



TEXAS RACING COMMISSION

**P. O. Box 12080
Austin, TX 78711-2080
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Texas Racing Commission
Tuesday, October 29, 2019
10:30 a.m.
John H. Reagan Building, Room 140
105 West 15th Street
Austin, TX 78701

AGENDA

I. CALL TO ORDER

Roll Call

II. PUBLIC COMMENT

III. GENERAL BUSINESS

- A. Discussion and consideration of reports by the Executive Director and staff regarding administrative matters:
 - 1. Budget and finance
 - 2. Wagering statistics
 - 3. Enforcement
- B. Discussion and possible action to approve the Commission's operating budget for fiscal year 2020

IV. PROCEEDINGS ON RULES

- A. Discussion and possible action to adopt amendments to:
 - 1. 16 TAC § 309.8, Racetrack License Fees
 - 2. 16 TAC § 309.51, Designation of Active and Inactive Racetrack Licenses
 - 3. 16 TAC § 309.118, Regulatory Office Space and Equipment

4. 16 TAC § 319.3, Medication Restricted
 5. 16 TAC § 319.102, Veterinarian's List
 6. 16 TAC § 319.333, Specimen Tags
 7. 16 TAC § 321.313, Select Three, Four, or Five
- B. Discussion and possible action to adopt new 16 TAC Chapter 303, Subchapter G, Horse Industry Escrow Account, including:
1. 16 TAC § 303.301, Definitions
 2. 16 TAC § 303.302, General Provisions
 3. 16 TAC § 303.311, Allocations to Horse Racetrack Associations
 4. 16 TAC § 303.312, Limitation on Use of Funds by Racetrack Associations
 5. 16 TAC § 303.321, Allocations to Breed Registries
 6. 16 TAC § 303.322, Limitations on Use of Funds by Breed Registries
 7. 16 TAC § 303.323, Modifications to Approved Events
 8. 16 TAC § 303.324, Recordkeeping and Audits
 9. 16 TAC § 303.325, Quarterly Reports
- C. Discussion and possible action to adopt the repeal of 16 TAC § 321.509, Escrowed Purse Account
- D. Discussion and possible action to propose new 16 TAC § 309.106, Transfers to Texas-Bred Incentive Fund
- E. Discussion and possible action to propose amendments to 16 TAC § 311.2, Application Procedure

V. PROCEEDINGS ON RACETRACKS

Discussion and possible action on the following race date items:

- A. Allocation of live race dates for horse racetracks under 16 TAC § 303.41 for the period beginning August 2, 2021, and ending August 31, 2021
- B. Allocation of live race dates for greyhound racetracks under 16 TAC § 303.41 for the period beginning August 2, 2021, and ending August 31, 2021
- C. Discussion and possible action to reallocate interstate cross-species purse money under Commission Rule 303.102(d) for the period from February 24, 2019, through February 29, 2020
- D. Discussion and possible action to allocate funds for the Texas-bred incentive program as provided under Commission Rule 321.505(b) for calendar year 2020
- E. Discussion and possible action to allocate purses as provided under Commission Rule 321.505(a) for calendar year 2020

- F. Discussion and possible action to allocate purse funds in the horse industry escrow account among the various breeds of horses under Commission Rule 321.509 for calendar year 2020
- G. Discussion and possible action to reallocate purse funds in the horse industry escrow account among the various breeds of horses under Commission Rule 321.509 for the period from September 1, 2019, through December 31, 2019

VI. PROCEEDINGS ON OCCUPATIONAL LICENSES

Discussion and possible action regarding:

- A. The proposal for decision in SOAH No. 0476-19-3110, Joseph Michael Davis v. Texas Racing Commission
- B. The proposal for decision in SOAH No. 0476-19-3111, Rolando Almanza v. Texas Racing Commission
- C. The proposal for decision in SOAH No. 0476-19-2614, Sigifredo Gonzalez Jr. v. Texas Racing Commission

VII. 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 open an executive session to review security plans and management, concession, and totalisator contracts.

VIII. SCHEDULING OF NEXT COMMISSION MEETING

IX. ADJOURN

I. CALL TO ORDER

Roll Call

II. PUBLIC COMMENT

III. GENERAL BUSINESS

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

III. GENERAL BUSINESS

B. Discussion and possible action to approve the Commission's operating budget for fiscal year 2020

Texas Racing Commission

FYE 08/31/2019
Operating Budget Status
by LBB Expenditure Object/Codes

OBS-1

Strategy	Program Description	FY 2019 Annual Budget	FY 2019 Expended Thru 8/31/2019	FY 2019 Unexpended Bal 8/31/2019	With 100% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.1.1.	(0.50) FTE's = 4.00 <u>Regulate Racetrack Owners</u>				
Base Appr =	1001 Salaries and Wages	340,041.87	347,690.96	(7,649.09)	102.25%
\$ 385,941.00	1002 Other Personnel Cost	5,280.00	5,140.00	140.00	97.35%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 385,941.00	2005 Travel	2,000.00	2,387.53	(387.53)	119.38%
Budgeted =	2006 Rent Building	-	-	-	
\$ 354,422.50	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	7,100.63	8,392.41	(1,291.78)	118.19%
(31,518.50)	CB Computer Equipment	-	-	-	
-8.17%	Total Strategy A.1.1.	354,422.50	363,610.90	(9,188.40)	102.59%
<i>Appropriated</i> A.2.1.	0 FTE's = 0 <u>Texas Bred Incentive</u>				
	ATB Money Expended	3,130,000.00	2,769,230.65	360,769.35	88.47%
3,130,000.00	Total Strategy A.2.1.	3,130,000.00	2,769,230.65	360,769.35	88.47%
<i>Appropriated</i> A.3.1.	(1.87) FTE's = 5.53 <u>Supervise Racing and Licensees</u>				
Base Appr =	1001 Salaries and Wages	372,033.13	354,301.53	17,731.60	95.23%
\$ 545,741.00	1002 Other Personnel Cost	15,280.28	25,689.19	(10,408.91)	168.12%
Sup Appr =	2001 Prof Fees and Services	9,900.00	21,002.50	(11,102.50)	212.15%
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 545,741.00	2005 Travel	62,300.00	56,511.86	5,788.14	90.71%
Budgeted =	2006 Rent Building	-	-	-	
\$ 465,349.20	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	5,835.79	5,025.49	810.30	86.11%
(80,391.80)	CB Computer Equipment	-	-	-	
-14.73%	Total Strategy A.3.1.	465,349.20	462,530.57	2,818.63	99.39%
<i>Appropriated</i> A.3.2.	(0.10) FTE's = 3.70 <u>Monitor Occupational Licensee Act.</u>				
Base Appr =	1001 Salaries and Wages	219,488.60	212,232.82	7,255.78	96.69%
\$ 235,247.00	1002 Other Personnel Cost	8,963.31	18,753.47	(9,790.16)	209.22%
Sup Appr =	2001 Prof Fees and Services	500.00	260.00	240.00	52.00%
\$ -	2003 Consumables	800.00	544.78	255.22	68.10%
Total Appr =	2004 Utilities	-	-	-	
\$ 235,247.00	2005 Travel	37,500.00	31,205.56	6,294.44	83.21%
Budgeted =	2006 Rent Building	-	-	-	
\$ 272,244.15	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	4,992.24	4,672.48	319.76	93.59%
\$ 36,997.15	CB Computer Equipment	-	-	-	
15.73%	Total Strategy A.3.2.	272,244.15	267,669.11	4,575.04	98.32%
<i>Appropriated</i> A.4.1.	(0.30) FTE's = 3.20 <u>Inspect and Provide Emerg. Care</u>				
Base Appr =	1001 Salaries and Wages	212,985.36	210,360.89	2,624.47	98.77%
\$ 364,152.00	1002 Other Personnel Cost	3,320.00	3,820.00	(500.00)	115.06%
Sup Appr =	2001 Prof Fees and Services	78,409.94	103,777.57	(25,367.63)	132.35%
\$ -	2003 Consumables	300.00	153.28	146.72	
Total Appr =	2004 Utilities	-	-	-	
\$ 364,152.00	2005 Travel	17,375.00	14,923.29	2,451.71	85.89%
Budgeted =	2006 Rent Building	-	-	-	
\$ 318,685.08	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	6,294.78	6,542.29	(247.51)	103.93%
\$ (45,466.92)	CB Computer Equipment	-	-	-	
-12.49%	Total Strategy A.4.1.	318,685.08	339,577.32	(20,892.24)	106.56%

Texas Racing Commission

FYE 08/31/2019
Operating Budget Status
by LBB Expenditure Object/Codes

OBS-2

Strategy	Program Description	FY 2019 Annual Budget	FY 2019 Expended Thru 8/31/2019	FY 2019 Unexpended Bal 8/31/2019	With 100% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.4.2.	(1.73) FTE's = 2.57 <u>Administer Drug Testing</u>				
Base Appr = \$ 215,181.00	1001 Salaries and Wages	135,858.90	131,396.48	4,462.42	96.72%
Sup Appr = \$ -	1002 Other Personnel Cost	2,420.00	2,420.00	-	100.00%
Total Appr = \$ 215,181.00	2001 Prof Fees and Services	500.00	-	500.00	0.00%
Budgeted = \$ 174,825.78	2003 Consumables	200.00	30.24	169.76	15.12%
Difference \$ (40,355.22)	2004 Utilities	-	-	-	
-18.75%	2005 Travel	23,709.00	21,424.58	2,284.42	90.36%
	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
	2009 Other Operating Cost	12,137.88	12,179.18	(41.30)	100.34%
	CB Computer Equipment	-	-	-	
	Total Strategy A.4.2.	174,825.78	167,450.48	7,375.30	95.78%
<i>Appropriated</i> B.1.1.	(2.10) FTE's = 5.00 <u>Occupational Licensing</u>				
Base Appr = \$ 412,016.00	1001 Salaries and Wages	201,723.88	199,912.87	1,811.01	99.10%
Sup Appr = \$ -	1002 Other Personnel Cost	9,093.60	8,109.65	983.95	89.18%
Total Appr = \$ 412,016.00	2001 Prof Fees and Services	-	-	-	
Budgeted = \$ 336,799.53	2003 Consumables	2,500.00	2,013.15	486.85	80.53%
Difference \$ (75,216.47)	2004 Utilities	-	-	-	
-18.26%	2005 Travel	14,500.00	14,794.12	(294.12)	102.03%
	2006 Rent Building	-	-	-	
	2007 Rent Machine	2,000.00	1,279.26	720.74	63.96%
	2009 Other Operating Cost	106,982.06	69,846.37	37,135.69	65.29%
	CB Computer Equipment	-	-	-	
	Total Strategy B.1.1.	336,799.53	295,955.42	40,844.11	87.87%
<i>Appropriated</i> B.1.2.	- FTE's = 0 <u>Texas OnLine</u>				
Base Appr = \$ 19,185.00	1001 Salaries and Wages	-	-	-	
Sup Appr = \$ -	1002 Other Personnel Cost	-	-	-	
Total Appr = \$ 19,185.00	2001 Prof Fees and Services	-	-	-	
Budgeted = \$ 17,000.00	2003 Consumables	-	-	-	
Difference \$ (2,185.00)	2004 Utilities	-	-	-	
-11.39%	2005 Travel	-	-	-	
	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
	2009 Other Operating Cost	17,000.00	11,884.00	5,116.00	69.91%
	CB Computer Equipment	-	-	-	
	Total Strategy B.1.2.	17,000.00	11,884.00	5,116.00	69.91%
<i>Appropriated</i> C.1.1.	- FTE's = 4.00 <u>Monitor Wagering and Audit</u>				
Base Appr = \$ 373,795.00	1001 Salaries and Wages	231,225.36	230,002.53	1,222.83	99.47%
Sup Appr = \$ -	1002 Other Personnel Cost	7,820.00	8,000.00	(180.00)	102.30%
Total Appr = \$ 373,795.00	2001 Prof Fees and Services	-	-	-	
Budgeted = \$ 256,513.74	2003 Consumables	-	-	-	
Difference \$ (117,281.26)	2004 Utilities	-	-	-	
-31.38%	2005 Travel	4,500.00	3,868.42	631.58	85.96%
	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
	2009 Other Operating Cost	12,968.38	13,054.99	(86.61)	100.67%
	CB Computer Equipment	-	-	-	
	Total Strategy C.1.1.	256,513.74	254,925.94	1,587.80	99.38%

Texas Racing Commission

FYE 08/31/2019
Operating Budget Status
by LBB Expenditure Object/Codes

OBS-3

Strategy	Program Description	FY 2019 Annual Budget	FY 2019 Expended Thru 8/31/2019	FY 2019 Unexpended Bal 8/31/2019	With 100% of Year Lapsed % of Budget Expended
<i>Appropriated</i> D.1.1.	(1.00) FTE's = 6.00 <u>Central Administration</u>				
Base Appr = \$ 753,512.00	1001 Salaries and Wages	362,931.18	354,038.13	8,893.05	97.55%
Sup Appr = \$ -	1002 Other Personnel Cost	18,029.60	17,737.50	292.10	98.38%
Total Appr = \$ 753,512.00	2001 Prof Fees and Services	25,500.00	20,055.55	5,444.45	78.65%
Budgeted = \$ 653,710.87	2003 Consumables	8,500.00	8,558.43	(58.43)	100.69%
Difference \$ (99,801.13)	2004 Utilities	51,000.00	46,890.16	4,109.84	91.94%
	2005 Travel	7,500.00	6,324.82	1,175.18	84.33%
	2006 Rent Building	104,470.00	104,513.28	(43.28)	100.04%
	2007 Rent Machine	3,200.00	3,489.19	(289.19)	109.04%
	2009 Other Operating Cost	72,580.09	67,565.55	5,014.54	93.09%
	CB Computer Equipment	-	-	-	0.00%
-13.24%	Total Strategy D.1.1.	653,710.87	629,172.61	24,538.26	96.25%
<i>Appropriated</i> D.1.2.	(1.00) FTE's = 3.80 <u>Information Resources</u>				
Base Appr = \$ 509,511.00	1001 Salaries and Wages	262,187.72	171,183.64	91,004.08	65.29%
Sup Appr = \$ -	1002 Other Personnel Cost	10,082.75	8,882.72	1,200.03	88.10%
Total Appr = \$ 509,511.00	2001 Prof Fees and Services	154,185.00	172,111.75	(17,926.75)	111.63%
Budgeted = \$ 515,428.15	2003 Consumables	1,500.00	181.64	1,318.36	12.11%
Difference \$ 5,917.15	2004 Utilities	-	-	-	
	2005 Travel	2,500.00	1,528.49	971.51	61.14%
	2006 Rent Building	500.00	480.00	20.00	96.00%
	2007 Rent Machine	-	-	-	
	2009 Other Operating Cost	84,472.68	84,541.14	(68.46)	100.08%
	CB Computer Equipment	-	-	-	
1.16%	Total Strategy D.1.2.	515,428.15	438,909.38	76,518.77	85.15%
<i>Appropriated</i> D.1.3.	FTE's = 37.80 <u>Other Support Services</u>				
Base Appr = \$ 6,944,281.00	1001 Salaries and Wages	-	-	-	
Sup Appr = \$ -	1002 Other Personnel Cost	-	-	-	
Total Appr = \$ 6,944,281.00	2001 Prof Fees and Services	-	-	-	
Budgeted = \$ 6,494,979.01	2003 Consumables	-	-	-	
Difference \$ (449,301.99)	2004 Utilities	-	-	-	
	2005 Travel	-	-	-	
	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
	2009 Other Operating Cost	-	-	-	
	CB Computer Equipment	-	-	-	
-6.47%	Total Strategy D.1.3.	-	-	-	
\$ 3,814,281	Regulatory Program Operating Budget	3,364,979.01	3,231,685.73	116,226.94	96.04%
\$ 3,130,000	TX Bred Program Operating Budget	3,130,000.00	2,769,230.65	360,769.35	88.47%
\$ 6,944,281	Total M.O.F. (TXRC Acct. 597 & GR) Total All Programs Operating Budget	6,494,979.01	6,000,916.38	476,996.29	92.39%

