\$ 1,406,018	\$ -	\$ 5,246,092	79%

Unappropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
TOTAL - ALL UNAPPROPRIATED EXPENDITURES	\$ 1,046,569	\$ 247,120	\$ -	\$ 799,449	76%
TOTAL - ALL EXPENDITURES	\$ 7,698,679	\$ 1,653,138	\$ -	\$ 6,045,541	79%
OPERATING SURPLUS / (DEFICIT)	\$ 566,732	\$ 683,937			

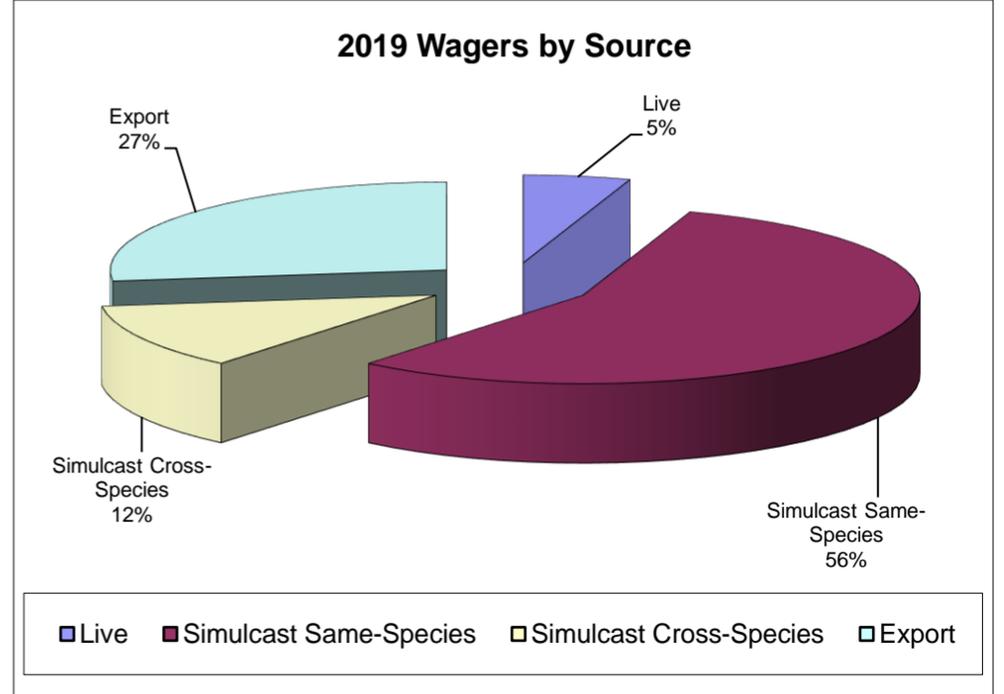
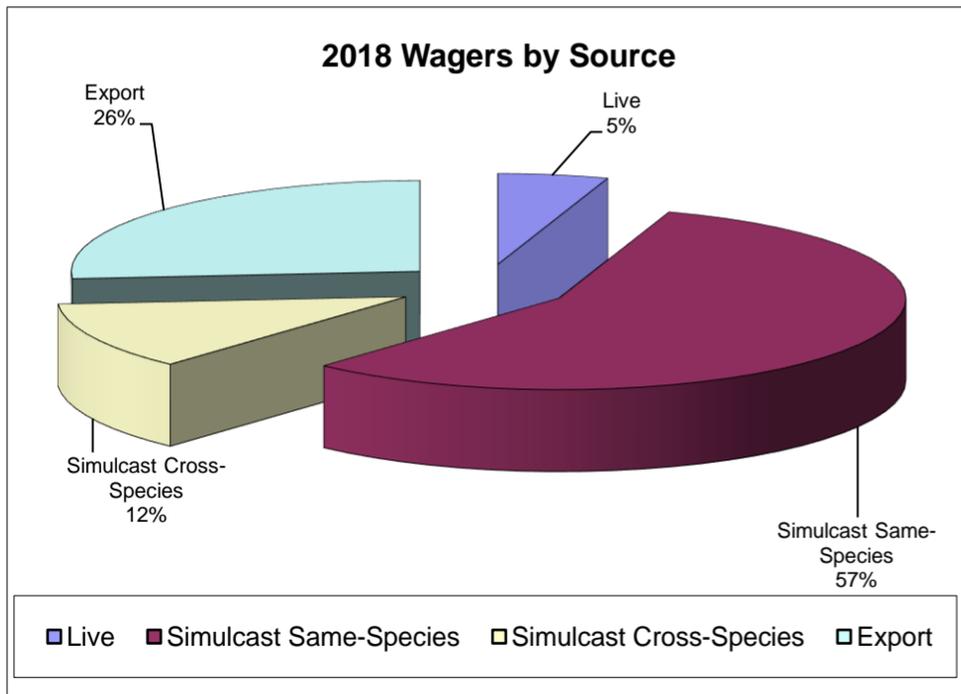
Summary of FTE's

By Fiscal Quarter:	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Authorized FTE's	37.55	37.55	37.55	37.55
Budgeted FTE's	39.30	39.30	39.30	39.30
Actual FTE's	31.60	0.00	0.00	0.00
Actual FTE's Over / (Under) Budget	7.70	n/a	n/a	n/a
Actual FTE's Over / (Under) Authorization	5.95	n/a	n/a	n/a



Texas Pari-Mutuel Racetracks Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races For the Period of January 1 through December 31

	Year 2018			Year 2019			Percentage Change	
	# Days	Wagers (Handle)*		# Days	Wagers (Handle)*		Wagers (Handle)	
		Total	Average per day		Total	Average per day	Total	Average per day
Greyhound Racetracks								
Live	36	\$ 662,778	\$ 18,410	32	\$ 524,910	\$ 16,403	-20.80%	-10.90%
Simulcast Same-Species	927	\$ 22,277,642	\$ 24,032	930	\$ 20,685,941	\$ 22,243	-7.14%	-7.44%
Simulcast Cross-Species	927	\$ 16,670,025	\$ 17,983	930	\$ 16,527,485	\$ 17,771	-0.86%	-1.17%
Export	36	\$ 1,227,332	\$ 34,093	32	\$ 1,963,797	\$ 61,369	60.01%	80.01%
Total Wagers		\$ 40,837,777			\$ 39,702,133		-2.78%	
Horse Racetracks								
Live	142	\$ 19,133,052	\$ 134,740	147	\$ 18,605,013	\$ 126,565	-2.76%	-6.07%
Simulcast Same-Species	1,295	\$ 196,969,350	\$ 152,100	1,297	\$ 186,646,880	\$ 143,907	-5.24%	-5.39%
Simulcast Cross-Species	1,292	\$ 29,544,878	\$ 22,868	1,293	\$ 28,084,868	\$ 21,721	-4.94%	-5.02%
Export	134	\$ 100,511,589	\$ 750,086	139	\$ 98,274,631	\$ 707,012	-2.23%	-5.74%
Total Wagers		\$ 346,158,870			\$ 331,611,392		-4.20%	
All Racetracks								
Live	178	\$ 19,795,830	\$ 111,213	179	\$ 19,129,924	\$ 106,871	-3.36%	-3.90%
Simulcast Same-Species	2,222	\$ 219,246,992	\$ 98,671	2,227	\$ 207,332,821	\$ 93,100	-5.43%	-5.65%
Simulcast Cross-Species	2,219	\$ 46,214,903	\$ 20,827	2,223	\$ 44,612,353	\$ 20,069	-3.47%	-3.64%
Export	170	\$ 101,738,921	\$ 598,464	171	\$ 100,238,428	\$ 586,190	-1.47%	-2.05%
Total Wagers		\$ 386,996,647			\$ 371,313,526		-4.05%	
Total Wagers Placed in Texas		\$ 285,257,726			\$ 271,075,097		-4.97%	
Total Wagers Placed on Texas Races		\$ 121,534,751			\$ 119,368,352		-1.78%	



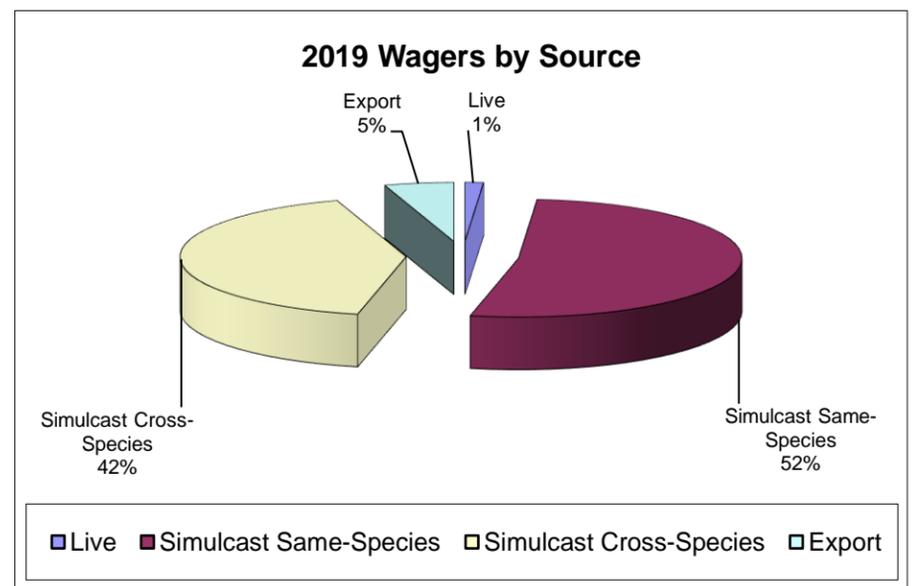
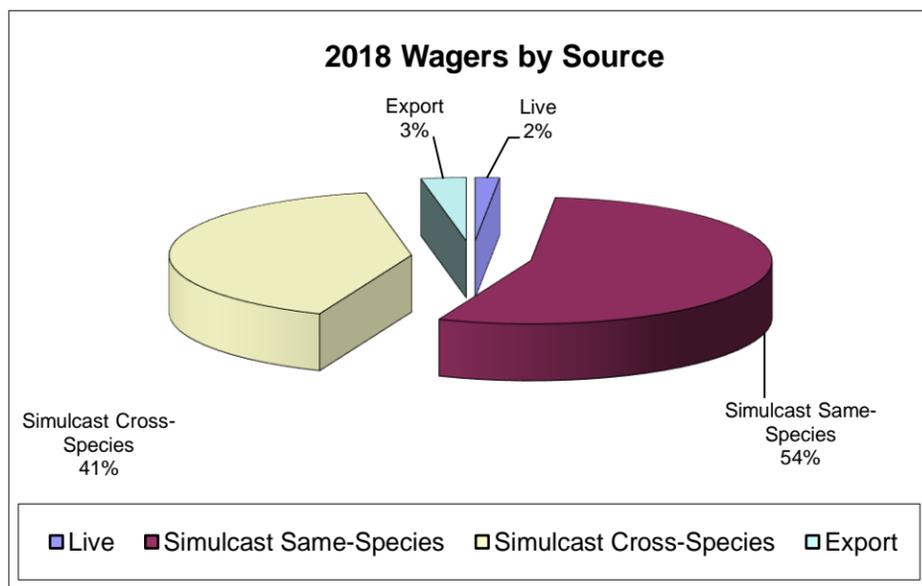
*NOTE: All figures are based on data available at the time the report was compiled and are subject to being audited and revised.



Greyhound Racetrack Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races

For the Period of January 1 through December 31

	Year 2018			Year 2019			Percentage Change	
	# Days	Wagers (Handle)*		# Days	Wagers (Handle)*		Wagers (Handle)	
		Total	Average per day		Total	Average per day	Total	Average per day
Gulf Coast Racing								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	257	\$ 7,278,870	\$ 28,322	259	\$ 7,343,723	\$ 28,354	0.89%	0.11%
Simulcast Cross-Species	257	\$ 3,584,700	\$ 13,948	259	\$ 4,062,096	\$ 15,684	13.32%	12.44%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Total Wagers		\$ 10,863,571			\$ 11,405,819		4.99%	
Gulf Greyhound Park								
Live	36	\$ 662,778	\$ 18,410	32	\$ 524,910	\$ 16,403	-20.80%	-10.90%
Simulcast Same-Species	359	\$ 9,774,262	\$ 27,226	361	\$ 8,662,667	\$ 23,996	-11.37%	-11.86%
Simulcast Cross-Species	359	\$ 8,234,504	\$ 22,937	361	\$ 7,330,644	\$ 20,306	-10.98%	-11.47%
Export	36	\$ 1,227,332	\$ 34,093	32	\$ 1,963,797	\$ 61,369	60.01%	80.01%
Total Wagers		\$ 19,898,875			\$ 18,482,018		-7.12%	
Valley Race Park								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	311	\$ 5,224,510	\$ 16,799	310	\$ 4,679,552	\$ 15,095	-10.43%	-10.14%
Simulcast Cross-Species	311	\$ 4,850,821	\$ 15,597	310	\$ 5,134,745	\$ 16,564	5.85%	6.19%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Total Wagers		\$ 10,075,330			\$ 9,814,297		-2.59%	
All Greyhound Tracks								
Live	36	\$ 662,778	\$ 18,410	32	\$ 524,910	\$ 16,403	-20.80%	-10.90%
Simulcast Same-Species	927	\$ 22,277,642	\$ 24,032	930	\$ 20,685,941	\$ 22,243	-7.14%	-7.44%
Simulcast Cross-Species	927	\$ 16,670,025	\$ 17,983	930	\$ 16,527,485	\$ 17,771	-0.86%	-1.17%
Export	36	\$ 1,227,332	\$ 34,093	32	\$ 1,963,797	\$ 61,369	60.01%	80.01%
Total Wagers		\$ 40,837,777			\$ 39,702,133		-2.78%	
Total Wagers Placed in Texas		\$ 39,610,445			\$ 37,738,336		-4.73%	
Total Wagers Placed on Texas Races		\$ 1,890,110			\$ 2,488,707		31.67%	

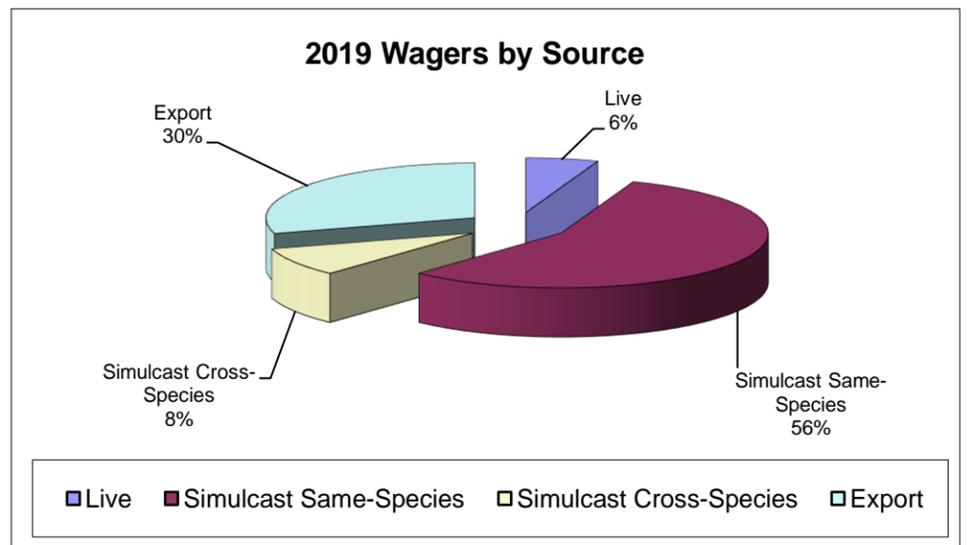
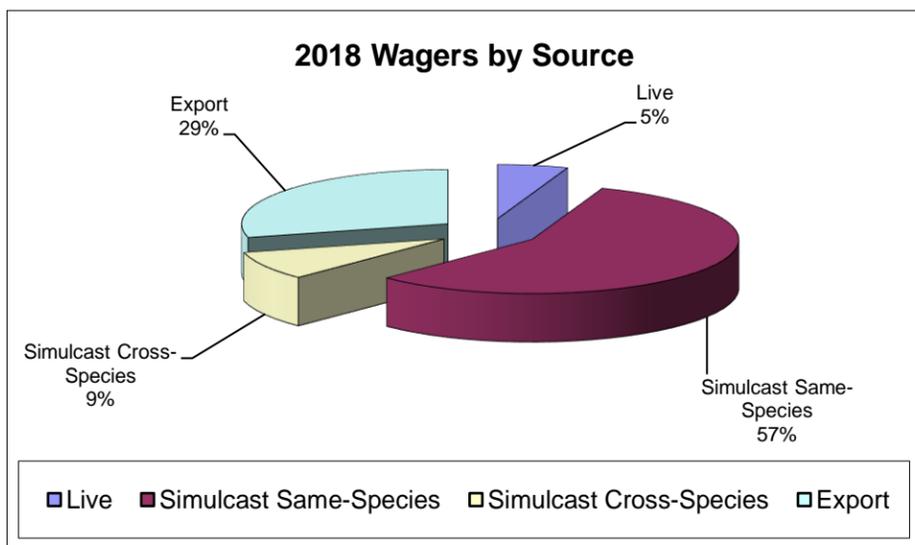


*NOTE: All figures are based on data available at the time the report was compiled and are subject to being audited and revised.



Horse Racetrack Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races For the Period of January 1 through December 31

	Year 2018			Year 2019			Percentage Change	
	# Days	Wagers (Handle)*		# Days	Wagers (Handle)*		Wagers (Handle)	
		Total	Average per day		Total	Average per day	Total	Average per day
Gillespie County Fair								
Live	8	\$ 1,186,056	\$ 148,257	8	\$ 1,100,819	\$ 137,602	-7.19%	-7.19%
Simulcast Same-Species	208	\$ 4,132,849	\$ 19,869	208	\$ 3,839,079	\$ 18,457	-7.11%	-7.11%
Simulcast Cross-Species	208	\$ 567,486	\$ 2,728	208	\$ 579,326	\$ 2,785	2.09%	2.09%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Total Wagers		\$ 5,886,392			\$ 5,519,225		-6.24%	
Lone Star Park								
Live	57	\$ 12,093,574	\$ 212,168	59	\$ 11,537,037	\$ 195,543	-4.60%	-7.84%
Simulcast Same-Species	363	\$ 99,919,804	\$ 275,261	363	\$ 96,257,186	\$ 265,171	-3.67%	-3.67%
Simulcast Cross-Species	362	\$ 6,863,452	\$ 18,960	361	\$ 7,698,192	\$ 21,325	12.16%	12.47%
Export	57	\$ 41,680,311	\$ 731,234	59	\$ 39,935,914	\$ 676,880	-4.19%	-7.43%
Total Wagers		\$ 160,557,141			\$ 155,428,330		-3.19%	
Retama Park								
Live	25	\$ 1,531,629	\$ 61,265	28	\$ 1,614,552	\$ 57,663	5.41%	-5.88%
Simulcast Same-Species	362	\$ 32,274,310	\$ 89,156	363	\$ 29,767,014	\$ 82,003	-7.77%	-8.02%
Simulcast Cross-Species	361	\$ 5,491,810	\$ 15,213	362	\$ 5,158,639	\$ 14,250	-6.07%	-6.33%
Export	25	\$ 9,360,393	\$ 374,416	28	\$ 12,325,636	\$ 440,201	31.68%	17.57%
Total Wagers		\$ 48,658,142			\$ 48,865,842		0.43%	
Sam Houston Race Park								
Live	52	\$ 4,321,793	\$ 83,111	52	\$ 4,352,605	\$ 83,704	0.71%	0.71%
Simulcast Same-Species	362	\$ 60,642,386	\$ 167,520	363	\$ 56,783,600	\$ 156,429	-6.36%	-6.62%
Simulcast Cross-Species	361	\$ 16,622,131	\$ 46,045	362	\$ 14,648,711	\$ 40,466	-11.87%	-12.12%
Export	52	\$ 49,470,884	\$ 951,363	52	\$ 46,013,081	\$ 884,867	-6.99%	-6.99%
Total Wagers		\$ 131,057,195			\$ 121,797,996		-7.07%	
All Horse Tracks								
Live	142	\$ 19,133,052	\$ 134,740	147	\$ 18,605,013	\$ 126,565	-2.76%	-6.07%
Simulcast Same-Species	1,295	\$ 196,969,350	\$ 152,100	1,297	\$ 186,646,880	\$ 143,907	-5.24%	-5.39%
Simulcast Cross-Species	1,292	\$ 29,544,878	\$ 22,868	1,293	\$ 28,084,868	\$ 21,721	-4.94%	-5.02%
Export	134	\$ 100,511,589	\$ 750,086	139	\$ 98,274,631	\$ 707,012	-2.23%	-5.74%
Total Wagers		\$ 346,158,870			\$ 331,611,392		-4.20%	
Total Wagers Placed in Texas		\$ 245,647,281			\$ 233,336,761		-5.01%	
Total Wagers Placed on Texas Races		\$ 119,644,642			\$ 116,879,645		-2.31%	



*NOTE: All figures are based on data available at the time the report was compiled and are subject to being audited and revised.

Ruling Detail 2018 - 2019

<u>Title</u>	<u>2018</u>	<u>2019</u>	<u>% Change</u>
Total # of Rulings	320	217	-32%
# of Live Race Days	156	154	-1%
# of Live Performances	180	179	-1%
Jockey Riding Suspensions	27	20	-26%
Total Rulings with Suspensions	140	108	-23%
Rulings with Revocations	1	0	-100%
Rulings with Fines	191	135	-29%
Total # Purses Redistributed	41	35	-15%

<u>Ruling Category</u>	<u>2018</u>	<u>2019</u>	<u>% Change</u>
Jockey-Riding	34	30	-12%
Jockey-Nonriding	6	5	-17%
Trainer Infractions	39	33	-15%
Medication Violations	54	56	4%
Human Drug Violations	23	20	-13%
Miscellaneous	9	6	-33%
Human Alcohol Violation	20	10	-50%
Greyhound Weight Infractions	4	5	25%
Failure to Disclose	5	1	-80%
Wagering/Integrity	4	1	-75%
Licensing	26	6	-77%
Financial Obligation	11	6	-45%
Violation By MGMT or Official	1	0	-100%
Conduct	7	1	-86%
Contraband	54	17	-69%
Reciprocity	5	4	-20%
Failure to Appear	0	5	100%
Failure to Pay Fine	<u>18</u>	<u>11</u>	<u>-39%</u>
TOTAL RULINGS	320	217	-32%

	<u>2018</u>	<u>2019</u>	<u>% Change</u>
Total Amount of Fines	\$103,025	\$50,250	-51%

IV. PROCEEDINGS ON RULES

- A. Discussion and possible action to adopt the following rule items proposed in the November 15, 2019, issue of the *Texas Register*.
 - 1. new 16 TAC § 309.106, Transfers to Texas-Bred Incentive Fund
 - 2. amendments to 16 TAC § 311.2, Application Procedure
- B. Discussion and possible action to propose:
 - 1. amendments to 16 TAC § 311.1, Occupational Licenses
 - 2. amendments to 16 TAC § 313.409, Jockey Mount Fees
 - 3. amendments to 16 TAC § 309.206, Rails

CHAPTER 309 **RACETRACK LICENSES AND OPERATIONS**
SUBCHAPTER B **OPERATIONS OF RACETRACKS**
DIVISION 1 **GENERAL PROVISIONS**
SECTION 309.106 **Transfers to Texas-Bred Incentive Fund**

- 1 A racetrack association shall initiate the transfer of funds due to the Texas-bred incentive fund
- 2 within two business days of the date of the performance for which the funds were earned.

CHAPTER 311 **OTHER LICENSES**
SUBCHAPTER A **LICENSING PROVISIONS**
DIVISION 1 **OCCUPATIONAL LICENSES**
SECTION 311.2 **APPLICATION PROCEDURE**

1 (a) – (e) (No change.)

2 (f) License provisions for military service members, military spouses, and military
3 veterans.

4 (1) - (7) (No change.)

5 (8) Military spouse acting under out-of-state license. A military spouse who holds a
6 racing license issued by another jurisdiction and who wishes to participate in racing in
7 Texas under that license shall submit to the Commission the information required by
8 Section 55.0041 of the Texas Occupations Code. Upon receipt of such information, the
9 Commission shall determine whether the requirements of Section 55.0041 are satisfied
10 and notify the military spouse that the person is authorized to act under that section if it
11 confirms, through communication with the other jurisdiction or through other means,
12 that:

13 (A) the jurisdiction that issued the license on which the military spouse is relying
14 to act in Texas has substantially equivalent license requirements; and

15 (B) the military spouse is licensed in good standing in the other jurisdiction.

CHAPTER 311
SUBCHAPTER A
DIVISION 1
SECTION 311.1

OTHER LICENSES
LICENSING PROVISIONS
OCCUPATIONAL LICENSES
OCCUPATIONAL LICENSES

- 1 (a) (No change.)
- 2 (b) Duration of License.
 - 3 (1) – (2) (No change.)
 - 4 [~~3~~] A training facility license expires on December 31 of the year for which it was
 - 5 issued.]
 - 6 (c) –(d) (No change.)

TEXAS RACING COMMISSION COMMITTEE ON RULES

Date of Request: 12/19/2019

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

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

Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, TX 78754-4552
Phone: 512/833-6699 Fax: 512-833-6907
email: info@bxrc.texas.gov

Contact Information:

Name:	John Beech		
Phone Number:	(512) 826-3344	Fax number:	(859) 523-5625
Mailing address:	2365 Harrodsburg Road, Ste B375, Lexington, KY 40504		

Check appropriate box(es):

Personal Submission *OR*

Submission on Behalf of Jockeys' Guild, Inc.
(Name of Organization)

Proposed Change to (if known): Chapter: 313 Rule: 409 (c)

Proposed Addition to (if known): Chapter: _____ Rule: _____

Other Rules Affected by Proposal (if any): Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Statutory Authority for Proposed Change: _____

A. Summary of the Issue and Proposed Solution

1. Summarize the issue. Address the following:

- What specific problems or concerns are involved in this issue?
- Do any existing model rules (such as from ARCI) relate to this issue?

The last time there was an increase in the losing mount fees paid to jockeys who ride races at Texas racetracks was in 2012. As such, due to the increase in cost of living and expenses related to being a jockey, the jockeys are seeking an increase in the losing mount fees.

The ARCI model rule for jockey mount fees, ARCI-008-030 G. Jockey Mount Fees, was adopted in 2009, to add a tiered scheduled and provides for a 4th place incentive. However, with that being said, the numbers in the scale are outdated and have been surpassed by most jurisdictions. Therefore, the Guild is in the process of proposing a change to the existing ARCI Model Rule to be presented during the Spring ARCI Model Rules Meeting. The proposal will also include an amendment to ensure a minimum mount fee schedule is in place prior to the start of a meet, with the horsemen and jockeys to negotiate fees based on need and current economic conditions in the area.

2. Summarize proposed solution(s). Address the following:

- How will the solution fix the problem?
- What are the benefits of the proposed change?
- What are the possible drawbacks of the proposed change?

The proposed change is based on agreement between the Jockeys' Guild and the Texas Horsemen's Partnership LLP with regards to the fees paid to the jockeys riding at Texas racetracks regulated by the Texas Racing Commission. This will allow the jockeys to receive a higher losing mount fee as determined by the purse and bring the losing mount fees more in line with the economics of today, as opposed to what they were almost 10 years ago.

Increased jockey fees will help jockeys cover expenditures associated with the jockey profession, including safety equipment, such as 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. As such they 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 necessary items. This could potentially reduce the number of injuries suffered by jockeys 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.

B. Impact of Proposal

Please answer the following questions to the best of your ability. Explain all "yes" answers below.

1. Is this change likely to have any fiscal impact on state or local government over the next five years?

Yes	No
	X

2. Is there likely to be any cost to persons or businesses required to comply with the change?
3. Is the change likely to result in the creation or elimination of a government program?
4. Is the change likely to create any new employee positions or eliminate any existing employee positions within the Texas Racing Commission?
5. Is the change likely to require an increase or decrease in future legislative appropriations to the agency?
6. Is the change likely to require a substantial increase or decrease in the total amount of fees paid to the agency?
7. Does the change create any new regulations or expand any existing regulations?
8. Is the change likely to increase the number of individuals subject to the rule's applicability?
9. Is the change likely to have an impact on the Texas economy?
10. Is the change likely to have a negative economic effect on small businesses?
11. Is the change likely to have a negative impact on micro-businesses (independently owned businesses with no more than 20 employees)?
12. Is the change likely to have a negative impact on the local economy?
13. Is the change likely to have a negative impact on rural communities (communities with a population of less than 25,000)?
14. Is the change likely to have a negative impact on employment conditions in Texas?
15. Is the change likely to restrict, limit, or impose a burden an owner's right to his or her private real property?

X	
	X
	X
	X
	X
	X
	X
X	
	X
	X
	X
	X
	X
	X

16. Explain any "yes" answers, including estimates of cost where appropriate.

B. 2. There will be an increase in the fees paid by the owner(s) to the jockeys for riding in a race on his or her behalf at Texas racetracks governed by the Texas Racing Commission.

B. 9. By increasing the amount of the losing mount fees, jockeys will have an increase in income. Therefore, allowing them to have additional monies to be used for living and contributing to the Texas economy.

17. If you answered "yes" to any questions above, is there another way to achieve the same goal that would not result in a "yes" answer?

No. The losing mount fees are paid by the owner(s) to the jockeys he or she has engaged to ride his or her horse at the Texas racetracks governed by the Texas Racing Commission.

18. What is the anticipated public benefit of this change?

By increasing the losing mount fees, jockeys will have an increase in income based on the increase in the cost of the living and costs associated with being a jockey. Which in turn, will

allow them to have additional monies to be used for living and contributing to the surrounding communities.

D. Support or Opposition

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

- For those stakeholder groups that have expressed an opinion, please state their opinion(s) and submit any formal letters of support or opposition.
- Are there any affected stakeholder groups that have not been consulted on this proposal?

Attached for the Commission's review, is the signed agreement between representatives of Jockeys' Guild, Inc. and the Texas Horsemen's Partnership LLP, which has the proposed increase in the losing mount fees.

C. Proposal

Provide rule language you are proposing. Please show any language to be added with underlined text (example: new text) and any current rule language to be eliminated in brackets with strikethroughs (example: [~~text to be deleted~~]). To substitute text, show the new text first (example: new text [~~old text~~]).

Sec. 313.409. Jockey Mount Fees.

(c) In the absence of a written agreement, the following jockey mount fees apply:

Purse	Winning Mount	Second Place Mount	Third Place Mount	Fourth Place Mount	Losing Mount
Up to \$4,999.00	10% of Win Purse	\$70 <u>\$75</u>	\$60 <u>\$70</u>	\$58 <u>\$68</u>	\$50 <u>\$60</u>
\$5,000 - \$9999.00	10% of Win Purse	\$80 <u>\$85 or 5% of Place Purse</u>	\$65 <u>\$75</u>	\$63 <u>\$73</u>	\$55 <u>\$65</u>
\$10,000.00 to \$14,999.00	10% of Win Purse	\$100.00 <u>5% of Place Purse</u>	\$75 <u>\$85</u>	\$68 <u>\$78</u>	\$60 <u>\$70</u>
\$15,000 to \$24,999.00	10% of Win Purse	5% of Place Purse	\$90 <u>5% of Show Purse</u>	\$75 <u>\$85</u>	\$70 <u>\$80</u>
\$25,000 to \$49,999.00	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$80 <u>\$90</u>	\$75 <u>\$85</u>
\$50,000 to \$99,999.00	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of 4th Purse	\$90 <u>\$100</u>
\$100,000.00 and up	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of 4th Purse	\$110 <u>\$120</u>



PROPOSAL (\$10 INCREASE)

11-1-2019

This is an agreement between the Jockeys' Guild and the Texas Horsemen's Partnership LLP with regard to fees paid to jockeys for riding in races at Texas tracks. While both parties acknowledge that jockeys, as independent contractors are free to negotiate their own terms for each horse they ride, both parties are in favor of a new schedule to be used in the absence of an individual contract. This schedule will be kept on file with the racing secretary and the horsemen's bookkeeper.

Jockey Fees Schedule:

Purse	Win	Place	Show	Fourth	other
Up to \$4,999	10%	\$75	\$70	\$68	\$60
\$5,000 to \$9,999	10%	\$85 OR 5%	\$75	\$73	\$65
\$10,000-\$14,999	10%	5%	\$85	\$78	\$70
\$15,000-\$24,999	10%	5%	\$90 OR 5%	\$85	\$80
\$25,000-\$49,999	10%	5%	5%	\$90	\$85
\$50,000-\$99,999	10%	5%	5%	5%	\$100
\$100,000 and up	10%	5%	5%	5%	\$120

John W Beech 12-18-19 Marsha Reunten 12/9/19
 Jockeys' Guild Rep. Date Texas Horsemen's Partnership Rep. Date

CHAPTER 313 OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER D RUNNING OF THE RACE
DIVISION 1 JOCKEYS
SECTION 313.409 JOCKEY MOUNT FEES

- 1 (a) – (b) (No change.)
 2 (c) In the absence of a written agreement, the following jockey mount fees apply:
 3

Figure: 16 TAC §313.409(c)

Purse	Winning Mount	Second Mount	Third Mount	Fourth Mount	Losing Mount
Up to \$4,999	10% Win Purse	\$ <u>75</u> [70]	\$ <u>70</u> [60]	\$ <u>68</u> [58]	\$ <u>60</u> [50]
\$5,000-\$9,999	10% Win Purse	Larger of \$85 or 5% of Place Purse [80]	\$ <u>75</u> [65]	\$ <u>73</u> [63]	\$ <u>65</u> [55]
\$10,000-\$14,999	10% Win Purse	5% Place Purse	\$ <u>85</u> [75]	\$ <u>78</u> [68]	\$ <u>70</u> [60]
\$15,000-\$24,999	10% Win Purse	5% Place Purse	Larger of \$90 or 5% Show Purse	\$ <u>85</u> [75]	\$ <u>80</u> [70]
\$25,000-\$49,999	10% Win Purse	5% Place Purse	5% Show Purse	\$ <u>90</u> [80]	\$ <u>85</u> [75]
\$50,000-\$99,999	10% Win Purse	5% Place Purse	5% Show Purse	5% Fourth Place Purse	\$ <u>100</u> [90]
\$100,000 and up	10% Win Purse	5% Place Purse	5% Show Purse	5% Fourth Place Purse	\$ <u>120</u> [110]

- 4
 5 (d) – (g) (No change.)

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 11/25/19

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

Please submit this information to the attention of the Executive Director *at least 14 days* in advance of the next scheduled Committee on Rules meeting. An electronic form is available to assist in your submission or feel free to add additional pages as necessary in order to provide as much detail as possible. Filing this request does not guarantee that your proposal will be considered by the Committee on Rules.

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

Contact Information:

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

Check appropriate box(es):

Personal Submission *OR*
 Submission on Behalf of Lone Star Park
(Name of Organization)

Proposed Change to (if known): Chapter: 309 Rule: 206 (b)
 Proposed Addition to (if known): Chapter: _____ Rule: _____

Other Rules Affected by Proposal (if any): Chapter: _____ Rule: _____
 Chapter: _____ Rule: _____
 Chapter: _____ Rule: _____
 Chapter: _____ Rule: _____

Statutory Authority for Proposed Change: _____

A. Brief Description of the Issue

We are planning on installing a new and safer inner turf rail that is 50 inches above the ground, but the current rule only allows rail heights from 38 to 42 inches.

B. Discussion of the Issue and Problem

Please see above.

C. Possible Solutions and Impact

Change the rule to only specify a minimum rail height rather than both a minimum and maximum.

D. Support or Opposition

I can't imagine there would be any opposition to changing this rule to allow for a safer railing option.