Texas Racing Commission

FYE 08/31/2019
Operating Budget Status
by LBB Expenditure Object/Codes

OBS-4

Strategy	Program Description	FY 2019 Annual Budget	FY 2019 Expended Thru 8/31/2019	FY 2019 Unexpended Bal 8/31/2019	With 100% of Year Lapsed % of Budget Expended
\$ -	(8.60) FTE's = 37.80				
<i>Appropriated</i>	<u>Direct Expense of Regulatory Programs</u>				
	1001 Salaries and Wages	2,338,476.00	2,211,119.85	127,356.15	94.55%
	1002 Other Personnel Cost	80,289.53	98,552.53	(18,263.00)	122.75%
	2001 Prof Fees and Services	268,994.94	317,207.37	(48,212.43)	117.92%
	2003 Consumables	13,800.00	11,481.52	2,318.48	83.20%
	2004 Utilities	51,000.00	46,890.16	4,109.84	91.94%
	2005 Travel	171,884.00	152,968.67	18,915.33	89.00%
	2006 Rent Building	104,970.00	104,993.28	(23.28)	100.02%
	2007 Rent Machine	5,200.00	4,768.45	431.55	91.70%
	2009 Other Operating Cost	330,364.54	283,703.90	46,660.64	85.88%
	CB Computer Equipment	-	-	-	0.00%
\$ 3,814,281	Total Direct Expense of Regulatory Program	3,364,979.01	3,231,685.73	133,293.28	96.04%
\$ 3,130,000	FTE's = - Direct Expense of TX Bred Program	3,130,000.00	2,769,230.65	360,769.35	88.47%
\$ 6,944,281	(8.60) FTE's = 37.80 Total Direct Expense of All Programs	6,494,979.01	6,000,916.38	494,062.63	92.39%
\$ -	<i>Un-Appropriated</i> <u>Indirect Expense of All Programs</u>				
	OASI Match	180,582.15	167,880.06	12,702.09	92.97%
	Group Insurance	260,000.00	255,401.53	4,598.47	98.23%
	State Retirement	189,982.81	174,002.82	15,979.99	91.59%
	Benefit Replacement	2,053.72	2,053.72	-	100.00%
	ERS Retiree Insurance	409,000.00	412,994.48	(3,994.48)	100.98%
	SWCAP GR Reimburse	-	-	-	
	Unemployment Cost	-	-	-	
	Other	-	-	-	
\$ 1,041,619	Total Indirect Expense of All Programs	1,041,618.69	1,012,332.61	29,286.08	97.19%
\$ 7,985,900	Total Direct and Indirect Expense of All Programs	7,536,597.70	7,013,248.99	523,348.71	93.06%

Source Of Funds	Agency Method Of Finance	FY 2019 Projected Revenue	FY 2019 Actual Revenue Thru 8/31/2019	N/A	With 100% of Year Lapsed % of Revenue Collected
	Regulatory Program MOF:				
Acct. 597	Cash Balance Carry Forward	\$ 200,000.00	\$ 200,000.00		n/a
Acct. 597	Live Race Day Fees	\$ -	\$ -		
Acct. 597	Simulcast Race Day Fees	\$ -	\$ -		
Acct. 597	Annual License Fees (Active & Inactive)	\$ 3,681,855.00	\$ 3,681,835.00		100.00%
Acct. 597	Outs	\$ -	\$ -		
Acct. 597	Occupational License Fees and Fines	\$ 665,000.00	\$ 577,343.25		86.82%
Acct. 597	Other Revenue	\$ 18,000.00	\$ 25,563.19		142.02%
Acct. 1	GR Funds	\$ -	\$ -		
	Sub-Total Regulatory Prgm. MOF	\$ 4,564,855.00	\$ 4,484,741.44		98.24%
	Texas Bred Program MOF:				
Acct. 597	Cash Balance Carry Forward	\$ -	\$ -		
Acct. 597	Breakage and 1% Exotic	\$ 3,130,000.00	\$ 2,769,230.65		88.47%
Acct. 597	Other	\$ -	\$ -		
	Sub-Total Texas Bred Prgm. MOF	\$ 3,130,000.00	\$ 2,769,230.65		88.47%
All Sources	Total MOF	\$ 7,694,855.00	\$ 7,253,972.09		94.27%
MOF Estimated to Exceed or (Fall-Short of Covering) Direct & Indirect Expenses of Operating Budget		\$ 158,257.30	\$ 240,723.10		



Fiscal Year 2019 Operational Budget

Updated: September 16, 2019
Thru: August 31, 2019

Summary of Operating Revenue

By Revenue Type:	Budget	Collected	Suspended	Uncollected Balance	%
Account 597 - Racing Commission - GRD	\$ 7,694,855	\$ 7,253,972	\$ -	\$ 440,883	6%
Account 1 - State of Texas - GR	\$ -	\$ -	\$ -	\$ -	
TOTAL - ALL REVENUES	\$ 7,694,855	\$ 7,253,972	\$ -	\$ 440,883	6%

Summary of Appropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
1001 - Salaries and Wages:	\$ 2,338,476	\$ 2,211,120	\$ -	\$ 127,356	5%
1002 - Other Personnel Cost:	\$ 80,290	\$ 98,553	\$ -	\$ (18,263)	-23%
2001 - Professional Fees and Services:	\$ 268,995	\$ 317,207	\$ -	\$ (48,212)	-18%
2003 - Consumable Supplies:	\$ 13,800	\$ 11,482	\$ -	\$ 2,318	17%
2004 - Utilities:	\$ 51,000	\$ 46,890	\$ -	\$ 4,110	8%
2005 - Travel:	\$ 171,884	\$ 152,969	\$ -	\$ 18,915	11%
2006 - Rent Building:	\$ 104,970	\$ 104,993	\$ -	\$ (23)	0%
2007 - Rent Machine and Other:	\$ 5,200	\$ 4,768	\$ -	\$ 432	8%
2009 - Other Operating Expense:	\$ 330,365	\$ 283,704	\$ -	\$ 46,661	14%
4000 - Grants	\$ 3,130,000	\$ 2,769,231	\$ -	\$ 360,769	12%
5000 - Capital Expenditures:	\$ -	\$ -	\$ -	\$ -	
TOTAL - ALL APPROPRIATED EXPENDITURES	\$ 6,494,979	\$ 6,000,916	\$ -	\$ 494,063	8%

Unappropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
TOTAL - ALL UNAPPROPRIATED EXPENDITURES	\$ 1,041,619	\$ 1,012,333	\$ -	\$ 29,286	3%
TOTAL - ALL EXPENDITURES	\$ 7,536,598	\$ 7,013,249	\$ -	\$ 523,349	7%

OPERATING SURPLUS / (DEFICIT)

\$ 158,257 \$ 240,723

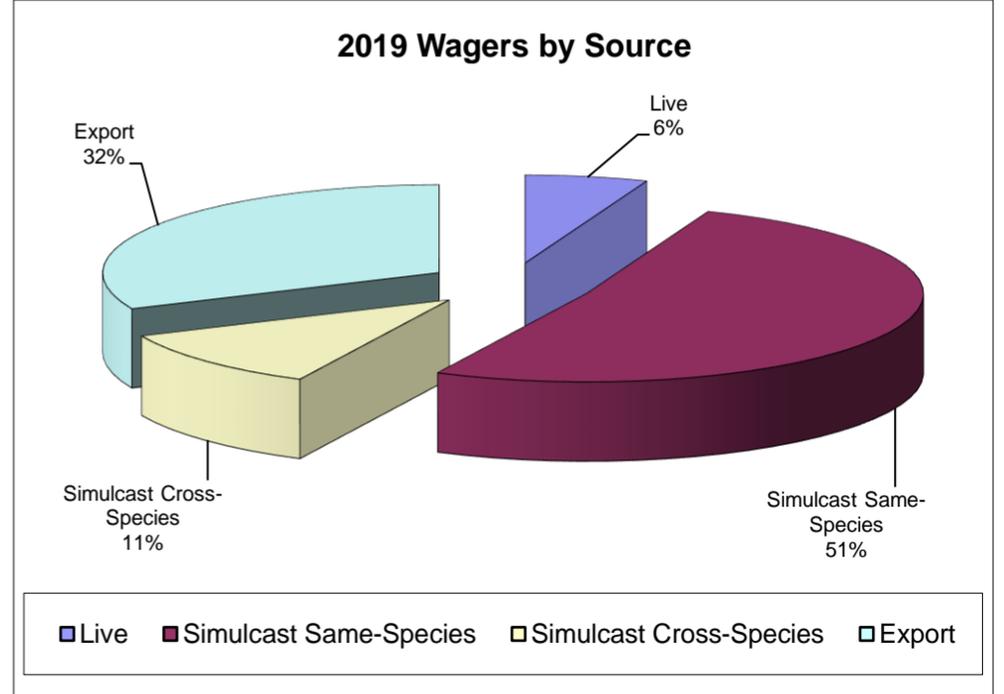
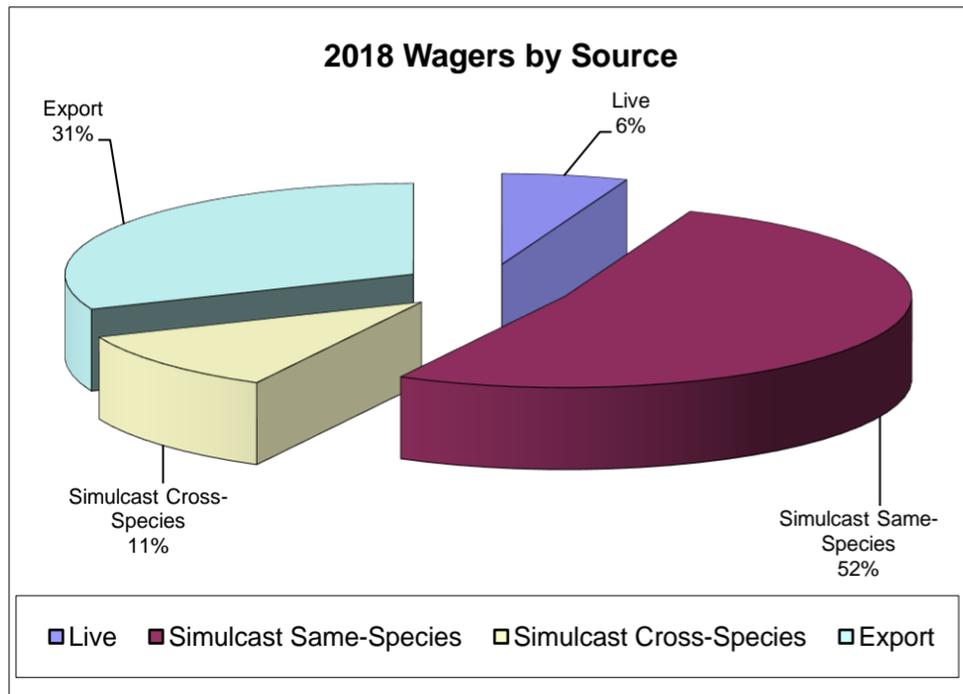
Summary of FTE's

By Fiscal Quarter:	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Authorized FTE's	46.40	46.40	46.40	46.40
Budgeted FTE's	37.80	37.80	37.80	37.80
Actual FTE's	33.80	35.20	34.60	0.00
Actual FTE's Over / (Under) Budget	n/a	n/a	n/a	n/a
Actual FTE's Over / (Under) Authorization	n/a	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 August 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	33	\$ 594,284	\$ 18,009	32	\$ 524,910	\$ 16,403	-11.67%	-8.91%
Simulcast Same-Species	619	\$ 15,418,045	\$ 24,908	624	\$ 14,418,306	\$ 23,106	-6.48%	-7.23%
Simulcast Cross-Species	619	\$ 11,799,667	\$ 19,062	624	\$ 11,448,189	\$ 18,346	-2.98%	-3.76%
Export	33	\$ 1,073,319	\$ 32,525	32	\$ 1,963,797	\$ 61,369	82.96%	88.68%
Total Wagers		\$ 28,885,315			\$ 28,355,202		-1.84%	
Horse Racetracks								
Live	123	\$ 16,720,051	\$ 135,935	125	\$ 16,197,465	\$ 129,580	-3.13%	-4.68%
Simulcast Same-Species	865	\$ 138,372,639	\$ 159,968	868	\$ 131,353,319	\$ 151,329	-5.07%	-5.40%
Simulcast Cross-Species	865	\$ 20,465,293	\$ 23,659	868	\$ 19,719,062	\$ 22,718	-3.65%	-3.98%
Export	115	\$ 91,536,077	\$ 795,966	117	\$ 87,996,709	\$ 752,109	-3.87%	-5.51%
Total Wagers		\$ 267,094,060			\$ 255,266,554		-4.43%	
All Racetracks								
Live	156	\$ 17,314,335	\$ 110,989	157	\$ 16,722,375	\$ 106,512	-3.42%	-4.03%
Simulcast Same-Species	1,484	\$ 153,790,683	\$ 103,633	1,492	\$ 145,771,625	\$ 97,702	-5.21%	-5.72%
Simulcast Cross-Species	1,484	\$ 32,264,960	\$ 21,742	1,492	\$ 31,167,251	\$ 20,890	-3.40%	-3.92%
Export	148	\$ 92,609,397	\$ 625,739	149	\$ 89,960,506	\$ 603,762	-2.86%	-3.51%
Total Wagers		\$ 295,979,375			\$ 283,621,756		-4.18%	
Total Wagers Placed in Texas		\$ 203,369,979			\$ 193,661,250		-4.77%	
Total Wagers Placed on Texas Races		\$ 109,923,732			\$ 106,682,881		-2.95%	



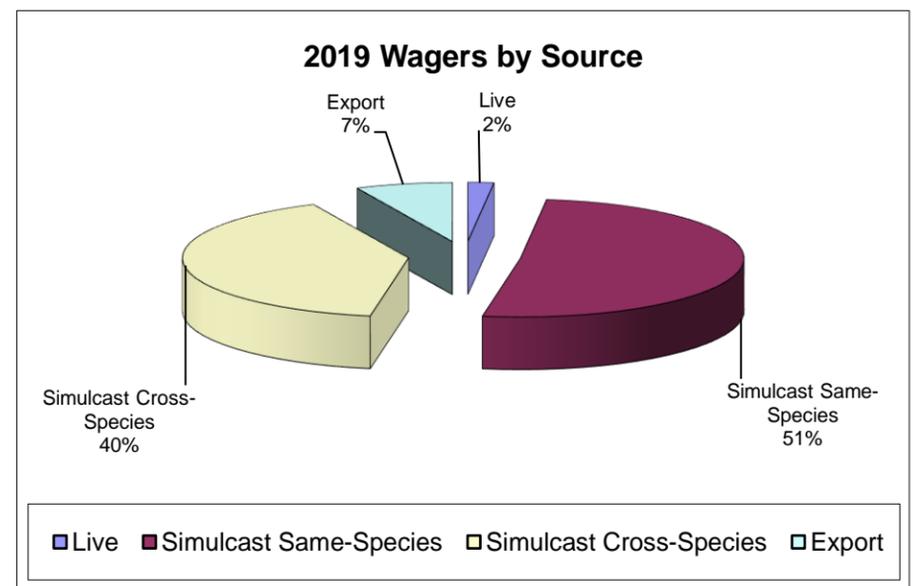
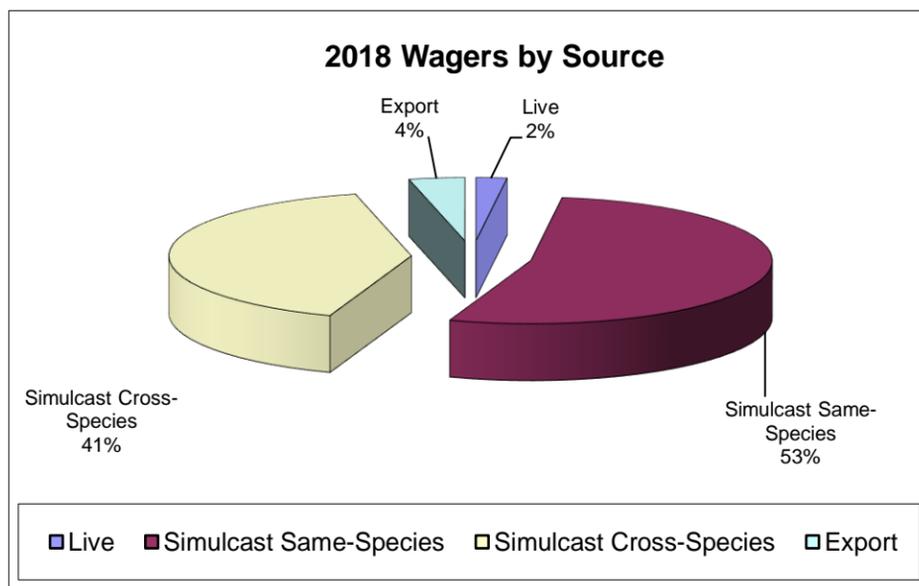
*NOTE: All figures are based on data available at the time the report was compiled and are subject to being audited and revised.



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

For the Period of January 1 through August 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	171	\$ 4,920,363	\$ 28,774	174	\$ 5,051,640	\$ 29,032	2.67%	0.90%
Simulcast Cross-Species	171	\$ 2,553,659	\$ 14,934	174	\$ 2,797,815	\$ 16,079	9.56%	7.67%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Total Wagers		\$ 7,474,022			\$ 7,849,455		5.02%	
Gulf Greyhound Park								
Live	33	\$ 594,284	\$ 18,009	32	\$ 524,910	\$ 16,403	-11.67%	-8.91%
Simulcast Same-Species	240	\$ 6,857,820	\$ 28,574	242	\$ 5,989,054	\$ 24,748	-12.67%	-13.39%
Simulcast Cross-Species	240	\$ 5,893,327	\$ 24,556	242	\$ 5,012,914	\$ 20,715	-14.94%	-15.64%
Export	33	\$ 1,073,319	\$ 32,525	32	\$ 1,963,797	\$ 61,369	82.96%	88.68%
Total Wagers		\$ 14,418,751			\$ 13,490,675		-6.44%	
Valley Race Park								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	208	\$ 3,639,862	\$ 17,499	208	\$ 3,377,612	\$ 16,239	-7.20%	-7.20%
Simulcast Cross-Species	208	\$ 3,352,681	\$ 16,119	208	\$ 3,637,460	\$ 17,488	8.49%	8.49%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Total Wagers		\$ 6,992,543			\$ 7,015,072		0.32%	
All Greyhound Tracks								
Live	33	\$ 594,284	\$ 18,009	32	\$ 524,910	\$ 16,403	-11.67%	-8.91%
Simulcast Same-Species	619	\$ 15,418,045	\$ 24,908	624	\$ 14,418,306	\$ 23,106	-6.48%	-7.23%
Simulcast Cross-Species	619	\$ 11,799,667	\$ 19,062	624	\$ 11,448,189	\$ 18,346	-2.98%	-3.76%
Export	33	\$ 1,073,319	\$ 32,525	32	\$ 1,963,797	\$ 61,369	82.96%	88.68%
Total Wagers		\$ 28,885,315			\$ 28,355,202		-1.84%	
Total Wagers Placed in Texas		\$ 27,811,996			\$ 26,391,405		-5.11%	
Total Wagers Placed on Texas Races		\$ 1,667,603			\$ 2,488,707		49.24%	

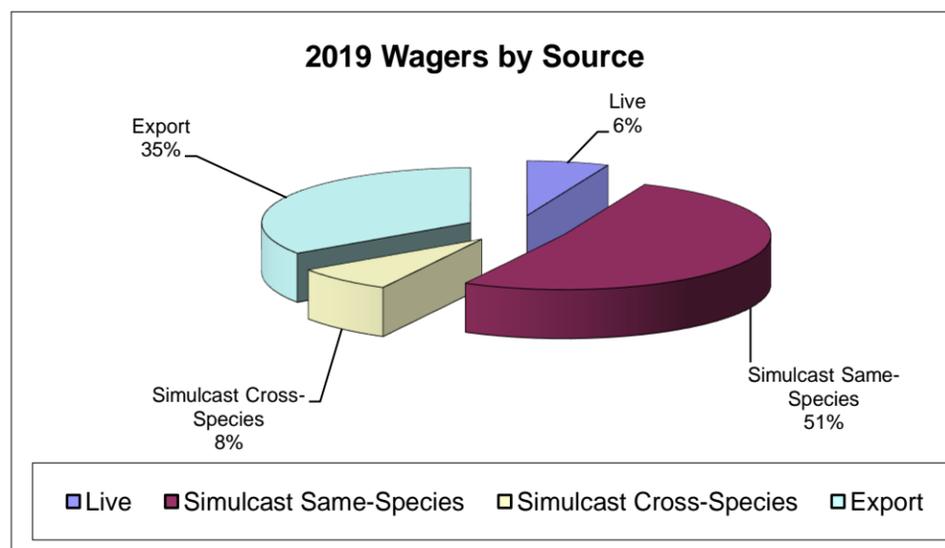
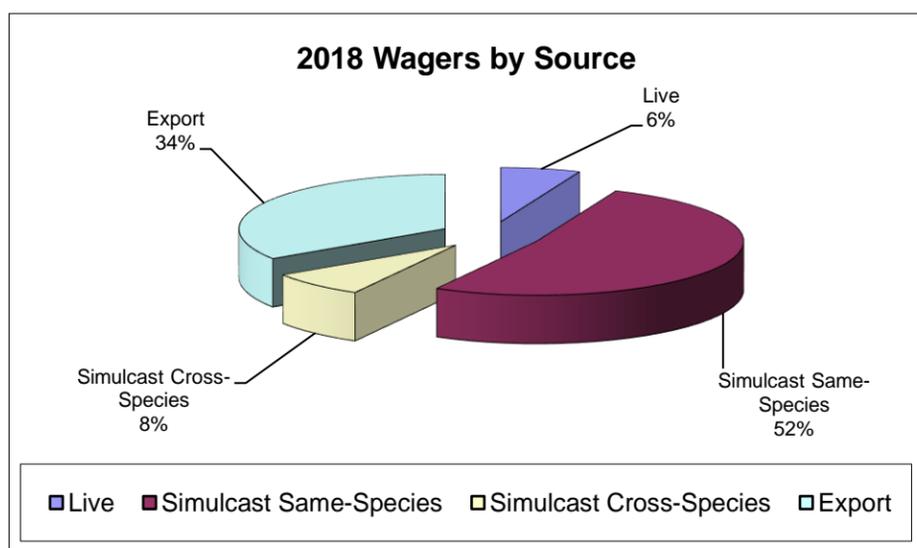


*NOTE: All figures are based on data available at the time the report was compiled and are subject to being audited and revised.



Horse Racetrack Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races For the Period of January 1 through August 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	138	\$ 3,000,053	\$ 21,740	139	\$ 2,781,583	\$ 20,011	-7.28%	-7.95%
Simulcast Cross-Species	138	\$ 364,779	\$ 2,643	139	\$ 396,278	\$ 2,851	8.63%	7.85%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Total Wagers		\$ 4,550,888			\$ 4,278,679		-5.98%	
Lone Star Park								
Live	41	\$ 9,826,563	\$ 239,672	43	\$ 9,346,647	\$ 217,364	-4.88%	-9.31%
Simulcast Same-Species	243	\$ 70,176,908	\$ 288,794	243	\$ 67,592,434	\$ 278,158	-3.68%	-3.68%
Simulcast Cross-Species	243	\$ 4,667,583	\$ 19,208	243	\$ 5,301,108	\$ 21,815	13.57%	13.57%
Export	41	\$ 33,994,381	\$ 829,131	43	\$ 32,986,327	\$ 767,124	-2.97%	-7.48%
Total Wagers		\$ 118,665,435			\$ 115,226,517		-2.90%	
Retama Park								
Live	21	\$ 1,385,639	\$ 65,983	22	\$ 1,397,393	\$ 63,518	0.85%	-3.74%
Simulcast Same-Species	242	\$ 22,831,578	\$ 94,345	243	\$ 21,274,463	\$ 87,549	-6.82%	-7.20%
Simulcast Cross-Species	242	\$ 3,877,763	\$ 16,024	243	\$ 3,587,130	\$ 14,762	-7.49%	-7.88%
Export	21	\$ 8,070,813	\$ 384,324	22	\$ 8,997,301	\$ 408,968	11.48%	6.41%
Total Wagers		\$ 36,165,792			\$ 35,256,287		-2.51%	
Sam Houston Race Park								
Live	53	\$ 4,321,793	\$ 81,543	52	\$ 4,352,605	\$ 83,704	0.71%	2.65%
Simulcast Same-Species	242	\$ 42,364,100	\$ 175,058	243	\$ 39,704,840	\$ 163,394	-6.28%	-6.66%
Simulcast Cross-Species	242	\$ 11,555,167	\$ 47,749	243	\$ 10,434,546	\$ 42,941	-9.70%	-10.07%
Export	53	\$ 49,470,884	\$ 933,413	52	\$ 46,013,081	\$ 884,867	-6.99%	-5.20%
Total Wagers		\$ 107,711,945			\$ 100,505,071		-6.69%	
All Horse Tracks								
Live	123	\$ 16,720,051	\$ 135,935	125	\$ 16,197,465	\$ 129,580	-3.13%	-4.68%
Simulcast Same-Species	865	\$ 138,372,639	\$ 159,968	868	\$ 131,353,319	\$ 151,329	-5.07%	-5.40%
Simulcast Cross-Species	865	\$ 20,465,293	\$ 23,659	868	\$ 19,719,062	\$ 22,718	-3.65%	-3.98%
Export	115	\$ 91,536,077	\$ 795,966	117	\$ 87,996,709	\$ 752,109	-3.87%	-5.51%
Total Wagers		\$ 267,094,060			\$ 255,266,554		-4.43%	
Total Wagers Placed in Texas		\$ 175,557,983			\$ 167,269,845		-4.72%	
Total Wagers Placed on Texas Races		\$ 108,256,129			\$ 104,194,174		-3.75%	



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

ENFORCEMENT ACTIVITY SUMMARY

Lone Star Park is currently conducting its fall Quarter Horse meet. This meet is scheduled to conclude on November 9, 2019.

All other active licensed racetracks are conducting simulcast operations.

Lone Star Park – Quarter Horse Meet

Rulings Activity from 09/10/2019 through 10/20/2019

Human Drug Violation	1
Conduct Violation	1
Trainer Infractions	2
Financial Obligations	1
TOTAL	5

*Does not include any rulings that have not been finalized through the appeals process



Texas Racing Commission
 FY 2020
 Proposed Operating Budget

FY 2020 Appropriated Operating Budget

<u>Budget by Strategy</u>	<u>Strategy Description</u>	<u>FTE's</u>	<u>Budget</u>
1.1.1.	License / Regulate Racetracks	4.00	373,628
1.2.1.	Texas Bred Incentive Program	-	3,130,000
1.3.1.	Supervise & Conduct Live Races	5.55	462,062
1.3.2.	Monitor Licensee Activities	3.60	303,586
1.4.1.	Inspect & Provide Emergency Care	3.00	312,422
1.4.2.	Adminster Drug Test	2.60	200,706
2.1.1.	Occupational Licensing Program	5.00	321,141
2.1.2.	Texas OnLine	-	17,500
3.1.1.	Monitor Wagering and Compliance	4.00	260,358
4.1.1.	Central Administration	6.00	739,435
4.1.2.	Information Resources	<u>3.80</u>	<u>531,271</u>
	Total Base Appropriations	37.55	\$ 6,652,110
Total Appropriations for FY 2020 Operating Budget			\$ 6,652,110



Texas Racing Commission
FY 2020
Proposed Operating Budget

FY 2020 Appropriated Operating Budget by Object-of-Expense (OOE)

<u>Budget by OOE</u>	<u>Budget</u>
1001 Salaries & Wages	2,396,654
1002 Other Personnel Costs	81,171
2001 Professional Fees & Services	295,417
2003 Consumable Supplies	12,000
2004 Utilities	51,000
2005 Travel	232,216
2006 Rent-Building	105,970
2007 Rent-Machine & Other	3,200
2009 Other Operating Expense	344,481
Grants	3,130,000
Capital Expenditures	-
Total Base Appropriations by OOE	\$ 6,652,110
Total OOE for FY 2020 Operating Budget	\$ 6,652,110



Texas Racing Commission
FY 2020
Proposed Operating Budget

FY 2020 Unappropriated Operating Budget by Object-of-Expense (OOE)

Budget by OOE

OASI Match	183,344
Group Insurance	260,000
State Retirement	190,371
Benefit Replacement	2,054
ERS Retiree Insurance	414,000
Unemployment Cost	916
Other	-
Total Unappropriated Operating Budget by OOE	\$ 1,050,685

Total Appropriated and Unappropriated FY 2020 Operating Budget \$ 7,702,795



Texas Racing Commission

FY 2020

Proposed Operating Budget

FY 2020 Appropriated Operating Budget

<u>Budget by Strategy</u>	<u>Strategy Description</u>	<u>FTE's</u>	<u>Budget</u>
1.1.1.	License / Regulate Racetracks	4.00	373,628
1.2.1.	Texas Bred Incentive Program	-	3,130,000
1.3.1.	Supervise & Conduct Live Races	5.55	462,062
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2.1.2.	Texas OnLine	-	17,500
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4.1.1.	Central Administration	6.00	739,435
4.1.2.	Information Resources	<u>3.80</u>	<u>531,271</u>
	Total Base Appropriations	37.55	\$ 6,652,110
Total Appropriations for FY 2020 Operating Budget			\$ 6,652,110



Texas Racing Commission
FY 2020
Proposed Operating Budget

FY 2020 Appropriated Operating Budget by Object-of-Expense (OOE)

<u>Budget by OOE</u>	<u>Budget</u>
1001 Salaries & Wages	2,396,654
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2001 Professional Fees & Services	295,417
2003 Consumable Supplies	12,000
2004 Utilities	51,000
2005 Travel	232,216
2006 Rent-Building	105,970
2007 Rent-Machine & Other	3,200
2009 Other Operating Expense	344,481
Grants	3,130,000
Capital Expenditures	-
Total Base Appropriations by OOE	\$ 6,652,110
Total OOE for FY 2020 Operating Budget	\$ 6,652,110



Texas Racing Commission
 FY 2020
 Cash Flow of Proposed Operating Budget

Regulatory Operations Budget

Appropriated Regulatory Budget by OOE	Proposed Budget	
1001 Salaries & Wages	2,396,654	
1002 Other Personnel Costs	81,171	
2001 Professional Fees & Services	295,417	
2003 Consumable Supplies	12,000	
2004 Utilities	51,000	
2005 Travel	232,216	
2006 Rent-Building	105,970	
2007 Rent-Machine & Other	3,200	
2009 Other Operating Expense	344,481	
Grants	-	
Total Appropriated Regulatory Budget by OOE		\$ 3,522,110
Unappropriated Regulatory Budget by OOE		
OASI Match	183,344	
Group Insurance	260,000	
State Retirement	190,371	
Benefit Replacement	2,054	
ERS Retiree Insurance	414,000	
SWCAP GR Reimbursement	-	
Unemployment Cost	916	
Total Unappropriated Regulatory Budget by OOE		\$ 1,050,685
Total Regulatory Budget		\$ 4,572,795 *

*Total Expenditures of \$7,702,795 less Texas Bred Incentive Program Grants of \$3,130,000 totals \$4,572,795.