E. Proposal

Change the current rule by striking the language that specifies the maximum height of the top of the rail.

The top of the rail must be not less than 38 ~~nor more than 42~~ inches above the top of the cushion.

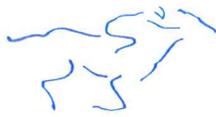
CHAPTER 309
SUBCHAPTER C
DIVISION 1
SECTION 309.206

RACETRACK LICENSES AND OPERATIONS
HORSE RACETRACKS
RACETRACKS
RAILS

- 1 (a) (No change.)
- 2 (b) The top of the rail must be not less than 38 nor more than 50 [42] inches above the
- 3 top of the cushion.
- 4 (c) – (e) (No change.)

V. PROCEEDINGS ON RACETRACKS

- A. Discussion and possible action regarding allocation of additional race days and race day fees under 16 TAC § 309.8
- B. Discussion and possible action regarding LRP Group, Ltd., et al. v. Texas Racing Commission et al.



November 26, 2019

SENT VIA ELECTRONIC MAIL

Mr. Chuck Trout
Executive Director
Texas Racing Commission
8505 Cross Park Dr. #110
Austin, TX 78754

Dear Mr. Trout:

Sam Houston Race Park is requesting to add three dates to our 2020 Quarter Horse meet, increasing our total number of Quarter Horse dates in 2020 from 20 to 23.

The specific additional dates are as follows:

- May 25, May 29 and May 30

Please let me know if you have any questions or comments.

Sincerely,

Dwight Berube,
Vice President & General Manager
Sam Houston Race Park, LLC
(281) 807-8827

CC: Frank Hopf
Joel Speight
Devon Bijansky
Ricky Walker
Patrick Pence
Rob Werstler
Marsha Rountree



T E X A S
HORSEMEN'S
PARTNERSHIP

January 2, 2020

Sent Via Electronic Mail

Mr. Chuck Trout
Executive Director
Texas Racing Commission
8505 Cross Park Dr. #110
Austin, TX 78754

Dear Chuck:

Texas Horsemen's Partnership is pleased to offer its support of Sam Houston Race Park's request to add three dates to its 2020 Quarter Horse meet. The addition of May 25, May 29 and May 30 will increase the meet to 23 days and we look forward to another great Quarter Horse meet at Sam Houston Race Park this year.

Please let me know if you have any questions.

Sincerely,

Marsha Rountree
Executive Director
Texas Horsemen's Partnership, LLP
(512) 467-9799

Cc: Dwight Berube
Rob Werstler



Our Mission:
Create Winning Experiences.

November 23, 2019

Mr. Joel Speight
Deputy Executive Director
Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, TX 78754

Via Email and Regular Mail

Dear Joel:

Enclosed you will find Lone Star Park's revised race date application for our Fall Meet in 2020 for the Commission's review and consideration.

In summary, we respectfully request the following dates for the fall of 2020:

Fall Quarter Horse Meet – September 11 through November 28 (26 days)

- 6:05 pm post times on Thursdays, Fridays & Saturdays

In addition this application for the 10 additional days (from the 16 originally submitted to 26) will be conditional upon Lone Star Park not being ultimately responsible for \$53,450 in additional regulatory fees. While we understand the Texas Racing Commission is obligated to collect \$5,345 per additional day due to the timing of their budget approval (prior to the passage of beneficial legislation) it is our belief that the Texas racing Commission will be in a position to eliminate, reduce or reimburse those funds by the time calendar year 2020 comes to a close.

Please feel free to contact me if you have any questions or need any additional information.

Sincerely,



Bart Lang
Director of Racing

Enclosures

Cc: Sam Houston Race Park, Retama Park, Gillespie County Fair, Texas Horsemen's Partnership, Texas Thoroughbred Association, Texas Quarter Horse Association, Texas Paint Horse Association & Texas Arabian Breeders Association

**TEXAS RACING COMMISSION
REQUEST FOR PERFORMANCES
HORSE RACETRACKS**

January 1, 2020 – December 31, 2020

INSTRUCTIONS: Print or type the information requested in each section and attach all required documents and additional sheets if necessary. The Commission will not consider an incomplete request. The request must be filed at the Commission's Austin office no later than 5:00 p.m. on July 16, 2019.

I. Schedule Requested

Name of Racetrack: Lone Star Park

<u>First Meet</u>	Opening Day: <u>4/16/2020</u>	Closing Day: <u>7/19/2020</u>
Meet Type: X TB <input type="checkbox"/> QH <input type="checkbox"/> MX		Total Number of Race Days <u>44</u>
X Thoroughbred	# of Races Per Day <u>9</u>	Projected Purse Per Day \$ <u>165,000</u>
<input type="checkbox"/> Quarter Horse	# of Races Per Day _____	Projected Purse Per Day \$_____
<input type="checkbox"/> Arabian	# of Races Per Day _____	Projected Purse Per Day \$_____
<input type="checkbox"/> Paint Horse	# of Races Per Day _____	Projected Purse Per Day \$_____
Totals	# of Races Per Day _____	Projected Purse Per Day \$_____

<u>Second Meet</u>	Opening Day: <u>9/11/2020</u>	Closing Day: <u>11/28/2020</u>
Meet Type: <input type="checkbox"/> TB X QH <input type="checkbox"/> MX		Total Number of Race Days <u>26</u>
<input type="checkbox"/> Thoroughbred	# of Races Per Day _____	Projected Purse Per Day \$ <u>250,000</u>
X Quarter Horse	# of Races Per Day <u>12</u>	Projected Purse Per Day \$_____
X Arabian	# of Races Per Day <u><1</u>	Projected Purse Per Day \$_____
X Paint Horse	# of Races Per Day <u><1</u>	Projected Purse Per Day \$_____
Totals	# of Races Per Day _____	Projected Purse Per Day \$_____

Third Meet

Opening Day: ___/___/___

Closing Day: ___/___/___

Meet Type: TB QH MX

Total Number of Race Days _____

Thoroughbred # of Races Per Day _____

Projected Purse Per Day \$ _____

Quarter Horse # of Races Per Day _____

Projected Purse Per Day \$ _____

Arabian # of Races Per Day _____

Projected Purse Per Day \$ _____

Paint Horse # of Races Per Day _____

Projected Purse Per Day \$ _____

Totals # of Races Per Day _____

Projected Purse Per Day \$ _____

II. Negotiation with Breed Registries

Specify how the total races scheduled for 2020 will be allocated among the various breeds:

Appaloosa .5 % Arabian 1 % Paint .5 %

Quarter Horse 31 % Thoroughbred 67 %

Check all that apply:

Attached are letters from the affected breed registries that have agreed to this allocation.

The _____ breed registry(ies) has not agreed to this allocation, but negotiations with the breed registry(ies) occurred as described below:

Participants in Negotiations

_____/_____/_____

_____/_____/_____

_____/_____/_____

_____/_____/_____

_____/_____/_____

III. Dates Requested

Indicate on the attached calendar each live race date requested with a "T" (Thoroughbred), "QH" (Quarter Horse), or "M" (Mixed). Include standard post time in space provided on calendar. Any exceptions, such as holidays, should be noted.

IV. Charity Days

A Class 1 or Class 2 racetrack shall conduct at least two and not more than five charity race days each year. The association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: 10/09/2020

Day 2: 10/15/2020

Day 3 (Optional): 11/12/2020

Day 4 (Optional): _____

Day 5 (Optional): _____

Identify the charities:

REQUIRED BY RULE

(1) A charity that directly benefits the persons who work on the backside:

Day 1 Charity: Race Track Chaplaincy of Texas
(Name of Charity)

(2) A charity that primarily benefits research into the health or safety of race animals:

Day 2 Charity: Texas A&M Equine
(Name of Charity)

OPTIONAL CHARITY DAYS

Day 3 Charity: Grand Prairie ISD Education Foundation
 (Name of Charity)

Day 4 Charity: _____
 (Name of Charity)

Day 5 Charity: _____
 (Name of Charity)

For each charity listed, attach the following information:

1. The name of the charity;
2. the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5.0% or more;
3. a brief description of the activities or purposes of the charity; and
4. a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.

V. Coordination of Request

To facilitate the Commission's consideration of each association's request, please indicate below the association's coordination efforts and the letters of support as appropriate.

	Affected?		Letter of Support Attached?		
	Yes	No	Yes	No	N/A
<u>Racetrack</u>					
Gillespie County Fair & Festivals Association	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Laredo Downs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lone Star Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Manor Downs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retama Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam Houston Race Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valle de los Tesoros	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Letter of Support Attached?		
	Yes	No	N/A
<u>Horsemen's Organization</u>			
Texas Horsemen's Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

LONE STAR PARK

(Name of Racetrack)

Requested Performances for 2020

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 New Year's Day	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20 Martin Luther King Jr. Day	21	22	23	24	25
26	27	28	29	30	31	

February						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13	14 Valentine's Day	15
16	17 President's Day	18	19	20	21	22
23	24	25	26	27	28	29

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16 T-6:35 PM	17 T-6:35 PM	18 T-2:35 PM
19 T-2:35 PM	20	21	22	23	24 T-6:35 PM	25 T-2:35 PM
26 T-2:35 PM	27	28	29	30		

May						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 T-6:35 PM	2 T-1:35 PM
3 T-2:35 PM	4	5	6	7 T-6:35 PM	8	9 T-2:35 PM
10 T-2:35 PM	11	12	13	14	15 T-6:35 PM	16 T-1:35 PM
Mother's Day 17 T-2:35 PM	18	19	20	21	22	23 T-2:35 PM
24 T-2:35 PM	25 T-2:35 PM Memorial Day	26	27	28	29 T-6:35 PM	30 T-2:35 PM

June						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
31 T-2:35 PM	1	2	3	4	5 T-6:35 PM	6 T-1:35 PM
7 T-2:35 PM	8	9	10	11 T-6:35 PM	12	13 T-2:35 PM
14 T-2:35 PM	15	16	17	18 T-6:35 PM	19	20 T-2:35 PM
21 T-2:35 PM	22	23	24	25 T-6:35 PM	26	27 T-2:35 PM
Father's Day 28 T-2:35 PM	29	30				

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3 T-6:35 PM	4 T-5:00 PM Independence Day
5 T-2:35 PM	6	7	8	9	10 T-6:35 PM	11 T-2:35 PM
12 T-2:35 PM	13	14	15	16 T-6:35 PM	17 T-6:35 PM	18 T-2:35 PM
19 T-2:35 PM	20	21	22	23	24	25
26	27	28	29	30	31	

August						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11 Q-6:05 PM	12 Q-6:05 PM
13	14	15	16	17	18 Q-6:05 PM	19 Q-6:05 PM
20	21	22	23	24	25 Q-6:05 PM	26 Q-6:05 PM
27	28	29	30			

October						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2 Q-6:05 PM	3 Q-6:05 PM
4	5	6	7	8	9 Q-6:05 PM	10 Q-6:05 PM
11	12	13	14	15 Q-6:05 PM	16 Q-6:05 PM	17 Q-6:05 PM
18	19	20	21	22	23 Q-6:05 PM	24 Q-6:05 PM
25	26	27	28	29	30 Q-6:05 PM	31 Q-6:05 PM

November						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6 Q-6:05 PM	7 Q-6:05 PM
8	9	10	11	12 Q-6:05 PM	13 Q-6:05 PM	14 Q-6:05 PM
15	16	17	18	19	20 Q-6:05 PM	21 Q-6:05 PM
22	23	24	25	26	27 Q-6:05 PM	28 Q-6:05 PM
29	30					

December						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

**TEXAS RACING COMMISSION
REQUEST FOR PERFORMANCES
HORSE RACETRACKS**

January 1, 2020 – December 31, 2020

INSTRUCTIONS: Print or type the information requested in each section and attach all required documents and additional sheets if necessary. The Commission will not consider an incomplete request. The request must be filed at the Commission's Austin office no later than 5:00 p.m. on July 16, 2019.

I. Schedule Requested

Name of Racetrack: **Retama Park**

<u>First Meet</u>	Opening Day: <u>7/3/2020</u>	Closing Day: <u>9/12/2020</u>
Meet Type: <input type="checkbox"/> TB <input type="checkbox"/> QH <input checked="" type="checkbox"/> MX		Total Number of Race Days <u>30</u>
<input checked="" type="checkbox"/> Thoroughbred	# of Races Per Day <u>8.5</u>	Projected Purse Per Day \$175,000
<input checked="" type="checkbox"/> Quarter Horse	# of Races Per Day <u>9.9</u>	Projected Purse Per Day \$200,000
<input checked="" type="checkbox"/> Arabian	# of Races Per Day <u>0.5</u>	Projected Purse Per Day \$9,500 *
<input checked="" type="checkbox"/> Paint Horse	# of Races Per Day <u>0.1</u>	Projected Purse Per Day \$12,500 *
Totals	# of Races Per Day <u>10.0</u>	Projected Purse Per Day \$175/200k

Retama Park will conduct one Mixed Meet, with quarter horses racing on Fridays and Saturdays beginning July 3, 2020 and thoroughbred racing on a variety of days beginning on July 26, 2020. A total of 16 QH days and 14 TB days. See attached calendar.

***Minor – Two Paint Stakes races during the meet depending on available purse money. Arabian races subject to availability of horses and purse money. Retama Park will work in good faith with Ed Wilson of the TABA to provide racing opportunities for Arabians.**

II. Negotiation with Breed Registries

Specify how the total races scheduled for 2020 will be allocated among the various breeds:

Appaloosa	____%	Arabian	<u>2.3 %</u>	Paint	<u>0.8 %</u>
Quarter Horse	<u>51.9 %</u>	Thoroughbred	<u>45.1 %</u>		

Check all that apply:

- Attached are letters from the affected breed registries that have agreed to this allocation.
- The _____ breed registry(ies) has not agreed to this allocation, but negotiations with the breed registry(ies) occurred as described below:

Participants in Negotiations

In advance of this submission, this proposed schedule change was emailed to Marsha Rountree, Mary Ruyle, Rob Werstler and Ed Wilson. Each has indicated their organization's support. Attached are letters or emails from the THP, TTA and the TABA, along with an email where Rob (TQHA) indicates that he sent an email directly to Executive Director Chuck Trout.

On Thursday, January 2, 2020 there was a call conducted to discuss Gillespie County Fair's objections to Retama Park's revised schedule. It was arranged by Tommy Azapardi, and other participants were Lee DeLong (GCF), Sally Briggs (GCF), Angela Cooper (Ret) and myself, Steve Ross (Ret).

Although no 2020 agreement was reached on the call, it was very productive as it clarified Gillespie's concerns in my mind. My understanding now is that it is not so much about racing on the same days as they do, but about racing during the same general time period, specifically during the last two weeks of August. Lee said Retama Park conducting live racing in mid to late August has hurt Gillespie entries the past couple years. He stated it was better for Gillespie pre-2018 when Retama Park conducted two separate meets, a QH meet from early June through early August and a TB meet that started around the first of September. That may be true, but it is too late to address those concerns for 2020. Retama Park cannot cancel this year's August dates and move them into September.

The requested schedule change involves moving TB racing off three already approved Tuesdays and Wednesdays to Fridays and Saturdays. It was acknowledged on the call that this will have no impact on TB entries at Gillespie. For example, Retama Park currently is approved for TB racing on Tuesday and Wednesday, August 4 and 5 and desires to move those two days to Friday and Saturday, August 7 and 8. Gillespie races on Saturday and Sunday, August 8 and 9. Horses that race at Retama Park on August 4 and 5 or on August 7 and 8 will not be available for Gillespie on August 8 and 9. So moving those two dates to August 7 and 8 has no impact on Gillespie's entries. Similar scenario for August 21 and 22. Gillespie is done on August 23, so the September move is irrelevant.

Those all the call committed to continue working to find a way to work something out for 2020, and Retama Park will certainly consider applying for two separate meets in 2021, similar to pre-2018. The two racing departments will look at scheduling races in an attempt to minimize writing races for the same condition of horse around the same time.

With the purse enhancements this year, we expect a significant influx of horse into the state, and I believe we will have the horse population that both Retama Park and Gillespie can have successful 2020 seasons.

III. Dates Requested

Indicate on the attached calendar each live race date requested with a "T" (Thoroughbred), "QH" (Quarter Horse), or "M" (Mixed). Include standard post time in space provided on calendar. Any exceptions, such as holidays, should be noted.

IV. Charity Days

A Class 1 or Class 2 racetrack shall conduct at least two and not more than five charity race days each year. The association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: 8/25/2020

Day 2: 9/1/2020

Day 3 (Optional): _____

Day 4 (Optional): _____

Day 5 (Optional): _____

Identify the charities:

REQUIRED BY RULE

(1) A charity that directly benefits the persons who work on the backside:

Day 1 Charity: RTCA – South Texas Chapter
(Name of Charity)

(2) A charity that primarily benefits research into the health or safety of race animals:

Day 2 Charity: Texas A&M University Equine Research
(Name of Charity)

OPTIONAL CHARITY DAYS

Day 3 Charity: _____
(Name of Charity)

Day 4 Charity: _____
(Name of Charity)

Day 5 Charity: _____
(Name of Charity)

For each charity listed, attach the following information:

- 1. The name of the charity;**
- 2. the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5.0% or more;**
- 3. a brief description of the activities or purposes of the charity; and**
- 4. a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.**

V. Coordination of Request

To facilitate the Commission's consideration of each association's request, please indicate below the association's coordination efforts and the letters of support as appropriate.

	Affected?		Letter of Support Attached?		
	Yes	No	Yes	No	N/A
<u>Racetrack</u>					
Gillespie County Fair & Festivals Association	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Laredo Downs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lone Star Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Manor Downs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Retama Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam Houston Race Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Valle de los Tesoros	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Letter of Support Attached?		
	Yes	No	N/A
<u>Horsemen's Organization</u>			
Texas Horsemen's Partnership	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Retama Park

Requested Performances for 2020

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3 QH 6:45	4 QH 6:45
5	6	7	8	9	10 QH 6:45	11 QH 6:45
12	13	14	15	16	17 QH 6:45	18 QH 6:45
19	20	21	22	23	24 QH 6:45	25 QH 6:45
26 TB 2:00	27 TB 6:45	28	29	30	31 QH 6:45	

August						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 QH 6:45
2	3	4	5	6	7 TB 6:45	8 TB 6:45
9	10	11 TB 6:45	12 TB 6:45	13	14 QH 6:45	15 QH 6:45
16	17	18	19	20	21 TB 6:45	22 TB 6:45
23	24	25 TB 6:45	26 TB 6:45	27	28 QH 6:45	29 QH 6:45
30	31					

September						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 TB 6:45	2 TB 6:45	3	4 QH 6:45	5 QH 6:45
6	7	8	9	10	11 TB 6:45	12 TB 6:45
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			



T E X A S
HORSEMEN'S
PARTNERSHIP

January 2, 2020
Mr. Chuck Trout
Texas Racing Commission
8505 Cross Park DR. #110
Austin, TX 78754

Sent Via Electronic Mail

Dear Chuck:

Texas Horsemen's Partnership is in support of the revised race date request submitted by Retama Park.

We believe that the proposed schedule will provide the best opportunity for all breeds racing at the 2020 Retama Mixed Meet and that the minor overlap with GCFA will not adversely affect the success of the GCFA meet.

The significantly higher purse levels at both tracks will be an incentive to owners, trainers and jockeys to participate at both Retama and GCFA and should prevent a shortage of horses and riders.

THP appreciates the willingness of Retama Park to compromise and to work with the horsemen to find ways to improve its 2020 meet while being sensitive to the needs of the GCFA meet.

Please let me know if you have any questions.

Sincerely,

Marsha Rountree
Executive Director
Texas Horsemen's Partnership, LLP
512.467.9799

Cc: Steve Ross
Angela Cooper
Mary Ruyle
Rob Werstler



December 31, 2019

Joel Speight
Deputy Executive Director
Texas Racing Commission
8505 Cross Park Drive, Ste 110
Austin, TX 78754

Dear Mr. Speight,

The Texas Thoroughbred Association has no opposition to the December 16, 2019 request by Retama Park to revise its 2020 live race schedule.

The proposed schedule has Thoroughbred races on July 26, 27; August 7, 8, 11, 12, 21, 22, 25, 26; September 1, 2, 11 and 12.

Respectfully,

Mary Ruyle
Executive Director

RE: Retama Park Revised Race Date Request

1 message

Rob Werstler
To: Steve Ross

Thu, Jan 2, 2020 at 12:51 PM

I sent a letter of support to Chuck this morning

From: Steve Ross [mailto:]**Sent:** Tuesday, December 31, 2019 10:49 AM**To:** Marsha Rountree; Mary Ruyle; Rob Werstler; Ed Wilson; Angela Cooper**Subject:** Retama Park Revised Race Date Request

Retama Park wishes to revise its 2020 live race date schedule from what was approved in September to what is on the attached document. Gillespie has objected, but we are trying to come up with a compromise solution. In the absence of Gillespie support, the Commission has asked me to submit a new race date application that will be considered by the full Commission at the January 21, 2020 meeting no later than this Friday, January 3.

The differences between the revised calendar and the one approved at the September meeting are as shown below:

1. Move one TB Tuesday / Wednesday to Sunday / Monday.
2. Move three TB Tuesday / Wednesday to Friday / Saturday.
3. Add two QH days, July 17 and 18.

This revised schedule will result in three Saturdays overlapping with Gillespie, but we did that for over 20 years without major issues prior to the past two years. Only one of the three Saturdays would be the same breed, that being QH on July 18. On the other two Saturdays of overlap, Gillespie historically races almost all QH while Retama will be all TB.

I have looked at the attendance and handle figures for Gillespie for the period 2015-2017, when there was an overlap, vs the attendance and handle figures for Gillespie for the period 2018 and 2019. There is not a significant impact.

I need letters of support to submit with the application. An email would suffice. I would appreciate it if you could get me something at your earliest convenience.

Thanks.

Steve

RE: Retama Park Revised Race Date Request

1 message

Ed Wilson
To: Steve Ross

Thu, Jan 2, 2020 at 6:35 PM

Dear Steve Ross

The Texas Arabian Breeders Association has no objections to the requested changes in race dates at Retama Park during the Thoroughbred Meet in 2020.

Ed Wilson
President TABA

Sent from [Mail](#) for Windows 10



November 8, 2019

Mr. Chuck Trout, Executive Director
Texas Racing Commission
PO Box 12080
Austin, TX 78711-2080

Re; Retama Live Race Dates

Dear Mr. Trout,

The Board of Directors of the Gillespie County Fair & Festivals/Fredericksburg Downs have been made aware that Mr. Steve Ross has submitted a request to modify their 2020 live race dates at Retama. The modifications that he is submitting will affect our 2020 race dates, that are already established, and we strongly oppose this change.

We already overlap on the first day (Saturday, July 4th), of the beginning of our race season in 2020, with QH races granted to run at Retama on July 3rd & 4th. With the changes he is suggesting, every one of our (only) 4 race Saturdays will be affected. With us running only 4 race weekends a year, in addition to us only being a class 3 track, *any* competition on more of our race days will, in all likelihood, have an adverse effect on the number of jockeys willing to participate at our racetrack, not to mention a lower attendance, handle and purse for each of these races. Our entire year relies on just 4 race weekends (plus our county fair in August) and we must be able to depend on having Class 1 racetracks, that are capable of racing more than 16 days a year, not competing with us as much as possible.

We understand that the time of the Saturday races at Retama will not be until 7:30 pm. However, depending on the number of entries that day (and, of course, barring no delays from earlier races), our final race normally starts at approximately 5:35pm. So even on a "normal" day, this leaves participants less than 2 hours to gather up, load up and travel to Retama then unload and get situated and ready to race. From our past experience, this is too rushed for a lot of them and they will most likely choose a Class 1 track over a Class 3 for obvious reasons.

With this in mind, we respectfully ask that these modifications requested by Retama, be denied.

Sincerely,

Lee DeLong
Racing Committee/Mutuels Manager

Gillespie County Fair & Festivals Association

P.O. Box 526
Fredericksburg, Texas 78624
Tel. (830) 997-2359 Fax: (830) 997- 4923
www.gillespiefair.net

VI. PROCEEDINGS ON THE HORSE INDUSTRY ESCROW ACCOUNT

Discussion and possible action to allocate funds in the horse industry escrow account to state horse breed registries under 16 TAC Chapter 303, Subchapter G

TEXAS THOROUGHBRED ASSOCIATION
APPLICATION FOR FUNDS FROM THE HORSE INDUSTRY ESCROW ACCOUNT

Included in this application packet, there is a 2-page spreadsheet with specific events and amounts requested for each.

Below is the list of those requested items for which approval is needed at the January 21 TRC meeting.

Item 2: 2020 Thoroughbred Meet at Sam Houston Race Park

Approval of this item is urgent since the race meet began on January 10th and concludes March 28, 2020.

TRC approved adding days to the beginning of the meet, necessitating an earlier opening of the stable area to accommodate horses shipping in. Funds are requested in connection with extra expenses associated with opening the stable area on December 3rd, 2019.

To capitalize on opportunities to attract more horsemen to participate in Texas racing, provide additional race days and improve handle via increased purses, a plan has been developed to include increased media exposure, offer new wagering promotions, implement grass roots marketing and improve the stakes program with an emphasis on Texas-bred races.

Expanded media coverage of these initiatives will also benefit the breeding sector as interest in the Accredited Texas-bred Program increases.

Item 10: ATB Breeder Bonus Awards

If approved, this must be advertised immediately as it would be implemented for the 2020 Thoroughbred meet at Houston, and this should attract more horses to race there.

TTA currently pays an Owner Bonus Award to owners of Accredited Texas-bred horses placing 1, 2, or 3 in open company races in Texas. These awards are derived from breakage and a percent of multiple wagers. In 2019, this equated to \$345,534. This was implemented to reward those Texas-bred horses demonstrating higher competitive ability. Implementing a Breeder Bonus Award paid to the breeders of ATB horses finishing 1, 2, or 3 in open company races in Texas will encourage efforts to breed more competitive Texas-bred racehorses.

Item 9: Rebate to Consignors in the 2020 Texas 2-Year-Old and Horses of Racing Age Sale

If approved, this must be advertised immediately due to the consignment deadline of January 15th. If approved, we will announce an extension of that deadline.

The Texas 2-Year-Old and Horses of Racing Age Sale will be conducted April 3, 2020 in the Texas Thoroughbred Sales Pavilion at Lone Star Park with horses and consignors from Texas and many other states. A rebate of ½ of the \$500 consignment fee provided for sales graduates will encourage participation by providing a price break for consignors. Increased participation will increase associated business in the state.

Item 8: Purse Bonus for the 2020 Texas 2-Year-Old and Horses of Racing Age Sale Graduates

If approved, this must be advertised immediately due to the consignment deadline of January 15th. If

approved, we will announce an extension of that deadline.

The Texas 2-Year-Old and Horses of Racing Age Sale will be conducted April 3, 2020 in the Texas Thoroughbred Sales Pavilion at Lone Star Park with horses and consignors from Texas and many other states. This bonus would be paid to the owner of a sales graduate finishing in the top 3 in Texas races in calendar year 2020. This would increase the number of horses participating in the sale, and subsequently increase the number of horses racing in Texas, also increasing associated business in the state.

Item 11: Incentives for Mares Bred in Texas in 2020

If approved, this must be advertised immediately as mare owners are currently making plans for the 2020 breeding season which begins February 1.

Moving a mare to Texas and maintaining her care can be costly, with only long-term reward. At the earliest, it is a 3-year prospect – if the mare gets in foal, sustains the pregnancy, delivers a healthy foal and that foal begins racing as a two-year-old. This initiative would provide a partial rebate of breeding fees (on a sliding scale) based upon foals born in 2021. According to The Jockey Club, Texas currently ranks #11 in the nation for the number of registered foals and the number of mares bred. This incentive should increase those numbers and move Texas up in the ranking. We propose a program similar to those used in Ontario and Indiana.

Item 7: 2020 Thoroughbred Meet at Lone Star Park

Approval of this item is urgent since racetrack personnel are currently working on their condition books and purse schedules for their Thoroughbred meet which begins April 16 and concludes July 19, 2020. Horsemen are already looking forward to pointing horses to specific races in this meet.

To capitalize on opportunities to attract more horsemen to participate in Texas racing, plans have been developed to increase purses, attendance and handle. Improvements will be made to the stakes program with an emphasis on Texas-bred races.

A Texas Derby will be conducted for the first time in May, with a bonus available for participating ATB horses. Signature events days include Texas Derby Day on May 25, Lone Star Showcase Day on June 14 and Stars of Texas Day on July 12.

Expanded media coverage of these initiatives will also benefit the breeding sector as interest in the Accredited Texas-bred Program increases.

Item 3: American Racehorse Stallion Register

Approval of this item is urgent since the Stallion Register has already been published and the publisher has already incurred costs.

To grow the Texas breeding industry, it is vital to promote Texas stallions and attract more mares to the state. As many Texas stallions are owned by those without a large advertising budget, discounts offered to advertise Texas farms and stallions in the Stallion Register resulted in a 23% increase in the number of advertisements over the previous year. Advertisers benefit from exposure to over 4,600 direct recipients of the publication as well online readers.

Item 4: Industry Promotional Advertisements

Approval of this item is urgent as these promotions must take place in the first quarter of 2020 to achieve maximum effectiveness.

A widespread marketing plan will increase awareness of new opportunities within all sectors of the Texas horse industry and attract participants from out-of-state. These ads will appear in such national publications and websites as BloodHorse, Paulick Report, and the Horsemen's Journal.

If necessary, the following items may be considered at the March TRC Meeting:

Item 5: Texas Equine Industry Directory

With no such directory currently available, a new online equine services directory open to all breeds and equine disciplines to promote Texas-based businesses will provide significant exposure and encourage participants to keep their spending within Texas.

Item 6: Administrative Fees

The TTA uses a custom database designed over 15 years ago to manage all aspects of the Accredited Texas-bred Program, breeding statistics, race results (in and out of state), stakes programs, horse auction sales, equine industry participants and businesses. We are now in the process of having the database and associated programs redesigned to accommodate growth, comply with industry standards for security and ensure continued programming support. The new program will combine all information in a single database and automatically integrate with our membership software, enabling horsemen to securely log into their account and view all associated horses, races, ATB awards, incentive funds received, fees paid, TTA-sponsored stakes programs and horse auction sales.

Administrative fees include website hosting and administration, various software programs, hardware, licensing fees and maintenance, and communications including online auction video, daily social media posts, weekly emails, American Racehorse magazine and mailers sent to all members.

Item 12: 2020 Thoroughbred Meet at Retama Park

Item 13: Non-racing Disciplines

Item 14: Other Administrative Fees

Item 15: To Be Determined



January 6, 2020

Mr. Chuck Trout
Executive Director
Texas Racing Commission
PO Box 12080
Austin, TX 78711

Dear Mr. Trout,

Per Devon Bijansky's request, The Texas Thoroughbred Association is resubmitting our application for funds from the Horse Industry Escrow Account in accordance with Rule 303.321.

This submission includes additional documentation for Item 6, Administrative Fees.

We understand that the total amount of requested funds may not be available for distribution at this time; however, we would appreciate Commission approval for all requests so that we may begin immediate promotion to achieve the best results.

We appreciate the opportunity to utilize these funds in the best interests of the Texas horse industry.

Respectfully,

Mary Ruyle
Executive Director

cc: Devon Bijansky, TRC

TEXAS THOROUGHBRED ASSOCIATION
APPLICATION FOR FUNDS FROM THE HORSE INDUSTRY ESCROW ACCOUNT

Item 1: Texas Arabian Breeders Association

The Texas Thoroughbred Association has agreed to allocate 6% of its total available (\$3,750,000) to the Texas Arabian Breeders Association for their use. **TABA Executive Director Ed Wilson will submit a separate application for funds up to that amount for consideration by the Commission.**

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**TEXAS THOROUGHBRED ASSOCIATION
APPLICATION FOR FUNDS FROM THE HORSE INDUSTRY ESCROW ACCOUNT
REQUEST FOR FULL AMOUNT OF \$3,750,000
OVERVIEW/SUMMATION**

EVENT	DATE	DESCRIPTION		
1 Texas Arabian Breeders Association	2019 - 2020	TABA will submit their own request		
For TTA Use After 6% to TABA				
2020 Thoroughbred Meet at Sam Houston Race Park	Dec 2019 - March 2020	Early opening of stable area	\$ 75,000	2.128%
	Jan 2019 - March 2020	Event Marketing	\$ 100,000	2.837%
	Jan 26 2020	Houston Racing Festival	\$ 200,000	5.674%
	Feb 22 2020	Texas Preview Day	\$ 85,000	2.411%
	Mar 21 2020	Texas Champions Day	\$ 225,000	6.383%
3 American Racehorse Stallion Register	Dec-19	Texas Advertiser Incentives	\$ 12,250	0.348%
4 Industry Promotional Advertisements	Jan-20	National Advertisements for Breeding, Racing and Horse Sales	\$ 10,000	0.284%
5 Texas Equine Industry Directory	Jan 2020 - March 2020	Directory of Texas-based Equine Businesses	\$ 20,000	0.567%
6 5% Administrative Fees	Sept 2019 - Dec 2019	15% for Admin in Connection with Texas Equine Industry Direct	\$ 8,812	0.250%
		20% in Connection with Purse Bonus to TX Sale Grads Racing in	\$ 11,750	0.333%
		17% in Connection with Texas Sales Conignor Rebates	\$ 9,987	0.283%
		30% in Connection with ATB Breeder Bonus Awards	\$ 17,624	0.500%
		18% in Connection with Incentives for Mares Bred in TX in 2020	\$ 10,575	0.300%
7 2020 Thoroughbred Meet at Lone Star Park	April - July 2020	Event Marketing and Showcase Race Days	\$ 670,000	19.007%

EVENT	DATE	DESCRIPTION	AMOUNT	% of \$3,525,000
8	Purse bonus to Texas sales graduates racing in Texas 2020 - 2021	Paid to owner if sales graduate finishes in top 3 in Texas races for a set period of time after going through the 2020 TTA 2-year-old & HORA sale.	\$ 100,000	2.837%
9	Rebate to consignors at 2020 TX 2YO & HORA Sale Apr-20	Rebate 1/2 of consignment fee for sales graduates	\$ 56,000	1.589%
10	ATB Breeder Bonus Awards Throughout year	Paid to breeders of ATB horse placing 1, 2 or 3 in open company races in Texas, or in out-of-state races when there is no live racing in Texas, or in out-of-state stakes of \$50,000 or more.	\$ 350,000	9.929%
11	Incentives for mares bred in Texas in 2020 Feb - July 2020	Paid as a partial rebate of breeding fees on a sliding scale based upon foals born in Texas in 2021	\$ 450,000	12.766%
12	2020 Thoroughbred Meet at Retama July - September 2020	Event Marketing and Showcase Race Days	\$ 200,000	5.674%
13	Non-racing disciplines Throughout year	TBD	\$ 187,500	5.319%
14	5% Administrative Fees Jan 2020 - Aug 2020	8 Months Administrative Fees at 5%	\$ 117,496	3.333%
15	TBD 2020 - 2021	TBD	\$ 608,006	17.248%
			\$ 3,525,000	100.000%

ITEM 2

2020 THOROUGHBRED MEET AT SAM HOUSTON RACE PARK

Operating Cost SHRP

Stable Area

Original Plan		Adjusted Plan	
Open Stable Area	19-Dec	Open Stable Area	3-Dec
Begin Training	26-Dec	Begin Training	6-Dec
Begin Gate Works	26-Dec	Begin Gate Works	23-Dec

PER DAY EXPENSE

Type of Day	Stable Area Only	Stable Area with Training	Stable Area with Training on a Holiday (12/24)	Stable Area with Training and Gate Works
Labor				
TM Chief Equipment Operator	105.34	105.34	210.68	105.34
TM Operators	307.24	307.24	614.48	307.24
TM Maintenance Workers	267.93	625.17	1250.34	625.17
SE Stable Gate	680.13	680.13	1360.26	680.13
SE Walk In Gate	95.89	95.89	191.77	95.89
SE Fingerprint TRC	78.51	78.51	157.03	78.51
RA Stall Manager	212.64	212.64	212.64	212.64
RA Outriders	329.76	329.76	329.76	329.64
RA Clockers	91.60	91.60	91.60	91.60
RA Gap Attendant		45.80	45.80	45.80
RA Assistant Starters				316.31
Sub-Total Labor	2,169.04	2,572.08	4,464.36	2,888.27
Equipment/Other				
SE Ambulance with Medics	-	482.00	482.00	482.00
FM Utilities	285.00	285.00	285.00	285.00
FM Dumpster	45.00	45.00	45.00	45.00
TM Fuel	147.00	147.00	147.00	147.00
TM Propane	26.00	26.00	26.00	26.00
TM Supplies, etc	100.00	100.00	100.00	100.00
Sub-Total Equipment/Other	603.00	1,085.00	1,085.00	1,085.00
Grand Total	2,772.04	3,657.08	5,549.36	3,973.27

Electricity, Water, Gas
Haul Rate

Rest Rooms, Cleaning, Employee

Type of Day	5	14	1	21
Total Cost to SHRP	13,860.20	51,199.12	5,549.36	3,973.27
				74,581.95

TEXAS THOROUGHBRED ASSOCIATION 2020 MARKETING MONEY

SAM HOUSTON RACE PARK

OVERVIEW

Sam Houston Race Park will be the first track in Texas to utilize additional purse monies from HB 2463. This proposal develops a plan to increase exposure of the new opportunity for racing in Texas. Growing awareness will be addressed in a three tier approach listed below.