Texas Racing Commission
 FY 2020
 Cash Flow of Proposed Operating Budget

		<u>Regulatory Operations Cash Flow</u>	\$	70,000
Beginning Cash Balance:				
Annual Racetrack Fees:				
Class 1	Lone Star Park	317,813		
	Retama Park	287,813		
	Sam Houston Race Park	<u>310,313</u>		
	Sub-Total Class 1		\$	915,938
Class 2	Laredo Downs	128,750		
	Manor Downs	128,750		
	Valle de los Tesoros	<u>128,750</u>		
	Sub-Total Class 2		\$	386,250
Class 3	Gillespie County Fair	<u>36,249</u>		
	Sub-Total Class 3		\$	36,249
Greyhound	Gulf Greyhound Park	195,000		
	Gulf Coast Racing	195,000		
	Valley Race Park	<u>195,000</u>		
	Sub-Total Greyhound		\$	585,000
	Total Annual Racetrack Fees		\$	1,923,437
Other Revenue:				
	Simulcast Revenues	2,568,224		
	Occupational Licensing / Finger Print	555,750		
	Other (Training Facilities & Administrative Fees)	<u>18,000</u>		
	Total Other Revenue		\$	3,141,974
Cash Available to Fund Regulatory Budget				\$ 5,135,411
Less Total Regulatory Cost				\$ (4,572,795)
Ending Cash Balance:				\$ <u>562,616</u>

IV. PROCEEDINGS ON RULES

- A. Discussion and possible action to adopt amendments to:
1. 16 TAC § 309.8, Racetrack License Fees
 2. 16 TAC § 309.51, Designation of Active and Inactive Racetrack Licenses
 3. 16 TAC § 309.118, Regulatory Office Space and Equipment
 4. 16 TAC § 319.3, Medication Restricted
 5. 16 TAC § 319.102, Veterinarian's List
 6. 16 TAC § 319.333, Specimen Tags
 7. 16 TAC § 321.313, Select Three, Four, or Five

CHAPTER 309 **RACETRACK LICENSES AND OPERATIONS**
SUBCHAPTER A **RACETRACK LICENSES**
DIVISION 1 **GENERAL PROVISIONS**
SECTION 309. 8 **RACETRACK LICENSE FEES**

1 (a) Purpose of Fees. An association shall pay a license fee to the Commission to pay
2 the Commission's costs to administer and enforce the Act[;] and to regulate, oversee,
3 and license live and simulcast racing at racetracks.

4 (b) Annual License Fee. A licensed racing association shall pay an annual license fee
5 by remitting to the Commission 1/12th of the fee on the first business day of each
6 month. The annual license fee for each license type is as follows:

7 (1) for a Class 1 racetrack, \$200,000;

8 (2) for a Class 2 racetrack, \$95,000;

9 (3) for a Class 3 or 4 racetrack, \$25,000; and

10 (4) for a Greyhound racetrack, \$140,000.

11 (c) Adjustment of Fees.

12 (1) Annual fees are calculated using a projected base of 48 days of live horse racing
13 per Class 1 racetrack, 8 days of live horse racing per Class 3 or 4 racetrack, and a total
14 of 36 performances of live greyhound racing per fiscal year. If a Class 1 horse racetrack
15 does not intend to use all of the race days allotted to it, it shall share the unused days
16 with another Class 1 track, provided that the track receiving the unused days is not
17 required to compensate the track sharing the days. To cover the additional regulatory
18 cost in the event additional days or performances are requested by the associations, the
19 executive secretary may:

20 (A) recalculate a horse racetrack's annual fee by adding **an amount not to exceed**
21 \$5,345 for each live race day added beyond the base; and

22 (B) recalculate a greyhound racetrack's annual fee by adding \$750 for each live
23 performance added beyond the base.

24 (2) If the simulcast tax revenue collected in any quarter ending November 30,
25 February 28, May 31, or August 31 is less than 96 percent of the amount collected in
26 the same period the year before, the fees in subsection (b) of this section shall be
27 increased, for the second month of the following quarter, on a pro rata basis in an

28 amount sufficient to generate revenue in the amount of the difference between the
29 amount of simulcast tax revenue collected in the quarter and the amount that is 96
30 percent of the amount collected in the same quarter the year before.

31 (3) If the executive secretary determines that the total revenue from the annual fees
32 exceeds the amount needed to pay its costs, the executive secretary shall order a
33 moratorium on all or part of the license fees remitted monthly by any or all of the
34 associations. Before entering a moratorium order, the executive secretary shall develop
35 a formula for imposing the moratorium in an equitable manner among the associations.
36 In developing the formula, the executive secretary shall consider the amount of excess
37 revenue received by the Commission, the source of the revenue, the Commission's
38 costs associated with regulating each association, the Commission's projected receipts
39 for the next fiscal year, and the Commission's projected expenses during the next fiscal
40 year.

41 ~~[(b) Fees for The Period From September 1, 2018, Through February 28, 2019.~~

42 ~~(1) Base License Fee. A licensed racing association shall pay a license fee in the~~
43 ~~following annualized amount:~~

- 44 ~~(A) for a Class 1 racetrack, \$714,650;~~
- 45 ~~(B) for a Class 2 racetrack, \$127,600;~~
- 46 ~~(C) for a Class 3 or 4 racetrack, \$35,725; and~~
- 47 ~~(D) for a Greyhound racetrack, \$204,175.~~

48 ~~(2) Adjustment of Fees. Annualized fees are calculated using a base of 68 days of~~
49 ~~live horse racing and 36 performances of live greyhound racing per fiscal year. To cover~~
50 ~~the additional regulatory cost in the event additional days or performances are~~
51 ~~requested by the associations the executive secretary may:~~

- 52 ~~(A) recalculate a horse racetrack's annualized fee by adding \$6,313 for each live~~
53 ~~day added beyond the base;~~
- 54 ~~(B) recalculate a greyhound racetrack's annualized fee by adding \$750 for each~~
55 ~~live performance added beyond the base; and~~
- 56 ~~(C) review the original or amended race date request submitted by each~~
57 ~~association to establish race date baselines for specific associations if needed.~~

58 (3) Payment of Fee. Each association shall pay its license fee by remitting to the
59 Commission 1/12 of its annualized fee on the first business day of each month.

60 ~~(c) Unless the Commission Amends These Provisions, Fees for The Period Beginning~~
61 ~~March 1, 2019:~~

62 (1) Base License Fee. A licensed racing association shall pay a license fee in the
63 following annualized amount:

64 (A) for a Class 1 racetrack, \$540,000;

65 (B) for a Class 2 racetrack, \$230,000;

66 (C) for a Class 3 or 4 racetrack, \$70,000; and

67 (D) for a Greyhound racetrack, \$360,000.

68 (2) Adjustment of Fees. Annualized fees are calculated using a base of 83 days of
69 live horse racing and 270 performances of live greyhound racing per fiscal year. To
70 cover the additional regulatory cost in the event additional days or performances are
71 requested by the associations the executive secretary may:

72 (A) recalculate a horse racetrack's annualized fee by adding \$3,750 for each live
73 day added beyond the base;

74 (B) recalculate a greyhound racetrack's annualized fee by adding \$750 for each
75 live performance added beyond the base; and

76 (C) review the original or amended race date request submitted by each
77 association to establish race date baselines for specific associations if needed.

78 (3) Payment of Fee.

79 (A) For the period from March 1 through August 31, 2019:

80 (i) On the first business day of the month, an association that is conducting
81 live racing or simulcasting shall pay its license fee by remitting to the Commission 1/12
82 of the fee specified in Section 309.8(c)(1), as adjusted pursuant to Section 309.8(c)(2).

83 (ii) On the first business day of the fiscal quarter, an association that is not
84 conducting live racing or simulcasting shall pay its license fee by remitting to the
85 Commission 1/4 of the fee specified in Section 309.8(c)(1).

86 (B) For the period beginning September 1, 2019:

87 (i) ~~An association that is conducting live racing or simulcasting shall pay its~~
88 ~~license fee by remitting to the Commission 1/12 of the total fee on the first business day~~
89 ~~of each month.~~

90 (ii) ~~An association that is not conducting live racing or simulcasting shall pay~~
91 ~~its license fee in four equal installments on September 1, December 1, March 1, and~~
92 ~~June 1 of each fiscal year.~~

93 ~~(d) If the executive secretary determines that the total revenue from the fees exceeds~~
94 ~~the amount needed to pay those costs, the executive secretary may order a moratorium~~
95 ~~on all or part of the license fees remitted monthly by any or all of the associations.~~
96 ~~Before entering a moratorium order, the executive secretary shall develop a formula for~~
97 ~~providing the moratorium in an equitable manner among the associations. In developing~~
98 ~~the formula, the executive secretary shall consider the amount of excess revenue~~
99 ~~received by the Commission, the source of the revenue, the Commission's costs~~
100 ~~associated with regulating each association, the Commission's projected receipts for the~~
101 ~~next fiscal year, and the Commission's projected expenses during the next fiscal year.]~~

CHAPTER 309

RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B

OPERATION OF RACETRACKS

DIVISION 2

FACILITIES AND EQUIPMENT

SECTION 309.118

REGULATORY OFFICE SPACE AND EQUIPMENT

1 (a) An association shall provide adequate office space for the use of the stewards or
2 racing judges, occupational licensing personnel, the Commission's investigative unit, the
3 pari-mutuel auditing staff and the staff employed by the comptroller, the Commission
4 veterinary and drug testing staff, and the Department of Public Safety. The location and
5 size of the office space, furnishings, electrical outlets, telephone lines, television
6 monitors, and equipment required under this section must be approved by the executive
7 director [~~secretary~~].

8 (b) – (d) (No change.)

9 (e) The office space for occupational licensing personnel must consist of two rooms,
10 one of which must be private. The room that is not private must be equipped with:

11 (1) – (5) (No change.)

12 (6) a dedicated Ethernet [~~telephone~~] line to be used by a credit card machine or
13 other secure line with access to the internet that is acceptable to the executive director
14 [~~and that does not require a code to access an outside line~~];

15 (7) – (9) (No change.)

16 (f) The office space for the pari-mutuel auditing staff and the staff employed by the
17 comptroller must:

18 (1) – (7) (No change.)

19 (8) if requested by the Commission or the comptroller, have an additional Ethernet or
20 other secure line with access to the internet that is acceptable to the executive director
21 [~~voice line to support dial-up capabilities for a personal computer~~]; and

22 (9) a dedicated telephone line to be used by a fax machine.

23 (g) Commission Veterinarian's Office.

24 (1) – (4) (No change.)

25 (5) The office must be equipped with:

26 (A) a sink with hot and cold water built into a counter of a size required by the
27 executive director [~~secretary~~];

28 (B) desks and filing cabinets, in numbers as required by the executive director
29 [~~secretary~~], equipped with locks;

30 (C) at horse racetracks, refrigerators and freezers, in sizes and numbers as
31 required by the executive director [~~secretary~~], equipped with locks;

32 (D) at greyhound racetracks, a freezer in a size as required by the executive
33 director [secretary];

34 (E) a storage area, of a size required by the executive director [secretary], with a
35 door approved by the executive director; [secretary.]

36 (F) telephone lines with telephones as required by the executive director
37 [secretary];

38 (G) television monitors as required by the executive director [secretary]; and

39 (H) at horse racetracks, a freestanding counter of a size required by the
40 executive director [secretary].

41 (6) All locks must be of a type approved by the executive director [secretary].

42 (h) (No change.)

43 (i) All telephone lines provided under this section must:

44 (1) be assigned a unique telephone number that is directly accessible by outside
45 callers;

46 (2) if requested by the executive director [secretary], be listed in the governmental
47 section of the local telephone directory; and

48 (3) if requested by the executive director [secretary], be listed on the association's
49 website.

50 (j) An association shall provide at its expense computer lines, phone equipment, and
51 any necessary voice and data network cabling in the offices of the state regulatory and
52 law enforcement personnel as prescribed by the executive director [secretary]. In
53 addition, the association shall reimburse the Commission for the costs of any network or
54 data circuits installed or caused to be installed by the Commission at the association's
55 location.

56 (k) All costs of telecommunications for regulatory and law enforcement personnel
57 provided under this section shall be paid by the association and the telecommunications
58 service may not be interrupted at any time. To ensure minimal disruption to the
59 Commission's regulatory functions, the association shall ensure the Commission staff
60 has twenty-four hour access and keys to any telecommunications rooms serving
61 regulatory and law enforcement personnel as prescribed by the executive director
62 [secretary].

63 (l) An association shall provide to the Commission a number of keys to the Commission
64 offices as approved by the executive director [secretary].

65 (m) (No change.)

CHAPTER 319 **VETERINARY PRACTICES AND DRUG TESTING**
SUBCHAPTER A **GENERAL PROVISIONS**
SECTION 319.3 **MEDICATION RESTRICTED**

1 (a) – (e) (No change.)

2 (f) Except as provided in paragraph (1) [~~(2)~~] of this subsection, clenbuterol and albuterol
3 are [~~is~~] prohibited and shall not be administered to a horse participating in racing at any
4 time.

5 [~~(1) Any horse that is the subject of a finding by the stewards that a test specimen~~
6 ~~contains clenbuterol shall immediately be placed on the Veterinarian's List for not less~~
7 ~~than 60 days.~~

8 (A) ~~In order to have a horse removed from the Veterinarian's List after being~~
9 ~~placed on the list under this subsection, the trainer must contact a commission~~
10 ~~veterinarian to schedule a time and test barn location where the horse must be~~
11 ~~presented after the sixtieth day in order for a commission veterinarian to obtain test~~
12 ~~specimens to be submitted to the official laboratory for testing.~~

13 (B) ~~The cost of each test conducted under this section, including applicable~~
14 ~~shipping costs, shall be borne by the owner and must be paid in full at the time the~~
15 ~~specimens are shipped to the laboratory.~~

16 (C) ~~The collected specimens must not have any detectable level of clenbuterol. If~~
17 ~~no detectable level of clenbuterol is present, the horse shall be removed from the~~
18 ~~Veterinarian's List. If a detectable level of clenbuterol is present, then the horse shall~~
19 ~~remain on the Veterinarian's List until such time that a test specimen reveals no~~
20 ~~detectable level of clenbuterol.~~

21 (D) ~~A horse placed on the Veterinarian's List pursuant to this subsection may not~~
22 ~~be entered in a race until it has been removed from the list.]~~

23 (1) [~~(2)~~] A horse may only be administered clenbuterol or albuterol if:

24 (A) it [~~the clenbuterol~~] is prescribed by a licensed veterinarian;

25 (B) within 24 hours of initiating treatment, the trainer or owner has submitted to
26 the Commission a form prescribed by the Commission and signed by the veterinarian,
27 indicating:

28 (i) the name of the horse;

- 29 (ii) the name of the trainer;
- 30 (iii) the name of the veterinarian;
- 31 (iv) that the veterinarian has personally examined the horse and made an
- 32 accurate clinical diagnosis justifying the ~~[clenbuterol]~~ prescription;
- 33 (v) the proper dosage and route of administration; and
- 34 (vi) the expected duration of treatment; and

35 (C) only FDA-approved clenbuterol or albuterol that is labeled for use in the

36 horse is prescribed and dispensed.

37 (2) ~~[(3)]~~ A horse that has been administered clenbuterol or albuterol under paragraph

38 (1) ~~[(2)]~~ of this subsection shall be placed on the Veterinarian's List for a period ending

39 not less than 30 days after the last administration of the drug as prescribed, subject to a

40 negative test for clenbuterol, albuterol, or any other beta-agonist drug ~~[test]~~ before being

41 removed from the list.

42 (A) In order to have a horse removed from the Veterinarian's List after being

43 placed on the list pursuant to paragraph (1) ~~[(2)]~~ of this subsection, the trainer must

44 contact a commission veterinarian to schedule a time and test barn location where the

45 horse must be presented after the thirtieth day in order for a commission veterinarian to

46 obtain test specimens to be submitted to the official laboratory for testing.

47 (B) (No change.)

48 (C) The collected specimens must not have any detectable level of clenbuterol,

49 albuterol, or any other beta-agonist drug. If no detectable level of clenbuterol, albuterol,

50 or any other beta-agonist drug is present, the horse shall be removed from the

51 Veterinarian's List. If a detectable level of clenbuterol, albuterol, or any other beta-

52 agonist drug is present, then the horse shall remain on the Veterinarian's List until such

53 time that a test specimen reveals no detectable level of clenbuterol, albuterol, or any

54 other beta-agonist drug.

55 (D) A horse placed on the Veterinarian's List pursuant to paragraph (1) ~~[(2)]~~ of

56 this subsection may not be entered in a race until it has been removed from the list.

CHAPTER 319

VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER B

TREATMENT OF HORSES

SECTION 319.102

VETERINARIAN'S LIST

1 (a) – (c) (No change.)

2 (d) Before removing a horse from the veterinarian's list, the commission veterinarian
3 may require the horse to perform satisfactorily in a workout or qualifying race.
4 Performance in such a workout or qualifying race must be conducted in accordance with
5 §319.3 of this title (relating to Medication Restricted), except that, for a workout or
6 qualifying race to be used for the purpose of removing a horse from the veterinarian's
7 list, the horse must not have any detectable level of permissible therapeutic medication
8 other than furosemide. The commission veterinarian may require the collection of test
9 specimens from a horse after a workout or race required under this subsection. If a
10 specimen is collected under this subsection, the commission veterinarian may not
11 remove the horse from the veterinarian's list until the results of the test are negative.

12 (e) (No change.)

CHAPTER 319 **VETERINARY PRACTICES AND DRUG TESTING**
SUBCHAPTER D **DRUG TESTING**
DIVISION 2 **TESTING PROCEDURES**
SECTION 319.333 **SPECIMEN IDENTIFICATION [TAGS]**

1 (a) Each specimen obtained for testing must be marked for identification in a manner
2 that ensures that: [~~with a tag with multiple parts. A part of the tag must accompany the~~
3 ~~specimen to the testing laboratory and the commission veterinarian or test barn~~
4 ~~supervisor shall retain a part of the tag in a locked cabinet in the test barn or test area.~~

5 (1) the commission can identify which horse, trainer, owner, and race the specimen
6 came from; and

7 (2) the laboratory testing the sample cannot identify from the labeling on the
8 specimen which horse, trainer, owner, or race the specimen came from.

9 (b) The executive director may issue standards for specimen identification in a manner
10 that ensures the integrity of the specimens. [~~The part of the tag that is sent with the~~
11 ~~specimen to the laboratory may contain only the date the specimen was obtained and a~~
12 ~~unique identification number assigned by the executive secretary. The part of the tag~~
13 ~~that is retained in the test barn or test area must contain:~~

14 (1) ~~the signature of the commission veterinarian or test barn supervisor;~~

15 (2) ~~the initials of each individual who collected the urine or serum;~~

16 (3) ~~the initials of the individual who processed the serum for split sampling;~~

17 (4) ~~the date the specimen was obtained;~~

18 (5) ~~the unique identification number;~~

19 (6) ~~the name of the race animal;~~

20 (7) ~~the signature of the witness, if any; and~~

21 (8) ~~any other information required by the executive secretary.]~~

CHAPTER 321 **PARI-MUTUEL WAGERING**
SUBCHAPTER C **REGULATION OF LIVE WAGERING**
DIVISION 2 **DISTRIBUTION OF PARI-MUTUEL POOLS**
SECTION 321.313 **SELECT THREE, FOUR, OR FIVE**

1 (a) – (i) (No change.)

2 (j) When the condition of the turf course warrants a change of racing surface in any of
3 the races open to a select three, four, or five, and such change has not been made
4 known to the betting public prior to the close of wagering for the first select three, four,
5 or five race, the stewards shall declare each changed race a “no contest” for select
6 three, four, or five purposes and the pool shall be distributed in accordance with
7 subsection (i) of this section. Following the designation of a race as a “no contest,” no
8 tickets shall be sold selecting a horse in such “no contest” race.

9 (k) [(j)] In the event of a dead heat for win between two or more animals:

10 (1) – (2) (No change.)

11 (l) [(k)] A pari-mutuel ticket for the select three, four, or five pool may not be sold,
12 exchanged, or canceled after the time wagering closes in the first of the races
13 comprising the select three, four, or five, except for refunds on select three, four, or five
14 tickets as required by subsection (h) of this section. A person may not disclose the
15 number of tickets sold in the select three, four, or five pool or the number or amount of
16 tickets selecting winners of select three, four, or five races until the stewards or racing
17 judges have determined the last race comprising the select three, four, or five to be
18 official.

IV. PROCEEDINGS ON RULES

- B. Discussion and possible action to adopt new 16 TAC Chapter 303, Subchapter G, Horse Industry Escrow Account, including:
1. 16 TAC § 303.301, Definitions
 2. 16 TAC § 303.302, General Provisions
 3. 16 TAC § 303.311, Allocations to Horse Racetrack Associations
 4. 16 TAC § 303.312, Limitation on Use of Funds by Racetrack Associations
 5. 16 TAC § 303.321, Allocations to Breed Registries
 6. 16 TAC § 303.322, Limitations on Use of Funds by Breed Registries
 7. 16 TAC § 303.323, Modifications to Approved Events
 8. 16 TAC § 303.324, Recordkeeping and Audits
 9. 16 TAC § 303.325, Quarterly Reports
- C. Discussion and possible action to adopt the repeal of 16 TAC § 321.509, Escrowed Purse Account

CHAPTER 303
SUBCHAPTER G
DIVISION 1

GENERAL PROVISIONS
HORSE INDUSTRY ESCROW ACCOUNT
GENERAL PROVISIONS

1 303.301, Definitions

2 The following words and terms, when used in this subchapter, shall have the following
3 meanings:

4 (1) Account – the horse industry escrow account.

5 (2) Association – a horse racetrack association.

6 (3) Event – a planned occasion or activity, such as a competition or other public gathering,
7 including one planned and/or hosted by an organization other than a state horse breed
8 registry.

9
10 303.302 General Provisions

11 (a) At least once each year, the Commission shall make an allocation of funds from the
12 horse industry escrow account in accordance with §§2028.204-.205 of the Act.

13 (b) The Commission may make allocations of funds from the account at different times to
14 horse racetrack associations and to breed registries, provided that not more than 70% of
15 the amount deposited into the account is allocated to racetrack associations each year.

16 (c) At least 30 days before a deadline for submitting requests for allocation from the
17 account, the executive director shall notify all entities eligible to request funds from the
18 account at that time.

19

20 **DIVISION 2** **HORSE RACETRACK ASSOCIATIONS**

21 303.311 Allocations to Horse Racetrack Associations

22 (a) When requesting allocation from the account for purses, each association shall also
23 recommend the percentages by which it will divide its share of the horse industry escrow
24 account funds among the various breeds of horses.

25 (b) The Commission shall determine the amount of the allocation to each racetrack in
26 accordance with the standards set forth in the Act, §§2028.204-.205.

27 (c) The percentages by which an association will divide the horse industry escrow account
28 revenue among the various breeds of horses is subject to the approval of the Commission.
29 When requesting Commission approval of the percentages, the association shall present

30 in writing studies, statistics, or other documentation to support its proposed division of
31 horse industry escrow account revenue. The Commission may consider the following
32 criteria when evaluating the association's studies, statistics, or other documentation
33 submitted to support its proposed division of horse industry escrow account revenue
34 before granting its approval:

35 (1) local public interest in each breed as demonstrated by, but not limited to, the
36 following factors:

37 (A) simulcast import handle by breed;

38 (B) live handle by breed; and

39 (C) live attendance.

40 (2) earnings generated by the association from each breed;

41 (3) racetrack race date request and opportunities given to each breed;

42 (4) statewide need by breed; and

43 (5) national public interest in each breed as determined by the live simulcast export
44 handle of each Texas meet.

45 (d) If the Commission determines that the association's proposed division of the horse
46 industry escrow account revenue is inconsistent with the association's obligation to accord
47 reasonable access to races for all breeds of horses, the Commission may:

48 (1) require the association to submit additional information supporting its
49 recommendation for consideration at the next Commission meeting;

50 (2) reject the association's recommendation and require the association to submit a
51 new recommendation for consideration at the next Commission meeting; or

52 (3) reject the association's recommendation and approve an alternate division of the
53 horse industry escrow account revenue as determined by the Commission.

54 (e) In lieu of the process outlined in subsections (c) and (d) of this section, a signed
55 agreement between the association and the organizations recognized by the Commission
56 or in the Act as representatives of horse owners, trainers, and/or breeders may be
57 submitted to the Commission for consideration and approval. For the Commission to
58 approve the agreement, the agreement must:

59 (1) delineate the percentages by which the horse industry escrow account revenue
60 received by the association will be divided amongst the various breeds of horses; and

61 (2) be signed by all organizations recognized by the Commission or in the Act as
62 representatives of horse owners, trainers, and/or breeders.

63
64 303.312 Limitation on Use of Funds by Racetrack Associations
65 Funds allocated to racetrack associations from the horse industry escrow account may
66 only be used for purses and for administrative expenses payable to the horsemen's
67 organization pursuant to Section 2028.102 of the Act.

68
69 **DIVISION 3** **BREED REGISTRIES**

70 303.321 Allocations to Breed Registries

71 (a) A breed registry is eligible to request funds from the horse industry escrow account if it
72 is listed in Section 2030.002(a) of the Act.

73 (b) When requesting an allocation from the horse industry escrow account, an eligible
74 breed registry shall indicate the event(s) for which it intends to use the funds and provide
75 the following information for each event:

76 (1) the date(s) or approximate date(s);

77 (2) a detailed description of the event;

78 (3) the dollar amount requested for the event;

79 (4) a detailed explanation of the budget for the event, with any costs related to
80 personnel, the purchase of assets, and other administrative expenses stated separately;
81 and

82 (5) the anticipated economic impact of the event on the horse industry.

83 (c) The Commission may approve a request for allocation of funds submitted by an eligible
84 breed registry if, after considering the factors set forth in the Act, §2028.204(b), it finds that
85 the request satisfies the requirement that the funds be used for events to further the horse
86 industry. Requests may be approved in full or in part, at the discretion of the Commission.

87 (d) In the event that the total of funds requested by eligible breed registries exceed the
88 funds expected to be available in the account, the Commission may approve requests on a
89 pro rata basis, may approve funding for certain events but not others, or a combination.
90 Priority shall be given to events that the Commission finds likely to have the greatest
91 economic impact in the following areas:

92 (1) the state's horse racing industry;

93 (2) live racing at the state's racetracks;

94 (3) the horse breeding industry;

95 (4) the state of Texas as a whole; and

96 (5) non-racing horse industry activities.

97 (e) Notwithstanding subsections (c) and (d) of this section, prior to January 1, 2020, the
98 executive director may act on behalf of the Commission to approve requests for allocation
99 from the account.

100

101 303.322 Limitations on Use of Funds by Breed Registries

102 (a) A breed registry may use horse industry escrow account funds only for events that
103 further the horse industry. The Commission may require a breed registry to repay funds if
104 the breed registry fails to expend the funds in accordance with Section 2028.204 of the Act
105 and this section within twelve months of the date it receives the funds.

106 (b) The following types of costs may not be paid with funds allocated from the account:

107 (1) operating expenses, including the salaries of breed registry staff, interest and other
108 financial costs related to borrowing and the cost of financing, contributions to a
109 contingency reserve or any similar provision for unforeseen events, and audits or other
110 accounting services;

111 (1) (2) the purchase of capital assets or capital improvements;

112 (2) (3) donations or contributions made to any individual or organization without
113 express approval from the Commission for such contribution or donation;

114 (3) (4) costs of entertainment, amusements, social activities, and incidental costs
115 relating thereto, including tickets to shows or sports events, meals, alcoholic beverages,
116 lodging, rentals, transportation, tips, and gratuities;

117 (4) (5) fines, penalties, or other costs resulting from violations of or failure to comply
118 with federal, state, or local laws and regulations;

119 (5) (6) liability insurance coverage not specific to a particular event or series of events
120 for which the Commission has allocated funds from the account;

121 (6) (7) expenses related to litigation;

122 (7) (8) professional association fees or dues for the breed registry or an individual;

123 (8) (9) legislative expenses such as salaries and other expenses associated with
124 lobbying the state or federal legislature or similar local governmental bodies, whether
125 incurred for purposes of legislation or executive direction; or

126 (9) (10) fundraising.