The Objective

- Need #1: Increase awareness of the new purse structures in Texas
- Need #2: Promote the enhanced racing season at Sam Houston Race Park
- Need #3: Provide an additional avenue for TTA to grow the Texas bred program

The Opportunity

- Goal #1: Attract more horsemen to participate in Texas racing, starting at Sam Houston Race Park
- Goal #2: Additional race days at SHRP will provide extra racing opportunities to horsemen
- Goal #3: Improving handle which develops increased purse structures for 2021

The Solution

- Recommendation #1: Media (Radio, Print or Social)
- Recommendation #2: Wagering Promotions (ADW's)
- Recommendation #3: Grass Roots Marketing (Variety of options)
- Recommendation #4: Improve the stakes program with an emphasis on Texas Bred races

PROPOSAL

Outlined below is the multi-tier proposal for the Sam Houston Race Park 2020 thoroughbred meet.

2020 Racing Season

Advertising (Entire Season)

- Paulick Report Website- see attached proposal
 - Advertisement of SHRP and Texas racing on website (see attached)
 - Texas sire/ breeding advertising on website
 - Cost \$4,200
 - Texas Sires/Breeding Advertisement
 - Cost \$5,200

- "At the Races" with Steve Byk radio show.
 - Includes multiple call-ins and SHRP advertising on webpage
 - Cost \$4,100
- Social Media Influencers
 - Identify four (4) racing influencers to promote Texas racing throughout the season
 - Cost \$10,000

Wagering

- TVG- see attached proposal
 - Wednesday Racing
 - Pick 4 Insurance promo
 - Cash back to participating TVG customers
 - Talent Pick 4 analysis and tickets posted on website and social media
 - Four (4) email mentions throughout promotion period
 - Cost \$16,500
- Additional ADW promotion
 - Currently in discussions with Twinpires
 - Projected cost \$10,000

Texas Preview Day- Saturday, February 22, 2020

This is a new stakes event for Texas-breds and will act as prep races for Texas Champions Day. The 2020 edition will consist of four (4) TX bred stakes, with the goal to grow in the future.

- TVG- see attached proposal
 - Full card shown on TVG or TVG2 with stake races on TVG
 - Preview of stakes races the day prior
 - Preview segment early in the day on TVG
 - Interview during the week leading up to Texas Champions Day
 - Money Back Special wagering promotion
 - Cost \$13,000
- Daily Racing Form- see attached proposal
 - RaceBoost Elements
 - ½ page ad
 - Pick 4 or 5 advertorial in the National AM edition with expert handicapper analysis
 - Free digital SHRP past performances to all DRF customers
 - Email blast to DRF digital players (65k customers)
 - Morning Line email (150k emails)
 - Digital assets on DRF's homepage
 - Cost \$9,500
- Texas Racing themed giveaways
 - T-Shirt or stuffed animal
 - Projected cost \$2,500

Texas Champions Day- Saturday, March 21, 2020

The 2020 edition will consist of seven (7) Texas-breds stakes. Due to the increase purse funding, SHRP has added one additional Texas-bred stake race in 2020. Again, the goal is to grow this day in the future with the increase development of the Texas- bred program.

- TVG- see attached proposal
 - Full card shown on TVG or TVG2 with stake races on TVG
 - 90 :15 second tune-in commercials
 - Talent mentions and Interview during the week leading up to TPD
 - Talent Selections and Analysis

- Four social media posts
 - Money Back Special wagering promotion
 - Cost \$13,000
- Daily Racing Form- see attached proposal
 - RaceBoost Elements
 - ½ page ad
 - Pick 4 or 5 advertorial in the National AM edition with expert handicapper analysis
 - Free digital SHRP past performances to all DRF customers
 - Email blast to DRF digital players (65k customers)
 - Morning Line email (150k emails)
 - Digital assets on DRF's homepage
 - Cost \$9,500
- Texas Racing themed giveaways
 - T-Shirt or stuffed animal
 - Projected cost \$2,500
- Stakes Program
 - Add two (2) Texas-bred stakes at \$75,000
 - Increase seven (7) Texas-bred stakes from \$50,000 to \$75,000
 - Total increase of \$310,000 in purse monies for Texas-breds stakes
 - Add one (1) race on Houston Racing Festival Day (1/26/20)
 - \$200,000 Texas Turf Mile (3 year-olds)

ECONOMIC IMPACT

The primary driver of the events is to bring national exposure to Texas racing starting with the 2020 Sam Houston Race Park meet. Fiscal measurements for all proposed elements will be demonstrated in the racing product via entries and handle increases compared to 2019.

Financial Benefits

- Advertising (Season long)
 - National exposure through a variety of media platforms for Texas bred program
- Wagering
 - TVG Pick 4 promo
 - Increase SHRP's Wednesday TVG Handle by \$50,000 per day
 - Additional ADW proposal
 - Once finalized, expectation is to increase handle
- Texas Preview Day
 - National exposure through proposed platforms for Texas bred program
 - Increase SHRP's Saturday TVG handle by \$75,000
 - Increase national handle by 10% via DRF marketing
- Texas Champions Day
 - National exposure through proposed platforms for Texas bred program
 - Increase TVG handle versus PY by \$100,000
 - Increase national handle by 10% via DRF marketing

PRICING- MARKETING

Media (Radio, Print or Social)	Price
Daily Racing Form:	
Texas Preview Day- Multiple Avenues	\$9,500
Texas Champions Day- Multiple Avenues	\$9,500
Paulick Report: Website advertisement for the entire meet	\$4,200
"At the Races" with Steve Byk: Advertising/ Appearances	\$4,100
Media (Radio, Print or Social) Costs	\$27,300
Wagering Promotions	
Twinspires: TBD	\$10,000*
TVG:	
Pick 4 Insurance Promo: Offered every Wednesday at SHRP	\$16,500
Texas Preview Day: Expanded coverage plus a Money Back Special	\$13,000
Texas Champions Day: Expanded coverage plus a Money Back Special	\$13,000
Wagering Promotions Costs	\$52,500
Grass Roots Marketing	
Texas Themed Giveaways: "We are Texas Racing"	\$5,000*
T-Shirt: Texas Champions Day- March 21, 2020	
Stuffed Animal: Mr. Money Bags	
Social Media Influencers	
Identify four (4) influencers to push Texas Racing throughout season	\$10,000*
Additional Opportunities	
Texas Sire/ Breeding Promos- Possible Paulick Report	\$5,200*
Grass Roots Marketing Costs	\$20,200
Total	\$100,000

Pricing listed above consists of actual proposals received by SHRP (attached). Pricing with an asterisk (*) are estimated at this time but will not exceed proposed cost.

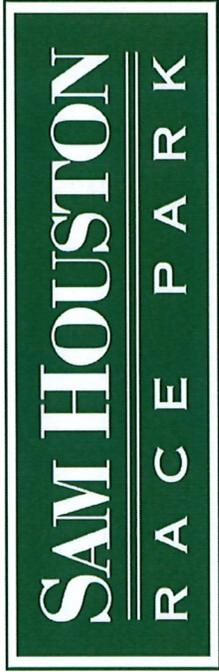
PRICING- STAKES PROGRAM

Stakes	Price
Houston Racing Festival- January 26, 2020	
Texas Turf Mile (New Race)	\$200,000
Texas Preview Day- February 22, 2020 (ALL TEXAS BREDS)	
Houston Turf (Added \$10,000 from 2019)	\$10,000
Miss Houston Turf (New Race)	\$75,000
Texas Champions Day- March 21, 2020 (ALL TEXAS BREDS)	
Bara Lass (Added \$25,000 from 2019)	\$25,000
Groovy (Added \$25,000 from 2019)	\$25,000
Richard King (Added \$25,000 from 2019)	\$25,000
San Jacinto (Added \$25,000 from 2019)	\$25,000
Spirit of Texas (Added \$25,000 from 2019)	\$25,000
Star of Texas (Added back for 2020)	\$75,000
Yellow Rose (Added \$25,000 from 2019)	\$25,000
Stakes Program Improvements	\$510,000



2020 PARTNERSHIP

NEW YEAR | NEW DRE.COM | NEW GROWTH!



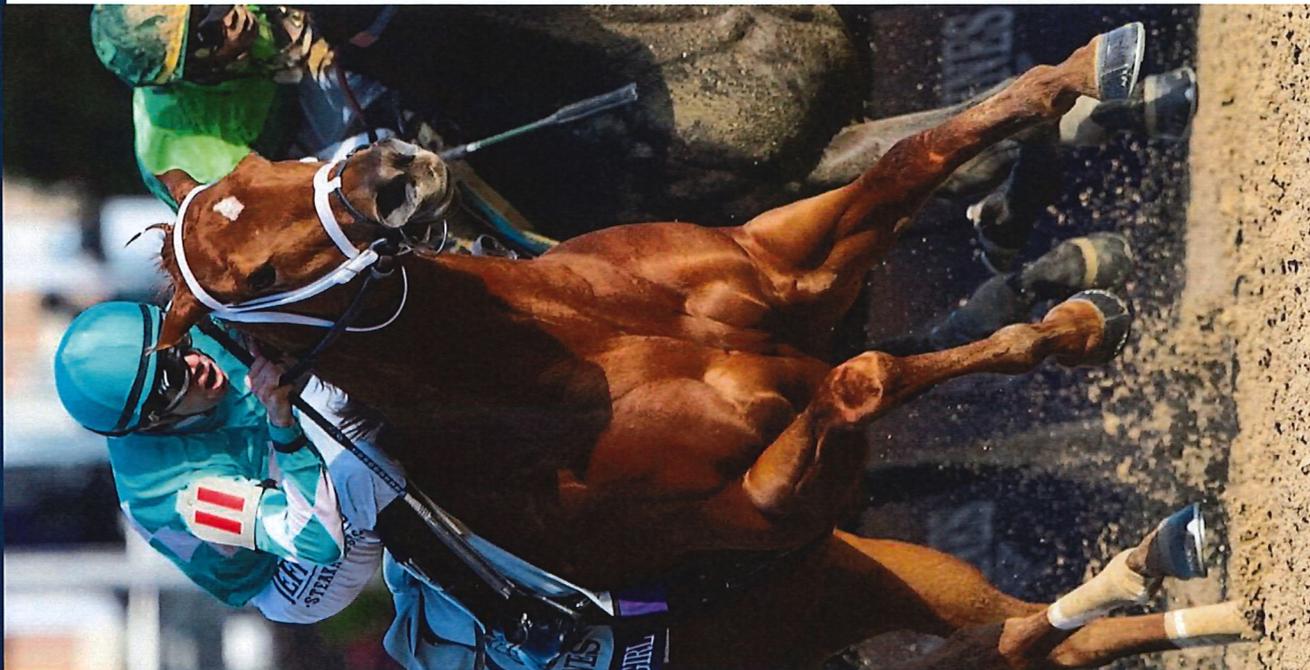
DRF and DRF.com: By The Numbers

DRF provides the pieces to the puzzle horseplayers have come to trust!

A two-day shelf life for each edition, where players regularly refer to and elicit the help from DRF products!

Players invest a premium price for this tool also:

Approximately \$10 USD
(Varies state-to-state)



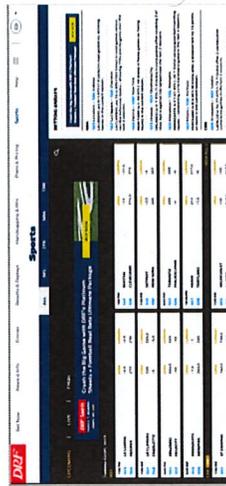
DRF and DRF.com:
What is it?

The primary source for Thoroughbred/Harness racing news and information via industry-leading daily newspaper, and DRF.com!



NEW
DRF Announcements:

- The launch of the new DRF.com & DRFBets platform (in early 2019), a ‘singularity’ model
 - A fully integrated handicapping and wagering experience like no other in racing!
- **New HP, Track, DRF Bets and News pages for all fans to enjoy!**
- Enhanced entries, race results, classic PP’s page + four (4) new ad carousels to spotlight the main user flow
- DRF Sports Data & the DRF Fast Form!
- The successful branding campaign, **“Ready, Set, Bet!”** & Social contests: **#HowYouDRF**
- Celebrated our 125th year milestone as the #1 trusted voice in racing



We are a culture of delivery creating more educated players, instilling confidence - resulting in repeat visits to our robust suite!

NEW DRF Announcements cont'd:

A new experience...for the companion player

- Improved Database Marketing Elements and better visibility of tracks Bonus Card PPs
- Plus, with new improvements at DRF, we have even better use of our players, casual fan lists and the like, and the new RaceBoost *User Interface!*
- The late 2019, successful removal of the DRF News payroll!
- **ALL DRF NEWS IS NOW FREE!**
- Cultural targeting campaigns with “DRF En Español”
- Core Data product improvements with DRF Formulator PPs, & MORE!



OPENING THE GATES

All news stories on DRF.com are now FREE!

Dear Customer,

As America's Turf Authority, it's our mission to provide racing fans with the most timely and up-to-date information possible, so we have redesigned our site so that you can now see the news you want, whenever you want, with just a click.

And there's no better time to start — Breeders' Cup is just a few weeks away and we have extensive coverage of all the prep races, key contenders and so much more. Thank you for being a loyal customer, The DRF Team

READ FREE

Free PPs

Today's Bonus - Free PPs

Finger Lakes - Fri, Mar 16
Belmont Park - Sat, Mar 17

Get Access to BONUS card for FREE with any same-date race card purchased below.

Favorite Tracks

★ **BEL** Belmont Park

16 FRI	17 SAT	18 SUN
--------	--------	--------

★ **SA** Santa Anita

16 FRI	17 SAT	18 SUN
--------	--------	--------

Top Tracks

☆ **DMR** Del Mar

16 FRI	17 SAT	18 SUN
--------	--------	--------

☆ **GP** Gulfstream Park

16 FRI	17 SAT	18 SUN
--------	--------	--------

☆ **FL** Finger Lakes

16 FRI	17 SAT	18 SUN
--------	--------	--------

All North American Tracks

International Tracks





DRF and DRF.com: By The Numbers



Total annual print distribution:
4.5 million

Annual monthly page views:
15.4 million

Average monthly visitors, DRF.com:
625,000

Email database:
430,000

Annual video views, DRF TV:
3 million

Hours viewed annually:
286,000

Annual emails sent:
120 million

Annual Digital Edition downloads:
50,000



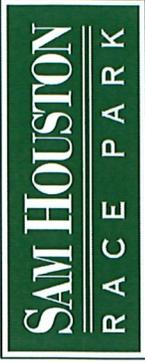
3.4M REACH*



15.9M REACH*



353K REACH*



**DRF and DRF.com:
By The Numbers**



DRF USER

Age	
<18	14%
18-24	7%
25-34	6%
35-44	11%
45-54	22%
55-64	24%
65+	16%

Household Income	
\$0-50k	40%
\$50-100k	33%
\$100-150k	12%
\$150k+	15%

Education Level	
Attnd/Grad College	45%
High School Grad	40%
Graduate School	15%

Source: Quantcast, Dec. 2016



WAGERING

Average amount wagered in single race day **\$374**
 vs. \$126 national average
 Average number of race days played per year **108**



VISITS

90% customers visit DRF.com every week
55% of customers visit DRF.com every day



MOBILE

95% of customers own a tablet/mobile device
55% use handheld device to access racing news/data
52% use handheld device to wager on races
40% use handheld device to watch live races



PRINT READERS

Average amount wagered in single race day **\$374**
 Average Amount wagered annually **\$16,560**
 Purchase DRF an average of **2.7x** per week



DRF and DRF.com: By The Numbers

DRF will make it our #1 objective to expand **Sam Houston** racing over our multiple platforms and product lines. By promoting to similar audiences, we aim to grow the appetite like never before for the Texas Thoroughbred Association, and deliver the consistent base in new, and existing regions – **translating into new handle!**

DRF Bets

State	% of Total
CA	17.6%
NY	17.2%
FL	10.3%
KY	5.7%
IL	4.5%
OH	4.1%
MA	3.3%
MD	2.6%
VA	2.5%
AR	2.4%

DRF PP Customers

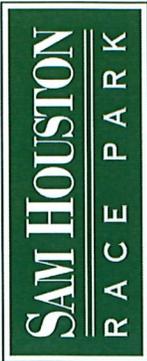
State	% of Total
CA	14.5%
NY	13.2%
FL	6.7%
TX	5.5%
NJ	5.4%
KY	4.5%
PA	3.9%
IL	3.8%
MA	2.8%
OH	2.8%

DRF Tourney Players

State	% of Total
CA	12.6%
NY	12.1%
FL	6.2%
NJ	6.0%
IL	5.2%
KY	4.7%
PA	4.5%
TX	4.2%
OH	3.5%
MA	3.3%

DRF Print

State	% of Total
CA	25.3%
NY	14.2%
NV	13.0%
CAN	5.9%
FL	5.5%
LA	3.9%
IL	3.2%
NJ	3.2%
KY	2.6%
MD	2.4%



**DRF, Sam Houston
& Texas Thoroughbred Association:
2020 Mission**

Maximize awareness, and horseplayer engagement on Texas Preview & Champions Day in 2020!
This proposal will maximize exposure of Sam Houston racing and position the circuit as a premier wagering option for horseplayers across North America! **How?** Through investment in certain DRF elements: mainly Past Performance expansion and DRF RaceBoost!

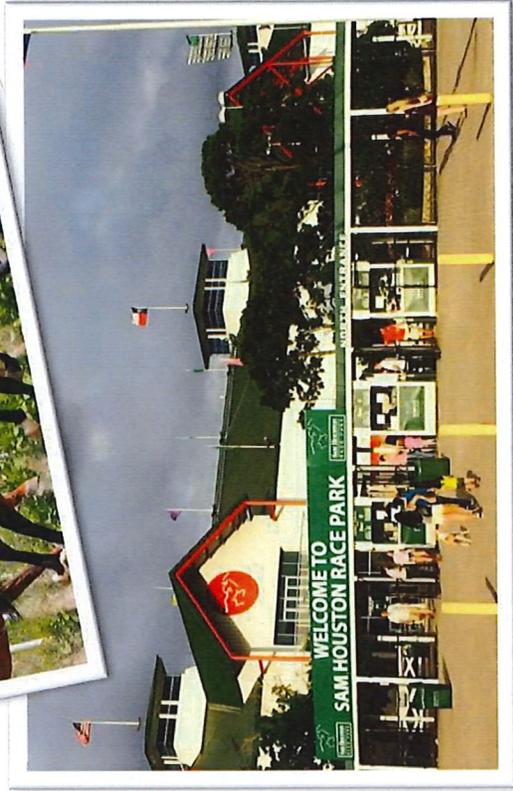


- Capitalize on DRF’s popular platforms to maximize North American handle
- Attract players who will already be playing on other tracks, and ensure they trial Sam Houston too!
- RaceBoost brings all the unique DRF platforms together to highlight any circuit to grow share of wallet play



DRF, Sam Houston & Texas Thoroughbred Association: 2020 Mission

- Create a new appetite like DRF has successfully accomplished with other racing circuits on a regular basis
- Gain share from other high-profile circuits on your targeted dates by introducing your racing's value
- Promote and drive handle for your most important dates below to the most avid and devoted horseplayers across the country!
- **Texas Champions Preview – February 22, 2020**
- **Texas Champions Day – March 21, 2020**





DRF RaceBoost - Proven Results 2019 Recaps

DRF RaceBoost

Keeneland 2019 Fall Meet

2018: \$144,561,182
2019: \$160,587,928

11% ↑

Same YOY races, partnership has helped drive 32% increase since 2017 and record PP downloads!

Ellis Park 2019 Season:

2018: \$39,106,607
2019: 43,186,582

10% ↑

Two less race dates in 2019, The same amount of races and starters

Breeders' Cup (Rotating tracks)

2018: 163,011,577, CD
2019: \$174,000,574, SA

7% ↑

Handle highest ever yet for two-day format

Woodbine 2019 Queen's Plate

2018: \$14,625,756
2019: \$18,000,000

23% ↑

All-time single day wagering record for Woodbine Program started in fall '16

Best of Ohio Races (Rotating tracks)

2018: \$661,920, TDN
2019: \$1,120,020, MVR

69% ↑

No DRF promotion for Best of Ohio in 2018 (increase of \$458,100 with one less race carded)

Ruidoso Downs All American Festival (Fri-Mon, T'bred & QH)

2018: \$3,652,049
2019: \$3,993,595

9% ↑

First time utilizing DRF RaceBoost, similar results for Alb. Downs-AQHA 2019 event

Charles Town 2019 Charles Town Classic

2018: \$3,097,960
2019: \$5,443,268

58% ↑

13-race card on the event, same as 2018

Prairie Meadows Iowa Festival of Racing

2017: \$2,225,222
2018: \$3,453,904, w/RaceBoost
2019: \$2,621,588 no RaceBoost

25% ↓

Ran in 2018 (first for the first time), did not in 2019



DRF RaceBoost - Proven Results 2019 Recaps, cont'd

DRF RaceBoost

**Keeneland
2019 Blue Grass Stakes**

2018: \$22,634,861
2019: \$25,809,200

14% ↑

Eclipsing 2018's figure, same races and record set for the Pick 5 pool/PP downloads in DRF funnel

**Canterbury
Minnesota Derby**

2018: \$697,722
2019: \$966,372

39% ↑

Handle up \$268,650 with one less race in 2019 – 10-race card in 2019, 11-race card in 2018

**Remington Park
2019 Oklahoma Derby**

2018: \$2,411,714
2019: \$3,086,582

28% ↑

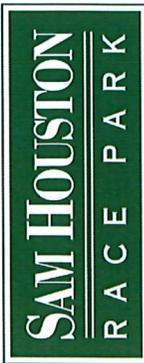
One less race, and Remington set all-time record in 2019

**Indiana Grand
2019 Indiana Derby Day**

2018: \$3,628,579
2019: \$4,101,656

13% ↑

Same 10 races on the card this year and last, garnered record PP downloads for this event in DRF's funnel

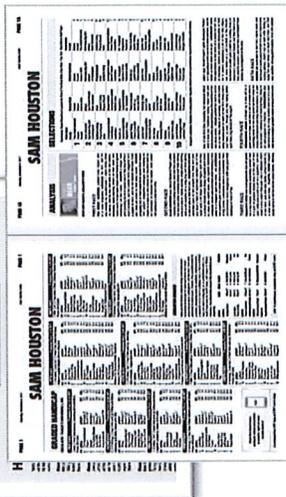


1 DRF, Sam Houston & Texas Thoroughbred Association :
RaceBoost Elements
Special Section Print PPs & Advertorial (National)

Enhance awareness, and maximize handle for your racing to the most devoted horseplayers across North America with this special section print advertorial! Support your premier dates (2/22 & 3/21) with an expanded print presence nationally that includes:

- A ½ page ad
- Pick 4 or 5 Advertorial in the National Main AM edition promoting the wager sequence on both dates, with expert DRF handicapper analysis!

- This would be followed by upfront Pick 4 or 5 PP's providing Sam Houston with a complete, national presence. Capturing an entirely new audience of horseplayer that does not typically receive this information



2 DRF, Sam Houston & Texas Thoroughbred Association: RaceBoost Elements Digital PPs, & Database Marketing

- DRF will provide all customers with access to Free Digital PPs for Preview & Championship Day cards of racing!
- Email Blast to DRF Digital PP Buyer database of 65,000+ active core players across North America, with a direct link to your Free Digital PPs

- Morning Line Email Sponsorship (150K emails) linking to FREE PPs page!

- Digital assets on DRF's Homepage Carousel to maximize your share of track voice. (*The highest profile placement on DRF.com!*) + links on various DRF.com customer journeys!

DRF
SAM HOUSTON BONUS PPS
WITH PURCHASE OF ANY WEDNESDAY PP
GET PPS

DRF Bets Morning Line

OAKLAWN PARK: Big names collide in Southwest Stakes

The Kentucky Derby trail is starting to heat up, and one sign is that a trio of Hall of Fame trainers - Steve Asmussen, Bob Baffert, and D. Wayne Lukas - account for seven of the 11 horses entered in the Grade 3 Southwest Stakes Monday at Oaklawn. [READ MORE](#)

TODAY'S RACING

GULFSTREAM PARK: Lewis Bay, Curlin's Approval rematch in Royal Delta Stakes

After a disappointing start in his second start in weights and a favorable shift at the track, Curlin's Approval can help his trainer's Approval turn the tables on Lewis Bay when the two square off for the second time this meet in Monday's \$200,000 Royal Delta Stakes at Gulfstream Park. [READ MORE](#)

OAKLAWN PARK: Sonneteer on favorite surface in Razorback

Sonneteer likes being in Los Angeles but racing in Arkansas. He swept in from Southern California to take the \$500,000 Razorback Handicap. [READ MORE](#)

DRF's Race of the Day
Oaklawn Park | Race 9:10 PM ET
G3 Southwest S. | 3YO | 1/16 M

Get video analysis and free PPs >>>

DERBY WATCH
Get odds, comments, and more for the 2018 Kentucky Derby

[READ MORE](#)

DRF
SAM HOUSTON BONUS PPS
WITH PURCHASE OF ANY WEDNESDAY PP
GET PPS

DRF Bets

\$200 FREE BET
[No deposit required]

100% BONUS
Convert West Coast derby - Regional World Cup
Sister World racing in race for Regional World Cup
Bets placed in workout, placing your cover in debt?
California needs to take advantage of its Localized Stakes
Local Cards Friday card to see on Monday
NTA's terms using the "Signature of the Year"
DRF's Livingston will win Eclipse Award
Monday: Three local riders per race for customers

PAST PERFORMANCES



DRF, Sam Houston & Texas Thoroughbred Association: Campaign Summary

1 Special Section Print PPs & Advertorial on 2/22/20 and 3/21/20 (National):

- 1/2 page ad
 - Pick 4/5 Advertorial in the National Main AM editions promoting the wager sequence of your choosing (with expert DRF handicapper analysis!)
 - Upfront Pick 4/5 Past Performances to run nationally (North America-wide)
-

2 Digital PPs & Database Marketing:

- DRF to provide all customers with access to Free Digital PPs to any customer that buys another card on February 22, 2020 and on March 21, 2020
- Email Blast to DRF Digital PP Buyer database of 65,000+ active core players
- Morning Line Email Sponsor
- Digital assets on DRF's Homepage Carousel

Total Investment: \$19,000

PAULICK REPORT.COM

Sam Houston 2020 Meet Shopping List

Morning Headlines Email:



Reaches 16,700 subscribers
2019 click through rate 37%.
Mobile opens 54%

Website:

342,000 monthly unique visitors, 28,000 active daily readers
1.1- million page views, 3+ minutes per visit
66% of monthly traffic is via mobile devices



Demographics

58% male, 40% age 40-59

- 44% Owners – 18% Primary role, 26% Secondary
- 26% Breeders – 8% Primary Role, 18% Secondary
- 23% Industry Professionals
- 13% Trainer/Assistant
- 12% Farm Managers
- 27% of readers visit 2 or more times a day
- 44% have shared an article, 32% clicked a banner



28,000 Facebook fans

Last 28-days 984,000 Post Reach, 661,000 Post Engagements. 26,000 video views, 925 new likes



16,000 Instagram Followers



25,000 Twitter followers (Ray Paulick)
4,00 Twitter followers Paulick Report

Save 50% when booking a minimum of 16-weeks during the 2020 season. Bundle the Morning Headlines Email, PLUS Article Pop Out on the website. **Only 5 Packages Available**, choose your day, Thur-Fri-Sat-Sun-Mon. **1**

\$5,600 net total over 16 weeks (TB meet & most of QH meet)

*** \$4,200 net total over 12 weeks (TB meet only)**

1. Morning Headlines Email

Reach our 17,000 daily subscribers as sponsor. Includes your name in the subject line, PLUS 600x300 top banner.

PLUS

2. Article Page Pop Out

Starts as a 300x90 banner within right hand column and pops across bottom of page. Follow our email readers onto the website, plus our expanded online audience. 40,000 imp. 268 avg. daily clicks Sept-Nov

2

The screenshot shows a website article layout. At the top right, there is a blue banner with the text "300 x 90" and "PR POLL". Below the banner is a poll question: "Will a GPS system for tracking workouts improve the accuracy of information provided to handicappers?" with "Yes" and "No" options. At the bottom of the page, there is a blue footer with the text "900 x 125 Footer". A red arrow points from the banner to the footer, and a red arrow points from the footer to the banner.

The screenshot shows the Paulick Report Morning Headlines page. The main headline is "SPENDTHRIFT OPEN HOUSE TODAY - JAN. 14 1-3 pm daily | Fun will be served". Below the headline are several smaller articles with images, including "The Breeders' Farm", "Wags On Magic Millions", "DHY-1: Restrictions Placed On Louisiana Horses For Upcoming QH Sale", "Daughter Of Direct Sense Tops Membership Session Of Keeneland January Sale", "Imparting The Benefits & Risks Of The Thoroughbred Race In The Exchange Rate", "Delaware Shifts 2017 Sales To Later In Year To Maximize Field Size", "Widened Pools Up 'Bargain' More Than Ready Yearling For 1.3 Million AID At Magic Millions", "Florida HPA Announces Deal With Gulfstream Park For 600,000 Available Millions", "Vide Dri' Gues For Third Straight Win In Saturday's Q1 La Canada", and "You Haven't Won, Sir! Apprentice Celebrates Top Seen In New Zealand Race". At the bottom, there is a "FOR NEWS THROUGHOUT THE DAY, VISIT WWW.PAULICKREPORT.COM" section and a "PAULICK REPORT" sidebar with contact information.

High Profile, owned by the day

1. Article Page Pushdown

Expandable Banner at top of all article pages. Expands at 1st visit per user per day 1170x350, 1170x90, 300x90 \$250 per day, 40,000 daily imp.
Also available on the homepage - \$175 per day



2. Takeover Banner

Pops up over the website, reader must "x" out to enter the site. Only shows once per person per 24-hour period. Adv have used as fillable form, links to video, animated or static banners. 35,000 imp & 2.5% CTR \$425 per day



3. Mobile Sticky Banner

Appears at bottom of cell screen across the bottom of all pages on the site. 45,000 imp & 1% CTR \$200 per day



4. Pop Out Footers

Available on Homepage & Article Pages and includes a footer across the bottom of the page.
Homepage - \$225 daily, 20k imp.
Article Pages - \$300, 60K imp.