127 (c) The following types of costs may only be paid with funds allocated from the account, in
128 an amount not to exceed [REDACTED] percent of the total allocated to the breed registry or of
129 the approved allocation for any event, if specifically approved by the Commission:

130 (1) operating expenses, including the salaries of breed registry staff, interest and other
131 financial costs related to borrowing and the cost of financing, contributions to a
132 contingency reserve or any similar provision for unforeseen events, and audits or other
133 accounting services; and

134 (2) the purchase of capital assets.

135 (d) (b) A breed registry may pay a cost out of funds awarded from the horse industry
136 escrow account if it satisfies subsections (a) through (c) of this section and is reasonable
137 and adequately documented.

138 (1) A cost is reasonable if the cost does not exceed that which would be incurred by a
139 prudent individual or organization under the circumstances prevailing at the time the
140 decision was made to incur the cost and it is necessary to achieve the purpose for which
141 the funds were sought.

142 (2) A cost is adequately documented if the cost is supported by Generally Accepted
143 Accounting Principles, the breed registry's accounting records, and documented in
144 accordance with §303.325 of this subchapter (relating to Quarterly Reports).

145
146 303.323 Modifications to Approved Events

147 (a) A breed registry seeking to make a modification to the date, description, or budget for
148 an event for which funds have been allocated from the horse industry escrow account shall
149 submit a request to:

150 (1) the executive director for changes to one or more of the following:

151 (A) the date, if the proposed new date is within six months of the original date;

152 (B) the description, if the change does not materially change the nature or scope of
153 the event; or

154 (C) the budget, if the proposed new budget is within ten percent of the original
155 budget for the event; or

156 (2) the Commission, for all other changes.

157 (b) The request must explain the proposed change, the reason for the change, and the
158 anticipated economic impact of the event as modified on the horse industry.

159 (c) The executive director may approve or deny a change requested under subsection
160 (a)(1) of this section or may forward the request to the Commission for consideration.

161

162 303.324 Recordkeeping and Audits

163 (a) Subject to audit by the Commission or auditors or investigators working on behalf of the
164 Commission, including the State Auditor and/or the Comptroller of Public Accounts for the
165 State of Texas, a breed registry receiving funds from the horse industry escrow account
166 shall maintain all records of expenses paid out of funds from the account for a minimum of
167 five years following the event. Records may be maintained in electronic or paper format.

168 (b) The Commission may request, and the breed registry must provide, any such record as
169 part of a review or audit.

170 (c) The funds received and/or expended by the breed registry from the horse industry
171 escrow account must be included in the breed registry's annual audit of the financial
172 statements required to be submitted by June 15 of each year. An auditor's statement must
173 be included as part of the annual audit attesting to the proper use of the funds received
174 from the horse industry escrow account by the breed registry.

175

176 303.325 Quarterly Reports

177 (a) A breed registry receiving funds from the horse industry escrow account shall submit to
178 the Commission a report every quarter. The report must include:

179 (1) the amount of funds expended toward each event for which funds have been
180 allocated;

181 (2) for each completed event, the total amount of funds expended toward the event and
182 a breakdown of the funds expended for that event; and

183 (3) the following certification: "By my signature below, I certify that (1) all of the
184 information in this report is correct, (2) all funds expended from the horse industry escrow
185 account were used in accordance with Section 2028.204 of the Texas Racing Act and the

186 Rules of the Texas Racing Commission, and (3) the breed registry has all documentation
187 required by 16 TAC § 303.324.
188 (b) Quarterly reports shall be submitted to the Commission no later than November 30,
189 February 28, May 31, and August 31 of each year.

CHAPTER 321 GENERAL PROVISIONS
SUBCHAPTER D SIMULCAST WAGERING
DIVISION 2 COMMON POOL WAGERING
SECTION 321.509 ESCROWED PURSE ACCOUNT

1 ~~(a) At least once a year, the Commission shall distribute all funds accrued in the escrowed~~
2 ~~purse account. The executive secretary shall establish a deadline for receiving requests for~~
3 ~~distribution from the account and publicize that deadline to the horse racetrack~~
4 ~~associations at least 30 days before the deadline. The associations when requesting for~~
5 ~~distribution from the account shall also recommend the percentages by which it will divide~~
6 ~~the escrowed purse account revenue among the various breeds of horses.~~
7 ~~(b) The Commission shall determine the amount of the distribution to each racetrack in~~
8 ~~accordance with the standards set forth in the Act, §§2028.204-.205.~~
9 ~~(c) The percentages by which an association will divide the escrowed purse account~~
10 ~~revenue among the various breeds of horses is subject to the approval of the Commission.~~
11 ~~When requesting Commission approval of the percentages, the association shall present~~
12 ~~in writing studies, statistics, or other documentation to support its proposed division of~~
13 ~~escrowed purse account revenue. The Commission may consider the following criteria~~
14 ~~when evaluating the association's studies, statistics, or other documentation submitted to~~

15 ~~support its proposed division of escrowed purse account revenue before granting its~~
16 ~~approval:~~

17 ~~(1) local public interest in each breed as demonstrated by, but not limited to, the~~
18 ~~following factors:~~

19 ~~(A) simulcast import handle by breed;~~

20 ~~(B) live handle by breed; and~~

21 ~~(C) live attendance.~~

22 ~~(2) earnings generated by the association from each breed;~~

23 ~~(3) racetrack race date request and opportunities given to each breed;~~

24 ~~(4) statewide need by breed; and~~

25 ~~(5) national public interest in each breed as determined by the live simulcast export~~
26 ~~handle of each Texas meet.~~

27 ~~(d) If the Commission determines that the association's proposed division of the escrowed~~
28 ~~purse account revenue is inconsistent with the association's obligation to accord~~
29 ~~reasonable access to races for all breeds of horses, the Commission may:~~

30 ~~(1) require the association to submit additional information supporting its~~
31 ~~recommendation for consideration at the next Commission meeting;~~

32 ~~(2) reject the association's recommendation and require the association to submit a~~
33 ~~new recommendation for consideration at the next Commission meeting; or~~

34 ~~(3) reject the association's recommendation and approve an alternate division of the~~
35 ~~escrowed purse account revenue as determined by the Commission.~~

36 ~~(e) In lieu of the process outlined in subsections (c) and (d) of this section, a signed~~
37 ~~agreement between the association and the organizations recognized by the Commission~~
38 ~~or in the Act as representatives of horse owners, trainers, and/or breeders maybe~~
39 ~~submitted to the Commission for consideration an approval. For the Commission to~~
40 ~~approve the agreement, the agreement must:~~

41 ~~(1) delineates the percentages by which the escrowed purse account revenue received~~
42 ~~by the association will be divided amongst the various breeds of horses; and~~

43 ~~(2) be signed by all organizations recognized by the Commission or in the Act as~~
44 ~~representatives of horse owners, trainers, and/or breeders.]~~

IV. PROCEEDINGS ON RULES

- D. Discussion and possible action to propose new 16 TAC § 309.106, Transfers to Texas-Bred Incentive Fund
- E. Discussion and possible action to propose amendments to 16 TAC § 311.2, Application Procedure

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
- 2 incentive fund within two business days of the date of the performance for which the
- 3 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.

V. PROCEEDINGS ON RACETRACKS

Discussion and possible action on the following race date items:

- A. Allocation of live race dates for horse racetracks under 16 TAC § 303.41 for the period beginning August 2, 2021, and ending August 31, 2021
- B. Allocation of live race dates for greyhound racetracks under 16 TAC § 303.41 for the period beginning August 2, 2021, and ending August 31, 2021
- C. Discussion and possible action to reallocate interstate cross-species purse money under Commission Rule 303.102(d) for the period from February 24, 2019, through February 29, 2020
- D. Discussion and possible action to allocate funds for the Texas-bred incentive program as provided under Commission Rule 321.505(b) for calendar year 2020

T E X A S R A C I N G C O M M I S S I O N
R E Q U E S T F O R P E R F O R M A N C E S
H O R S E R A C E T R A C K S

January 1, 2021 - August 31, 2021

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 17, 2018.

I. Schedule Requested

Name of Racetrack: Fredericksburg Downs, Inc.

First Meet Opening Day: 07 / 03 / 21 Closing Day: 08 / 29 / 21

Meet Type: TB QH MX Total Number of Race Days 8

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 \$ _____

Second 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 \$ _____

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 2021 will be allocated among the various breeds:

Appaloosa	_____ %	Arabian	<u>3.5</u> %	Paint	<u>3.5</u> %
Quarter Horse	<u>72.075</u> %	Thoroughbred	<u>20.925</u> %		

Check all that apply:

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

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

Participants in Negotiations

_____/_____/_____

06 / 28 / 19 Marsha Rountree, Executive Director, Texas Horseman's Partnership

_____/_____/_____

_____/_____/_____

_____/_____/_____

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: **(N/A-Class III Racetrack)**

Day 1: _____

Day 2: _____

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: _____
(Name of Charity)

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

Day 2 Charity: _____
(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.

<u>Racetrack</u>	<u>Affected?</u>		<u>Letter of Support Attached?</u>		
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Gillespie County Fair & Festivals Association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
**Laredo Downs	<input type="checkbox"/>	<input 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 type="checkbox"/>	<input type="checkbox"/>	<input 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
**Valle de los Tesoros	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**** (Not Known-Race Calendar for 2021 not posted on TxRC website as of 6-28-19)**

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

Fredericksburg Downs, Inc.

(Name of Racetrack)

Requested Performances for 2021

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 Martin Luther King Jr. Day	19	20	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	15	16	17	18	19	20
Valentine's Day	President's Day					
21	22	23	24	25	26	27
28						

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 St. Patrick's Day	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

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



July 11, 2019

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

via electronic mail and FedEx

Dear Mr. Speight:

Enclosed is Valley Race Park's Request for Performances for August, 2021, which dates are within the period currently pending before the Commission. Race dates in addition to or in lieu of these dates shall be requested at the appropriate time.

Please let me know if you have any questions.

Sincerely,

Dwight Berube,
Vice President and General Manager
Valley Race Park

Enclosures

Cc: Maury Korn
Sally Briggs
Tommy Azopardi
David Dyal

VALLEY RACE PARK INC.
2601 SOUTH ED CAREY DRIVE, HARLINGEN, TEXAS 78552
(956) 412-7223 • (956) 428-0163 FAX
www.valleyracepark.com

**T E X A S R A C I N G C O M M I S S I O N
R E Q U E S T F O R P E R F O R M A N C E S
G R E Y H O U N D R A C E T R A C K S**

January 1, 2021 – August 31, 2021

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: Valley Race Park

Opening Day: 08/20/2021

Closing Day: 08/28/2021

Number of Performances per week 3

Projected Number of Races per Performance 10

TOTAL NUMBER OF PERFORMANCES REQUESTED 5

II. Charity Days

A greyhound association shall conduct at least 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: TBD

Day 2: TBD

Day 3: TBD

Day 4: TBD

Day 5: TBD

Identify the charities:

REQUIRED BY RULE

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

Day 1 Charity: TBD
(Name of Charity)

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

Day 2 Charity: TBD
(Name of Charity)

ADDITIONAL CHARITIES

Day 3 Charity: TBD
(Name of Charity)

Day 4 Charity: TBD
(Name of Charity)

Day 5 Charity: TBD
(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.

III. Dates Requested

Indicate on the attached calendar each live race performance requested with an
"M" denoting a Matinee performance
"E" denoting an Evening performance

Include standard post time for each performance in space provided on calendar. Any exceptions, such as holidays, should be noted.

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.

<u>Racetrack</u>	<u>Affected?</u>		<u>Letter of Support Attached?</u>		
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Gulf Coast Racing	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gulf Greyhound Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Valley Race Park	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Greyhound Breed Association</u>	<u>Letter of Support Attached?</u>		
	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Texas Greyhound Association	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Valley Race Park

Requested Performances for 2021

January						
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						

February						
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						

July						
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

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 E 7:00 PM	21 E 7:00 PM
22	23	24	25 M 1:00 PM	26	27 E 7:00 PM	28 E 7:00 PM
29	30	31				

V. PROCEEDINGS ON RACETRACKS

C. Discussion and possible action to reallocate interstate cross-species purse money under Commission Rule 303.102(d) for the period from February 24, 2019, through February 29, 2020.

2019-20 Interstate Cross-Species Purse Money [Greyhounds]

TGA Proposal



TEXAS RACING COMMISSION

Mailing Address: PO Box 12080, Austin, TX 78711-2080

Phone: 512.833.6699 Facsimile: 512.833.6907

www.txrc.texas.gov

September 10, 2019

Lois Orta, Interim Executive Director
Texas Greyhound Association
PO Box 40
Lorena, TX 76655-0040

Dear Ms. Orta:

As you are aware, Valley Race Park had requested to drop their previously approved race meet originally scheduled to begin in December 2019. The Texas Racing Commission received a race date request from Gulf Greyhound Park as part of the open race date period to run similar dates in lieu of Valley Race Park. However, Gulf Greyhound Park's request is to begin racing in January 2020, instead of December 2019. This race date request was taken up for consideration at the Commission meeting on September 10, 2019, and was subsequently approved. This change of venue for the live race meet for greyhounds will also necessitate a change to the previously approved TGA Escrow Purse allocation.

Commission rule §303.102(d)(2) requires the Commission's executive director to establish a deadline by which the proposed allocation for distribution of purse money earned from cross-species simulcasting is to be submitted. Pursuant to his authority, Executive Director Chuck Trout has established a deadline of Thursday, October 10, 2019, for filing the proposed reallocation of the TGA cross-species purse money collected for the period of February 24, 2019, through February 29, 2020. This time frame covers the escrow period and the proposed 2019/2020 race dates as requested by Gulf Greyhound Park. Additionally, in your proposal, it should be specified that the funds will accrue in the TGA Cross-Species Account beginning upon the completion of Gulf Greyhound Park's live race meet through the as of yet determined next live race meet. Once the next meet is determined and approved by the Commission, the allocation of those escrowed funds will be proposed. The proposed reallocation will be added to the next Commission meeting agenda, currently scheduled for October 29, 2019, for consideration and approval.

Respectfully,

Curley L. Trahan
Director of Pari-Mutuels

cc: Chuck Trout, Executive Director
Devon Bijansky, Legal Counsel



texas greyhound association

September 20, 2019

Chuck Trout
Texas Racing Commission
PO Box 12080
Austin, TX 78711

Dear Mr. Trout,

The Texas Greyhound Association (TGA) is aware that Valley Race Park will not be running their previously requested and approved race dates. The TGA is also aware that Gulf Greyhound Park, in lieu of Valley Race Park, will be running similar dates beginning in January 2020. The TGA is in full support of GGP running the meet at GGP.

Effective, Thursday; January 2, 2020, the TGA requests that the escrowed interstate cross-species simulcast monies received under Texas Racing Act Sec 6.091(d)(2), from February 24, 2019, through February 29, 2020, after allowable TGA administrative expenses, be allocated only to GGP.

The schedule for the payout will be as follows; approximately 30 days before GGP's meet, on or before December 2, 2019, the TGA will transfer, to date, all escrowed funds in the Cross-Species account to GGP's purse account. On or before the first day of racing, the TGA will transfer the remaining escrowed funds to GGP's purse account. We will then begin making weekly Cross-Species payments, upon the start of live racing.