Package 1 - Article Page Pushdowns

One day per week
\$250 per day x 12 (TB Meet) = \$3,000 net
\$250 per day x 20 (TB&QH) = \$5,000 net
Straight and simple with high exposure

Package 2 – Homepage Popout

One day per week of Homepage Popout banner
\$225 x 20 (TB&QH) = \$4,500
\$225 x 12 (TB) = \$2,700
Be the first thing they see on the homepage

Package 3 – Mix It Up

One day per week Homepage Pushdown & Mobile Sticky Banner
For 12 weeks (TB Meet)
\$4,500 net
Hit them on both desktop and mobile



Package 4 – Mobile Assault

12 Mobile Sticky Banners + 6 Takeover Banners
\$4,950 net
Be unavoidable on both mobile and desktop,
Especially on your biggest days



**TVG / Sam Houston
Race Enhancement /
Co-funded Wagering Incentive
November 2019**

TVG Exposure

LIVE TELEVISED SPORTS COVERAGE PRODUCED AND AIRED EVERY DAY

HOSTED FROM TVG's STATE-OF-ART HD STUDIOS & MAJOR
RACETRACKS AROUND THE WORLD



HOURS
PER WEEK

TVG

110



HOURS
PER DAY

15+



DAYS
PER WEEK

7

50%

OF PROGRAMMING IS
ON-TRACK WITH
ONSITE PRESENCE

TVG2

50

10

5





ONE NETWORK, TWO CHANNELS, 51,000 RACES PER YEAR, 150+ TRACKS WORLDWIDE



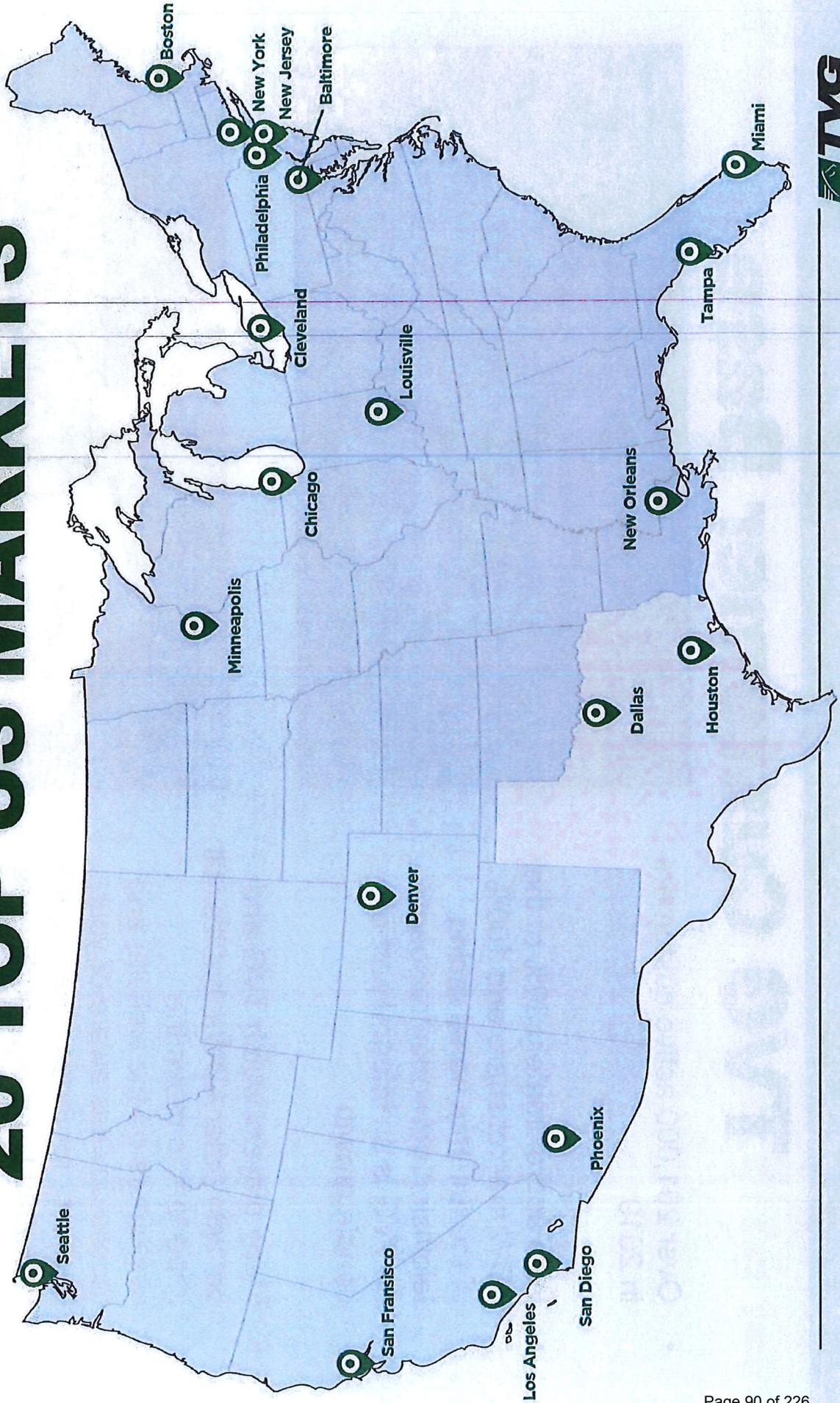
CHURCHILL DOWNS



GOLDEN GATE FIELDS



TVG COVERAGE EXTENDS TO ALL 20 TOP US MARKETS



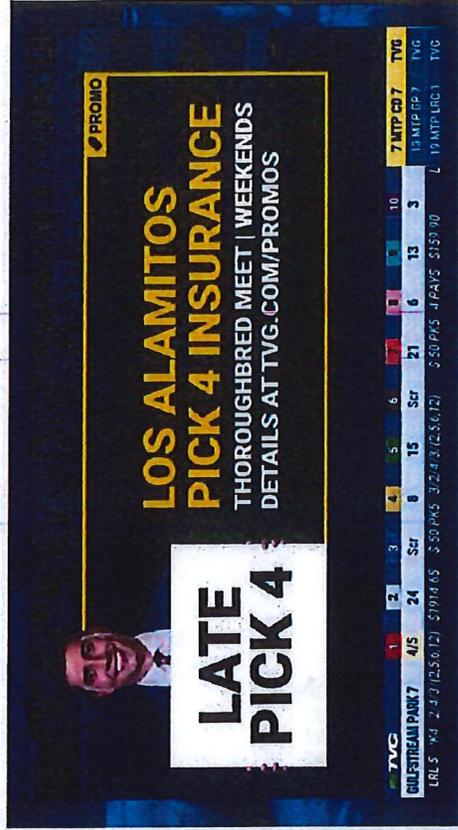
TVG Customer Base

- Over 201,000 active customers in 2019
- With approximately 30% of the ADW market share and 100% of the full-time horse racing television networks, exposure on TVG is an integral part of handle growth
- Many players watch TVG and bet with other ADWs, but it's still important to make the customers on the website and mobile devices aware of your product - for these reasons, it is important to hit both audiences on the TVG Network and on the TVG website



Pick 4 Insurance

- Wagering Incentive
 - Customers get cash back for going 3 out of 4 in the pick 4
 - First pick 4 bet is eligible
 - Refund up to \$25
- TV / Marketing
 - Talent pick 4 analysis
 - Talent ticket posted to web and social media
 - Mention in 4 emails throughout promotion period
 - Mention on promotional page on TVG.com



TVG	1	2	3	4	5	6	7	8	9	10	7 MTP C07	TVG
CULPEPER PARK	4/5	24	Scr	0	15	Scr	21	6	13	3	13 MTP C07	TVG
LRLS	2-3 (2.5.12)	10/16.5	3.50 PMS	3/2.4 (2.5.12)	3.50 PMS	4/PAVS	3/3.0/0				10 MTP L061	TVG

\$12,500

2019 Partnership Opportunity



Term: January 2020 – March 2020

Pick 4 Insurance: \$1,500 per day

Approximately 11 days – Wednesdays

Price: \$16,500

Big Race Day Package

TEXAS PREVIEW DAY

TVG Production and Marketing commitments:

- Full card shown between TVG and TVG2 with stakes races on TVG
- 90 :15 second tune-in commercials
- Countdown to Race Day Crawl
 - To begin airing 5 days prior to race day
- Interview during the week leading up Texas Preview Day
- Talent Mentions on air promoting Texas Preview Day
- Talent Selections/Analysis
- 4 Social Media Posts
- Money Back Special on stakes races
 - Push notification promoting Money Back Special
 - Mention in promotional email

2019 Partnership Opportunity



Term: February 22, 2020

Big Day Package: Texas Preview Day

Enhanced coverage with wagering incentive (Money Back Special on stakes races): \$13,000

TEXAS CHAMPIONS DAY

TVG Production and Marketing commitments:

- Full card shown between TVG and TVG2 with stakes races shown on TVG
- Preview(s) of stakes races the day prior to Texas Champions Day
- Preview segment early in the day on TVG
- Interview during the week leading up to Texas Champions Day
- Money Back Special on stakes races
 - Push notification promoting Money Back Special
 - Mention in promotional email

2019 Partnership Opportunity



Term: March 21, 2020

Big Day Package: Texas Champions Day

Enhanced coverage with wagering incentive (Money Back Special on stakes races): \$13,000

THANK YOU

To discuss TVG growth opportunities email

Tom.Cassidy@fanduel.com

ITEM 3

AMERICAN RACEHORSE STALLION REGISTER

AMERICAN RACEHORSE STALLION REGISTER TEXAS ADVERTISING INCENTIVES

In order to grow our breeding industry, it is important to promote Texas stallions and attract more broodmares (open or in-foal) to the state to participate in the Accredited Texas-bred Program. It's also important to encourage current Texas mare owners to breed to Texas stallions rather to a stallion in another state.

Any in-foal mare may come to reside in Texas, become Accredited and have a 2020 foal that is eligible to become an Accredited Texas-bred. Breeding to an Accredited Texas stallion after foaling allows the breeder to receive 100% breeder awards on the 2020 foal.

Through new funding available to the breed registries due to passage of HB 2463, Texas Thoroughbred Association collaborated with *American Racehorse* magazine to provide advertising discounts for Texas stallions and farms to advertise in the *2020 Stallion Register*. The discounts, averaging 40% off of regular rates, resulted in a 23% increase in the number of advertisements over the previous year. These discounts are important because many Texas stallions are owned by small farms and individuals without a large advertising budget. As a direct result of these discounts, the *2020 Stallion Register* contained multiple advertisements for stallions who had been standing in the state for several years but had never advertised before, and it also included expanded advertising for many Texas stallions. The *2020 Stallion Register* contains ads for stallions from around the region, and in years past the highest number of advertised stallions was typically in Oklahoma. For this year, however, Texas had the highest number of advertised stallions by far.

The *Stallion Register* has a print circulation of 4,600 recipients and is also available online, providing significant exposure for advertisers. It is mailed to approximately 1,000 Texas residents with the rest being residents of other states in the region. By advertising in *American Racehorse*, Texas stallion owners are able to reach those out-of-state residents at an affordable price.

The *Stallion Register* also contains advertisements detailing the benefits of new funding to the Texas Horse industry.

2020 AMERICAN RACEHORSE STALLION REGISTER

Recap of discounts provided to Texas accredited stallions

Farm	Stallions	Discount
Ivy Rose Equestrian Center	8-stallion roster	\$1,000
Rose Hill Stables LC	Behindatthebar	\$250
Leadem Farm	Aikenite	\$500
	Leadem in Ken	\$500
Hell on Heels Racing Stable	Allstar Dancer	\$500
Valor Farm	Crossbow	\$500
	Early Flyer	\$500
	Eagle	\$500
	Bradester	\$500
	My Golden Song	\$500
	Too Much Bling	\$500
	Stonesider	\$500
	Congaree	\$500
Lewis Hall/HFT Racing Stables	Cu Rahy	\$500
	Texas Bling	\$500
Mike Grossman/Eureka Thoroughbred	Mr. Besilu	\$500
	The Hunk	\$500
	Expect a Lot	\$500
CW Racing Stables/Chuck Walls	Light Up the Score	\$500
Broughton Farm/Misti Broughton	Live in Joy	\$500
	Shermanesque	\$500
American Legacy Farm	Moojab	\$500
Double Infinity Ranch	Moro Tap	\$500
Double S Thoroughbreds	Revolving	\$500
	TOTAL	\$12,250

ITEM 4
INDUSTRY PROMOTIONAL ADVERTISEMENTS

INDUSTRY PROMOTIONAL ADVERTISEMENTS

The Horsemen's Journal:

Half page \$750

BloodHorse:

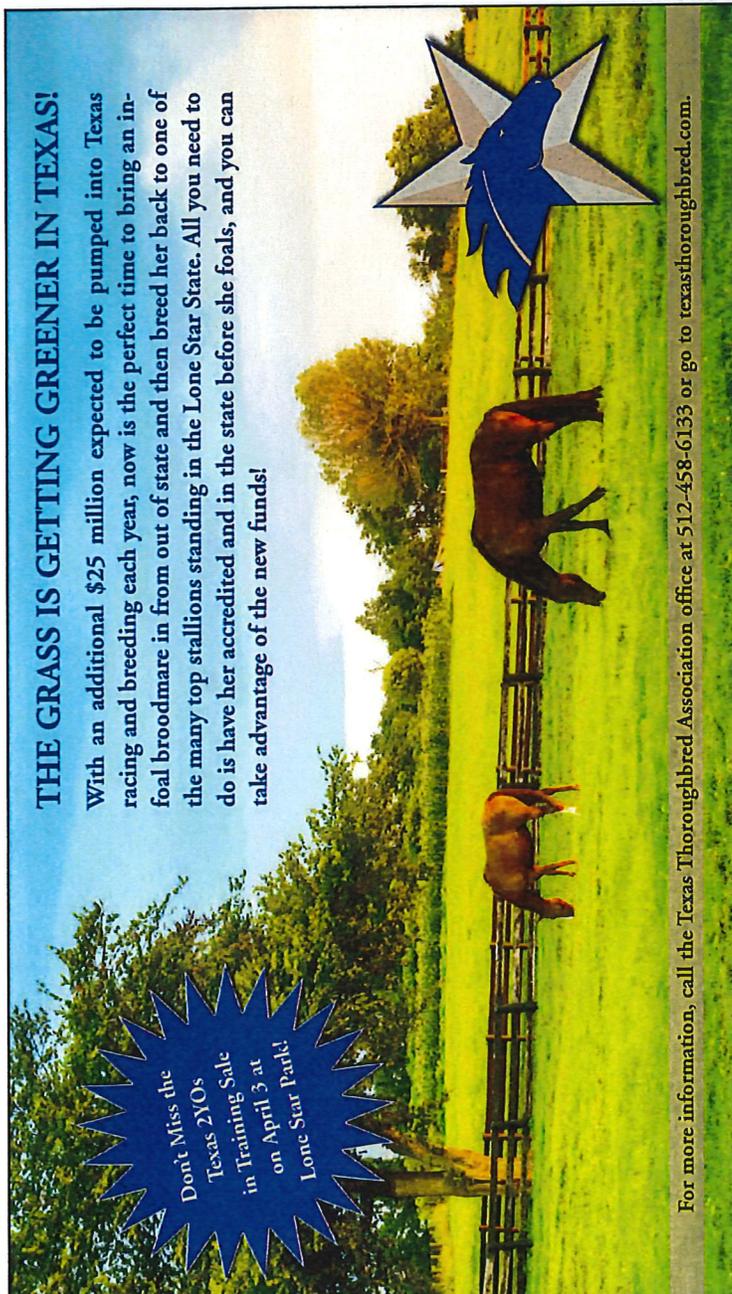
One-third page \$903

BloodHorse Daily:

\$298

Paulick Report:

TBD



THE GRASS IS GETTING GREENER IN TEXAS!

With an additional \$25 million expected to be pumped into Texas racing and breeding each year, now is the perfect time to bring an in-foal broodmare in from out of state and then breed her back to one of the many top stallions standing in the Lone Star State. All you need to do is have her accredited and in the state before she foals, and you can take advantage of the new funds!

Don't Miss the Texas 2YO's in Training Sale on April 3 at Lone Star Park!

For more information, call the Texas Thoroughbred Association office at 512-458-6133 or go to texas thoroughbred.com.

ITEM 5
TEXAS EQUINE INDUSTRY DIRECTORY

TEXAS EQUINE INDUSTRY DIRECTORY

The Texas Thoroughbred Association is developing an online equine services directory to be launched in early 2020. It will be similar in format to the old printed Yellow Pages but will be in an easy-to-use searchable digital format. The online directory will include numerous categories (breeding farms, trainers, veterinarians, feed and tack shops, equine transport, etc.) and will include only equine businesses that operate in the state of Texas. The goal is to highlight those Texas-based businesses and encourage participants in the Texas equine industry (as well as those from out of state) to patronize those businesses and keep their equine spending within the state of Texas.

Although it will be managed by the TTA, the directory will be open to all breeds and all equine disciplines (racing and non-racing). It will also be free for anyone to submit a listing, with be paid options available for those wanting to have enhanced listings with additional information, such as photos or videos. The TTA will also make available those enhanced listings at no cost to non-profit organizations involved in racehorse aftercare or other similar programs, such as therapeutic riding. The TTA will promote the directory thorough online and print magazine ads and at various equine events. The directory will provide Texas equine businesses another way to promote their services at low cost and will serve as a showcase for the wide variety of equine businesses in the state.

**ITEM 6
ADMINISTRATIVE FEES
SUMMARY**

The Semarca Corporation	Custom Programming of Horse Database, Monthly Fees for Maintenance, Licensing, Web Hosting	\$ 33,355.07
Ceratec Inc.	Domain Registration, Backup Software, Monthly Maintenance, Electronic Document Scanning Software	\$ 9,106.54
Fry's Electronics	Purchase of 2 Laptop Computers	\$ 1,146.62
Sage Software	Accounting Software Annual Renewal	\$ 3,750.86
Micro Accounting Solutions	Software Upgrade	\$ 7,731.80
Percent of Fees to Person Posting Social Media	10% of Fees for 4 Months	\$ 400.00
Percent of Staff Salary	10% of Staff Salary for 4 Months	\$ 3,220.70
	Total	\$ 58,711.59

ITEM 7

2020 THOROUGHBRED MEET AT LONE STAR PARK

2020 Event Marketing Money from HB 2463

Use the new opportunity from the passage of HB 2463 to grow awareness, generate an increase in handle and support Thoroughbred Horse Racing in Texas and at Lone Star Park.

Handle Drivers - \$55,000: TVG / DRF / NYRA Bets

- Increase interest from Bettors nation-wide to Wager on Lone Star Park races
- Will lead to increased handle, which will bolster future purses

Direct Mail Campaign - \$42,500

- Promote biggest day of the year, featuring the New Texas Derby to 50K Households in the DFW Market.
- Mystery Mutuel Voucher promotes wagering, leads to increased on-track handle and creates sense of urgency to be attendance on specific day.

2020 Event Marketing Money from HB 2463

Continued...

Attendance Drivers - \$52,500: Promotional / Live Music / Family Fun Activities

- Vehicle Giveaway used to generate an increase in attendance, since of urgency for a specific day, valuable data collection opportunity
- Live Music & Family Fun Activities used to create a fun, exciting atmosphere that will leave guests wanting to return for another day of great Thoroughbred racing.

Additional Funds that could be requested* – up to \$88,500

- Bolster event days in 2nd half of season with additional Marketing Dollars; In the scenario that not all of the \$100,000 allocated funds for Tx-Bred incentive in the Texas Derby are paid out.
- The additional Marketing dollars would be used for a combination of Direct Mail, Attendance Drivers and Handle Drivers.



LONE STAR PARK
at Grand Prairie

Sexton Mile Day

TVG Promotional	\$ 10,000.00
DRF Promotional	\$ 5,000.00
NYRA Promotional	\$ 1,500.00
Total	\$ 16,500.00
TOTAL (before Texas Derby)	\$ 150,000.00
GRAND TOTAL *	\$ 238,500.00

Texas Derby Day

TVG Promotional	\$ 10,000.00
DRF Promotional	\$ 5,000.00
NYRA Promotional	\$ 1,500.00
Vehicle Giveaway	\$ 40,000.00
Live Music	\$ 7,500.00
Family Fun Activities	\$ 5,000.00
Direct Mail MMV	\$ 42,500.00
Total	\$ 111,500.00

Lone Star Showcase Day

TVG Promotional	\$ 4,500.00
DRF Promotional	\$ 5,000.00
NYRA Promotional	\$ 1,500.00
Live Music*	\$ 7,500.00
Family Fun Activities*	\$ 5,000.00
Postcard Mailer*	\$ 15,000.00
SPR Bonus Points*	\$ 3,000.00
Total	\$ 41,500.00

Stars of Texas Day

TVG Promotional	\$ 4,500.00
DRF Promotional	\$ 5,000.00
NYRA Promotional	\$ 1,500.00
Live Music*	\$ 7,500.00
Family Fun Activities*	\$ 5,000.00
Direct Mail MMV*	\$ 42,500.00
SPR Bonus Points*	\$ 3,000.00
Total	\$ 69,000.00

Category Breakdown

Handle Driver Promos	\$ 55,000.00
Direct Mail	\$ 42,500.00
Attendance Driver Promos	\$ 52,500.00
*Tx-Derby Tx-Bred Incentive Funds	\$ 88,500.00

(to be used in the event that the \$100,000 allocated for the Texas Derby Tx-Bred Incentive isn't fully paid out)

Date	State	Sex/Age	Distance	Notes	2020		2019		Event Day
Monday, May 25, 2020	Texas Derby*	3 Year Olds	1 1/16 M	NEW	\$	\$ 300,000	\$	\$ 300,000	
	*Texas Derby Tx-Bred Incentive			NEW	\$	\$ 100,000	\$	\$ 100,000	
Monday, May 25, 2020	Lone Star Park Turf Stakes	F & M, Three Year Olds & Upward	1 Mile (T)		\$	\$ 100,000	\$	\$ -	
Sunday, June 14, 2020	Lane's End Danny Shifflett Scholarship Stakes	Tx-Bred F & M, Three Year Olds & Upward	7.5 F (T)		\$	\$ 75,000	\$	\$ 25,000	
Sunday, June 14, 2020	Wayne Hanks Memorial Stakes	Tx-Bred, Three Year Olds & Upward	6.5 F		\$	\$ 75,000	\$	\$ 25,000	
Sunday, June 14, 2020	Texas Stallion Stakes (Pan Zareta Div.)	Filly, Two Year Olds	5 F		\$	\$ 75,000	\$	\$ 10,000	
Sunday, June 14, 2020	Texas Stallion Stakes (Staunch Avenger Div.)	C&G, Two Year Olds	5 F		\$	\$ 75,000	\$	\$ 10,000	
Sunday, July 12, 2020	TX Thoroughbred Futurity (Filly Div.)	Filly, Two Year Olds	5.5 F		\$	\$ 100,000	\$	\$ -	
Sunday, July 12, 2020	TX Thoroughbred Futurity (C&G Div.)	C&G, Two Year Olds	5.5 F		\$	\$ 100,000	\$	\$ -	
Sunday, July 12, 2020	Highlander Training Center Assault Stakes	Tx-Bred, Three Year Olds & Upward	1 M (T)		\$	\$ 75,000	\$	\$ 25,000	
Sunday, July 12, 2020	Valor Farm Stakes	Tx-Bred, F & M, Three Year Olds & Upward	6 F		\$	\$ 75,000	\$	\$ 25,000	
			Total		\$	\$ 1,150,000	\$	\$ 520,000	
							\$	\$ 630,000	

Texas Derby Day
Lone Star Showcase Day
Stars of Texas Day

ITEM 8

PURSE BONUS FOR 2020 TEXAS 2-YEAR-OLD & HORA SALE GRADUATES

ITEM 9

REBATE TO CONSIGNORS IN THE 2020 TEXAS 2-YEAR-OLD & HORA SALE

Fillies Set Pace at Texas 2-Year-Old Sale

APRIL 10, 2019 BY TTA SALES POSTED IN 2-YEAR-OLD SALE



Hip 21 (Photo by Denis Blake/Texas Thoroughbred Association)

After four fillies tied for the fastest time during Sunday's under tack show at Lone Star Park, fillies again took center stage in Wednesday's Texas 2-Year-Olds in Training Sale with the five highest prices. The auction, sponsored by the Texas Thoroughbred Association and Lone Star Park, was held at the Dallas-area track.

From 110 horses going through the ring, 75 head sold for a total of \$1,751,400. The median was \$14,500, up 10.69% from last year's \$13,100, and the average dipped 9.27% from \$25,737 to \$23,352. Buy-backs at this year's sale came in at 31.82% compared to 20.75% last year when 84 of 106 head sold for a total of \$2,161,900.

"Overall we were pretty pleased with the results," said Tim Boyce, sales director. "I'm happy to see that the median jumped up. Last year we had four horses break \$100,000 compared to two this year, so that affected the average a bit but there was strong demand in the middle of the market as evidenced by the median going up. I heard from several horsemen today who said they were impressed by the quality of horses brought by our consignors."

Hip 21, a daughter of Street Boss who worked an eighth-mile in :10.3 in Sunday's under tack show, topped the sale with a \$150,000 bid from Maui James. Consigned by Asmussen Horse Center, agent, the unnamed Kentucky-bred is the first foal out of the winning Successful Appeal mare I Have a Price.

Maui James was the leading buyer with two purchases for \$203,000 with Danny Keene ranking second with four bought for \$171,000.

The second-highest price was for hip 131, All in Harmony. The Kentucky-bred filly by Palace Malice went for \$140,000 to Carl R. Moore Management LLC from the consignment of Twin Oaks Training Center LLC, agent. She is out of the Tale of the Cat mare Cativating and worked a furlong in :10.3.

The highest-priced male, and sixth-highest overall, was hip 129. The Oklahoma-bred colt named Duffield and sired by Kennedy sold for \$62,000 from Bryan Ford, agent, to John James.

Texas Yearling Sale Records Big Jumps in Average and Gross

AUGUST 26, 2019 BY TTA SALES POSTED IN YEARLING SALE



Hip 61 sold for \$115,000 to top the sale (Photo by Frank Alosa)

The Texas Summer Yearling and Mixed Sale held Monday at Lone Star Park concluded with strong gains in average and gross receipts, signaling that the recent passage of legislation could be having a positive impact on the industry. The sale was sponsored by the Texas Thoroughbred Association and Lone Star Park.

In the yearling session, 42 of 65 head sold for a total of \$506,000, which was an increase of 22.1% from last year when 44 of 82 sold for \$414,300. This year's average came in at \$12,048, up 28% from last year's \$9,416. The median this year dropped to \$5,000 from \$7,750. Buybacks at this year's sale were 35.4% compared to 46.3% last year.

"Even with a smaller catalog this year it's encouraging that we were able to increase the gross sales along with a big surge in the average," said Tim Boyce, sales director. "With as much as \$25 million annually expected to be added to the Texas racing program thanks to the bill that was passed, that can only do good things for this sale and for the entire Southwest region in the coming years."

Hip 61, a Louisiana-bred colt by champion Shanghai Bobby, topped the sale with a \$115,000 bid from Summer Grove Farm. Consigned by Clear Creek Stud LLC, agent, the March 5 foal is out of the winning Cobra King mare Viva Vega, who has produced eight winners including stakes winners Southern Dude and Viva Vegas.

While the sale-topper was bred in Louisiana, the next three highest-priced horses were all Texas-breds by leading Texas stallion Too Much Bling. Tops among the Texas-breds was Hip 42, a colt consigned by Benchmark Training Center, agent, and sold for \$60,000 to Anton Kubacak. He is out of the multiple stakes-producing Devil His Due mare Red Thread.

In the mixed portion of the sale, 13 of 17 head sold for a total of \$33,100. Show Me the Bling, a winning and Grade 3-placed daughter of Too Much Bling, topped the mixed session, going to CJ Thoroughbred for \$14,000. Benchmark Training Center, agent, consigned the 11-year-old broodmare who sold in foal to Alternation.

ITEM 11
INCENTIVES FOR MARES BRED IN TEXAS IN 2020

Thoroughbred Breeding Annual Statistical Comparison for Texas

US Distribution of Active Thoroughbred Stallions and Mares Bred

Texas	*2018	*2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	% change from 2000 to 2017
Stallions	80	110	125	133	160	172	172	213	246	278	290	317	353	393	387	409	438	439	465	-76.34%
Mares Bred	480	601	622	837	976	1070	1055	1235	1436	1830	2107	2336	2689	3021	3070	3251	3628	3643	3663	-83.59%
Avg Book	6	5.5	5	6.3	6.1	6.2	6.1	5.8	5.8	6.6	7.3	7.4	7.6	7.7	7.9	7.9	8.3	8.3	7.9	
Rank in Nation	11	11	11	9	8	8	9	7	8	5	5	5	5	5	5	4	4	4	4	

* Preliminary statistics

Distribution of Thoroughbred Foal Crop by State

Texas	*2018	*2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	% change from 2000 to 2017
Reg Foals		401	1.9	534	594	592	658	755	869	1142	1202	1431	1476	1671	1747	1862	1952	2013	2035	-80.29%
% of US Crop		1.8	2	2.3	2.6	2.6	2.8	3	3.1	3.6	3.5	3.9	3.9	4.4	4.7	5.1	5.5	5.8	5.5	
Rank		11	10	10	8	11	10	9	7	7	7	6	6	6	6	5	4	4	4	
ATB Foals	277	327	373	445	485	495	509	542	629	874	946	1120	1126	1301	1401	1452	1492	1583	1549	
% ATB of Crop		0.82	196	0.833	0.82	0.84	0.774	0.718	0.724											

US Distribution of Active Thoroughbred Stallions and Mares Bred

Louisiana	*2018	*2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	% change from 2000 to 2017
Stallions	100	119	134	148	163	192	206	245	277	289	305	297	301	302	268	236	210	205	186	-36.02%
Mares Bred	1214	1364	1529	1765	1880	2100	2318	2985	3369	3537	4023	4154	3995	3597	3292	2789	2306	2221	2225	-38.70%
Avg Book	12.1	11.3	11.4	11.9	11.5	10.9	11.3	12.2	12.2	12.2	13.2	14	13.3	11.9	12.3	11.8	11	10.8	12	
Rank in Nation	4	4	5	4	4	4	4	3	2	3	4	4	4	4	4	5	6	6	5	

Distribution of Thoroughbred Foal Crop by State

Louisiana	*2018	*2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	% change from 2000 to 2017
Reg Foals		1068	1127	1233	1403	1528	1716	1946	2331	2398	2520	2529	2360	2105	1906	1592	1492	1417	1247	-14.35%
% of US Crop		4.7	5	5.4	6.1	6.6	7.3	7.8	8.2	7.4	7.1	6.9	6.2	5.5	5	4.3	4.1	3.7	3.3	
Rank		5	5	5	5	4	4	3	3	4	4	4	4	4	5	6	6	6	6	

Note: Slots at Delta Downs in Feb. 2002; Louisiana Downs in Summer 2003; Evangeline Downs in Dec. 2003 and Fair Grounds in Sept. 2007

US Distribution of Active Thoroughbred Stallions and Mares Bred

New Mexico	*2018	*2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	% change from 2000 to 2017
Stallions	95	94	107	121	121	141	145	156	171	184	183	192	196	195	166	170	160	149	139	-32.37%
Mares Bred	681	810	890	1019	1019	1137	1164	1297	1448	1495	1687	1989	2050	1867	1618	1536	1478	1214	1131	-28.38%
Avg Book	7.2	9.3	8.3	9	8.4	8.1	8	8.3	8.5	8.1	9.2	10.4	10.5	9.6	9.7	9	9.2	8.1	8.1	
Rank in Nation	7	6	7	6	6	7	6	6	7	9	8	7	7	7	8	9	9	11	11	

Distribution of Thoroughbred Foal Crop by State

New Mexico	*2018	*2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	% change from 2000 to 2017
Reg Foals		444	529	556	583	612	663	753	809	896	1078	1078	1039	899	796	752	675	550	470	-5.53%
% of US Crop		2	2.3	2.4	2.5	2.6	2.8	3	2.8	2.8	3.1	2.9	2.7	2.3	2.1	2	1.9	1.5	1.2	
Rank		10	9	8	9	8	9	10	8	9	8	8	8	9	11	11	12	13	16	

* Preliminary statistics

US Distribution of Active Thoroughbred Stallions and Mares Bred

Oklahoma	*2018	*2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	% change from 2000 to 2017
Stallions	72	102	105	103	117	140	158	174	185	180	201	193	220	222	207	224	226	240	273	-62.64%
Mares Bred	662	806	860	878	960	1131	1126	1208	1478	1568	1692	1704	1620	1606	1621	1621	1769	1955	1964	-58.96%
Avg Book	8.4	7.9	9.2	8.5	8.2	8.1	7.1	6.9	8	8.7	8.4	8.8	7.4	7.2	7.8	7.2	7.8	8.1	7.2	
Rank in Nation	9	7	8	7	7	6	7	8	6	8	7	8	9	9	7	8	8	7	7	

Distribution of Thoroughbred Foal Crop by State

Oklahoma	*2018	*2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	% change from 2000 to 2017
Reg Foals		541	599	553	647	662	696	759	793	926	879	847	926	895	853	954	965	1069	1083	-50.05%
% of US Crop		2.4	2.7	2.4	2.8	2.8	3	3	2.8	2.9	2.5	2.3	2.4	2.3	2.2	2.6	2.7	2.8	2.9	
Rank		8	8	9	7	7	8	8	9	8	9	9	9	10	10	9	8	8	8	

* Preliminary statistics

Per TJCIS State Fact Books as of 12/1/19

*Texas Quarter Horse Association
Horse Industry Escrow Account*

*Partnership and Promotion of
the Texas Quarter Horse Industry*



Overview

In accordance with Rule § 303.321 Allocations to Breed Registries, within the Horse Industry Escrow Account (HB 2463), the Texas Quarter Horse Association (TQHA) respectfully requests funding for several impactful programs. The funding requests are further broken down between racing and non-racing requests.

Contained within the following pages, the details of each program area are presented and include the following:

- ❖ The date(s) or approximate date(s);
- ❖ A detailed description of the event/program;
- ❖ The dollar amount requested for each event/program;
- ❖ A detailed explanation of the budget for the event, with any costs related to personnel, the purchase of assets, and other administrative expenses stated separately; and
- ❖ The anticipated impact of the event/program on the horse industry.

After thoughtful analysis, it is anticipated that through this program, TQHA will also benefit in a multitude of ways including:

- Promotion and recognition of the Texas breeding, racing, and showing industry
- Increased TQHA memberships
- Press releases and digital advertising promoting TQHA/Association partnerships
- Recognition and inclusion of TQHA leadership during awards presentations
- Development of strategic alliance partnerships

Thank you in advance for your consideration.

Sincerely,

Val Clark
Executive Director
Texas Quarter Horse Association

Index & Budget Summary

Appendix A - Racing Funds Requests.....

 ATB Enrollment Incentive (pages 3 - 4).....\$1,050,000

 ATB Owners, Breeders & Stallion Awards (page 5).....\$2,096,750

Total Racing Funds Application Request.....**\$3,146,750**

Appendix B - Non-Racing Requests in Order of Priority and Date Sensitivity

 March 2020 NCHA Super Stakes (pages 6 -7)\$100,000

 TQHA Novice Saddle Show Series (pages 8 - 9).....\$24,780

 TQHA Barrel Stallion Incentive (page 10).....\$17,000

 ROCK ON Veterans Therapeutic Riding Program (pages 11 - 12).....\$50,000

Total Non-Racing Funds Application Request.....**\$191,780**





*Appendix A
Racing Funds Request*

©Bee Silva

Accredited Texas Bred (ATB) Enrollment Incentive

A principal objective of the Texas Racing Act is to encourage agriculture and the horse breeding industry in the state. To achieve this objective, the Texas Racing Act provides various incentives for Texas horse breeders and owners - the Accredited Texas Bred program being one of them.

The **Accredited Texas-bred Enrollment Incentive** is a program that will reward horse breeders for producing Accredited Texas-bred horses. It will also reward stallion owners that have stayed in Texas as well as stallion owners who return their stallions to Texas and attract new stallions.

For many years it has not been economically feasible to produce horses in Texas. Louisiana and Oklahoma have breeding programs that offer much more lucrative incentives. Texas has lost stallions and broodmares to these states resulting in a reduction in the number of foals produced. Referencing the Texas Racing Commission Performance Measures, there has been a 49% decline of ATB enrollments over the past 10 years (2008 -1,584 ATB; 2018 -802 ATB). This has had a negative impact on field size in races at Texas racetracks. It also had a negative effect on many agricultural businesses such as grain and hay producers, etc.

As part of the enrollment process, a horse is “accredited,” or deemed eligible, for the ATB enrollment Incentive program. Depending on the age of the horse when it receives its accreditation, prices can range between \$50 - \$500. The incentive will award up to \$500 for a foal or yearling, and up to \$250 for a mare or stallion, if accreditation requirements are met.

The incentive payment will be pro-rated based on the number of ATB registrations received between January 1 – December 31, 2020 (weanlings of 2020, yearlings of 2019):

- ❖ 50% for foal/yearling
- ❖ 25% ATB mare of the foal/yearling accredited
- ❖ 25% ATB stallion of the foal/yearling accredited
- ❖ ATB Race Age of 2+ years are not eligible for an incentive

For example, the owner of an Accredited Texas Bred racing Quarter Horse would be eligible to apply to TQHA for funding for any 2020 weanlings and 2019 yearlings. The incentive for the owner would be \$500. Once accredited, the mare owner and stallion owner would also be able to apply for funding be eligible to receive \$250 each.

As this program would be new for TQHA to oversee, several administrative costs would need to be included as a priority. With the enrollments being effective as of January 1, 2020, an immediate need for an awareness campaign would need to be launched so that breeders would be educated and encouraged to produce a Texas-bred Quarter Horse. Additionally, TQHA staff would need to initiate software enhancements in February that would allow for appropriate tracking and reporting of the new incentive.

Administration:

Personnel	\$0.00
Software Upgrade	\$0.00
Office Supplies	\$0.00
Marketing	\$0.00
Postage	\$0.00
Membership Coordination/Development	<u>\$50,000</u>
Total Admin.	\$50,000

Incentive:

Performance Foal	\$500,000 (55% increase over 2019)
Performance Mare	\$250,000 (55% increase over 2019)
Performance Stallion	<u>\$250,000</u> (55% increase over 2019)
Total Incentive	\$1,000,000

If implemented, TQHA estimates that this program will increase Accredited Texas Bred enrollments by at least 50% over current enrollments. In 2018, TQHA enrolled approx. 650 foals. A 50% increase would raise that number by 325 to 975 foals. This does not include the enrollment of mares and stallions that will also need to be accredited for the eligibility of the foal.

This incentive will attract new stallions as well as stallions that left Texas for more lucrative programs and give Texas breeders more options which will result in more Accredited Texas Bred foals produced in Texas. This will have a positive economic impact on Texas agriculture and will also increase the number of horses available for Texas-bred races. This will also have a direct impact on the number of horses eligible for the TQHA Yearling Sale which is currently limited to Texas-bred horses.

Accredited Texas Bred (ATB) Owners, Breeders & Stallion Owners Awards

In addition to increased enrollment incentives offered to eligible Texas-bred Quarter Horse racehorses, TQHA proposes also increasing incentive money to the owners, breeders and stallion owners of accredited Texas-bred horses finishing within the top 3 places in a Texas pari-mutual race from January 1 – December 31, 2020.

By increasing the award system to owners, breeders, and stallions of Accredited Texas Bred horses through the Texas Racing Act, Texas will be in a much better position to be able to compete with surrounding states that have similar awards and incentives.

The addition of the **Accredited Texas Bred Owner, Breeder and Stallion Owner Awards** will incentivize the increase of ATB horses over the next breeding cycle and beyond. The increased ATB awards will attract new breeders to Texas as well as see the return of many breeders who left the state for larger purses.

Like the ATB Enrollment Incentive, TQHA would need to make immediate upgrades to existing software in order to track and report on incentive monies. While payments would be made throughout the year, software improvements and marketing materials would need to be developed during February.

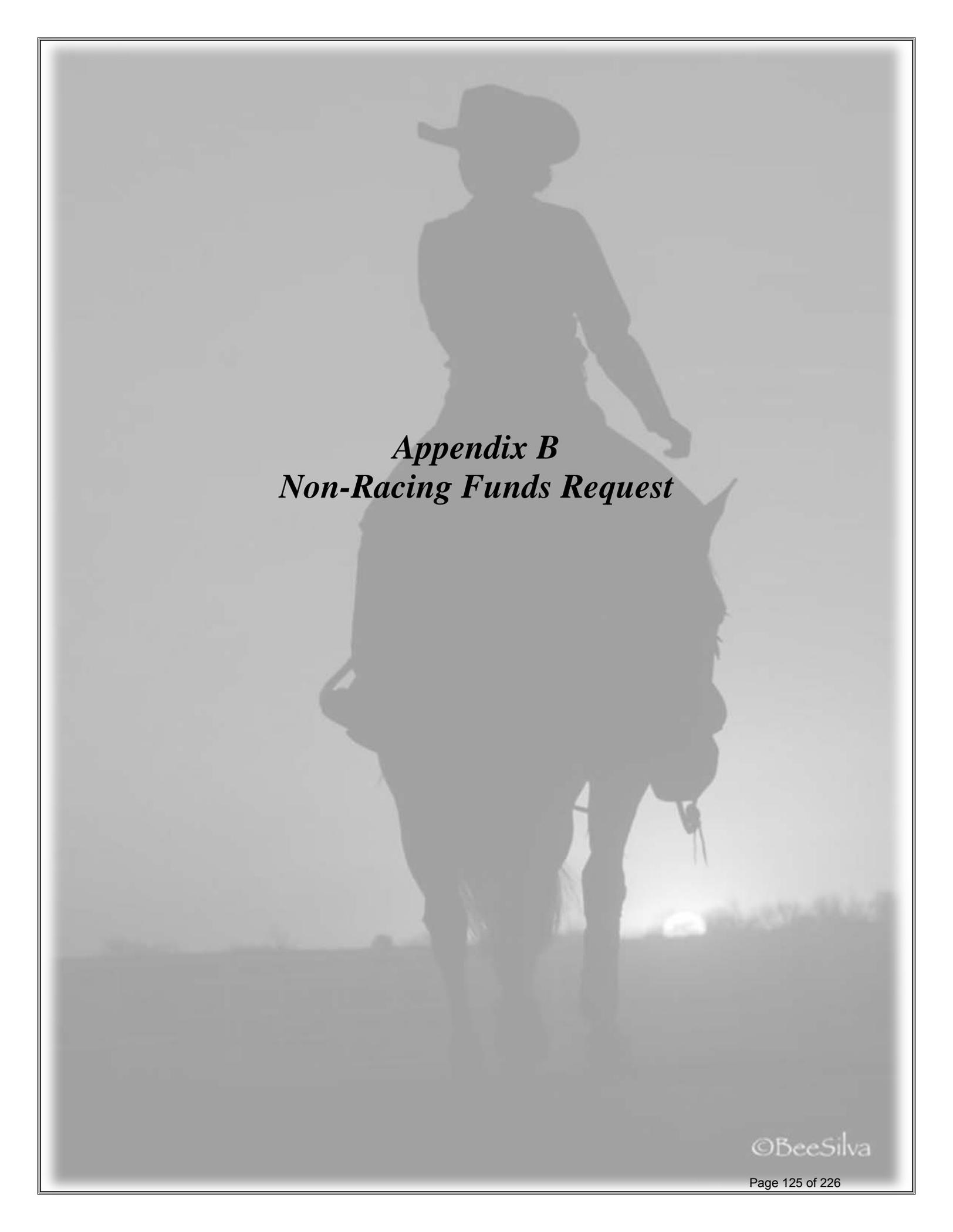
Administration:

Personnel	\$20,000
Software Upgrade	\$20,000
Office Supplies	\$1,500
Marketing	\$5,000
Postage	\$250
Membership	
Coordination/Development	<u>\$50,000</u>
Total Admin.	\$96,750

Incentive:

40% Owner Award	\$800,000
40% Breeder Award	\$800,000
20% Stallion Owner Award	<u>\$400,000</u>
Total Incentive	\$2,000,000



A grayscale silhouette of a cowboy riding a horse, viewed from behind. The cowboy is wearing a wide-brimmed hat and a long-sleeved shirt. The horse is facing right, and the sun is visible as a bright circle on the horizon behind the horse's head. The background is a soft, hazy landscape.

Appendix B
Non-Racing Funds Request

National Cutting Horse Association Super Stakes March 26 – April 19, 2020

The National Cutting Horse Association (NCHA) is one of the largest single-discipline equine organizations in the world. Boasting over 13,000 members, the NCHA has been proudly promoting the sport of cutting since its inception in 1946.

In addition to serving as the governing body and official record keeper of all member and horse earnings, the NCHA itself produces three shows annually that together comprise the Triple Crown of Cutting. Each leg of the Triple Crown is approximately 25 days long and is hosted at the prestigious Will Rogers Memorial Center. All three shows within the Triple Crown are designed to promote the breeding, owning, and showing of some of the best young equine athletes in the world.

The second leg of the Triple Crown is the Super Stakes & Super Stakes Classic. In 2020, the Super Stakes will be held in Fort Worth, Texas from March 26 – April 19. The Super Stakes is the showcase for stallion owners and breeders. All horses competing in the Super Stakes must be eligible to compete by being nominated through the NCHA Stallion Foal Program (www.nchacutting.com/events/superstakes/stallion-foal). Visitors to the Super Stakes come from all over the world and generate approximately \$4.8 million dollars in direct economic impact to the State of Texas. Visitor categories include:

- ❖ 724 unique contestants (52.4% out-of-state residents, 47.6% Texas)
- ❖ 22 NCHA judges and monitors and days at the show
- ❖ 46 show staff and NCHA officials and days at the show
- ❖ 66 vendor booths
- ❖ 608 spectator box seat tickets issued for finals performances with 22.9% of tickets being issued to out-of-state residents and 77.1% of tickets being issued to Texas residents
- ❖ People participating in the 2019 NCHA Super Stakes visited from Canada, Australia, Venezuela, Brazil, and 38 States

Through discussions with TQHA, the NCHA requests \$100,000 in funding to highlight and promote Texas-bred cutting horses competing in the 2020 Super Stakes & Super Stakes Classic. It is envisioned that all administrative work necessary for enrollments as well as payouts could be managed in-house by NCHA staff, resulting in maximum promotion of additional funds. Additionally, all marketing and promotion of program would be funded by NCHA. Owners and riders would be required to be current TQHA members to be eligible to participate in the program.

Highest placing Texas-bred horses in the Super Stakes Classic (5/6 year-old horses) Open, Ltd. Open, Non-Pro, Ltd. Non-Pro, Amateur and Unlimited Amateur divisions would be eligible to receive an additional purse (number of placings to be paid TBD).

Administration:

Personnel	\$0.00
Software Upgrade	\$0.00
Office Supplies	\$0.00
Marketing	\$0.00
Postage	\$0.00
Advocacy	<u>\$0.00</u>
Total Admin.	\$0.00



Incentive:

Open	\$53,000 (53%)
Limited Open	\$3,000 (3%)
Non-Pro	\$33,000 (33%)
Limited Non-Pro	\$3,000 (3%)
Unlimited Amateur	\$5,000 (5%)
Amateur	<u>\$3,000 (3%)</u>
Total Incentive	\$100,000

In 2019, the total purse for the NCHA Super Stakes Classic was approximately \$750,000. The inclusion of this additional prize money available to Texas-bred cutting horses would increase the existing purse by approximately 12% and generate a substantial number of new TQHA members.

Texas Quarter Horse Association Internal Program Initiatives

In addition to the strategic alliance partnerships highlighted within this application packet, the Texas Quarter Horse Association also requests funds that would be used internally within TQHA to further promote its mission of promoting the Texas quarter horse and Texas quarter horse industry. It is envisioned that all the programs below would not only increase TQHA membership numbers, but also bring increased awareness to the opportunities afforded to owners and breeders of non-racing Texas quarter horses.

1. TQHA Novice Saddle Show Series

An individual new to showing a horse at a TQHA approved show is called a novice. Novice classes are offered at all TQHA approved shows to allow people new to showing, or new to showing a different event, a place to feel competitive and safe. The primary goal of the novice level classes is to encourage people to become comfortable and continue to move up through higher level divisions and expand their showing experience.

TQHA would like to build an incentive to recognize and encourage these novice riders for their achievements and commitment. For 2020, TQHA would like to highlight novice exhibitors participating at four (4) approved shows:

- ❖ Aggie Super Circuit – March
- ❖ Athens Summer Jubilee – July
- ❖ Hunt County Horseman’s Association – September
- ❖ TQHA Introductory Show - December

To be eligible, riders must be current TQHA members and must show at 3 out-of-the 4 shows, with the TQHA Introductory Show in December being mandatory. Riders would be accumulating points in seven (7) youth and amateur divisions: ranch riding, hunter under saddle, hunt seat equitation, horsemanship, western pleasure, trail and showmanship. In addition to individual class buckles being awarded at each show, overall points will be used to determine the winner of a trophy saddle to be awarded during the TQHA Annual Meeting Awards Banquet in January of 2021.

It is important to note that many associations, including the parent organization of TQHA, the American Quarter Horse Association (AQHA) have taken an active role in promoting and encouraging novice riders. Associations have recognized the long-term benefits of supporting new participants in their early experiences. The more associations can continue to foster and encourage participation of these beginners, the greater chance of these individuals going on to increase their annual dollars spent on breeding and showing.

Administration:

Labor	\$0.00
Software Upgrade	\$0.00
Office Supplies	\$0.00
Marketing	\$0.00
Postage	\$0.00
Advocacy	<u>\$0.00</u>
Total Admin.	\$0.00

Incentive:

Show Buckles	\$7,280 (4 shows, 46 buckles @ \$130)
Year-End Saddles	<u>\$17,500</u> (14 saddles @ \$1,250)
Total Incentive	\$24,780

TQHA respectfully requests priority funding for this program as the first event of the eligible series is scheduled for March. Additionally, TQHA would need to notify members of this new opportunity and place orders for the saddles and buckles to be manufactured.



2. TQ Barrel Stallion Incentive

*TQHA Barrel Stallion Incentive
Elite Extravaganza Futurity
Extraco Events Center, Waco TX
March 12 -15, 2020*

Like Quarter Horse racing, barrel racing is a spectator sport. Winners are determined by the fastest time completing a cloverleaf pattern designed to test the speed and maneuverability of the horse.

The Texas Quarter Horse Association currently adds a \$5,000 incentive to eligible offspring that have gone through the TQHA Barrel Stallion auction as part of the Elite Extravaganza Futurity. The incentive helps encourage the breeding of mares to, and the value of, offspring by barrel stallions. Due to the limited incentive, the program has not been as effective as TQHA knows it could be. Through an increased incentive, TQHA envisions a significant increase in entries and a desire to own the offspring from one of these barrel stallions.

The Association would like to include an expanded side-pot, or additional prize money incentive, to the open aged event and Futurity.

Administration:

Labor	\$0.00
Software Upgrade	\$0.00
Office Supplies	\$0.00
Marketing	\$1,000
Postage	\$0.00
Event Production	\$1,000
Advocacy	<u>\$0.00</u>
Total Admin.	\$2,000

Incentive:

Futurity	\$10,000
Open Aged	<u>\$5,000</u>
Total Incentive	\$15,000



ROCK Therapeutic Riding ROCK ON Veterans Program

Inputs: The resources needed to implement the activities of ROCK ON Veterans Program: Horses, Professional Staff, Facility, and Volunteers.

ROCK is requesting \$50,000. This will pay for 28 veterans and their families to attend the Introduction to Horsemanship ROCK On Veterans Program. This will provide 560 service hours to veterans in need. Additional veterans participate as they volunteer and give back to their comrade.

Activities: Veterans are referred by physicians to ROCK for ROCK ON Veterans. Each veteran receives an individual intake by a licensed mental health professional and a Professional association of therapeutic horsemanship professional. Professional Therapeutic Equine Assisted Activities and Therapies are offered to Veterans. Coed classes are offered on Tuesday nights for 8 weeks sessions. A veteran comes at 5pm and partners with his horse and another veteran volunteer and a professional staff instructor or therapist until the fellowship meal at 6:30 pm. Spouses and children are encouraged to attend the fellowship meal. Community is created. A women's only veteran group is offered on Friday evenings with fellow veterans, a licensed mental health provider and professional PATH Intl instructors. In addition, private sessions are available versus the group session. Veterans attend once a week for their EAA (Equine Assisted Activities and/or therapy).

Outputs: ROCK On Veterans becomes a new community for veteran families. 32 veterans will receive 8 sessions of EAA partnering with a horse, and fellow veteran volunteer and professional staff. Veterans are taught horsemanship to include riding if applicable for the individual's veteran condition. Veteran families are encouraged to come and meet other veterans and their families and participate in the fellowship meal. Community is formed as friendships are developed.

Outcomes: Changes that occur in the veterans due to the activities and outputs are mental, physical and spiritual creating resiliency for transition into civilian life.

The physical benefits of caring for and riding a horse manifests in multiple ways, retraining the body for improved balance and coordination. Emotionally and spiritually, learning to lead the horse teaches individuals to lead themselves, helping return the reins of life back to the rider. Guides by principles of good horsemanship and leadership, veterans can reclaim their status as CEO of their lives. Caregivers of veterans meet other caregiver and gain support and fellowship. Children of veterans meet other children of veterans and form friendship and often attend CAMP Courage together at ROCK during the summer.

Research of this 8-week program has demonstrated 86.8% improvement in mental health and 74.2% decrease in PTSD symptoms. Weekly assessments demonstrated a decrease in anxiety, and an increase in quality of life.



Impacts: Long term results of ROCK On Veterans. Lives are saved, family and community are restored.

As anxiety is decreased and new life skills are learned which veterans are able to apply to themselves and their relationships, connection with family and other veterans, a community is formed and lives are saved. Many veterans come to ROCK suicidal and are referred by their physicians. Many have already tried to commit suicide and ROCK is a last stop. Working with horses and fellow veterans and professionals in community provide a safe environment for connection and lives are saved.

The ROCK has completed research published in peer review journals showing this program works and include testimonies of men and women veterans who say the horse and ROCK community saved their lives.

To date, over 50% of the ROCK's equine herd are Quarter Horses. When looking for horses that will make excellent healing partners, the ROCK has found the Quarter Horse to be their first choice due to their consistent, quiet, and even temperament.

The Introduction to Horsemanship program is extremely popular, and there is currently a waiting list for participants. Funding approval would allow for the immediate placement of the 28 Veterans and their families into this impactful and life-changing experience.



REQUEST FOR FUNDS FROM HORSE INDUSTRY ESCROW ACCOUNT



THE PAINT HORSE

Breeding refined the Paint Horse's stocky build and concentrated desired attributes like hardiness, agility and willingness. Likewise, the breed's vibrant markings are more than skin deep, and breeders now use genetics to improve their odds of crafting a foal that's both athletically talented and distinctly marked. And whether those foals are boldly painted with white patterns or more solid-colored, each is stamped with promise, a limited-edition partner destined to forge memories that will last a lifetime.





- 16,000 mares bred each year
- 1,100 Paint Horses registered in Texas each year, making it the largest Paint Horse state
- 50 Paint Horse shows in Texas each year
- Over 266,000 total entries each year globally
- Total United States Economic impact of \$22,161,600



PAINT BARREL RACING INCENTIVE PROGRAM

What is PBRIP?

Designed to bridge the gap between barrel racers who run Paints and the American Paint Horse Association by making it easier for barrel racers to be a part of APHA without having to attend traditional breed shows. PBRIP brings the breed to you at barrel racing events nationwide by adding money to the pot specifically for those enrolled in the program.

PBRIP Sweepstakes held in conjunction with the APHA World Championship Show. This event features the finest Paint-bred barrel horses in the country.

September 21 – October 4, 2020

Will Rogers Memorial Center, Fort Worth, TX

- Total Cash Prizes and Awards Request: \$128,000
- 2019 Estimated Texas Economic Impact: \$151,200
- 2020 Estimated Texas Economic Impact (pending approval): \$583,200

Total request is for added money and prizes only.
We will not be claiming any expenses at this time.



FUTURITY STAKES



The 15th Running of the Grade 1, Lone Star Paint & Appaloosa Futurity



The Facts:

A two-year-old Paint and Appaloosa futurity race which includes trials and finals. Features the best nominated Paint horses converging in the great state of Texas.

October/November 2020

Lone Star Park, Grand Prairie, TX

- **Total Cash Prizes and Awards Request: \$125,000**
This futurity would easily become the richest Paint Horse Futurity in Texas and the World.
- 2019 Estimated Texas Economic Impact: \$63,480
- 2020 Estimated Texas Economic Impact (pending approval): \$270,480

Total request is for added money and prizes only.
We will not be claiming any expenses at this time.



RANCH WORK CHAMPIONSHIPS

What is Ranch Work Championships?

An ALL-BREED, TIMED event based on authentic work done on a ranch, with the emphasis of efficient and proper cattle handling. Includes three divisions, plus an all around. Designed to bring all levels of competitors together for an impactful event to stimulate growth across the equine industry, while also creating emphasis on racing and cow horse cross breeding.

September 2020

Will Rogers Memorial Center, Fort Worth, TX

(Held in conjunction with the APHA World Championship Show)

- **Total Cash Prizes and Awards Request: \$125,000**
- 2019 Estimated Texas Economic Impact: \$129,000
- 2020 Estimated Texas Economic Impact (pending approval): \$345,600

Total request is for added money and prizes only.
We will not be claiming any expenses at this time.



APHA WORLD CHAMPIONSHIP SHOW



The Facts:

The largest Paint Horse event in the world, full of Paint horses competing for the title of World Champion! The title event for the American Paint Horse Association, with an average of 1,100 horses and over 210 World Champions each year.

September 21–October 4, 2020

Will Rogers Memorial Center, Fort Worth, TX

- **Total Cash Prizes and Awards Request: \$588,000**
- **2019 Estimated Texas Economic Impact: \$4,466,788**
- **2020 Estimated Texas Economic Impact (pending approval): \$5,330,788**

Total request is for added money and prizes only. We will not be claiming any expenses at this time.

THE PROPOSAL

Paint Barrel Racing Incentive Race

- **Cash Prizes and Awards Request: \$128,000**
- Breakdown: \$125,000 added across the 4D divisions, with \$3,000 awarded to the owner of the Paint Horse, foaled in Texas, with the fastest time.

Lone Star Paint & Appaloosa Futurity

- **Cash Prizes and Awards Request: \$125,000**
- Breakdown: added purse money and payout would follow Lone Star Park's current payout listed in their condition book.

Ranch Work Championships

- **Cash Prizes and Awards Request: \$125,000**
- Breakdown: \$30,000 to Ranch Penning, \$30,000 to Ranch Course, \$30,000 to Ranch Roping, and \$35,000 to the All-Around. Also includes \$3,000 to the high point all around horse owner who resides in Texas.

APHA Open/Amateur World Championship Show

- **Cash Prizes and Awards Request: \$588,000**
- Breakdown: added money would be awarded to each World Championship class based off the number of entries for each class.

SUMMARY TOTALS - ALL EVENTS

- **Total Added Money Request: \$966,000**
- Total 2020 Estimated Texas Economic Impact: \$6,530,068
- Total Increase of Estimated Texas Economic Impact (2019 vs 2020): \$1,719,600
- **Total request is for added money and prizes only. We will not be claiming any expenses at this time.**



CONTACT US

Questions or ready to partner? We want to hear from you!



817-222-6444
racing@apha.com

@ Lex Smurthwaite
Executive Director, TPHBA

@ Pancho Villarreal
President, TPHBA
panchov@gvlaw.net

 Learn more about the Paint Horse by visiting
APHA.COM



PRESENTATION DESIGN BY
AMERICAN PAINT HORSE ASSOCIATION

From: [Pancho Villarreal](#)
To: [Devon Bijansky](#)
Subject: RE: horse industry escrow account proposals
Date: Monday, January 13, 2020 9:06:25 AM

TPHBA would like to prioritize our events in the following order for the Jan meeting:

1. APHA Open/Amateur World Championship show \$588,000
2. Paint Barrel Racing Incentive Race \$128,000

Both of these events have a qualifying period that ends May 31, 2020. Exhibitors must compete in at least two events by May 31, 2020 in order to qualify without having a large financial penalty. There are 76 qualifying events already sanctioned Between January 31,2020 and May 31,2020, with more to come. Being able to announce and market an increase in added money and awards of this magnitude will greatly influence our exhibitors decision to qualify or not.

For the March meeting:

1. Lone Star Paint and Appaloosa Futurity \$125,000
2. Ranch Work Championships \$125,000

Please let me know if you have any questions or require additional information.

Thanks. Pancho.

Francisco "Pancho" Villarreal
GARCIA & VILLARREAL, PLLC
4311 N. McColl Rd.
McAllen, Texas 78504
(956) 630-0081
(956) 630-3631 Fax

Internal Revenue Service - Circular 230 Disclosure: As provided for in Treasury Regulations, advice (if any) relating to federal taxes contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any plan or arrangement addressed herein.

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Texas Racing Commission

8505 Cross Park Dr. #110

Austin, TX 78754

December 13, 2019

The Texas Arabian Breeders Association (TABA) very much appreciates the promotional funding opportunity for us to promote Texas Racing.

We have a broad swath of prospects we intend to reach in a multi-faceted outreach effort to Texas-based Arabian horse breeders/owners, and racing enthusiasts using the increased purse monies and accredited bonuses currently offered in Texas. The outreach strategy will combine the use of social media content and advertising, email marketing, trade show presence, and multiple open houses on our Arabian stakes racing days throughout 2020.

The goal will be to spread the word and promote racing exclusively in Texas.

Event: February 15, 2020

TABA will be joining with SHRP to have two Stakes Races at SHRP. Our goal is to have Arabian enthusiasts we have contacted using social media strategy and Ad campaigns join TABA representatives in a suite we have reserved to share information and enjoyment of the races.

Our goal is to increase the number of racing fans and race horse ownerships.

Budget for this event:

Two Stakes Races (\$10,000 purse money for Each race)	\$20,000
Hosting racing information Presentation at the track. TABA will	
Provide a suite and refreshments(nonalcoholic) for guest that have	
been contacted thru media efforts.	2,500
Promotional manager TABA will contract an experienced media and	
promotional professional to manage (social media blast, advertisement,	
email blast, etc.) _____	2,500
<u>Administrative cost. TABA has only one employee. A proportional share of the</u>	
<u>administrative cost to maintaining web site, bookkeeping, record processing,</u>	
<u>audit, correspondence, etc.</u> _____	2,000
<u>Request for February 15, 2020 Event</u> _____	<u>\$27,000</u>

Event: March 20, 2020

TABA will be joining with SHRP to have 2 stakes races at SHRP. We will be joining with the Arabian Racing Cup at this event. The Arabian Racing Cup will be hosting the Darley Awards, which is the most globally prestigious award for Arabian Racing the following evening. The Darley Awards bring the largest number of racing enthusiasts together for any racing event each year. Over the past few years it has been hosted in Hollywood California and was moved to Houston in 2019. We intend to utilize the opportunity to promote the advantages of breeding and racing in Texas. Races will be live streamed across the USA and overseas.

Budget for this event:

Two Stakes Races (\$10,000 purse money for each race)	\$20,000
TABA Share the cost with ARC of hosting a suite with refreshments(nonalcoholic) for guest both locally and out of state Arabian enthusiast. This also includes the expense of live streaming the races.	<u>5,000</u>
<u>Promotional Manager: TABA will hire an experienced media and promotional to manage. (social media blast, advertisement, email, blast etc.)</u>	<u>2,500</u>
<u>Administrative cost: TABA has only one employee. A proportional share of the administrative cost for maintaining the web site, bookkeeping, record processing, audit, correspondence, etc.</u>	<u>2,000</u>
<u>Request for March 20, 2020 event</u>	<u>\$29,500</u>

Event: January 10, 2020 thru March 28, 2020

To encourage bringing new Mares and Stallions to Texas for breeding, TABA will use \$30,000 to enrich the Accredited Texas Bred Awards to be paid with those earned at SHRP for this meet.

Budget for this event:

<u>Accredited Texas Bred Awards</u>	<u>\$30,000</u>
-------------------------------------	-----------------

Through use of our Promotion Manager and Hosting these events, we expect to increase attendance at the track and bringing new owners and breeders into Arabian Racing in Texas. This will bring an economic boost to the industry.

Event: April 1, 2020 thru June 30, 2020

There will not be any/or at least minimal Arabian Racing in Texas from April 1 thru June 30 but the Promotional Manager will continue with our e-blast, advertisement, social media promotion of breeding and racing in Texas. Representative from TABA will have presence at shows, events, or meetings of various Arabian Horse Clubs. The Regional 9 Championship Horse Show is the largest and most prestigious qualifier for US National Championship Arabian Horse Show each year. It draws thousands of exhibitors and enthusiasts. TABA plans to be an exhibitor in the exhibit area and host an open house meet & greet to spread information about Arabian racing. We also plan a racehorse presentation during the horse show.

TABA expects to make owners, breeders, and enthusiasts more aware of the opportunities and enjoyment racing has to offer. Thus, increase attendance at the track and bring new Arabian race horse owners and breeders into racing.

Budget for this event:

Promotional Manager: (continue use of professional media manager for social media blast, and advertising promotions)	\$3,500
Region 9 Show; (exhibit in commercial area, host meet & greet information sharing, and manage a racehorse presentation during the show)	3,500
Administrative expense; A proportional share of the administrative cost to maintain the web site, bookkeeping, record processing, audit, correspondence, etc	2,500.
Total budget for this event	\$9,500

VII. PROCEEDINGS ON OCCUPATIONAL LICENSES

Discussion and possible action regarding:

- A. The proposal for decision in SOAH No. 0476-19-2614, Sigifredo Gonzalez Jr. v. Texas Racing Commission
- B. The proposal for decision in SOAH No 0476-19-6054, George Bryant v. Texas Racing Commission
- C. Motions for rehearing in SOAH No. 0476-18-1010, Judd Kearl v. Texas Racing Commission and SOAH No. 0476-18-1011, Jose Sanchez v. Texas Racing Commission

Texas Racing Commission
Ruling Report for Licensee

Ruling Date: 12/13/2018 Violation Date: 11/09/2018

Ruling #: LSP3505

Licensee: SIGIFREDO GONZALEZ JR

Status: CLSD

License # 157689 Type OWNER Status SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	11/09/2018	11/08/2023

Redistribute Purse: N

Ruling Type: 18 CONTRABAND

Rules Cited: 311.215 POSSESSION OF CONTRABAND
14.10 UNLAWFUL INFLUENCE ON RACING

Fine: \$ 25,000 Fine Due Date: 12/16/2018 Fine Paid Date:

**FAILURE TO PAY THE ASSESSED FINE BY THE DUE DATE INDICATED ABOVE
MAY RESULT IN THE SUSPENSION OF THE SUBJECT'S OCCUPATIONAL LICENSE(S).**

Narrative:

Owner Sigifredo Gonzalez Jr appeared in a hearing in the Lone Star Park Stewards office on 12/12/18 in the matter of possession of two (2) electrical devices found in his vehicle during a compliance inspection inside the stable gate (Restricted Area) at Lone Star Park on 11/09/18.

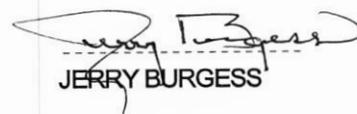
After hearing all testimony presented in the case, the Lone Star Park Board of Stewards find via current penalty guidelines, hereby fine Owner Sigifredo Gonzalez Jr twenty five thousand (25,000) dollars and suspend his TxRC Owners license #157689 for five years. The dates of the suspension are 11/09/2018 thru 11/08/2023.

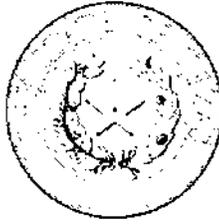
During the term of this suspension, Owner Sigifredo Gonzalez Jr is denied access to all facilities under the jurisdiction of the Texas Racing Commission. Horses owned by Sigifredo Gonzalez Jr are denied entry pending sale or transfer to a party approved by the Board of Stewards.

First violation.


DENNIS SIDENER


TONY LANGFORD


JERRY BURGESS



State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

September 4, 2019

Chuck Trout
Executive Director
Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, Texas 78754-4594

INTER-AGENCY

RE: Docket No. 476-19-2614; Sigifredo Gonzalez, Jr. v Texas Racing Commission

Dear Mr. Trout:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Sarah Starnes".

Sarah Starnes
Administrative Law Judge

SS/db
Enclosures (with 1 CD)

cc: Virginia S. Fields Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 – **INTER-AGENCY**
Sigifredo Gonzalez, Jr., 4249 Hwy 67 East, Mount Pleasant, TX 75455- **VIA REGULAR MAIL**

SOAH DOCKET NO. 476-19-2614

SIGIFREDO GONZALEZ, JR.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
TEXAS RACING COMMISSION,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Sigifredo Gonzalez, Jr. (Petitioner) appealed Lone Star Park Stewards (Stewards) Ruling LSP3505 to the Texas Racing Commission (Commission). The Stewards’ ruling determined that Petitioner possessed prohibited devices—namely, two electronic shocking devices—while on racetrack premises. The Stewards suspended Petitioner’s license for five years and imposed an administrative penalty of \$25,000. Having considered the evidence presented at the hearing on the merits, the Administrative Law Judge (ALJ) concludes that Petitioner failed to meet his burden of proving that the Stewards’ ruling was clearly erroneous. Therefore, the ALJ recommends upholding the Stewards’ ruling.

I. JURISDICTION AND NOTICE

There were no contested issues of jurisdiction or notice, and those issues are set forth in the Findings of Fact and Conclusions of Law below.

Petitioner’s appeal was referred to the State Office of Administrative Hearings, and the staff (Staff) of the Commission filed a Motion for Summary Disposition on May 29, 2019. Petitioner did not respond. In Order No. 2, the ALJ denied the Motion for Summary Disposition.

On July 16, 2019, ALJ Sarah Starnes convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Virginia Fields represented Commission Staff. Petitioner appeared and represented himself. The record closed at the conclusion of the hearing that day.

II. APPLICABLE LAW

Horse racing in Texas is governed by the Texas Racing Act (Act) and the rules promulgated by the Commission pursuant to the Act.¹

The Act makes it a criminal offense for a person to possess “a prohibited device or prohibited substance on a racetrack facility, in an enclosure, or at a training facility.”² “Prohibited device” is defined to include “an electrical or other device prohibited by a commission rule regulating the unlawful influence of a race” or any device “specifically designed, made, or adapted to influence or affect the outcome of a race in a manner contrary to this Act or a [C]ommission rule.”³

The Commission’s rules state that a person may not “possess an item of contraband at any time while on a racetrack or association grounds,” and defines “contraband” to include “an electrical shocking device, spur, or similar device or paraphernalia designed to increase or decrease the speed of a race animal or to unnaturally depress, stimulate, or excite a race animal.”⁴

The Act and the Commission’s rules authorize the Commission to revoke or suspend the license of a person who violates the regulations relating to the possession or use of contraband or prohibited devices.⁵ Further, an administrative penalty may be assessed against an individual who violates the Texas Racing Act or a Commission rule.⁶ For violating racing rules, the Commission’s

¹ Tex. Rev. Civ. Stat. art. 179e; 16 Tex. Admin. Code part 8. Effective April 1, 2019, the Act was re-codified and is now found in Texas Occupations Code subtitle A-1. In this Order, the version of the Racing Act in effect when the Stewards’ Ruling was issued is cited.

² Tex. Rev. Civ. Stat. art 179e, § 14.10(a) (*now at* Tex. Occ. Code § 2033.015(a)).

³ Tex. Rev. Civ. State art 179e, §1.03(71) (*now at* Tex. Occ. Code § 2021.003(37)).

⁴ 16 Tex. Admin. Code § 311.215(a)(2), (b).

⁵ Tex. Rev. Civ. Stat. art. 179e, § 3.16(j) (*now at* Tex. Occ. Code § 2034.007); 16 Tex. Admin. Code § 307.64.

⁶ 16 Tex. Admin. Code § 323.101(a).

Stewards are authorized to impose a penalty up to \$25,000 and up to a five-year suspension.⁷ The Commission has adopted an Equine Medication Classification Policy and Penalty Guidelines (Penalty Guidelines) that are intended to ensure consistent and effective rulings against licensees who have violated the rules and laws prohibiting the illegal influencing of a race.⁸ The Penalty Guidelines provide that possession of an electrical device or other device that could influence the outcome of a race should be punished by a \$25,000 fine and a five-year suspension.⁹

A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.¹⁰ In an appeal, the Petitioner has the burden of proving that the Stewards' ruling was clearly erroneous.¹¹ A finding is considered "clearly erroneous" only if the ALJ "is left with the definite and firm conviction that a mistake has been committed."¹²

III. EVIDENCE

At the hearing, Staff had twelve exhibits admitted into evidence and presented no witness testimony. Petitioner testified on his own behalf.

A. Staff's Evidence

Petitioner holds a Texas Racing Commission license as an Owner; his license was issued March 21, 2014, and renewed on October 6, 2018, and it expires on October 31, 2019.¹³

⁷ Tex. Rev. Civ. State art 179e, § 3.07(b) (*now at* Tex. Occ. Code § 2023.106(c); 16 Tex. Admin. Code § 307.64(a).

⁸ Staff Ex. G at 1.

⁹ Staff Ex. G at 13.

¹⁰ 16 Tex. Admin. Code § 307.67.

¹¹ 16 Tex. Admin. Code § 307.67(c).

¹² *Hunter Indus. Facilities, Inc. v. Texas Nat. Res. Conservation Com'n*, 910 S.W.2d 96, 104 (Tex. App.—Austin 1995, writ denied) (*citing United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¹³ Staff Ex. D at 4.

On November 9, 2018, Petitioner visited Lone Star Park in Grand Prairie, Texas, and his vehicle was searched by security during a gate vehicle compliance inspection.¹⁴ Security found a small box located in the driver's side door of the vehicle driven by Petitioner. The box contained two electrical shocking devices.¹⁵ Petitioner denied knowing the devices were in the vehicle and told investigators that they must have belonged to his brother or other employees who had recently driven the vehicle.¹⁶

The Lone Star Park Board of Stewards summarily suspended Petitioner's license for having contraband in his possession.¹⁷ Petitioner was also arrested that day on a misdemeanor charge of criminal possession of the electrical shocking devices.¹⁸ Subsequently, on November 14, 2018, the Commission issued a Notice of Alleged Violation asserting that there was cause to believe Petitioner had possessed prohibited devices at the racetrack.¹⁹

On December 12, 2018, Petitioner, having been duly noticed, appeared for a hearing before the Stewards.²⁰ At the hearing, a Commission investigator testified and described how Petitioner's vehicle had been searched on November 9, 2018, and what had been found. Petitioner also testified and told the Stewards that he had been surprised to see the electrical shocking devices in the truck that day. He explained that he and his brother ran a small business with friends in the Dallas area, and they owned a number of vehicles and trailers that employees were permitted to drive. Petitioner lived in east Texas, but visited Dallas for the weekend and borrowed a truck from the business when he got there. The truck was registered to Petitioner, but he described it as "basically a community truck" that could have been driven by a number of people in the days and weeks leading up to November 9, 2018.