Upon completion of GGP's 2020 live meet, the funds will accrue in the TGA Cross-Species account for the next live meet, to be determined and approved by the Racing Commission.

Thank you,

Lois Orta
Interim Executive Director

Cc: TGA Board of Directors
Curley Trahan - TxRC
Eric Wilson - GGP
Sally Briggs - GGP

PO Box 40; Lorena, Texas 76655 * (254) 857-4377 * Fax: (254) 857-4299

Email: loisorta@tgagreyhounds.com

Website: www.tgagreyhounds.com

V. PROCEEDINGS ON RACETRACKS

D. Discussion and possible action to allocate funds for the Texas-bred incentive program as provided under Commission Rule 321.505(b) for calendar year 2020.

2020 Breed Splits Texas-Bred Incentive Program

Industry Agreement

2020 Industry Agreement Summary

ATB Program Funds Rule 321.505(b)

ATB Program	Gillespie	Lone Star	Retama	Sam Houston
Arabian	2.00%	2.00%	2.00%	2.00%
Paint	1.00%	1.00%	1.00%	1.00%
Quarter Horse	64.67%	32.33%	32.33%	32.33%
Thoroughbred	32.33%	64.67%	64.67%	64.67%



TEXAS RACING COMMISSION

Mailing Address: PO Box 12080, Austin, TX 78711-2080

Phone: 512.833.6699 Facsimile: 512.833.6907

www.txrc.texas.gov

September 10, 2019

Ed Wilson, President
Texas Arabian Breeders' Association
PO Box 215
Forney, TX 75126

Lex Smurthwaite, Director of Racing
Texas Paint Horse Breeders Association
PO Box 163794
Fort Worth, TX 76161

Rob Werstler, Director of Racing
Texas Quarter Horse Association
706 W. 11th Street, Suite D
Elgin, TX 78621

Mary Ruyle, Executive Director
Texas Thoroughbred Association
192 Cimarron Park Loop, Suite A
Buda, TX 78610

RE: 2020 Breed Splits for Accredited Texas Bred Program Funds

Breed Association Representatives:

Please be advised that the Commission will take up the Accredited Texas Bred program fund breed split allocations for calendar year 2020 at the Commission meeting currently scheduled for October 29, 2019.

Under §321.505(b) of the Texas Rules of Racing, the Commission shall determine the percentages by which Texas Bred Incentive Program funds generated from simulcasting are divided among the various breeds of horses. Each officially recognized breed registry is afforded the opportunity to present information in writing regarding the criteria listed in paragraph §321.505(b)(2). Alternatively, the Commission may approve an agreement that is signed by all of the official breed organizations and delineates the percentages by which the Texas Bred Incentive Program funds generated from simulcasting are divided among the various breeds of horses.

Please provide either written information you would like the Commission to consider or a signed agreement by all parties to my attention by Thursday, October 10, 2019.

Respectfully,

Curley L. Trahan
Director of Pari-Mutuels

cc: Chuck Trout, Executive Director
Devon Bijansky, General Counsel

AGREEMENT BETWEEN
TEXAS ARABIAN BREEDERS ASSOCIATION, TEXAS PAINT HORSE
BREEDERS ASSOCIATION, TEXAS QUARTER HORSE ASSOCIATION AND
TEXAS THOROUGHBRED ASSOCIATION

Pursuant to Section 321.505(b) of the Texas Rules of Racing, the Commission shall determine the percentages by which Texas Bred Incentive Program funds generated from simulcasting are divided among the various breeds of horses.

In an effort to achieve a fair and equitable share of revenue available to the Texas state-bred incentive program for owners and breeders, the following Agreement is made by and between Texas Arabian Breeders Association (TABA), Texas Paint Horse Breeders Association (TPHBA), Texas Quarter Horse Association (TQHA) and Texas Thoroughbred Association (TTA).

As previously allocated for calendar years 2011 – 2019, it is agreed that ATB incentive funds generated from simulcasting shall be allocated to the respective breeds as follows:

At Class 1 tracks (Lone Star Park, Retama Park and Sam Houston Race Park), the funds shall be allocated 66.67% to Thoroughbreds and 33.33% to Quarter Horses after a 2% deduction off the top for Arabians and a 1% deduction off the top for Paint Horses.

At Gillespie County Fair Grounds, the funds shall be allocated 33.33% to Thoroughbreds and 66.67% to Quarter Horses after a 2% deduction off the top for Arabians and a 1% deduction off the top for Paint Horses.

This agreement shall be in effect for calendar year 2020.

The foregoing is acknowledged and agreed to on this 17 day of September 2019.



Texas Arabian Breeders Association

Texas Paint Horse Breeders Association

Texas Quarter Horse Association

Texas Thoroughbred Association

**AGREEMENT BETWEEN
TEXAS ARABIAN BREEDERS ASSOCIATION, TEXAS PAINT HORSE
BREEDERS ASSOCIATION, TEXAS QUARTER HORSE ASSOCIATION AND
TEXAS THOROUGHBRED ASSOCIATION**

Pursuant to Section 321.505(b) of the Texas Rules of Racing, the Commission shall determine the percentages by which Texas Bred Incentive Program funds generated from simulcasting are divided among the various breeds of horses.

In an effort to achieve a fair and equitable share of revenue available to the Texas state-bred incentive program for owners and breeders, the following Agreement is made by and between Texas Arabian Breeders Association (TABA), Texas Paint Horse Breeders Association (TPHBA), Texas Quarter Horse Association (TQHA) and Texas Thoroughbred Association (TTA).

As previously allocated for calendar years 2011 – 2019, it is agreed that ATB incentive funds generated from simulcasting shall be allocated to the respective breeds as follows:

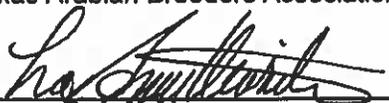
At Class 1 tracks (Lone Star Park, Retama Park and Sam Houston Race Park), the funds shall be allocated 66.67% to Thoroughbreds and 33.33% to Quarter Horses after a 2% deduction off the top for Arabians and a 1% deduction off the top for Paint Horses.

At Gillespie County Fair Grounds, the funds shall be allocated 33.33% to Thoroughbreds and 66.67% to Quarter Horses after a 2% deduction off the top for Arabians and a 1% deduction off the top for Paint Horses.

This agreement shall be in effect for calendar year 2020.

The foregoing is acknowledged and agreed to on this 12 day of October 2019.

Texas Arabian Breeders Association



Texas Paint Horse Breeders Association

Texas Quarter Horse Association

Texas Thoroughbred Association

AGREEMENT BETWEEN
TEXAS ARABIAN BREEDERS ASSOCIATION, TEXAS PAINT HORSE
BREEDERS ASSOCIATION, TEXAS QUARTER HORSE ASSOCIATION AND
TEXAS THOROUGHBRED ASSOCIATION

Pursuant to Section 321.505(b) of the Texas Rules of Racing, the Commission shall determine the percentages by which Texas Bred Incentive Program funds generated from simulcasting are divided among the various breeds of horses.

In an effort to achieve a fair and equitable share of revenue available to the Texas state-bred incentive program for owners and breeders, the following Agreement is made by and between Texas Arabian Breeders Association (TABA), Texas Paint Horse Breeders Association (TPHBA), Texas Quarter Horse Association (TQHA) and Texas Thoroughbred Association (TTA).

As previously allocated for calendar years 2011 – 2019, it is agreed that ATB incentive funds generated from simulcasting shall be allocated to the respective breeds as follows:

At Class 1 tracks (Lone Star Park, Retama Park and Sam Houston Race Park), the funds shall be allocated 66.67% to Thoroughbreds and 33.33% to Quarter Horses after a 2% deduction off the top for Arabians and a 1% deduction off the top for Paint Horses.

At Gillespie County Fair Grounds, the funds shall be allocated 33.33% to Thoroughbreds and 66.67% to Quarter Horses after a 2% deduction off the top for Arabians and a 1% deduction off the top for Paint Horses.

This agreement shall be in effect for calendar year 2020.

The foregoing is acknowledged and agreed to on this 19 day of October 2019.

Texas Arabian Breeders Association

Texas Paint Horse Breeders Association

Roland C. Wooten

Texas Quarter Horse Association

Texas Thoroughbred Association

AGREEMENT BETWEEN
TEXAS ARABIAN BREEDERS ASSOCIATION, TEXAS PAINT HORSE
BREEDERS ASSOCIATION, TEXAS QUARTER HORSE ASSOCIATION AND
TEXAS THOROUGHBRED ASSOCIATION

Pursuant to Section 321.505(b) of the Texas Rules of Racing, the Commission shall determine the percentages by which Texas Bred Incentive Program funds generated from simulcasting are divided among the various breeds of horses.

In an effort to achieve a fair and equitable share of revenue available to the Texas state-bred incentive program for owners and breeders, the following Agreement is made by and between Texas Arabian Breeders Association (TABA), Texas Paint Horse Breeders Association (TPHBA), Texas Quarter Horse Association (TQHA) and Texas Thoroughbred Association (TTA).

As previously allocated for calendar years 2011 – 2019, it is agreed that ATB incentive funds generated from simulcasting shall be allocated to the respective breeds as follows:

At Class 1 tracks (Lone Star Park, Retama Park and Sam Houston Race Park), the funds shall be allocated 66.67% to Thoroughbreds and 33.33% to Quarter Horses after a 2% deduction off the top for Arabians and a 1% deduction off the top for Paint Horses.

At Gillespie County Fair Grounds, the funds shall be allocated 33.33% to Thoroughbreds and 66.67% to Quarter Horses after a 2% deduction off the top for Arabians and a 1% deduction off the top for Paint Horses.

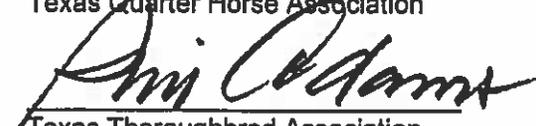
This agreement shall be in effect for calendar year 2020.

The foregoing is acknowledged and agreed to on this 10 day of October 2019.

Texas Arabian Breeders Association

Texas Paint Horse Breeders Association

Texas Quarter Horse Association



Texas Thoroughbred Association

V. PROCEEDINGS ON RACETRACKS

- E. Discussion and possible action to allocate purses as provided under Commission Rule 321.505(a) for calendar year 2020
- F. Discussion and possible action to allocate purse funds in the horse industry escrow account among the various breeds of horses under Commission Rule 321.509 for calendar year 2020
- G. Discussion and possible action to reallocate purse funds in the horse industry escrow account among the various breeds of horses under Commission Rule 321.509 for the period from September 1, 2019, through December 31, 2019

V. PROCEEDINGS ON RACETRACKS

E. Discussion and possible action to allocate purses as provided under Commission Rule 321.505(a) for calendar year 2020.

2020 Breed Splits Simulcast Purse

Requests by
Racetracks

2020 Racetracks' Requests Summary

Simulcast Purses Rule 321.505(a)

Simulcast Purses	Gillespie	Lone Star	Retama*	Sam Houston
Arabian	0%	0.8125%	1.50%	1.40%
Paint	1.50%	0.4375%	0.50%	0.60%
Quarter Horse	68.95%	18.2875%	23.52%	21.56%
Thoroughbred	29.55%	80.4625%	74.48%	76.44%



TEXAS RACING COMMISSION

Mailing Address: PO Box 12080, Austin, TX 78711-2080

Phone: 512.833.6699 Facsimile: 512.833.6907

www.txrc.texas.gov

September 10, 2019

Robert "Henry" Sagebiel, General Manager
Gillespie County Fair and Festivals Assn.
P.O. Box 523
Fredericksburg, TX 78624

Steve Ross, Director of Racing Operations
Retama Park
One Retama Parkway
Selma, TX 78265

Bart Lang, Racing Secretary
Lone Star Park
1000 Lone Star Parkway
Grand Prairie, TX 75050

Frank Hopf, Sr. Director of Racing Operations
Sam Houston Race Park
7575 N. Sam Houston Park Way W.
Houston, TX 77064

Re: 2020 Allocation of Purses and Distribution of Horse Industry Escrow Account Funds

Dear Gentlemen:

The Commission is preparing to allocate purses under Rule 321.505(a) and funds within the horse industry escrow account under Rule 321.509 for calendar year 2020 at the meeting currently scheduled for October 29, 2019. The horse industry escrow account allocations will cover only the racetrack allocated portion of the funds within that account. Commission staff must receive the proposed division of purses and funds from each Class 1 association and from Gillespie County Fair and Festivals Association in time to prepare for that meeting.

Rule 321.505(a) requires that, when requesting approval of its proposed division of purses, each association shall present in writing studies, statistics, or other documentation supporting the association's application of the Rule 321.505(a)(4) criteria to its proposal. These criteria are:

(A) local public interest in each breed as demonstrated by, but not limited to, the following factors:

- (i) live handle by breed;
- (ii) simulcast import handle by breed;
- (iii) live attendance at the racetracks; and
- (iv) sales and market survey information.

(B) earnings generated by the association from each breed;

(C) national public interest in each breed as determined by the live simulcast export handle of each Texas meet;

(D) racetrack race date request and opportunities given to each breed; and

(E) availability of and ability to attract competitive horses.

In lieu of the studies, statistics, or other documentation described above, an association may submit a signed agreement between the association and the organizations recognized by the Commission or in the Act as representatives of horse owners, trainers and/or breeders. For the Commission to approve the agreement, the agreement must:

- (A) delineate the percentages by which the association will divide the purse revenue generated from simulcasting among the various breeds of horses; and
- (B) be signed by the association and all of the organizations recognized by the Commission or in the Act as representatives of horse owners, trainers and/or breeders.

Rule 321.509 requires that, when requesting approval of its proposed division of funds from the horse industry escrow account, each association shall present in writing studies, statistics, or other documentation supporting the association's application of the Rule 321.509(c) criteria to its proposal. These criteria are:

- (A) local public interest in each breed as demonstrated by, but not limited to, the following factors:
 - (i) simulcast import handle by breed;
 - (ii) live handle by breed; and
 - (iii) live attendance.
- (B) earnings generated by the association from each breed;
- (C) racetrack race date request and opportunities given to each breed;
- (D) statewide need by breed; and
- (E) national public interest in each breed as determined by the live simulcast export handle of each Texas meet.

In lieu of the studies, statistics, or other documentation described above, an association may submit a signed agreement between the association the organizations recognized by the Commission or in the Act as representatives of horse owners, trainers and/or breeders. For the Commission to approve the agreement, the agreement must:

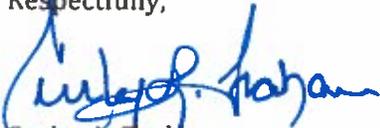
- (A) delineate the percentages by which the allocated portion of the horse industry escrow account funds received by the racetrack association will be divided amongst the various breeds of horses; and
- (B) be signed by all organizations recognized by the Commission or in the Act as representatives of horse owners, trainers, and/or breeders.

Please submit the above described documents no later than the close of business on Thursday, October 10, 2019, to my attention. If you would like to review the materials submitted last year, please see the Commission's meeting packet for October 9, 2018, at:

<http://www.txrc.texas.gov/agency/meetings/packets/p20181009.pdf>

If you have any questions, please call me at (512) 833-6699.