¹⁴ Staff Ex. D at 1, 7.

¹⁵ Staff Ex. D at 1, 7, 9.

¹⁶ Staff Ex. C (recording of investigatory interview); Staff Ex. D at 2, 7.

¹⁷ Staff Ex. D at 2.

¹⁸ Staff Ex. D at 2.

¹⁹ Staff Ex. E.

²⁰ Staff Ex. B, Staff Ex. C (recording of Stewards' hearing).

Petitioner told the Stewards that he had no reason to think there was any kind of contraband in the truck, so he did not hesitate to consent to having the truck searched when he arrived at the race park to visit some friends. Neither he nor his passengers were racing a horse that day, and Petitioner said he had not raced a horse he owned in over a year. He was surprised to see the electrical shocking devices and told the Stewards that he had no idea who put them in the truck. He denied ever using a shocking device and said he never would, because he loves horses and does not want to see them mistreated. Following his arrest, Petitioner asked his brother and employees who had put the electrical shocking devices in the truck, but none of them would admit knowing anything. Petitioner told the Stewards that his employees all knew he had spent a night jail, and none of them was willing to accept responsibility. At the time of the Stewards' hearing, the criminal charge against Petitioner was still pending.

On December 13, 2018, the Stewards issued Lone Star Board of Stewards Ruling LSP3505, which found that Petitioner had violated § 14.01 of the Act and the Commission rule found at 16 Texas Administrative Code § 311.215. The Stewards Ruling suspended Petitioner for a period of five years (from November 9, 2018, until November 8, 2023), denied him access to all facilities under the jurisdiction of the Texas Racing Commission, and fined him \$25,000.²¹ Petitioner appealed the ruling, and this proceeding ensued.²²

B. Petitioner's Testimony

At the hearing in this case, Petitioner again admitted that two electrical shocking devices were found in the truck he was driving at Lone Star Park on November 9, 2018, but he denied knowing how the devices came to be in the vehicle.

Petitioner testified that he had driven to the Dallas area from his home in east Texas, and was experiencing mechanical problems with his usual vehicle. He parked that vehicle outside the

²¹ Staff Ex. B.

²² Staff Ex. F.

equine hospital and called for someone to come meet him in another vehicle. Petitioner explained that he had a business with his brother and friends in Dallas, and had bought a truck for that business. Though the truck was registered in Petitioner's name, it was kept in Dallas with the friends, and Petitioner had not been in or around the vehicle for some time. Two of these friends picked Petitioner up in the truck, and one of them suggested that they visit another friend who was working as a trainer at the racetrack that day. With Petitioner driving the truck, they tried to visit the restricted stable area. They were stopped for a security check, and that is when officers found the electrical shocking devices in the truck.

Consistent with his testimony at the Stewards' hearing, Petitioner said he was unaware that the devices were in the truck, and did not know how they got there. He denied ever using a shocking device on a horse he owned and denied even knowing how such a device operated. Petitioner testified that none of his Dallas associates who had had access to the truck would take responsibility for the devices. Though he still does not know who the shocking devices belonged to, Petitioner said he has since distanced himself from those friends.

Petitioner said he has never been in trouble before and that he has no prior enforcement history with the Commission.

IV. ANALYSIS

Applying the law and evidence discussed above, the ALJ finds that Stewards' determination that Petitioner possessed prohibited devices should be upheld.

Petitioner failed to establish that the Stewards clearly erred in finding that he violated § 14.01 of the Act, which makes it an offense to possess a prohibited device—such as an electric shocking device—at a racetrack.²³ The Commission's rules and the Act do not define "possession," but cases arising under the Texas Penal Code provide guidance. The Texas Penal

²³ Tex. Rev. Civ. Stat. art 179e, §§ 1.03(71), 14.10(a)

Code defines possession as “actual care, custody, control, or management.”²⁴ The Texas Court of Criminal Appeals has explained that possession requires an affirmative link between a defendant and the contraband:

[A]n accused must not only have exercised actual care, control, or custody of the substance, but must also have been conscious of his connection with it and have known what it was, evidence which affirmatively links him to it suffices for proof that he possessed it knowingly.²⁵

Here, Petitioner has consistently denied knowingly possessing the electronic shocking devices that were found in his vehicle. The Stewards reviewed the investigatory materials and heard Petitioner’s testimony describing his surprise at discovering the shocking devices in his vehicle. The ALJ generally found Petitioner to be credible when he offered similar testimony at the hearing. However, this is not a *de novo* appeal in which the ALJ is permitted to exercise her own judgment and re-determine each issue of fact and law.²⁶ Instead, Petitioner is entitled to relief from the Stewards’ ruling only if he can show that it was clearly erroneous.²⁷ Having considered all the evidence, the ALJ cannot say that the evidence supporting the Stewards’ finding is so weak that it is clear a mistake was made when they determined that he was sufficiently linked to the electrical shocking devices to constitute knowing possession.

For the same reasons, Petitioner likewise failed to establish that the Stewards were clearly erroneous in finding that he violated the Commission rule found at 16 Texas Administrative Code § 311.215, which prohibits a person from possessing contraband—such as an electrical shocking device—at a racetrack or on association grounds.²⁸

Petitioner’s violations of Act § 14.01 and the rule found at 16 Texas Administrative Code § 311.215 support the penalties imposed by the Stewards. The Act grants the Stewards discretion

²⁴ Tex. Pen. Code § 1.07(39).

²⁵ *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995)

²⁶ See *Quick v. City of Austin*, 7 S.W.3d 109, 116 (Tex. 1998).

²⁷ 16 Tex. Admin. Code § 307.67(c).

²⁸ 16 Tex. Admin. Code § 311.215(a)(2), (b).

to impose a penalty of up to \$25,000 and a suspension of up to five years for unethical practices or violations of racing rules, and the Commission's Penalty Guidelines suggest that this is the appropriate penalty for possession of an electrical device.²⁹ Nothing in the record suggests that suspension for five years or the penalty of \$25,000 is clearly erroneous given Petitioner's violations of the Act and Commission rules.

Accordingly, the ALJ finds that the Stewards' ruling is supported by the evidence presented.

V. FINDINGS OF FACT

1. Sigifredo Gonzalez, Jr. (Petitioner) holds a Texas Racing Commission (Commission) license as an Owner. His license was issued March 21, 2014, renewed on October 6, 2018, and it expires on October 31, 2019.
2. On November 9, 2018, Petitioner visited Lone Star Park in Grand Prairie, Texas, and his vehicle was searched by security personnel during a gate vehicle compliance inspection.
3. Security found a small box located in the driver's side door of the vehicle driven by Petitioner. The box contained two electrical shocking devices.
4. Petitioner denied knowing the devices were in the vehicle and asserted they must have belonged to his brother or other employees who had recently driven the vehicle.
5. The vehicle Petitioner was driving on November 9, 2018, was registered to him, but was also used by employees of a small business owned by Petitioner and his brother. The vehicle could have been driven by a number of people in the days and weeks leading up to November 9, 2018.
6. Neither Petitioner's brother nor any of their employees would admit knowing how the electrical shocking devices came to be in Petitioner's vehicle.
7. Petitioner was arrested on a misdemeanor charge of criminal possession of the electrical shocking devices, and his racing license was summarily suspended.
8. On November 14, 2018, the Commission issued a Notice of Alleged Violation asserting that there was cause to believe Petitioner had possessed prohibited devices at the racetrack.
9. On December 12, 2018, Petitioner appeared for a hearing before the Stewards.

²⁹ Tex. Rev. Civ. State art 179e, § 3.07(b); 16 Tex. Admin. Code § 307.64(a).

10. On December 13, 2018, the Stewards issued Lone Star Board of Stewards Ruling LSP3505, which found that Petitioner had violated § 14.01 of the Act and the Commission rule found at 16 Texas Administrative Code § 311.215. The Stewards Ruling suspended Petitioner for a period of five years (from November 9, 2018, until November 8, 2023), denied him access to all facilities under the jurisdiction of the Texas Racing Commission, and fined him \$25,000.
11. On December 13, 2018, Petitioner filed his appeal of the Stewards Ruling LSP3505.
12. Commission Staff referred the appeal to the State Office of Administrative Hearings (SOAH) on February 11, 2019.
13. On February 25, 2019, Staff sent Petitioner the Notice of Hearing. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
14. On July 16, 2019, Administrative Law Judge Sarah Starnes convened the hearing on the merits at SOAH's hearing facility in Austin, Texas. Attorney Virginia Fields represented Commission Staff. Petitioner appeared and represented himself. The record closed at the conclusion of the hearing that day.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act. Tex. Rev. Civ. Stat. art. 179e (since re-codified at Tex. Occ. Code subtitle A-1).
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 16 Tex. Admin. Code §§ 307.31(c), .67(c).
3. Petitioner received timely and adequate notice of the allegations against him. Tex. Gov't Code §§ 2001.051-.052.
4. The Commission's Stewards have authority to conduct hearings, impose penalties, and suspend occupational licenses. Tex. Rev. Civ. Stat. art. 179e, § 3.07(b); 16 Tex. Admin. Code § 307.61.
5. A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing. 16 Tex. Admin. Code § 307.67.
6. Petitioner has the burden of proof at the hearing on the merits to show the Stewards' rulings were clearly erroneous. 16 Tex. Admin. Code § 307.67(c).

7. Stewards Ruling LSP3505 was not clearly erroneous in finding Petitioner violated Texas Racing Act § 14.10 and 16 Texas Administrative Code § 311.215 by possessing contraband or a prohibited device while on a racetrack or association grounds.
8. The Commission may revoke or suspend the license of a person who violates the rules relating to the use of prohibited devices. Tex. Rev. Civ. Stat. art. 179e, § 3.16(j).
9. An administrative penalty may be assessed against an individual who violates the Texas Racing Act or a Commission rule. 16 Tex. Admin. Cod § 323.101(a).
10. The Commission's Stewards may assess an administrative penalty of up to \$25,000 and/or a suspension for up to five years against an individual who violates the Texas Racing Act or a Commission rule. Tex. Rev. Civ. State art 179e, § 3.07(b); 16 Tex. Admin. Code § 307.64(a).
11. The Commission has adopted an Equine Medication Classification Policy and Penalty Guidelines, and those guidelines provide that possession of an electrical device or other device that could influence the outcome of a race should be punished by a \$25,000 fine and a five-year suspension. Available at <http://www.txrc.texas.gov/agency/news/postings/09-10-18-RevisedEquineMedicationClassificationPolicyandPenaltyGuidelines.pdf>.
12. Stewards Ruling LSP3505 was not clearly erroneous in finding that Petitioner should be suspended for five years and fined \$25,000. Tex. Rev. Civ. State art 179e, §3.07(b); 16 Tex. Admin. Code §§ 307.64(a), .69.
13. The Commission should adopt Stewards Ruling LSP3505, including the fine and suspension outlined therein.

SIGNED September 4, 2019.



SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

IN RE: THE APPEAL OF	§	
	§	BEFORE THE
SIGIFREDO GONZALEZ JR. FROM	§	
	§	
	§	
STEWARDS RULING LSP 3505	§	TEXAS RACING COMMISSION
	§	

ORDER OF THE COMMISSION

On January _____, 2020, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of Sigifredo Gonzalez, Jr., (“Petitioner”), Owner license number 157689, from Stewards’ Ruling LSP 3505 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

- (a) On or about December 13, 2018, the Lone Star Park Board of Stewards issued Ruling LSP 3505, finding Petitioner in violation of 16 TAC §§ 311.215, Possession of Contraband; and 14.10, Unlawful Influence on Racing; resulting from possession of two electrical devices discovered in his vehicle during a compliance inspection inside the stable gate (Restricted Area) at Lone Star Park on November 9, 2018.
- (b) In the ruling, Petitioner was fined \$25,000 and suspended for five (5) years from November 9, 2018 through November 8, 2023.
- (c) On or about December 13, 2019, Petitioner filed an appeal of the ruling with the Commission.
- (d) On or about July 16, 2019, the Administrative Law Judge (“ALJ”) conducted a hearing and, thereafter, on September 4, 2019 the ALJ issued a proposal for decision finding no clear error in the ruling.

IT IS HEREBY ORDERED that the proposal for decision, attached to this order and incorporated herein by reference, is adopted in full. Stewards' Ruling LSP 3505 is upheld in all respects.

If enforcement of this order is restrained by an order of a court, this order takes effect on a final determination by that court or an appellate court in favor of the Texas Racing Commission.

ISSUED AND ENTERED the _____ day of January 2020.

John T. Steen III, Chair

Ronald F. Ederer, Vice Chair

Steven Mach

Margaret Martin

Connie McNabb, DVM

Sid Miller

Michael Moore

Robert C. Pate

Arvel Waight, Jr.

Texas Racing Commission
Ruling Report on Licensee

Ruling Date: 06/27/2019 Violation Date: 02/23/2019 Ruling #: SHRP5320
Licensee: GEORGE RAY BRYANT Status: CLSD

License # 14314 Type OWNER-TRAINER Status SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	07/07/2019	07/21/2019

Ruling Type: 4 MEDICATION VIOLATION Redistribute Purse: Y

Rules Cited: 319.3 DRUG POSITIVE OR PERMITTED MEDICATION VIOLATION
319.302 REASONABLE OVERSIGHT OF ANIMAL
311.104 TRAINER/ABSOLUTE INSURER

Fine: \$ 500 Fine Due Date: 06/30/2019 Fine Paid Date:

FAILURE TO PAY THE ASSESSED FINE BY THE DUE DATE INDICATED ABOVE
MAY RESULT IN THE SUSPENSION OF THE SUBJECT'S OCCUPATIONAL LICENSE(S).

Narrative:

Upon being duly notified, Owner/Trainer George Bryant was represented in a hearing before the Lone Star Park Board of Stewards by Attorney John Mac Hayes on 06/21/19 in the matter of a Class 2B O-Desmethytramadol positive for the horse My Bling, the second place finisher in the fourth race at Sam Houston Race Park on 02/23/19. Test sample number SH065631 tested positive for O-Desmethytramadol in urine. George Bryant is hereby fined five hundred dollars and his TxRC occupational license is suspended for fifteen days (07/07/19 through 07/21/19) by the Lone Star Park Board of Stewards. First violation in a 365 day period.

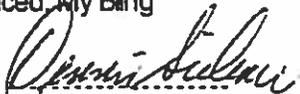
During the term of this suspension, George Bryant is denied access to all facilities under the jurisdiction of the Texas Racing Commission. Horses owned or trained by George Bryant are denied entry pending transfer to a party approved by the Board of Stewards.

The horse My Bling must pass a Commission approved exam to be eligible to start.

My Bling is hereby disqualified and declared unplaced in the fourth race at Sam Houston Race Park on 02/23/19 with the purse to be redistributed as follows:

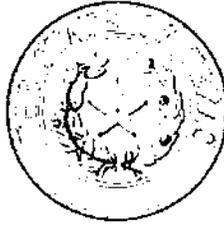
SHRP Fourth Race on 02/23/19

- 1. Mr. Money Bags
 - 2. Truly Bling
 - 3. Gold Buyer
 - 4. Lullaby Bling
 - 5. Mucho Dinero
 - 6. Roundaboutation
- Unplaced: My Bling


DENNIS SIDENER


MIKE PELLETIER


JERRY BURGESS



State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

October 24, 2019

Chuck Trout
Executive Director
Texas Racing Commission
8505 Cross Park Dr., Suite 110
Austin, TX 78754-4594

INTER-AGENCY

RE: Docket No. 476-19-6054; George Ray Bryant v. Texas Racing Commission

Dear Mr. Trout:

Please find enclosed a Proposal for Decision on Summary Disposition in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Behara'.

Srinivas Behara
Administrative Law Judge

SB/tt
Enclosures

cc: Virginia Fields, Staff Attorney, Texas Racing Commission, P.O. Box 12080, Austin, TX 78711-2080 –
INTER-AGENCY
John M. Hayes, Attorney, 1601 S. Victor Ave., Tulsa, OK 74104 - **VIA REGULAR MAIL**

GEORGE RAY BRYANT,
Petitioner

v.

TEXAS RACING COMMISSION,
Respondent

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

George Ray Bryant (Petitioner) appealed a portion of the Lone Star Park Board of Stewards (Stewards) Ruling SHRP 5320 (Ruling)¹ to the Texas Racing Commission (Commission). In its Ruling, the Stewards found that Petitioner violated the Commission's rules when a race horse he trained, MyBling, tested positive after a race for a Class 2B prohibited substance (Tramadol). The Stewards suspended Petitioner for 15 days and imposed an administrative penalty of \$500, disqualified the horse, redistributed the purse (approximately \$13,000), and declared the racehorse unplaced in the race.

Through this appeal, Petitioner contests only the sanctions of a 15-day suspension and loss of purse penalty, arguing that the Stewards failed to consider persuasive, credible mitigating factors that would reduce the sanctions.² Based on the pleadings, the summary disposition evidence, and the applicable law, the Administrative Law Judge (LJ) has determined that the Stewards considered all admissible evidence of mitigating circumstances. Because there is no genuine issue of material fact that, if resolved in Petitioner's favor, would show clear error in the Ruling, Staff has demonstrated it is entitled to summary disposition as a matter of law. Accordingly, this proposal for decision concludes the Ruling was not clearly in error.³

¹ Staff Ex. B.

² Response Brief at p. 5. Petitioner does not contest the Stewards' Ruling in so far as it found violations of 16 Texas Administrative Code § § 311.104 (trainer as absolute insurer), 319.3 (prohibiting presence of certain substances), and 319.302 (reasonable diligence required to protect the race animal).

³ 16 Tex. Admin. Code § 307.67(c).

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Those issues are set forth in the Findings of Fact and Conclusions of Law below.

Petitioner requested a hearing after receiving a notice of violation from the Commission. The Stewards deliberated over the case and issued their Ruling. Petitioner filed with the Commission a Notice of Appeal and Request for Stay, and Staff referred the appeal to the State Office of Administrative Hearings (SOAH), which resulted in this matter.

On July 24, 2019, staff of the Commission (Staff) filed a Notice of Hearing and set the matter for contested hearing on October 1, 2019, at SOAH's hearing facility in Austin, Texas. On August 12, 2019, Staff filed a Motion for Summary Disposition (Motion).⁴ On August 27, 2019, Petitioner filed an Application for Extension of Time to File a Response to the Motion. The ALJ assigned to this case, Srinivas Behara, granted the extension and reset the hearing until further notice.⁵ Petitioner filed his response brief on September 6, 2019. Staff filed a Reply to Petitioner's Response on October 21, 2019.

II. DISCUSSION

A. Undisputed Facts

Petitioner holds license number 14314 issued by the Commission. On February 23, 2019, MyBling was the second-place finisher in the fourth race at Sam Houston Race Park in Houston, Texas. Barn staff took a post-race urine sample from MyBling and divided it into two specimens. Both urine specimens tested positive for the Class 2B prohibited substance O-desmethyltramadol, a metabolite of Tramadol. Petitioner did not contest that he violated the

⁴ 1 Tex. Admin. Code § 155.505(a) provides that the ALJ may issue a final decision or a proposal for decision on all or part of a contested case without an evidentiary hearing if the pleadings and the summary disposition evidence demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion.

⁵ Order No. 1.

Commission's rules and stipulated that there was no evidence that human contamination caused the positive test.

B. Applicable Law

Horse racing in Texas is governed by the Texas Racing Act (Act)⁶ and the rules promulgated by the Commission pursuant to the Act.⁷ In support of its position that the Ruling should be upheld, Staff cites the Act, Commission rules, and Commission policies incorporated in its rules.⁸ The Commission's rules provide that a trainer shall ensure that a horse running a race while in the trainer's care and custody "is free from all prohibited drugs, chemicals, or other substances."⁹ Under the Commission's rules, the trainer is required to guard each animal in his or her custody to prevent the administration of a prohibited drug, chemical, or other substance.¹⁰ A positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse collected on the day of a race, subject to the rules of the Commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.¹¹

The Commission's Revised Equine Medication Classification Policy and Penalty Guidelines (Penalty Guidelines) classify prohibited drugs for race horses and provide a schedule for recommended disciplinary action for use by stewards and the Commission in assessing penalties for violations.¹² The Penalty Guidelines reflect each substance's pharmacology, its

⁶ Tex. Occ. Code subtitle A-1, ch. 2021. Prior to April 1, 2019, the Act was found in Texas Revised Civil Statutes article 179(e) (since repealed). The recodification of the Act did not change the substantive law applicable in this case.

⁷ 16 Tex. Admin. Code part 8.

⁸ Because Commission policies are expressly referenced in the Commission's rules, SOAH's rule addressing consideration of policy not incorporated in an agency's rules does not apply. 1 TAC § 155.419.

⁹ 16 Tex. Admin. Code § 311.104(b)(2).

¹⁰ 16 Tex. Admin. Code § 319.302.

¹¹ 16 Tex. Admin. Code § 319.3(e).

¹² 16 Tex. Admin. Code § 319.304(b); Staff Ex. H; *see also* <http://www.txrc.texas.gov/agency/news/postings/09-10-18-RevisedEquineMedicationClassificationPolicyandPenaltyGuidelines.pdf> The substances classification provided in the Penalty Guidelines are "based largely on the Uniform Classification Guidelines for Foreign Substances issued by the Association of Racing Commissioners International."

ability to influence the outcome of a race, whether it has a legitimate therapeutic use in a racehorse, and other evidence that it may be used improperly.¹³

Tramadol is a Class 2B prohibited substance.¹⁴ The Penalty Guidelines pertinently provide:

- Class 2 substances have a **high potential for affecting the outcome of a race.**
- Class 2 substances are not generally accepted as therapeutic agents in race horses or they are therapeutic agents that have a high potential for abuse.
- Many Class 2 substances are intended to alter consciousness or the psychic state of humans and have no approved or indicated use in a race horse.
- Class 2 substances include opiates, drugs that may have a stimulant effect on the central nervous system, and drugs that have a direct neuromuscular blocking action.¹⁵

The stewards have discretion to impose a penalty that best accomplishes the Commission's enforcement goals.¹⁶ In deliberations, the Stewards should consider what penalty would best punish the violator for harm caused by the violation and deter future similar violations by the violator and other licensees, and stewards should avoid blindly assessing "consistent" penalties without regard to the specifics of each case.¹⁷ If stewards find that a test specimen from a horse that participated in a race contains a prohibited substance, they may disqualify the horse and order the purse redistributed, impose a fine of not more than \$25,000, and suspend a license for up to five years.¹⁸ The Commission's Penalty Guidelines provide that the appropriate penalty for a first

¹³ Staff Ex. H at p. 11.

¹⁴ Staff Ex. G at 15, line 8 (Commission's Classification Guidelines for Foreign Substances). The ALJ notes that Petitioner mistakenly referenced Tramadol as a Class Four substance in his brief. See Response at pp. 4-5.

¹⁵ Staff Ex. H at 11-12. (Emphasis added).

¹⁶ Tex. Occ. Code § 2023.106; 16 Tex. Admin. Code § 307.64. See also Staff Ex. H (Penalty Guidelines). The goals are: (1) to protect the health and safety of the racing participants, including licensees, patrons, and race animals; and (2) to ensure that pari-mutuel racing is conducted honestly and fairly.

¹⁷ Staff Ex. H at 13.

¹⁸ 16 Tex. Admin. Code §§ 307.64, 319.304(a).

offense, positive test of a Class 2B prohibited substance is a 15-day license suspension, \$500 fine, and loss of purse.¹⁹

In this case, Petitioner has alleged that the Stewards made an error of law in interpreting relevant mitigation evidence. The penalties recommended in the Penalty Guidelines “should be followed in all cases in the absence of persuasive, credible evidence of mitigating circumstances justifying a lesser penalty or aggravating circumstances justifying an enhanced penalty.”²⁰ If the stewards deviate from the recommended penalty, the ruling should include an explanation of the mitigating and aggravating circumstances that support the modification.²¹ Mere speculation that mitigating circumstances could have been present is not enough evidence to support a mitigating factor, and the Penalty Guidelines specifically state that the amount of a substance is not relevant in reviewing mitigating circumstances:

Except for permitted medications which the Commission quantifies, **the amount of the substance in a sample should not be considered a mitigating or aggravating factor.** The definition of a prohibited substance adopted by the Commission in [16 Texas Administrative Code] § 319.1(b) establishes a zero-tolerance standard. In other words, the presence in a post-race sample of any amount of a prohibited drug, chemical, or other substance is a *per se* violation of the Commission’s rules.²²

A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.²³ In an appeal, the petitioner has the burden of proving that the Stewards’ ruling was clearly erroneous.²⁴

¹⁹ Staff Ex. H at 15-16.

²⁰ Staff Ex. H at 14.

²¹ Staff Ex. H at 14.

²² Staff Ex. H at 13. (Emphasis added). An example of mitigating circumstances is when the trainer presents credible evidence that another individual actually caused the horse to race with a prohibited substance in its system. *Id.*

²³ 16 Tex. Admin. Code § 307.67.

²⁴ 16 Tex. Admin. Code § 307.67(c).

C. Evidence Presented

In its Motion, Staff submitted the entire record of the hearing before Stewards including all evidence presented and an audio transcript of the hearing. At the hearing, Al Kind (Lead Racing Chemist) and Michael Leon Houston (Commission investigator) testified for Staff. Dr. Rudy Garrison (former Official Veterinarian for the Oklahoma Horse Racing Commission) and George Bryant, Jr. (son of Petitioner and owner of MyBling) testified for Petitioner.

Mr. Kind testified that the lab report indicated MyBling had approximately two nanograms per milliliter of Tramadol in his system after the race. Although Mr. Kind is not a pharmacologist, he testified that Tramadol can affect performance by masking pain and is considered a performance enhancer under the Penalty Guidelines. Mr. Houston proved the chain of custody of MyBling's urine sample(s) and further testified that MyBling was the only horse that tested positive for Tramadol the day of the race.

Dr. Garrison testified that in his 30 years of experience with race horses, he never had a horse test positive for Tramadol. Dr. Garrison testified that generally, it is common for trainers to urinate in barn stalls, which leads to human contamination in horses. Dr. Garrison testified that the combination of human contamination and sensitivity in testing procedures has caused more frequent positive tests for prohibited substances across the nation. Dr. Garrison testified that, according to a 2015 article entitled *Tramadol and Venlafaxine: Human Prescription Meds Occasionally Identified in Post-Race Urines*, authored by Dr. Tobin (a professor with University of Kentucky Gluck Equine Research Center), Tramadol is pharmacologically ineffective in a racehorse because it is very rapidly metabolized and excreted. Dr. Garrison testified that the Dr. Tobin article proposes a regulatory threshold for Tramadol of 50 nanograms per milliliter. Dr. Garrison testified, however, that he had not reviewed any evidence of human contamination specific for MyBling and he did not know MyBling's specific metabolism rate of Tramadol. Dr. Garrison did not review any other studies or publications on Tramadol. Dr. Garrison admitted that it is impermissible under the Penalty Guidelines for a horse to race with any amount of Tramadol in its system.

Dr. Garrison compared this case generally with other cases in Texas and Oklahoma, which apparently involved several racehorses that tested positive for methamphetamine and cocaine. In those cases, the investigators proved human contamination by tracing the prohibited substances in the race horses' samples to specific trainers. Dr. Garrison testified that the stewards dismissed those cases rather than issue sanctions.

Mr. Bryant Jr. did not dispute that MyBling had Tramadol in his system on February 23, 2019. Mr. Bryant Jr. testified that he took reasonable steps to safeguard MyBling and testified that the stable foreman for MyBling, Jose Baez Martinez, had his license suspended in March of 2019 because he tested positive for methamphetamine and cocaine.

E. Analysis

Petitioner does not contest or appeal that he violated the Commission rules at 16 Texas Administrative Code § 311.104 (trainer as absolute insurer), 319.3 (prohibiting presence of certain substances); and 319.302 (reasonable diligence required to protect race animal). He only contests the penalty imposed for those violations.

The Penalty Guidelines adopted by the Commission, however, support a 15-day license suspension, \$500 penalty, and loss of the race purse for Petitioner's admitted violations. The scope of the ALJ's inquiry is limited to determining whether such a penalty is clearly erroneous. No material fact issue was raised regarding this question. As a matter of law, the sanction is not clearly erroneous given Petitioner's admitted violations of the Commission's rules and given that the Stewards' recommended sanctions fall within the Penalty Guidelines. While the inquiry could stop here, the ALJ will address Petitioner's argument that the Stewards clearly erred because the mitigation evidence warrants a penalty of only a fine, with no suspension and loss of purse.

First, Petitioner agrees that it did not provide any evidence of human contamination and the Penalty Guidelines state that the amount of a substance in a sample should not be considered a mitigating or aggravating factor. Petitioner, however, then argues that the low amount of Tramadol in MyBling's sample (two nanograms per milliliter) indicates that human contamination, rather

than intentional cheating (doping), caused the positive test. Unlike the methamphetamine and cocaine cases referenced by Dr. Garrison, Petitioner did not trace Tramadol to any barn staff. Instead, Petitioner presented evidence that his stable foreman tested positive for methamphetamine and cocaine. The investigatory file demonstrated that MyBling was the only horse on the race day that tested positive for Tramadol. Petitioner's request for an inference of human contamination was not supported by persuasive, credible evidence and it was merely speculative. The Commission's Penalty Guidelines expressly provide that such speculation is insufficient to establish a mitigating factor. *See* Staff Ex. H at 13.

Second, Petitioner argues that Tramadol is ineffective at killing pain in a horse and therefore there is no motivation to dope a horse with the substance. Staff, however, references that Tramadol's Class 2B classification in the Penalty Guidelines is based on its pharmacology, its ability to influence the outcome of a race, whether it has a legitimate therapeutic use in a racehorse, and other evidence that it may be used improperly. The Penalty Guidelines provide that Tramadol has "high potential for affecting the outcome of a race." Mr. Kind testified that Tramadol can affect performance by masking pain and could be considered a performance enhancer. Dr. Garrison admitted that it is impermissible under the Penalty Guidelines for a horse to race with any amount of Tramadol in its system. Accordingly, there is no genuine issue of material fact that Tramadol is a prohibited substance and it could be used for performance enhancement.

Finally, Petitioner's counsel argued to the Stewards that no reasonable trainer would risk suspension by trying to cheat a race having comparatively little monetary value. Petitioner did not present any evidence that the purse (approximately \$13,000) was comparatively small. Petitioner's argument to the Stewards was not evidence. There was also no evidence regarding the trainer's reasonableness.

For the foregoing reasons, the record lacks any credible, persuasive evidence of a mitigating factor. The Stewards appropriately weighed the admissible evidence in assessing the penalties and followed the Penalty Guidelines. Therefore, Staff has met its burden of proving there is no genuine issue of material fact regarding whether the Stewards' Ruling is clearly erroneous. Staff is entitled to summary disposition of the violations and the associated sanctions.

III. FINDINGS OF FACT

1. George Ray Bryant (Petitioner) holds trainer's license number 14314 issued by the Texas Racing Commission (Commission).
2. On February 23, 2019, the racehorse trained by Petitioner, My Bling, placed second in the fourth race at Sam Houston Race Park in Houston, Texas. MyBling's purse was approximately \$13,000.
3. After the race, My Bling provided urine sample, and the barn staff divided it into two specimens.
4. The specimens testified positive for O-desmethyltramadol, a metabolite of Tramadol.
5. In April 2019, the Commission sent Petitioner a Notice of Alleged Violation, notifying him of his right to a hearing before the Lone Star Park Board of Stewards (Stewards) regarding alleged violations of the Commission's rules.
6. On June 21, 2019, the Stewards conducted a hearing. Petitioner was represented by legal counsel John Mac Hays. After receipt of evidence, the record closed that day.
7. On June 27, 2019, the Stewards issued Ruling SHRP 5320 (Ruling) finding Petitioner violated 16 Texas Administrative Code §§ 311.104, 319.3, and 319.302.
8. In its Ruling, Stewards suspended Petitioner for 15 days and imposed an administrative penalty of \$500, disqualified the horse, redistributed the purse, and declared the racehorse unplaced in the race.
9. On July 1, 2019, Petitioner filed a timely appeal of the Stewards' decision.
10. On July 24, 2019, staff of the Commission (Staff) filed a notice of hearing and set the matter for contested hearing on October 1, 2019, at the State Office of Administrative Hearings (SOAH) in Austin, Texas. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
11. On August 12, 2019, Staff filed a Motion for Summary Disposition (Motion).
12. On August 27, 2019, Petitioner filed an Application for Extension of Time to File a Response to the Motion. The Administrative Law Judge (ALJ) assigned to this case, Srinivas Behara, granted the extension and reset the hearing until further notice. Petitioner filed his response brief on September 6, 2019.

13. There is no evidence in the record that human contamination led to the positive test for Tramadol.
14. There is no evidence in the record of My Bling's metabolism rate of Tramadol.
15. There is no evidence in the record that Petitioner presented any persuasive, credible evidence of a mitigating factor at the Stewards hearing.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act. Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act) §§ 3.16, 7.04 (since re-codified at Tex. Occ. Code ch 2021).
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 16 Tex. Admin. Code §§ 307.31(c), .67.
3. Petitioner received timely and adequate notice of the allegations against him. Tex. Gov't Code §§ 2001.051-.052.
4. The Motion for Summary Disposition contained the required notice. 1 Tex. Admin. Code § 155.505(c)(3).
5. The Commission's Stewards have authority to conduct hearings and impose penalties. Tex. Occ. Code § 2023.106; 16 Tex. Admin. Code § 307.61.
6. A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing. 16 Tex. Admin. Code § 307.67.
7. Petitioner has the burden of proof at the hearing on the merits to show the Stewards' ruling was clearly erroneous. 16 Tex. Admin. Code § 307.67(c).
8. An ALJ may grant summary disposition on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues set out in the motion. 1 Tex. Admin. Code § 155.505(a).
9. Tramadol is a prohibited drug under Commission rules and shall not be administered to a horse participating in racing at any time. 16 Tex. Admin. Code § 319.3(a).
10. A positive finding from a urine sample that a prohibited substance was present in a horse's urine after a race is prima facie evidence that the substance was in his body during the race. 16 Tex. Admin. Code § 319.3(e).

11. A trainer must guard the horse he trains against administration of prohibited substances before the race and is subject to penalties if his horse races with a prohibited substance in its body. 16 Tex. Admin. Code §§ 319.302, .304.
12. As MyBling's trainer, Petitioner was the absolute insurer that the horse would be free of prohibited substances when he raced. 16 Tex. Admin. Code § 311.104(b)(2).
13. The Texas Racing Act authorizes the Stewards to impose a penalty of up to \$25,000 and a suspension of up to five years for unethical practices or violations of racing rules. Tex. Occ. Code § 2023.106; 16 Tex. Admin. Code § 307.64(a), 319.304(a).
14. The Commission's Equine Medication Classification Policy and Penalty Guidelines (Penalty Guidelines), adopted pursuant to 16 Texas Administrative Code § 319.304(b), classify Tramadol as a Class 2B prohibited substance.
15. According to the Commission's Penalty Guidelines, an important reason for prohibiting the use of Class 2B substances is that such substances have a high potential for affecting the outcome of a race.
16. Under the Penalty Guidelines, the recommended penalties may be reduced if there is persuasive evidence of mitigating circumstances justifying a lesser penalty. Mere speculation that circumstances could have been present is not enough to support a mitigating factor.
17. As a matter of law, the Stewards' Ruling was not clearly erroneous in holding that Petitioner violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302.
18. As a matter of law, the Stewards' Ruling was not clearly erroneous to assess sanctions against Petitioner of a 15-day license suspension, \$500 penalty, and the disqualification of Petitioner's horse and redistribution of the purse. 16 Tex. Admin. Code §§ 307.64(a), .67.
19. Staff is entitled to summary disposition upholding the Stewards' determination regarding Petitioner's violations of 16 Texas Administrative Code §§ 311.104, 319.3, and 319.302, as well as the penalty and sanctions imposed because, based on the pleadings, the motion for summary disposition, and the summary disposition evidence, there is no genuine issue as to any material fact. 1 Tex. Admin. Code § 155.505(a).

SIGNED October 24, 2019.



**SRINIVAS BEHARA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

IN RE: THE APPEAL OF §
§
§
GEORGE RAY BRYANT FROM §
§
§
STEWARDS RULING SHRP 5320 §
§
§
BEFORE THE
TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On January _____, 2020, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of George Ray Bryant (“Petitioner”), trainer/owner license number 14314, from Stewards’ Ruling SHRP 5320 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about June 27, 2019, the Lone Star Park Board of Stewards issued Ruling SHRP 5320, finding Petitioner in violation of 16 TAC §§ 311.104(b)(2), Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “My Bling” participating and placing in the fourth race at Sam Houston Race Park on February 23, 2019, with the Class 3B prohibited substance O-desmethyltramadol, a metabolite of Tramadol.

(b) In the ruling, Petitioner was fined \$500 and suspended for fifteen (15) days from July 7-July 21, 2019, the horse was disqualified and declared unplaced, and the purse was redistributed.

(c) On or about July 1, 2019, Petitioner filed an appeal of the ruling with the Commission and requested a stay of the suspension while the appeal was pending.

(d) On or about July 8, 2019, the Commission's Executive Director denied Petitioner's request for a stay of the suspension.

(e) On August 12, 2019, Respondent filed its Motion for Summary Disposition. On September 6, 2019, Petitioner filed his response. On or about October 24, 2019 the administrative law judge issued a proposal for decision finding no clear error in the ruling.

IT IS HEREBY ORDERED that the proposal for decision, attached to this order and incorporated herein by reference, is adopted in full. Stewards' Ruling SHRP 5320 is upheld in all respects.

If enforcement of this order is restrained by an order of a court, this order takes effect on a final determination by that court or an appellate court in favor of the Texas Racing Commission.

ISSUED AND ENTERED the _____ day of January 2020.

John T. Steen III, Chair

Ronald F. Ederer, Vice Chair

Steven Mach

Margaret Martin

Connie McNabb, DVM

Sid Miller

Michael Moore

Robert C. Pate

Arvel Waight, Jr.

SOAH DOCKET NOS. 476-18-1010, 476-18-1011, AND 476-18-1012

JUDD KEARL, JOSE SANCHEZ, and BRIAN STROUD, Petitioners,	§	BEFORE THE STATE OFFICE
	§	
	§	
v.	§	OF
	§	
TEXAS RACING COMMISSION, Respondent.	§	ADMINISTRATIVE HEARINGS

PETITIONERS KEARL AND SANCHEZ'S MOTION FOR REHEARING

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Pursuant to TEX. GOV'T CODE §2001.146 and 16 TEX. ADMIN. CODE §307.38, Petitioners Judd Kearl ("Mr. Kearl") and Jose Sanchez ("Mr. Sanchez") (collectively, "Petitioners"), being aggrieved by the Order of the Texas Racing Commission (the "Commission") on Mr. Kearl's appeal (the "Kearl Order") and the Order of the Commission on Mr. Sanchez's appeal (the "Sanchez Order") issued in this matter on October 29, 2019, file their Motion for Rehearing (the "Motion") in the above-captioned contested case and in support thereof would respectfully show as follows:

I. OVERVIEW

- The Commission's Kearl and Sanchez Orders adopted the May 28, 2019 Proposal for Decision and July 11, 2019 Exceptions Letter (collectively, the "PFD").
- Rehearing is necessary because the PFD is the result of findings of fact directly contradicted by the specific evidence presented and misapplication and misinterpretation of the applicable law.
- The PFD reflects three material, substantive, and independent errors of law and fact:
 - 1) There are no valid test results to support the imposition of any administrative penalty on Petitioners;

- 2) The Commission did not establish that Nomifensene meets the definition of a prohibited substance warranting a penalty; and
- 3) The penalties imposed on Petitioners are unprecedented and unreasonably disproportionate to the conduct the Commission alleges.

II. FACTUAL AND PROCEDURAL BACKGROUND

1. Petitioners are racehorse trainers whose licenses were suspended after eight split blood samples returned from the Commission's Texas Veterinary Medical Diagnostic Laboratory having tested positive for a substance called Nomifensine.¹ The Pennsylvania Toxicology and Research Laboratory also produced positive results for Nomifensine.

2. The Commission summarily suspended Petitioners' licenses.² Petitioners were entitled to a hearing on their summary suspensions not later than seven days after their licenses were suspended and did not waive that right.³ The Commission refused to comply with that rule and denied Petitioners' right to the agency-mandated hearing.⁴ A Travis County District Court order was required to persuade the Commission to follow the law. Unsurprisingly, the Commission did not change its position and instead upheld the summary suspensions.

¹ The third trainer, Brian Stroud, is separately represented by Trent Rowell.

² See 16 TEX. ADMIN. CODE §307.62(c).

³ 16 TEX. ADMIN. CODE §307.62(i).

⁴ Such disregard for strict statutory application has been endemic throughout this case.

3. The Board of Stewards ("BOS") held the disciplinary hearing on Petitioners' final suspensions on September 25-27, 2017. On October 20, 2017, the BOS issued its Rulings suspending Petitioners' licenses on the basis of the "absolute insurer rule;"⁵ for a prohibited drug, chemical, or other substance "which could affect the health or performance of a race animal, however minimal;"⁶ for a horse "participating in a race" carrying "in its body a prohibited drug, chemical, or other substance;"⁷ and for failure to guard the horses "in the manner and for the time necessary to prevent the administration of a drug, chemical, or other substance."⁸ Mr. Sanchez was cumulatively fined \$35,000 and suspended for four years; Mr. Kearl was cumulatively fined \$110,000 and suspended for nineteen years, effectively ending his career. These sanctions are the harshest penalties allowed under the existing guidelines, and resulted in the harshest penalties ever imposed in the Commission's history.⁹

4. Petitioners appealed their suspensions to the Commission.¹⁰ At the BOS hearing, Commission employees testified that they did not follow procedures designed

⁵ 16 TEX. ADMIN. CODE §311.104(b).

⁶ 16 TEX. ADMIN. CODE §319.1(b)(1).

⁷ 16 TEX. ADMIN. CODE §319.3(a).

⁸ 16 TEX. ADMIN. CODE §319.302.

⁹ 16 TEX. ADMIN. CODE §307.64; *see* Petitioners' January 16, 2019 State Office of Administrative Hearing Exhibit ("SOAH Ex.") 21.

¹⁰ *See* 16 TEX. ADMIN. CODE §307.67. Given the separate District Court action, the parties agreed to a continuance to allow that higher court to rule on the validity of the testing

by the Commission to ensure the safety and security of the testing samples.¹¹ This deliberate deviation from agency-mandated procedure prompted Petitioners to seek a ruling on its propriety from the only statutorily authorized body to make the determination: the Travis County District Court.¹² On May 14, 2018, District Judge Karin Crump found that the procedures followed by Commission employees and test barn supervisors were legally invalid.¹³ The Travis County District Court made this ruling while the administrative appeal was pending before SOAH because all parties agreed that a finding that the tests were invalid would affect SOAH's determination as well.

5. At the SOAH hearing on January 16, 2019, Petitioners presented evidence that the BOS Rulings were clearly in error, including three distinct and sufficient legal grounds for issuance of a PFD recommending the Commission vacate the BOS Rulings and impose no suspension or fine. First, because the District Court found that the testing procedure used in this case was invalid, no valid test results supported the administrative action or penalty.¹⁴ Second, the Commission presented no competent or legally sufficient evidence that Nomifensine met the statutory definition of a "prohibited substance."¹⁵

methods applied in this case, because such a ruling could affect the outcome of the SOAH appeal.

¹¹ See SOAH Exs. 23-27.

¹² See TEX. GOV'T CODE §2001.038(a)-(b).

¹³ SOAH Ex. 47.

¹⁴ 16 TEX. ADMIN. CODE §§307.62(e), 319.3(e).

¹⁵ 16 TEX. ADMIN. CODE §319.1(b).

Third, because the Commission presented no evidence of Petitioners' culpability and did not consider any mitigating evidence, imposition of the maximum sanction was unlawfully disproportionate.¹⁶

6. The ALJ assigned to hear Petitioners' case agreed with Petitioners regarding the underlying facts demonstrating the BOS's clear error, which would support vacating the suspension.¹⁷ Nonetheless, because of a number of extra-legal graces offered to the BOS and the Commission, and despite the acknowledgement by all parties that the Travis County District Court's ruling should impact SOAH's consideration, the ALJ declined to find clear error.

7. Petitioners timely filed their Exceptions to the PFD on June 7, 2019.¹⁸ To the extent that the Commission believes those Exceptions have merit but that revision of the PFD was not the proper remedy, Petitioners urge the Commission to grant this Motion so that those faults do not result in the improper exercise of governmental power and control over Petitioners and their livelihood. The ALJ's July 11, 2019 Exceptions Letter adopted all of the Commission's proposed changes and none of Petitioners'.

¹⁶ 16 TEX. ADMIN. CODE §§307.66(a), 319.304(a)(3).

¹⁷ See PFD, pp. 1-11.

¹⁸ See 16 TEX. ADMIN. CODE §307.34. Similar issues to those presented in this Motion are addressed as appropriate in Petitioners' Exceptions. Petitioners hereby incorporate those Exceptions by reference as if set forth fully in this Motion and re-urge the Commission to revise the PFD accordingly. Petitioners do not waive their right to assert the arguments and evidence described in the Exceptions at the rehearing of this matter or, as appropriate, on appeal to the Travis County District Court.

8. The Commission considered the PFD at an open meeting on September 10, 2019 and issued the Kearl and Sanchez Orders adopting the PFD at the next open meeting, October 29, 2019.¹⁹ The Kearl Order affirmed Mr. Kearl's suspension of fourteen years from July 31, 2017 until July 31, 2031, and the fine of \$85,000. The Sanchez Order affirmed Mr. Sanchez's suspension of four years from July 31, 2017 until July 30, 2021, and the fine of \$35,000.

9. Petitioners file this Motion for Rehearing because the PFD's conclusions of law are not supported by the corresponding findings of fact; the conclusions of law are contrary to the applicable law; and the findings of fact are not supported - and in many instances are directly contradicted - by the evidence presented, which was sufficient to determine that the BOS's rulings were clearly in error and unsupported by the limited evidence that the Commission offered to justify their imposition of maximum penalties on these two trainers. Petitioners request that, upon rehearing, the ALJ issue a new PFD for the Commission to adopt, with findings of fact and conclusions of law that correspond to the evidence presented and the applicable law, vacating the BOS's Rulings, and imposing no penalties or fines on Petitioners. In the alternative, Petitioners request that after a rehearing the Commission adopt a final decision as shown in Exhibit A to

¹⁹ Petitioners have twenty-five days after the Kearl and Sanchez Orders were issued to file their Motion for Rehearing. TEX. GOV'T CODE §2001.146. Because that deadline falls on Saturday, November 23, 2019, Petitioners' Motion for Rehearing is timely filed the following Monday, November 25, 2019. TEX. GOV'T CODE §311.104.

Petitioners' June 7, 2019 Exceptions, which is a version of the PFD with Petitioners' proposed changes.

III. GROUNDS FOR REHEARING

10. A rehearing in this case is necessary to permit the Commission to adopt a PFD rendered by SOAH that is free from errors in the findings of fact and resulting conclusions of law.²⁰ In this case, the ALJ's summary of the underlying facts for his findings and conclusions are not based on the evidence presented and resulted in a PFD likewise unsupported by the evidence. The evidence and the law require a revised PFD to reflect a substantial reversal of course. Given the Commission's likely objections to such a revised PFD, a motion for rehearing is likely to be the most appropriate avenue for achieving a just outcome.

A. THE COMMISSION PRESENTED NO VALID TEST RESULTS.

11. Petitioners presented evidence, the Commission stipulated, and the ALJ agreed that the Commission instructed its test barn employees to deviate from the published rules and procedures for collection and storage of split samples.²¹ Judge Crump declared the practice illegal ad hoc rulemaking. The ALJ acknowledged her ruling and entered it into SOAH's record of this appeal.²² The results of those invalid

²⁰ See TEX. GOV'T CODE §2001.141(d).

²¹ See PFD, pp. 6-8, 10; See SOAH Ex. 50, pp. 6-7, 12, 15-16, 18, 20-22; Ex. 51; Ex. 53; Ex. 54, pp. 1, 5-11; Ex. 56, pp. 2-7; Ex. 55; Ex. 57; Ex. 58, pp. 1-3, 5-11; Ex. 59; Ex. 60, pp. 1-4, 6-8; Ex. 61; Ex. 62, pp. 1-2; Ex. 63; Ex. 68, p. 1; Ex. 69.

²² See PFD, p. 1; SOAH Ex. 47.

tests are necessarily invalid themselves.²³ The ALJ's agreement that the Commission's procedure violated its own rules directly contradicts the ALJ's findings of fact and conclusions of law suggesting that any of the tests performed, or the test results, were valid and uncompromised. The PFD justifies these erroneous conclusions by introducing an extra-statutory requirement that Petitioners have to prove the illegal tests resulted in a different test outcome. Not only is this requirement a post hoc justification to prop up a rubber-stamp ruling, it would require Petitioners to produce unobtainable evidence to prove a speculative counterfactual.

12. The Commission failed to follow minimum standards of uniform practices and procedures required of state agencies when engaged in the rulemaking process.²⁴ Test barn procedures are defined in the Texas Administrative Code and therefore constitute "rules" under the Texas Administrative Procedures Act ("APA").²⁵ The "procedural deviations" the ALJ referred to were in fact unadopted regulatory changes.²⁶ The ALJ correctly noted that the Commission directed different procedures for sample collection and storage in this case.²⁷ From there, the ALJ determined, without supporting evidence, argument, or suggestion, that the test barn employees' deviant conduct was

²³ See *El Paso Hosp. Dist. v. Tex. HHS Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008).

²⁴ TEX. GOV'T CODE §2001.001, §2001.021 *et seq.*, *esp.* §§2001.023, .029, .033, .039.

²⁵ See *generally* TEX. GOV'T CODE Chapter 2001; *see also* TEX. GOV'T CODE §2001.003(6); 16 TEX. ADMIN. CODE §307.2.

²⁶ See PFD, pp. 6-8; TEX. GOV'T CODE §2001.003(6); TEX. GOV'T CODE §2001.021 *et seq.*

²⁷ See PFD, p. 10.

therefore “reasonable.”²⁸ However, whether the test barn employees had a reasonable basis for following the Commission’s instructions to deviate from published procedures was not a proper inquiry and should not have been a consideration; it improperly impacted the ALJ’s analysis and, ultimately, led to mistakes of law in the PFD.

13. The applicable law requires the ALJ to consider only whether the Commission’s instructions to violate the published procedures were properly adopted pursuant to the Texas Administrative Procedures Act.²⁹ The Travis County District Court had already issued a definitive answer to that question before the SOAH hearing, which SOAH is without statutory authority to change: the Commission did not properly adopt them, and their failure to follow the minimum standards of uniform practices and procedures required of state agencies by the APA when engaged in the rulemaking process constituted illegal ad hoc rulemaking, rendering the Commission’s instructions voidable.³⁰ To allow a Texas administrative agency like the Commission to ignore the law governing proper adoption of rules related to the integrity of official test samples - including collection, storage, and proper chain of custody - and to impose severe penalties on the basis of those improperly handled test samples, defeats the entire purpose of the Texas Administrative Procedures Act: to provide minimum standards of uniform practice and procedures for state agencies and provide for public participation

²⁸ See *id.*

²⁹ TEX. GOV’T CODE §2001.021, *et seq.*

³⁰ See SOAH Ex. 47; TEX. GOV’T CODE §§2001.035(a), 2001.038(a)-(b).

in the rulemaking process.³¹ The ALJ therefore did not properly apply the law to the facts and evidence, including the preexisting, preclusive judgment from the Travis County District Courts, and rehearing is therefore necessary to correct the error.

14. The ALJ also erred in implying that Petitioners had the burden to prove that the Commission's deviation from its published procedures in this case did not affect the outcome of the tests.³² This directly contradicts the applicable law, placing the burden to prove a violation of the Texas Racing Act or a Commission rule squarely on the Commission.³³ Without valid test results, the Commission could not and did not prove its case, and Petitioners were not and cannot be required to prove that there was not a violation. The ALJ incorrectly applied the law to the facts when he issued the PFD including the basis that because Petitioners did not disprove a violation, the BOS's Rulings were not clearly in error.

15. Findings of Fact 12, 13, 30, and 31 and Conclusions of Law 11, 13-19, and 23 are contradicted by the evidence of the invalid tests, are the result of the ALJ's errors in applying the law, and should be immaterial to the Commission's determination. If the Commission declines to adopt Petitioners' recommended changes to the PFD, a rehearing is necessary and appropriate to address the inconsistencies between the evidence presented to the ALJ and the findings of fact; the applicable law and the ALJ's

³¹ TEX. GOV'T CODE §2001.001.

³² See PFD, pp. 10-11.

³³ 16 TEX. ADMIN. CODE §307.62(e).

inconsistent and erroneous application of that law; and the ALJ's arbitrary application of the law as the ALJ understands it to the evidence that was in fact presented at the hearing.

B. THE COMMISSION PRESENTED NO COMPETENT EVIDENCE THAT NOMIFENSINE IS A PROHIBITED SUBSTANCE.

16. The only evidence that the Commission offered in support of its claim that Nomifensine meets the definition of a prohibited substance was legally no evidence at all.³⁴ Only substances that are reasonably capable of influencing or affecting the outcome of a race or of affecting the health or performance of a racehorse are "prohibited substances."³⁵ The Commission had the burden and failed to prove that Nomifensine is in fact a prohibited substance - a fundamental requirement for imposition of an administrative penalty.³⁶

17. Petitioners presented evidence, and the ALJ agreed, that there was no evidence of the effect, if any, of Nomifensine on a horse; that the Commission's expert witness had never encountered an instance where a horse tested positive for Nomifensine; that he was unaware of any study on its effects on a horse; and "there is simply no empirical data . . . that establishes the manner and extent Nomifensine may

³⁴ *Gharda USA, Inc. v. Control Solutions, Inc.*, 464 S.W.3d 338, 350 (Tex. 2015); *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 643 (Tex. 2009); *GMC v. Iracheta*, 161 S.W.3d 462, 470-71 (Tex. 2005); *Coastal Transp. Co. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 232 (Tex. 2004); *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 905 (Tex. 2003); *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 714 (Tex. 1997); *E.I. DuPont De Nemours & Co. v. Robinson*, 923 S.W.2d 549, 557 (Tex. 1995).

³⁵ 16 TEX. ADMIN. CODE §319.1(b).

³⁶ See SOAH Exs. 21-22.

have on a horse.”³⁷ The Commission presented a single witness whose opinion was legally insufficient under Texas law to constitute any evidence of a relationship between Nomifensine and the health or safety of a horse.³⁸ The “expert” also testified that he had not heard of the alleged prohibited substance until asked to testify that it was bad. The ALJ also incorrectly determined, without any supporting testimony or evidence, that FDA approval of a drug in any way correlates to its effect on a horse.³⁹

18. The ALJ erred in the findings of fact and conclusions of law based on his misinterpretation of the preclusive effect of Judge Crump’s final order. The ALJ claimed that exhaustion of administrative remedies was somehow implicated in the Court’s final order on the Commission’s illegal conduct or has some kind of effect on these proceedings.⁴⁰ This claim was without foundation in the District Court or SOAH record and was never raised or argued by the Commission.⁴¹ Additionally, this claim constitutes an erroneous conclusion of law (even if it is not labeled as such) on which the ALJ relied when he made his findings of fact and conclusions of law. Without any supporting

³⁷ See PFD, pp. 9 and 11.

³⁸ See SOAH Exs. 64, pp. 9-13, 15-16; 65; *see infra*, fn.34.

³⁹ See PFD, p. 11.

⁴⁰ See PFD, p. 1 fn.1.

⁴¹ Findings of fact may be based only on the evidence and on matters that are officially noticed. TEX. GOV’T CODE §2001.141(c).

evidence, or even the mere suggestion by one of the parties, the ALJ violated the law by making this consideration a basis for a finding of fact.⁴²

19. The ALJ nevertheless issued the following findings of fact and conclusions of law which are directly contradicted by the specific evidence presented at the SOAH hearing: Findings of Fact 31 and 33 and Conclusions of Law 13-19, 21, and 23. These findings of fact and conclusions of law are unsupported by the evidence, contradicted by numerous specific items of evidence described in the foregoing paragraph, or were simply immaterial to the Commission's determination. If the Commission declines to adopt Petitioners' recommended changes to the PFD, a rehearing is necessary and appropriate to address the inconsistencies between the evidence presented to the ALJ and the findings of fact; the applicable law and the PFD's inconsistent and erroneous application of that law; and the incorrect application of the relevant law to the supported facts.

C. THE PENALTIES IMPOSED ARE UNPRECEDENTED, DISPROPORTIONATE, ARBITRARY, AND CAPRICIOUS.

20. The Commission has never presented evidence or alleged that it considered and rejected a lesser penalty for Petitioners, a practice encouraged by its own rules.⁴³

⁴² Petitioners filed a Motion for Summary Disposition on September 28, 2018 including Judge Crump's final order. Respondents filed one on November 11, 2018. Neither contained a discussion of administrative remedies. To the extent the ALJ was confused, misled, or misinformed regarding the preclusive effect of the judgment or the effect, if any, of exhaustion of administrative remedies to the invalidity of the tests, it could have been raised at the hearing or requested for briefing either by the Commission or *sua sponte* by the ALJ.

⁴³ See SOAH Ex. 21, pp. 4-5.

There has been no attempt by the Commission to explain why Petitioners, who presented overwhelming, uncontroverted evidence of veterinary misconduct, should receive the harshest penalty authorized under the law. The ALJ agreed with Petitioners and accepted their evidence that their veterinarian, Dr. Justin Robinson, was solely responsible for Nomifensine's presence in their horses.⁴⁴ However, the ALJ misapplied or failed to apply the applicable law providing that Dr. Robinson should be held to account in addition to - or even in place of - Petitioners.⁴⁵

21. Petitioners produced uncontroverted evidence that they were careful, compliant trainers; the Commission's investigation produced no evidence - either direct or circumstantial - connecting Petitioners to the procurement or administration of Nomifensine, to any actual adverse effect in any horse, to the knowledge that any illicit substance had been administered, or to any specific lapse in maintenance of the standard of care required of trainers.⁴⁶ The Commission nevertheless imposed unnecessarily punitive penalties, which the ALJ erroneously upheld in spite of the applicable law and facts regarding mitigation.

⁴⁴ See PFD, pp. 10-11; *see also* SOAH Ex. 15, 15:23-16:3, 20:19-23, 23:10-12, 26:23-27:8, 33:5-15; Ex. 50, pp. 2-3, 30-31; Ex. 51, Ex. 52, pp. 11-13; Ex. 53; Ex. 64, p. 8; Ex. 65; Ex. 66, pp. 3-5; Ex. 67.

⁴⁵ See 16 TEX. ADMIN. CODE §§307.66(a), 319.304(a)(3).

⁴⁶ See 16 TEX. ADMIN. CODE §319.302; *see also* SOAH Ex. 15, 4:19-5:8, 5:17-6:13, 12:11-14:5, 15:21-16:9, 19:17-21:6, 21:22-24:16, 26:23-30:24, 31:16-33:21; Ex. 44; Ex. 45; Ex. 50, pp. 3, 24, 26, 28-33; Ex. 51; Ex. 52, pp. 11-14; Ex. 53; Ex. 64, pp. 3-6, 8-9; Ex. 65; Ex. 66, pp. 1-6; Ex. 67.

22. As a result, the ALJ issued Conclusion of Law 23, directly contradicted by the specific mitigation evidence presented at the SOAH hearing. That conclusion was the result of an error of law, was not supported by the mitigating evidence presented, and was therefore arbitrary and capricious and constitutes an abuse of the Commission's discretion.⁴⁷ If the Commission declines to adopt Petitioners' recommended changes to the PFD, a rehearing is necessary and appropriate to address the inconsistencies between the evidence presented to the ALJ and the findings of fact; the applicable law and the PFD's inconsistent and erroneous application of that law; and the incorrect application of the relevant law to the supported facts.

IV. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioners Judd Karl and Jose Sanchez request that the Commission grant this Motion for Rehearing pursuant to TEX. GOV'T CODE §2001.146 and 16 TEX. ADMIN. CODE §307.38, and, in the alternative, request the Commission render a decision as described in Exhibit A attached to this Motion. Petitioners also request any such other and further relief, in law or in equity, to which they may have shown themselves to be justly entitled.

⁴⁷ TEX. GOV'T CODE §2001.174.

Respectfully submitted,

RUFFNER SCHOENBAUM PLLC

By: /s/ Eleanor Ruffner

Eleanor Ruffner

State Bar No. 24047034

Tanya Robinson

State Bar No. 24095822

1603 West 6th Street

Austin, Texas 78703

(512) 275-6277 (telephone)

(512) 681-0800 (facsimile)

Eleanor@RSLawTX.com

Tanya@RSLawTX.com

ATTORNEYS FOR PETITIONERS JUDD KEARL
AND JOSE SANCHEZ

CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of November, 2019, a true and correct copy of the foregoing document has been delivered via e-service and/or email as follows:

Virginia S. Fields
Texas Racing Commission
P.O. Box 12080
Austin, Texas 78711
Email: virginia.fields@txrc.texas.gov

Attorney for Respondent the Texas Racing Commission

Devon Bijansky
Texas Racing Commission
8505 Cross Park Drive, Ste. 110
Austin, Texas 78711
Email: devon.bijansky@txrc.texas.gov

Deputy General Counsel for Respondent Texas Racing Commission

Trent C. Rowell
TRENT C. ROWELL, ATTORNEY AT LAW
P.O. Box 457
Stockdale, Texas 78160

Attorney for Petitioner Brian Stroud

Carbon Copy:

Darrell J. Vienna
LAW OFFICES OF DARRELL J. VIENNA
P.O. Box 725
Sierra Madre, California 91025

/s/ Eleanor Ruffner
Eleanor Ruffner

JUDD KEARL, JOSE SANCHEZ,
and BRIAN STROUD, Petitioners

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BEFORE THE STATE OFFICE

v.

OF

TEXAS RACING COMMISSION,
Respondent

ADMINISTRATIVE HEARINGS

**RESPONDENT'S REPLY TO PETITIONERS KEARL AND SANCHEZ'S
MOTION FOR REHEARING**

On September 10, 2019, the Texas Racing Commission voted to adopt the proposal for decision in the above-cited matters with limited changes. Judd Kearl and Jose Sanchez (Petitioners) have now filed a motion for rehearing requesting the matter be reopened. For the same reasons the Commission declined to make more significant changes to the proposal for decision, Petitioners' motion should be denied.

Petitioners re-urge a multitude of previously unsuccessful arguments against the stewards' rulings, the proposal for decision issued by the State Office of Administrative Hearings, and the Commission's order. Out of respect for the commissioners' time, staff will not revisit all of those arguments but will rather highlight the following points:

During the Stewards' hearing, the Petitioners acknowledged that the animals participated in a race with the prohibited substance nomifensine in their systems. The only evidence Petitioners proffered to substantiate the claim that they were not involved with the administration of the nomifensine was the uncorroborated, self-serving testimony of the trainers themselves.

Equine pharmacologist Dr. Scott Stanley provided uncontroverted testimony to the stewards that nomifensine, a drug that has *never* been approved for use in horses and had its approval for use in humans withdrawn by the FDA in 1992, is reasonably capable of affecting the outcome of a race and has the potential to affect the health or performance of a horse, which establishes that nomifensine meets the definition of a prohibited substance under the Racing Act and agency rules. Respondents attempted to capitalize on the fact that Dr. Stanley had not studied nomifensine prior to this case, suggesting that his lack of experience with it undermined the validity of his testimony. In reality, the fact that this drug was unknown in the equine pharmacology world underscores the great danger associated with administering it to horses, as even drugs considered safe in humans must be tested for safety and proper dosage before any approved use in horses.

Petitioners argue the ALJ's summary of the underlying facts for his findings and conclusions are not based on the evidence presented and resulted in a PFD likewise unsupported by the evidence. The Petitioners admit they failed to produce their veterinarian at any hearing to

accept full responsibility for doping their animals and to collaborate Petitioners' denial of any doping. Therefore the ALJ found substantial evidence to uphold the rulings, no evidence of inconsistencies between the evidence presented and the findings of fact, no inconsistent or erroneous application of the law or incorrect application of the relevant law to the supported facts.

WHEREFORE premises considered, the Respondent respectfully prays the Commission deny the Petitioners Kearn and Sanchez's Motion for Rehearing.

Respectfully submitted,



Virginia S. Fields
Texas Racing Commission
PO Box 12080
Austin, Texas 78711
(512) 490-4009 telephone
(512) 833-6907 facsimile
State Bar No. 00792501

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing Respondent's Reply to Petitioners Kearn and Sanchez's Motion for Rehearing have been sent by U.S. mails 7004 1350 0003 5202 9883 to Eleanor Ruffner and Tanya Robinson, Ruffner Schoenbaum, PLLC, Attorneys for Petitioners Judd Kearn and Jose Sanchez at 1603 West 6th Street, Austin, Texas 78703, on this the 6th day of December, 2019.



Virginia S. Fields

IN RE: THE APPEAL OF §
JUDD KEARL FROM § BEFORE THE
§
STEWARDS RULINGS §
SHRP 5093; RETA 2688; RETA 2689; § TEXAS RACING COMMISSION
RETA 2690 AND RETA 2691 §

ORDER OF THE COMMISSION

On September 10, 2019, the Texas Racing Commission (“Commission”) considered in an open meeting the appeal of Judd Kearn (“Petitioner”), trainer/owner license number 91094, from Stewards’ Rulings SHRP 5093, RETA 2688, RETA 2689, RETA 2690 and RETA 2691 (“the rulings”). The Commission hereby makes the following findings based on the record of this matter:

- (a) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling SHRP 5093, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Zoomin N Celebrating” participating and placing in the tenth race at Sam Houston Race Park on May 22, 2017, with the prohibited substance Nomifensine.
- (b) In the ruling, Petitioner was fined \$10,000 and suspended for one (1) year from July 31, 2017 until July 30, 2018, the horse was disqualified and declared unplaced, and the purse was redistributed.
- (c) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling RETA 2688, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ.

Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse "Million Dollar Kiss" participating and placing in the ninth race at Retama Park on June 9, 2017, with the prohibited substance Nomifensine.

(d) In the ruling, Petitioner was fined \$25,000 and suspended for three (3) years from July 31, 2018 until July 30, 2021, the horse was disqualified and declared unplaced, and the purse was redistributed.

(e) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling RETA 2689, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse "Chivalri" participating and winning in the tenth race at Retama Park on June 9, 2017, with the prohibited substance Nomifensine.

(f) In the ruling, Petitioner was fined \$25,000 and suspended for five (5) years from July 31, 2021 until July 30, 2026, the horse was disqualified and declared unplaced, and the purse was redistributed.

(g) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling RETA 2690, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse "Tellem Honeys Here" participating and winning in the tenth race at Retama Park on June 10, 2017, with the prohibited substance Nomifensine.

(h) In the ruling, Petitioner was fined \$25,000 and suspended for five (5) years from July 31, 2026 until July 30, 2031, the horse was disqualified and declared unplaced, and the purse was redistributed.

(i) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling RETA 2691, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse "Zoomin N Celebrating" participating and winning in the sixth race at Retama Park on June 17, 2017, with the prohibited substance Nomifensine.

(j) In the ruling, Petitioner was fined \$25,000 and suspended for five (5) years from July 31, 2031 until July 30, 2036, the horse was disqualified and declared unplaced, and the purse was redistributed.

(k) On or about October 27, 2017, Petitioner filed an appeal of the rulings with the Commission and requested a stay of the suspensions while the appeals were pending.

(l) Petitioner timely requested a stay of the suspensions which the Commission's Executive Director denied.

(m) On or about May 28, 2019, the administrative law judge (ALJ) issued a proposal for decision (PFD), incorporated by reference and attached to this order, finding no clear error in the rulings and recommending the adoption of Stewards' Rulings SHRP 5093, RETA 2688, RETA 2689, RETA 2690 and RETA 2691.

(n) On or about July 11, 2019, the administrative law judge issued an Exceptions Letter, incorporated by reference and attached to this order, recommending certain changes to

the PFD. The PFD and exceptions letter both included the matters of *Jose Sanchez v TxRC 476-18-1011* and *Brian Stroud v TxRC 476-18-1012*.

IT IS HEREBY ORDERED that the findings of fact and conclusions of law in the PFD are adopted and incorporated by reference herein, subject to the terms and conditions of this Final Order.

IT IS FURTHER ORDERED that the ALJ's exceptions letter dated July 11, 2019 is adopted and incorporated by reference herein, except for Finding of Fact #19, which is hereby changed due to a technical error in the Petitioner's name. Specifically, the Findings of Fact and Conclusions of Law addressed in the Exceptions Letter are as follows:

Finding of Fact No. 2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 163028.

Finding of Fact No. 12. Each blood sample was collected into three tubes. Two of the tubes were sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine. The third sample was retained for split specimen testing.

Finding of Fact No. 15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) began a hearing, which concluded on September 27, 2017.

Finding of Fact No. 19. On October 20, 2017, in Ruling No. RETA 2687, Appellant Sanchez was fined \$25,000 and received a three-year license suspension.

Finding of Fact No. 22. On October 21, 2017, in Ruling No. 2689 Appellant Kearl was fined \$25,000 and received a five-year license suspension.

Conclusion of Law No. 13. Stewards' Ruling No. RETA 2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system.

Conclusion of Law No. 14. Stewards' Ruling No. RETA 2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system.

IT IS FURTHER ORDERED that the following sanctions are imposed on Petitioner:

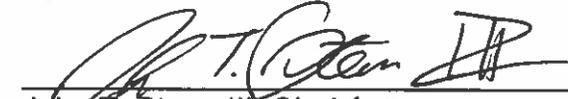
Petitioner's license is deemed SUSPENDED for a term of fourteen years from July 31, 2017 until July 31, 2031;

An administrative penalty is imposed on Petitioner in the amount of \$85,000.

IT IS FURTHER ORDERED THAT the horses, Zoomin N Celebrating, Million Dollar Kiss, Chivalri, and Tellem Honeys Here that won or placed in the races held at Sam Houston Race Park and Retama Race Park on May 22, 2017, June 9, 2017, June 10, 2017, and June 17, 2017 are DISQUALIFIED and declared unplaced;

IT IS FURTHER ORDERED that the purses in the aforementioned races are be redistributed in accordance with the findings of the Stewards and the terms of this Final Order.

ISSUED AND ENTERED the 29th day of October 2019.



John T. Steen III, Chair

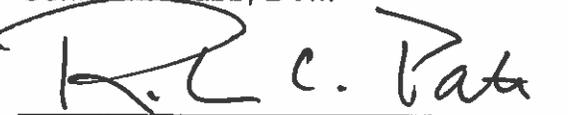
Ronald F. Ederer, Vice Chair



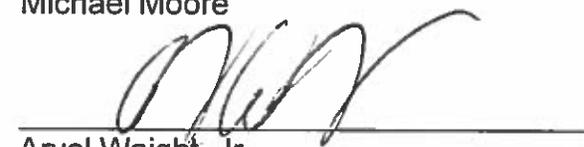
Connie McNabb, DVM



Michael Moore



Robert C. Pate



Arvel Waight, Jr.

Walt Rogers

Steven Mach

Margaret Martin

IN RE: THE APPEAL OF

JOSE SANCHEZ FROM

STEWARDS RULINGS
RETA 2686 and RETA 2687

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BEFORE THE

TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On September 10, 2019, the Texas Racing Commission ("Commission") considered in an open meeting the appeal of Jose Sanchez ("Petitioner"), trainer/owner license number 163028, from Stewards' Rulings RETA 2686 and RETA 2687 ("the rulings"). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about October 20, 2017, the Retama Park Board of Stewards issued Ruling RETA 2686, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse "Contentious Strike" participating and winning the sixth race at Retama Park on June 10, 2017, with the prohibited substance Nomifensine.

(b) In the ruling, Petitioner was fined \$10,000 and suspended for one (1) year from July 31, 2017 until July 30, 2018, the horse was disqualified and declared unplaced, and the purse was redistributed.

(c) On or about October 20, 2017, the Retama Park Board of Stewards issued Ruling RETA 2687, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication

Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse "Dancers Toast" participating and placing the tenth race at Retama Park on June 16, 2017, with the prohibited substance Nomifensine.

(d) In the ruling, Petitioner was fined \$25,000 and suspended for three (3) years from July 31, 2018 until July 30, 2021, the horse was disqualified and declared unplaced, and the purse was redistributed.

(e) On or about October 27, 2017, Petitioner filed an appeal of the rulings with the Commission and requested a stay of the suspensions while the appeals were pending.

(f) Petitioner timely requested a stay of the suspensions which the Commission's Executive Director denied.

(g) On or about May 28, 2019, the administrative law judge (ALJ) issued a proposal for decision (PFD), incorporated by reference and attached to this order, finding no clear error in the rulings and recommending the adoption of Stewards' Rulings RETA 2686 and RETA 2687.

(h) On or about July 11, 2019, the administrative law judge issued an Exceptions Letter, incorporated by reference and attached to this order, recommending certain changes to the PFD. The PFD and exceptions letter both included the matters of *Judd Kearn v TxRC 476-18-1010* and *Brian Stroud v TxRC 476-18-1012*.

IT IS HEREBY ORDERED the findings of fact and conclusions of law in the PFD are adopted and incorporated by reference herein, subject to the terms and conditions of this Final Order.

IT IS FURTHER ORDERED that the ALJ's exceptions letter dated July 11, 2019 is adopted and incorporated by reference herein, except for Finding of Fact #19, which is

hereby changed due to a technical error in the Petitioner's name. Specifically, the Findings of Fact and Conclusions of Law addressed in the Exceptions Letter are as follows:

Finding of Fact No. 2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 163028.

Finding of Fact No. 12. Each blood sample was collected into three tubes. Two of the tubes were sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine. The third sample was retained for split specimen testing.

Finding of Fact No. 15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) began a hearing, which concluded on September 27, 2017.

Finding of Fact No. 19. On October 20, 2017, in Ruling No. RETA 2687, Appellant Sanchez was fined \$25,000 and received a three-year license suspension.

Finding of Fact No. 22. On October 21, 2017, in Ruling No. 2689 Appellant Kearn was fined \$25,000 and received a five-year license suspension.

Conclusion of Law No. 13. Stewards' Ruling No. RETA 2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system.

Conclusion of Law No. 14. Stewards' Ruling No. RETA 2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system.

IT IS FURTHER ORDERED that the following sanctions are imposed on Petitioner:

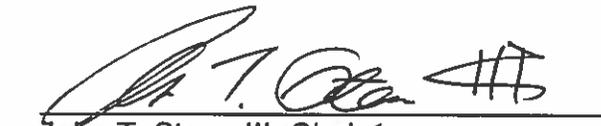
Petitioner's license is deemed SUSPENDED for a term of four years from July 31, 2017 until July 30, 2021;

An administrative penalty is imposed on Petitioner in the amount of \$35,000.

IT IS FURTHER ORDERED THAT the horses, Contentious Strike and Dancers Toast, that won or placed in the races held at Retama Race Park on June 10, 2017 and June 16, 2017, are DISQUALIFIED and declared unplaced;

IT IS FURTHER ORDERED that the purses in the aforementioned races are to be redistributed in accordance with the findings of the Stewards and the terms of this Final Order.

ISSUED AND ENTERED the 29th day of October 2019.



John T. Steen III, Chair

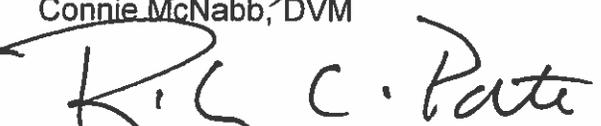
Ronald F. Ederer, Vice Chair



Connie McNabb, DVM



Michael Moore



Robert C. Pate



Arvel Waight, Jr.

Walt Rogers

Steven Mach

Margaret Martin

**JUDD KEARL, JOSE SANCHEZ, AND
BRIAN STROUD**
Appellants

v.

TEXAS RACING COMMISSION,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Judd Kearnl, Jose Sanchez, and Brian Stroud (Appellants) are racehorse trainers licensed by the Texas Racing Commission (Commission). Appellants are appealing the Board of Stewards (Stewards) Rulings as clear error. The Stewards ruled that eight racehorses trained by Appellants tested positive for a prohibited substance. The Administrative Law Judge (ALJ) concludes there was no evidence that the Stewards' rulings were clearly erroneous. Therefore, the Stewards' rulings should be upheld.

I. JURISDICTION AND NOTICE

There were no contested issues of jurisdiction or notice, and those issues are set forth in the Findings of Fact and Conclusions of Law below. On January 16, 2019, ALJ Steven M. Rivas convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Virginia Fields represented Commission Staff. Appellants Judd Kearnl and Jose Sanchez were represented by attorney Eleanor Ruffner. Appellant Brian Stroud was represented by attorney Trent Rowell. The hearing adjourned that day and the record closed on March 27, 2019, when the parties provided a copy of a court document related to this matter.¹

¹ Final Judgment in Cause No. D-1-GN-17-003711, *Kearl and Sanchez v. Texas Racing Commission*, in the 98th Judicial District Court of Travis County, Texas. During the pendency of this proceeding at SOAH, Appellants Kearnl and Sanchez filed suit in District Court challenging the Stewards' rulings. Although the Court found that newly-implemented testing procedures were not valid as rules promulgated by the Commission, the Court pointed out that Appellants had not exhausted their administrative remedies as this matter was pending at SOAH.

II. APPLICABLE LAW

Horseracing in Texas is governed by the Texas Racing Act (Act) and the rules promulgated by the Commission pursuant to the Act.² The Commission's Stewards have authority to conduct hearings, impose fines, and suspend licenses.³

The Commission's rules further provide that a horse participating in a race "may not carry in its body a prohibited drug, chemical, or other substance,"⁴ and require a trainer to "guard each animal in his or her custody before the animal races in the manner and for the time necessary to prevent the administration of a prohibited drug, chemical, or other substance."⁵ The Commission's rules also regard trainers as the "absolute insurer" for any horse entered into a race and require them to ensure that each horse in the care and custody of the trainer is "free from all prohibited drugs, chemicals, or other substances."⁶

After a race, a specimen must be collected from the horse that finished first and may be collected from the horse that finished second.⁷ The specimens must be taken from inside a test barn at the racetrack, shielded away from the noise and excitement of the races.⁸ The test barn must be clean, ventilated, and guarded at all times.⁹ If the specimen is of sufficient quantity to be split, it is divided into two parts. One part of the specimen is delivered to a laboratory for testing, and the second part, or "split specimen," is stored pending possible further testing.¹⁰

² Texas Racing Act, Tex. Rev. Civ. Stat. art. 179e; 16 Tex. Admin. Code, part 8.

³ 16 Tex. Admin. Code § 307.61.

⁴ 16 Tex. Admin. Code § 319.3(a).

⁵ 16 Tex. Admin. Code § 319.302.

⁶ 16 Tex. Admin. Code § 311.104(b)(2).

⁷ 16 Tex. Admin. Code § 319.361(b), (c)(1).

⁸ 16 Tex. Admin. Code § 309.250(b).

⁹ 16 Tex. Admin. Code § 309.250(c), (f).

¹⁰ 16 Tex. Admin. Code §§ 319.338, .362(a)-(b).

An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the retained serum or urine, whichever provided the positive result, be submitted for testing to a Commission approved and listed laboratory that is acceptable to the owner or trainer.¹¹ If the retained part of a specimen is sent for testing, the commission staff shall arrange for the transportation of the specimen in a manner that ensures the integrity of the specimen. The person requesting the tests shall pay all costs of transporting and conducting tests on the specimen.¹² If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of the Act.¹³

Although the Commission has adopted the Equine Medication Classification Policy and Penalty Guidelines (Guidelines), which identify prohibited substances, the parties agree that Nomifensine is not listed in the Guidelines as a prohibited substance. However, Commission rules further define a prohibited substance as any drug "which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter."¹⁴

Following an initial return of a test showing the presence of a prohibited substance, a Steward may summarily suspend a person who has used or administered the prohibited substance until a hearing before the Stewards and judges.¹⁵ If racing Stewards find that a test specimen from a race animal contained a prohibited drug, chemical, or substance, the stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, and impose a full suspension of the trainer's license for up to five years.¹⁶

¹¹ 16 Tex. Admin. Code § 319.362(c).

¹² 16 Tex. Admin. Code § 319.362(d).

¹³ 16 Tex. Admin. Code § 319.362(e).

¹⁴ 16 Tex. Admin. Code § 319.1(b)(1).

¹⁵ 16 Tex. Admin. Code § 307.62(i).

¹⁶ 16 Tex. Admin. Code §§ 307.64(a), 319.304(a).

A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.¹⁷ In an appeal, the appellant has the burden of proving that the Stewards' decisions were clearly in error.¹⁸

III. DISCUSSION

A. Background Facts and Procedural History

Appellants' owner/trainer licenses were in effect at all times relevant. Appellant Kearl holds license number 91094, Appellant Sanchez holds license number 163028, and Appellant Stroud holds license number 157702. In May and June of 2017, seven racehorses trained by Appellants won or placed¹⁹ in eight races at Texas racetracks. The following blood samples were provided:

- On May 22, 2017, Zoomin N Celebrating, trained by Appellant Kearl, placed in the tenth race at Sam Houston Race Park²⁰ and provided blood sample #SH064401;
- On June 9, 2017, Million Dollar Kiss, trained by Appellant Kearl, placed in the ninth race at Retama Park²¹ and provided blood sample #RP043194;
- On June 9, 2017, Chivalri, trained by Appellant Kearl, won the tenth race at Retama Park and provided blood sample #RP043195;
- On June 10, 2017, Contentious Strike, trained by Appellant Sanchez, won the sixth race at Retama Park and provided blood sample #RP043208;
- On June 10, 2017, Tellem Honeys Here, trained by Appellant Kearl, won the tenth race at Retama Park and provided blood sample #RP043216;
- On June 16, 2017, Dancers Toast, trained by Appellant Sanchez, placed in the tenth race at Retama Park and provided blood sample #RP043237;

¹⁷ 16 Tex. Admin. Code § 307.67.

¹⁸ 16 Tex. Admin. Code § 307.67(c).

¹⁹ 16 Tex. Admin. Code § 301.1(55) defines "place" as finishing second in a race.

²⁰ Sam Houston Race Park is located in Houston, Texas.

²¹ Retama Park is located in Selma, Texas, near San Antonio.

- On June 17, 2017, Zoomin N Celebrating, trained by Appellant Kearl, won the sixth race at Retama Park and provided blood sample #RP043248; and
- On June 17, 2017, Desdemona Rambler, trained by Appellant Stroud, won the eighth race at Retama Park and provided blood sample #RP043252.

Each blood sample was divided into two specimens. The first specimen was sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine.²² At the request of each Appellant, a split sample was sent to Pennsylvania Toxicology and Research Laboratory, where the first positive test was confirmed. Each horse was disqualified from its race and had its purse (winnings) redistributed.

The Stewards conducted hearings to consider the facts and circumstances surrounding the positive test results. Following the hearings, the Stewards ruled that each owner/trainer license held by each Appellant be summarily suspended. Each Appellant appealed the summary suspensions, and each was upheld.

On September 25, 2017, Appellants appeared before the Retama Park Board of Stewards for a hearing to determine whether Appellants were subject to a final suspension over the positive test results. The Stewards found in each instance that Appellants violated the Commission's rules at 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302. The Stewards issued the following rulings with regard to each Appellant:

- On October 18, 2017, in Ruling No. RETA2682, Appellant Stroud was fined \$10,000 and received a one-year license suspension;
- On October 20, 2017, in Ruling No. RETA2686, Appellant Sanchez was fined \$10,000 and received a one-year license suspension;
- On October 20, 2017, in Ruling No. RETA2687, Appellant Sanchez was fined \$25,000 and received a one-year license suspension;
- On October 21, 2017, in Ruling No. SHRP5093, Appellant Kearl was fined \$10,000 and received a one-year license suspension;

²² In the 1970s, Nomifensine was a drug used as an antidepressant. In 1992, the Federal Drug Administration withdrew its approval for this drug.

- On October 21, 2017, in Ruling No. RETA2688, Appellant Kearn was fined \$25,000 and received a 3-year license suspension;
- On October 21, 2017, in Ruling No. RETA2689, Appellant Kearn was fined \$25,000 and received a 3-year license suspension;
- On October 21, 2017, in Ruling No. RETA2690, Appellant Kearn was fined \$25,000 and received a 5-year license suspension; and
- On October 21, 2017, in Ruling No. RETA2691, Appellant Kearn was fined \$25,000 and received a 5-year license suspension.

Appellants appealed these rulings to the Commission, and these matters were referred to SOAH for contested case hearings. At SOAH, these matters were joined for one hearing.

B. Appellants' Position

Appellants presented three arguments as to why the Commission should not consider the positive test results. First, the test barn employees who collected and stored the blood samples deviated from the Commission's written procedures on how to conduct such tests. Second, Appellants argued that Nomifensine did not meet the definition of a "prohibited substance." Third, Appellants argued in the alternative, that they personally did not commit any violations and, as such, should not be sanctioned by the Commission.

1. Testing Procedure

Appellants pointed out that the Commission's Horse Racetrack Drug Testing Procedures²³ govern the testing procedure at issue in this case. However, Appellants testified the test barn employees who performed the blood tests deviated from the Commission's blood test procedure. In support of this argument, Appellants offered testimony of test barn supervisors Gina Griswold and Laura Hoffman.

²³ Staff Ex. 23. The Commission's Horse Racetrack Drug Testing Procedures were effective on November 6, 2014, and were revised on January 20, 2017, in the document titled Policies and Procedures for Test Barn Employees (Staff Ex. 24). The revised document primarily addressed urine testing procedures. No changes were made regarding blood testing procedures.

a. Edna Griswold

At the hearing before the Retama Park Board of Stewards on September 25, 2017, Ms. Griswold appeared as a witness and testified she was the test barn supervisor at Sam Houston Race Park when Zoomin N Celebrating provided blood sample #SH064401.²⁴ She acknowledged that although the Commission had developed a drug testing procedure, the test barn employees under her supervision deviated from the Commission's drug testing procedure as follows:

Provision	Procedure	Deviation
6.5.12	Collect four tubes of blood from each horse	Collected three tubes
6.5.21	Harvest the serum from the blood	Did not harvest the serum
6.5.22	Use evidence tape to tape the blood tubes	Used rubber bands
6.6.12	Store split samples in lockable freezer	Stored samples in refrigerator
6.6.13	Only test barn supervisors shall have keys to locked freezer where samples are stored.	Samples stored in a refrigerator. No need to secure a key to a freezer.

Ms. Griswold testified the Commission's Executive Director, Chuck Trout, trained her on how to carry out the above-noted blood testing procedures. She further explained it made sense to collect only three tubes because the tubes provided to her in 2017 were larger and could retain more blood than the tubes that were used in 2014—when the Commission's procedure was originally implemented. In addition, she stated that using rubber bands to hold the tubes together made it easier and cleaner to separate the tubes than having to contend with evidence tape. She also did not store the samples in a freezer to prevent any possibility that the blood may expand when frozen and damage the tube or become contaminated.

b. Laura Hoffman

The remaining blood samples were taken from horses at Retama Park, where Ms. Hoffman was the test barn supervisor. At the same hearing on October 20, 2017, Ms. Hoffman stated that she deviated from the Commission's drug testing procedure as follows:

²⁴ Staff Ex. 56.

Provision	Procedure	Deviation
6.5.12	Collect four tubes of blood from each horse	Collected three tubes
6.5.21	Harvest the serum from the blood	Did not harvest the serum
6.6.13	Only test barn supervisors shall have keys to locked freezer where samples are stored.	Two security officers had keys to the freezer where samples were stored.

Ms. Hoffman testified that in 2015, she was directed by Chief Medical Examiner “Dr. Crowe” to not harvest the serum from the blood sample. She also testified that she began collecting three instead of four tubes of blood for same reason as Ms. Griswold—the size of the tubes changed.²⁵

c. Stipulated Facts

On September 27, 2018, the following stipulated facts were read into the record:

- At some point before the testing of samples at issue in this hearing, the Commission, or someone acting with the authority of the Commission, informed then-acting test barn supervisors of modifications to the Commission’s Horse Racetrack Drug Testing Procedures;
- At some point before the testing of samples at issue in this hearing, the Commission, or someone acting with the authority of the Commission, informed then-acting test barn supervisors to disregard Section 6.5.12 requiring the collection of four tubes of blood from each horse and reducing the number of tubes to be collected from four to three;
- At some point before the testing of samples at issue in this hearing, the Commission, or someone acting with the authority of the Commission, informed then-acting test barn supervisors to disregard Section 6.5.21 requiring them to harvest the serum from the blood sample and instructing them not to harvest the serum from the blood sample; and
- The Commission has undertaken an investigation and cannot at this time determine the identity of the individual who made the changes.²⁶

²⁵ Staff Ex. 60.

²⁶ Staff Ex. 59.

2. Nomifensine

The Commission rules define a prohibited substance as any drug “which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter.”²⁷ Appellants argued that even if the blood samples tested positive for Nomifensine, the drug does not meet the Commission’s definition of a prohibited substance.

Appellants contend the testimony of Commission’s expert witness Scott Stanley, DVM, supports their position. Dr. Stanley testified at the September 25, 2017 Board of Stewards hearing that Nomifensine is considered an antidepressant due to its dopamine reuptake inhibitor aspect.²⁸ He further testified that because a horse and a human share the same dopamine receptor mechanism, both in theory, would react similarly to Nomifensine. Moreover, in his opinion, the presence of Nomifensine could affect the health of a horse, and in doing so, could affect the outcome of a horse race.

Dr. Stanley noted that in 1992, the Food and Drug Administration (FDA) withdrew its approval for Nomifensine because the drug was shown to have a detrimental effect on people who used the drug. On that basis, Dr. Stanley asserted the presence of Nomifensine is reasonably capable of having an adverse effect on a horse.

On cross-examination, Dr. Stanley acknowledged that although Nomifensine “resided in our analytical database,” he had never encountered an instance where a horse tested positive for the presence of this drug. Dr. Stanley also stated he is unaware of any study on the effects, if any, of Nomifensine on a horse. There is simply no empirical data, Dr. Stanley testified, that establishes the manner and extent Nomifensine may have on a horse.

²⁷ 16 Tex. Admin. Code § 319.1(b)(1).

²⁸ Staff Ex. 63.

3. No wrongdoing

Appellants argued, in the alternative, that despite the positive blood test results, and in light of the Commission's "absolute insurer" rule,²⁹ they took no part in any wrongdoing. Each Appellant testified they were surprised to hear about the positive test results and immediately denied doing anything that would cause the positive test results.

Appellants testified that upon finding out about the positive test results, each contacted the horses' veterinarian to discuss this matter. The record reflects that each Appellant shared the same veterinarian, Justin Robinson, DVM. It is also known that when Appellants confronted Dr. Robinson about the positive test results, he fled the state and has been unresponsive to the Appellants and the Commission. Appellants argue that based on Dr. Robinson's actions, it is clear that Dr. Robinson was solely responsible for injecting the horses with Nomifensine. On that basis, despite the absolute insurer rule, Appellants contend they should not be sanctioned for the actions of Dr. Robinson.

IV. ANALYSIS

Appellants first contend that none of the test results should be considered by the Commission because the test barn employees who withdrew and stored the blood samples deviated from the Commission's blood testing procedure. Appellants are correct. However, some of the deviations from the Commission's blood testing procedure can be explained. As noted, an individual acting on behalf of the Commission instructed the test barn supervisors to reduce the number of tubes of blood to withdraw from each horse and to not harvest the serum from the blood sample. Although it is unclear who communicated these modifications, it is reasonable that a test barn supervisor would follow a directive from someone acting on behalf of the Commission.

Appellants also pointed out the test barn employees deviated from procedure by storing blood samples in a refrigerator instead of a freezer and failing to limit access to the samples

²⁹ 16 Tex. Admin. Code § 311.104(b)(2).

stored in a locked freezer. Appellants are correct on both accounts. However, no evidence was presented on the likelihood that these actions could have caused the positive test results for Nomifensine. For these reasons, the ALJ finds that the noted deviations from the Commission's blood testing procedure fail to demonstrate the Stewards' rulings were clearly erroneous.

Appellants also argued that Nomifensine did not meet the definition of a prohibited substance because no study has ever established the effects that Nomifensine may have on a horse, if any. While true, the ALJ found Dr. Stanley's testimony credible that the drug is an antidepressant and that a human and a horse would react similarly to Nomifensine because both humans and horses share the same dopamine receptor mechanism. Dr. Stanley's testimony on the FDA's withdrawal of approval for Nomifensine was also persuasive. It is reasonable that a drug lacking FDA approval would be harmful to a person or animal that ingests it. The ALJ finds merit in Dr. Stanley's opinion that the presence of Nomifensine could affect the health of a horse, and in doing so, could affect the outcome of a horse race. Hence, it meets the definition of a prohibited substance. As such, Appellants' argument on this point fails to demonstrate the Stewards' rulings were clearly erroneous.

Appellant's final argument was a challenge to the Commission's absolute insurer rule. The ALJ finds Dr. Robinson's actions highly questionable. However, the rule as written makes no exception even under the extenuating circumstances Appellants now find themselves. Therefore, the Stewards' decisions were supported by the evidence presented, and Appellants have not met their burden of establishing that the decisions were clearly erroneous.

V. FINDINGS OF FACT

1. Judd Kearn (Appellant) is licensed by the Texas Racing Commission (Commission) as an owner-trainer with license number 91094.
2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 963028.
3. Brian Stroud (Appellant) is licensed by the Commission as an owner-trainer with license number 157702.

4. On May 22, 2017, Zoomin N Celebrating, trained by Appellant Kearl, placed in the tenth race at Sam Houston Race Park and provided blood sample #SH064401.
5. On June 9, 2017, Million Dollar Kiss, trained by Appellant Kearl, placed in the ninth race at Retama Park and provided blood sample #RP043194.
6. On June 9, 2017, Chivalri, trained by Appellant Kcarl, won the tenth race at Retama Park and provided blood sample #RP043195.
7. On June 10, 2017, Contentious Strike, trained by Appellant Sanchez, won the sixth race at Retama Park and provided blood sample #RP043208.
8. On June 10, 2017, Tellem Honeys Here, trained by Appellant Kearl, won the tenth race at Retama Park and provided blood sample #RP043216.
9. On June 16, 2017, Dancers Toast, trained by Appellant Sanchez, placed in the tenth race at Retama Park and provided blood sample #RP043237.
10. On June 17, 2017, Zoomin N Celebrating, trained by Appellant Kearl, won the sixth race at Retama Park and provided blood sample #RP043248.
11. On June 17, 2017, Desdemona Rambler, trained by Appellant Stroud, won the eighth race at Retama Park and provided blood sample #RP043252.
12. Each blood sample was divided into two specimens. The first specimen was sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine.
13. At the request of each Appellant, a split sample was sent to Pennsylvania Toxicology and Research Laboratory, where the first positive test was confirmed.
14. Each horse was disqualified from its race and had its purse redistributed
15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) conducted a hearing.
16. The Stewards found in each instance that Appellants violated the Commission's rules at 16 Texas Administrative Code §§ 311.104(b), 319.1(b)1, 319.3(a), and 319.302.
17. On October 18, 2017, in Ruling No. RETA2682, Appellant Stroud was fined \$10,000 and received a one-year license suspension.
18. On October 20, 2017, in Ruling No. RETA2686, Appellant Sanchez was fined \$10,000 and received a one-year license suspension.
19. On October 20, 2017, in Ruling No. RETA2687, Appellant Sanchez was fined \$25,000 and received a one-year license suspension.

20. On October 21, 2017, in Ruling No. SHRP5093, Appellant Kearn was fined \$10,000 and received a one-year license suspension.
21. On October 21, 2017, in Ruling No. RETA2688, Appellant Kearn was fined \$25,000 and received a three-year license suspension.
22. On October 21, 2017, in Ruling No. RETA2689, Appellant Kearn was fined \$25,000 and received a three-year license suspension.
23. On October 21, 2017, in Ruling No. RETA2690, Appellant Kearn was fined \$25,000 and received a five-year license suspension.
24. On October 21, 2017, in Ruling No. RETA2691, Appellant Kearn was fined \$25,000 and received a five-year license suspension.
25. Appellants filed a timely appeal of the Stewards' decisions, and the appeal was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing.
26. At SOAH, these matters were joined for one hearing.
27. On December 10, 2018, Staff issued notices of hearing to each Appellant. Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed at SOAH.
28. On January 16, 2019, ALJ Steven M. Rivas convened the hearing on the merits at SOAH in Austin, Texas. Attorney Virginia Fields represented Commission Staff. Appellants Judd Kearn and Jose Sanchez were represented by attorney Eleanor Ruffner. Appellant Brian Stroud was represented by attorney Trent Rowell. The hearing adjourned that day and the record closed on March 27, 2019, when the parties provided a copy of a court document related to this matter.
29. The test barn employees at Sam Houston Race Park and Retama Park were instructed to deviate from the Commission's blood testing procedure.
30. Other deviations from the Commission's blood testing procedure by the test barn employees did not impact the test results.
31. Nomifensine is an antidepressant drug, which may have the same effect on humans and horses.
32. No study has been done to determine the effect of Nomifensine on horses.
33. The Federal Drug Administration withdrew its approval of Nomifensine in 1992 after people reported adverse effects from taking the drug.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act (Act). Tex. Rev. Civ. Stat. art. 179e §§ 3.16, 7.04.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 16 Tex. Admin. Code § 307.31(c).
3. The Commission's Stewards have authority to conduct hearings and impose penalties. Act § 3.07(b); 16 Tex. Admin. Code § 307.61.
4. A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing. 16 Tex. Admin. Code § 307.67.
5. Appellants have the burden of proof in this matter to show the Stewards' rulings were clearly erroneous. 16 Tex. Admin. Code § 307.67(c).
6. A horse participating in a race may not carry in its body a prohibited drug, chemical, or other substance. 16 Tex. Admin. Code § 319.3(a).
7. A trainer must guard the horse he trains against administration of prohibited substances before the race and is subject to penalties if his horse races with a prohibited substance in its body. 16 Tex. Admin. Code § 319.302.
8. As trainer of Zoomin N Celebrating, Million Dollar Kiss, Chivalri, and Tellem Honeys Here, Appellant Kearl was the absolute insurer that the horses would be free of prohibited substances when they raced. Tex. Rev. Civ. Stat. art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
9. As trainer of Dancer's Toast and Contentious Strike, Appellant Sanchez was the absolute insurer that the horses would be free of prohibited substances when they raced. Tex. Rev. Civ. Stat. art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
10. As trainer of Desdemona Rambler, Appellant Stroud was the absolute insurer that the horse would be free of prohibited substances when it raced. Tex. Rev. Civ. Stat. art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
11. If a split sample is submitted for testing to a Commission-approved and listed laboratory that is acceptable to the owner or trainer, and the test on the split specimen confirms the findings of the original lab, it is a prima facie violation of the Commission's rules on racing with prohibited substances. 16 Tex. Admin. Code §§ 319.3(e), 319.362(c), (e).
12. Stewards' Ruling No. RETA2682 was not clearly erroneous in finding that Appellant Stroud violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Desdemona Rambler with Nomifensine in its system.

13. Stewards' Ruling No. RETA2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system.
14. Stewards' Ruling No. RETA2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system.
15. Stewards' Ruling No. SHRP5093 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Zoomin N Celebrating with Nomifensine in its system.
16. Stewards' Ruling No. RETA2688 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Million Dollar Kiss with Nomifensine in its system.
17. Stewards' Ruling No. RETA2689 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Chivalri with Nomifensine in its system.
18. Stewards' Ruling No. RETA2690 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Tellem Honeys Here with Nomifensine in its system.
19. Stewards' Ruling No. RETA2691 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Zoomin N Celebrating with Nomifensine in its system.
20. Nomifensine is not listed on the Commission's Equine Medication Classification Policy and Penalty Guidelines (Guidelines). 16 Tex. Admin. Code § 319.304(b).
21. Nomifensine is a prohibited substance. 16 Tex. Admin. Code § 319.1(b)(1).
22. Under the Guidelines, the Stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, and impose a full suspension of the trainer's license for up to five years as penalty for a prohibited drug, chemical, or substance. 16 Tex. Admin. Code §§ 307.64(a), 319.304(a).
23. The Commission should adopt the Stewards' Ruling Nos. SHRP5093, RETA2688, RETA2689, RETA2690, RETA2691, RETA2686, RETA2687, and RETA2682 in their entirety, including the fines, suspensions, and redistribution of purses outlined therein.

SIGNED May 28, 2019.



**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

July 11, 2019

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**Re: Exceptions Letter; 476-18-1010, 476-18-1011, and 476-18-1012; Judd Kearn,
Jose Sanchez, and Brian Stoud v Texas Racing Commission**

On May 28, 2019, the undersigned Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) in this matter. On June 7, 2019, Petitioners, Judd Kearn, Jose Sanchez, and Brian Stoud filed Petitioner's Exceptions to the PFD. On that same day, Staff for Texas Racing Commission filed Respondent's Exceptions to the PFD. On June 21, 2019, Staff filed Respondent's Reply to Appellants Kearn and Sanchez's Exceptions.

Petitioners asserted that Findings of Fact Nos. 15 and 28 were incomplete. The ALJ notes these two findings address procedural matters that did not pertain to the merits of the case. Regardless, the ALJ recommends that Finding of Fact No. 15 be amended, accordingly. Petitioners asserted Finding of Fact No. 16 was not supported by the evidence, but provided no further explanation. Petitioners took exception to Findings of Fact Nos. 12, 13, 29, and 30 because, when taken together, they suggest that the method described in these findings was permissible. However, the ALJ has determined these findings merely describe a method that was used in this case. These findings do not suggest they were permissible—taken together or otherwise. Petitioners asserted findings of Fact Nos. 31 and 33 were unsupported by the evidence. However, the ALJ notes these findings only describe the current status of a drug that was at issue in this matter.

Petitioners objected to the entire Conclusions of Law section. These objections amounted to a restatement of Petitioners' case. Because these matters were outlined in the PFD, the ALJ will not separately readdress these matters at this time.

Staff suggested the ALJ amend Findings of Fact Nos. 2, 12, 19, and 22. Staff also proposed the ALJ amend Conclusions of Law Nos. 13 and 14. Staff further pointed out a scrivener error on page 6 of the PFD. The ALJ adopts all of Staff's proposals.

Accordingly, the ALJ recommends the PFD be amended as follows:

Finding of Fact No. 2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 163028.

Finding of Fact No. 12. Each blood sample was collected into three tubes. Two of the tubes were sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine. The third sample was retained for split specimen testing.

Finding of Fact No. 15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) began a hearing, which concluded on September 27, 2017.

Finding of Fact No. 19. On October 20, 2017, in Ruling No. RETA2687, Appellant Kearl was fined \$25,000 and received a three-year license suspension.

Finding of Fact No. 22. On October 21, 2017, in Ruling No. RETA2689, Appellant Kearl was fined \$25,000 and received a five-year license suspension.

Conclusion of Law No. 13. Stewards' Ruling No. RETA2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 19.1(b)(1), 319.3(a), and 3191302 by racing Contentious Strike with Nomifensine in its system.

Conclusion of Law No. 14. Stewards' Ruling No. RETA2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 19.1(b)(1), 319.3(a), and 3191302 by racing Dancers Toast with Nomifensine in its system.

The ALJ further notes a scrivener error occurred on page 6 of the PFD when the ALJ identified a witness incorrectly as Edna Griswold. The witness's name is Gina Griswold. No other changes to the PFD are recommended at this time.

Sincerely,



Steven M. Rivas
Administrative Law Judge

SOAH Nos. 0476-18-1010 AND 0476-18-1011
TxRC No. 2018-O2-01; TxRC No. 2018-O2-02; TxRC No. 2018-O2-03;
TxRC No. 2018-O2-04; TxRC No. 2018-O2-05; TxRC No. 2018-O2-06; and
TxRC No. 2018-O2-07

IN RE: THE APPEALS OF	§	
	§	BEFORE THE
JUDD KEARL AND JOSE SANCHEZ	§	
	§	
STEWARDS RULINGS SHRP 5093	§	
RETA 2688; RETA 2689; RETA 2690	§	TEXAS RACING COMMISSION
RETA 2691; RETA 2686 and RETA 2687	§	

ORDER OF THE COMMISSION ON MOTION FOR REHEARING

On January 21, 2020, the Texas Racing Commission (“Commission”) considered in an open meeting the Motion for Rehearing of the final order in the appeal of Judd Kearl (“Petitioner”), trainer/owner license number 91094, from Stewards’ Rulings SHRP 5093, RETA 2688, RETA 2689, RETA 2690 and RETA 2691 (“the rulings”). After hearing the arguments presented, the Commission hereby denies the Petitioners’, Judd Kearl and Jose Sanchez, Motion for Rehearing.

IT IS HEREBY ORDERED the Petitioners’, Judd Kearl and Jose Sanchez, Motion for Rehearing is denied.

ISSUED AND ENTERED the _____ day of January 2020.

John T. Steen III, Chair

Ronald F. Ederer, Vice Chair

Steven Mach

Margaret Martin

In Re: The Appeals of Judd Kearn and Jose Sanchez
Stewards Ruling SHRP 5093; RETA 2688; RETA 2689; RETA 2690; RETA 2691;
RETA2686 and RETA2687
TxRC No. 2018-02-01; TxRC No. 2018-02-02; TxRC No. 2018-02-03; TxRC No. 2018-02-04;
TxRC No. 2018-02-05; TxRC No. 2018-02-06 and TxRC No. 2018-02-07

Connie McNabb, DVM

Sid Miller

Michael Moore

Robert C. Pate

Arvel Waight, Jr.

VIII. EXECUTIVE SESSION

The following items may be discussed and considered in executive session or open meeting, with any action taken in the open meeting:

- A. Under Texas Government Code § 551.071(1), the Commission may enter an executive session to seek the advice of its attorney regarding pending or contemplated litigation, or regarding a settlement offer.
- B. Under Texas Government Code § 551.071(2), the Commission may enter an executive session to discuss all matters identified in this agenda where the commission seeks the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. This may include, but is not limited to, legal advice regarding the Open Meetings Act, the Administrative Procedures Act, and the Texas Racing Act.
- C. Under Tex. Occ. Code § 2025.005, the Commission may enter an executive session to review security plans and management, concession, and totalisator contracts.

IX.SCHEDULING OF NEXT COMMISSION MEETING

X. ADJOURN