Respectfully,



Surley L. Trahan
Director of Pari-Mutuels

cc: Chuck Trout, Executive Director
Devon Bijansky, Legal Counsel

Association Recommended Allocation of 2020 Simulcast Purse Funds

Association Name: _____

Rule §321.505 (a) (1) stipulates that an association shall recommend the percentages by which it will divide the purse revenue generated from simulcasting among the various breeds of horses. The recommended percentages are subject to the approval of the Commission.

Recognized Breeds of Horses	Recommended Allocation Percentages
Arabian	
Paint Horse	
Quarter Horse	
Thoroughbred	

Rule §321.505 (a) (2) stipulates that at least 30 days before recommending the percentages, the association shall begin negotiations with the organizations recognized by the Commission or in the ACT as representatives of horse owners, trainers, and/or breeders. Indicate in the box below, what recognized organizations the association negotiated with prior to filing the recommended allocation percentages above.

Negotiations Conducted	
<input type="checkbox"/> Texas Arabian Breeders' Association	<input type="checkbox"/> Texas Paint Horse Breeders Association
<input type="checkbox"/> Texas Thoroughbred Association	<input type="checkbox"/> Texas Quarter Horse Association
<input type="checkbox"/> Texas Horsemen's Partnership	

Prepared by: _____ Date: _____

Racetrack Association Request for 2020 Horse Industry Escrow Account Distribution

Racetrack

Association Name: _____

Rule §321.509 (a) stipulates at least once a year, the Commission shall distribute all funds accrued in the horse industry escrow account created by the Act, §2028.202 and §2028.204. The Commission may not allocate more than 70 percent of the amount deposited into the account to horse racetrack associations for use as purses. An association shall request to the Commission for a distribution from the horse industry escrow account.

Type of Distribution Requested <i>(select one)</i>	Percentage Requested <i>(of the total allocation designated to racetracks)</i>
<input type="checkbox"/> Monthly	
<input type="checkbox"/> Annual	

Rule §321.509 (a) stipulates that an association when requesting for distribution from the horse industry escrow account shall also recommend the percentages by which it will divide the revenue for purses among the various breeds of horses.

Rule §321.509 (c) stipulates that the recommended percentages are subject to the approval of the Commission.

Recognized Breeds of Horses	Recommended Allocation Percentages
Arabian	
Paint Horse	
Quarter Horse	
Thoroughbred	

Prepared by: _____

Date: _____

Association Recommended Allocation of 2020 Simulcast Purse Funds

Association Name: Fredericcksburg Downs, Inc.

Rule §321.505 (a) (1) stipulates that an association shall recommend the percentages by which it will divide the purse revenue generated from simulcasting among the various breeds of horses. The recommended percentages are subject to the approval of the Commission.

Recognized Breeds of Horses	Recommended Allocation Percentages
Arabian	0%
Paint Horse	1.5%
Quarter Horse	68.95%
Thoroughbred	29.55%

Rule §321.505 (a) (2) stipulates that at least 30 days before recommending the percentages, the association shall begin negotiations with the organizations recognized by the Commission or in the ACT as representatives of horse owners, trainers, and/or breeders. Indicate in the box below, what recognized organizations the association negotiated with prior to filing the recommended allocation percentages above.

Negotiations Conducted	
<input type="checkbox"/> XX Texas Arabian Breeders' Association <input checked="" type="checkbox"/> XX Texas Thoroughbred Association <input checked="" type="checkbox"/> XX Texas Horsemen's Partnership	<input checked="" type="checkbox"/> XX Texas Paint Horse Breeders Association <input checked="" type="checkbox"/> XX Texas Quarter Horse Association

Prepared by:  Date: 9-12-19

Association Recommended Allocation of 2020 Simulcast Purse Funds

Association Name: Lone Star Park at Grand Prairie

Rule §321.505 (a) (1) stipulates that an association shall recommend the percentages by which it will divide the purse revenue generated from simulcasting among the various breeds of horses. The recommended percentages are subject to the approval of the Commission.

Recognized Breeds of Horses	Recommended Allocation Percentages
Arabian	.8125%
Paint Horse	.4375%
Quarter Horse	18.2875%
Thoroughbred	80.4625%

Rule §321.505 (a) (2) stipulates that at least 30 days before recommending the percentages, the association shall begin negotiations with the organizations recognized by the Commission or in the ACT as representatives of horse owners, trainers, and/or breeders. Indicate in the box below, what recognized organizations the association negotiated with prior to filing the recommended allocation percentages above.

Negotiations Conducted	
<input checked="" type="checkbox"/> Texas Arabian Breeders' Association	<input checked="" type="checkbox"/> Texas Paint Horse Breeders Association
<input checked="" type="checkbox"/> Texas Thoroughbred Association	<input checked="" type="checkbox"/> Texas Quarter Horse Association
<input checked="" type="checkbox"/> Texas Horsemen's Partnership	

Prepared by: 

Date: 10/10/2019

Association Recommended Allocation of 2020 Simulcast Purse Funds

Association Name: Retama Park

Rule §321.505 (a) (1) stipulates that an association shall recommend the percentages by which it will divide the purse revenue generated from simulcasting among the various breeds of horses. The recommended percentages are subject to the approval of the Commission.

Recognized Breeds of Horses	Recommended Allocation Percentages
Arabian	1.50%
Paint Horse	0.50%
Quarter Horse	23.52%
Thoroughbred	74.48%

Rule §321.505 (a) (2) stipulates that at least 30 days before recommending the percentages, the association shall begin negotiations with the organizations recognized by the Commission or in the ACT as representatives of horse owners, trainers, and/or breeders. Indicate in the box below, what recognized organizations the association negotiated with prior to filing the recommended allocation percentages above.

Negotiations Conducted	
<input checked="" type="checkbox"/> Texas Arabian Breeders' Association	<input checked="" type="checkbox"/> Texas Paint Horse Breeders Association
<input checked="" type="checkbox"/> Texas Thoroughbred Association	<input checked="" type="checkbox"/> Texas Quarter Horse Association
<input checked="" type="checkbox"/> Texas Horsemen's Partnership	

Prepared by: Steven M. Ross

Date: 10/7/2019

Association Recommended Allocation of 2020 Simulcast Purse Funds

Association Name: Sam Houston Race Park

Rule §321.505 (a) (1) stipulates that an association shall recommend the percentages by which it will divide the purse revenue generated from simulcasting among the various breeds of horses. The recommended percentages are subject to the approval of the Commission.

Recognized Breeds of Horses	Recommended Allocation Percentages
Arabian	1.40
Paint Horse	0.60
Quarter Horse	21.56
Thoroughbred	76.44

Rule §321.505 (a) (2) stipulates that at least 30 days before recommending the percentages, the association shall begin negotiations with the organizations recognized by the Commission or in the ACT as representatives of horse owners, trainers, and/or breeders. Indicate in the box below, what recognized organizations the association negotiated with prior to filing the recommended allocation percentages above.

Negotiations Conducted	
<input type="checkbox"/> Texas Arabian Breeders' Association	<input type="checkbox"/> Texas Paint Horse Breeders Association
<input type="checkbox"/> Texas Thoroughbred Association	<input type="checkbox"/> Texas Quarter Horse Association
<input type="checkbox"/> Texas Horsemen's Partnership	

Prepared by: 

Date: 10/10/19

2020 Breed Splits Simulcast Purse

Horse Industry
Organizations'
Letters of Support



Gillespie County Fair & Festivals Association, Inc.

October 4, 2019

Mr. Ed Wilson, Texas Arabian Breeders' Association
Mr. Lex Smurthwaite, Texas Paint Horse Breeders Association
Mr. Rob Werstler, Texas Quarter Horse Association
Ms. Mary Ruyle, Texas Thoroughbred Association
Ms. Marsha Rountree, Texas Horsemen's Association

Re: Gillespie County Fair & Festivals Association, Inc. aka Fredericksburg Downs, inc. 2020 Simulcast Purse Funds

Please see the attached Request for the Recommended Allocation of 2020 Simulcast Purse Funds form from the GCFFA/Fredericksburg Downs, Inc. We are requesting these new percentages and feel these are fair to all Breeds. Please sign as indicated below and return via fax (830-997-4923) or email (pam@gillespiefair.com) at your earliest convenience.

Thank you for your time and please feel free to call should you have any questions or concerns.

Best Regards,

Larry Burrow, President
Gillespie County Fair & Festivals Assn., Inc.

(@.75%)
Texas Arabian Breeders' Association

(@1.5%)
Texas Paint Horse Breeders' Association

(@68.57%)
Texas Quarter Horse Association

(@29.18%)
Texas Thoroughbred Association

Texas Horsemen's Partnership

PO Box 526 / 530 Fair Dr.
Fredericksburg, TX 78624

830-997-2359
www.gillespiefair.com



October 10, 2019

Chuck Trout
Executive Director
Texas Racing commission
PO Box 12080
Austin, TX 78711

Dear Mr. Trout,

The Texas Thoroughbred Association is in agreement with the Association Recommended Allocation of 2020 Simulcast Purse Funds and the 2020 Horse Industry Escrow Account Distribution for Gillespie County Fair, Lone Star Park, Retama Park and Sam Houston Race Park.

Please let me know if you need any further information.

Sincerely,

Mary Ruyle
Executive Director

cc: Joel Speight, TRC
Curley Trahan, TRC



T E X A S
HORSEMEN'S
PARTNERSHIP

October 9, 2019

Chuck Trout
Executive Director
Texas Racing commission
PO Box 12080
Austin, TX 78711

Dear Mr. Trout,

The Texas Horsemen's Partnership, LLP, supports the Association Recommended Allocation of 2020 Simulcast Funds and the 2020 Horse Industry Escrow Account Distribution agreement as submitted by Gillespie County Fair, Lone Star Park, Retama Park and Sam Houston Race Park.

Thank you for including this approval in the October 29 meeting agenda of the Texas Racing Commission.

Sincerely,

Marsha Rountree
Executive Director
Texas Horsemen's Partnership, LLP

cc: Joel Speight, TRC
Curley Trahan, TRC

V. PROCEEDINGS ON RACETRACKS

F. Discussion and possible action on distribution of purse funds in the horse industry escrow account among the various breeds of horses under Commission Rule 321.509 for calendar year 2020.

2020 Breed Splits
Horse Industry Escrow
Account
Purse Allocation

Industry-Wide
Agreement

2020 Industry-Wide Agreement Summary

Horse Industry Escrow Purses Rule 321.509

Escrow Purses	Gillespie	Lone Star	Retama	Sam Houston
	3.57%	36.29%	18.64%	41.50%
Arabian	1.22%	1.23%	2.79%	1.44%
Paint Horse	5.84%	1.30%	1.77%	1.19%
Quarter Horse	78.33%	46.69%	70.72%	39.77%
Thoroughbred	14.61%	50.78%	24.72%	57.60%

October 10, 2019

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

Dear Mr. Trout,

We, the undersigned representatives of Texas licensed pari-mutuel racetracks, the Texas Quarter Horse Association, the Texas Horsemen's Association, the Texas Thoroughbred Horsemen's Association, the Texas Thoroughbred Association, the Texas Paint Horse Breeders' Association and the Texas Arabian Breeders' Association have met extensively over the course of the past several weeks to come to a unanimous agreement on the allocation of new (\$17,500,000 per year) in purse funds that have become available specifically via the successful passage of House Bill 2463 during the 2019 session of the Texas Legislature; as well as the continued allocation of the purse money generated for horses via cross-species simulcasting. These funds collectively comprise the Horse Industry Escrow Purse Account.

We take very seriously our responsibility to utilize these funds in a manner that will be recognized as their highest and best use in growing the Texas Horse Racing Industry.

We have mutually agreed upon the following recommendations for distribution for the time period of September 1, 2019 – December 31, 2020. This agreement replaces and supersedes any prior agreements of the parties covering any portion of this time period for distribution of any funds from the Escrow Purse Account.:

Chart A: (October 10, 2019)

	Gillespie	Lone Star	Retama	Sam Houston
	3.57%	36.29%	18.64%	41.50%
Arabian	1.22%	1.23%	2.79%	1.44%
Paint Horse	5.84%	1.30%	1.77%	1.19%
Quarter Horse	78.33%	46.69%	70.72%	39.77%
Thoroughbred	14.61%	50.78%	24.72%	57.60%

As evidenced by our signatures below, we collectively believe this proposed allocation (Reference: Chart A/October 10, 2019) for the time period of September 1, 2019 – December 31, 2020 will be the best way to increase interest, attendance, handle and field size in Texas, as well as stimulating increases in all categories of the Texas horse breeding industry. We urge the Texas Racing Commission to approve this proposal as presented.

Respectfully,

Lone Star Park at Grand Prairie

Sam Houston Race Park

Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

As evidenced by our signatures below, we collectively believe this proposed allocation (Reference: Chart A/October 10, 2019) for the time period of **September 1, 2019 – December 31, 2020** will be the best way to increase interest, attendance, handle and field size in Texas, as well as stimulating increases in all categories of the Texas horse breeding industry. We urge the Texas Racing Commission to approve this proposal as presented.

Respectfully,



Lone Star Park at Grand Prairie

Sam Houston Race Park

Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

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Respectfully,

Lone Star Park at Grand Prairie



Sam Houston Race Park

Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association

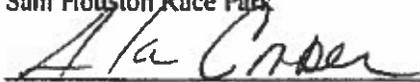
Texas Arabian Breeders Association

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Respectfully,

Lone Star Park at Grand Prairie

Sam Houston Race Park



Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

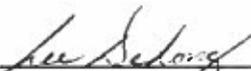
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Respectfully,

Lone Star Park at Grand Prairie

Sam Houston Race Park

Retama Park



Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

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Respectfully,

Lone Star Park at Grand Prairie

Sam Houston Race Park

Retama Park

Gillespie County Fair & Festivals Assn.

Messiah Kautsky

Texas Horsemen's Association
For Dr. Tommy Hays, President, THA

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

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Respectfully,

Lone Star Park at Grand Prairie

Sam Houston Race Park

Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association



Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

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Respectfully,

Lone Star Park at Grand Prairie

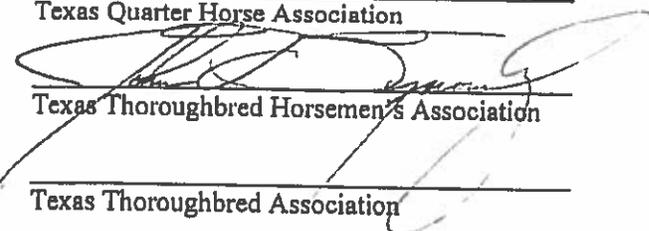
Sam Houston Race Park

Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association



Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

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Lone Star Park at Grand Prairie

Sam Houston Race Park

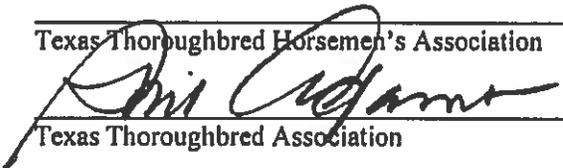
Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association



Texas Thoroughbred Association

Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

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Respectfully,

Lone Star Park at Grand Prairie

Sam Houston Race Park

Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association



Texas Paint Horse Breeders Association

Texas Arabian Breeders Association

As evidenced by our signatures below, we collectively believe this proposed allocation (Reference: Chart A October 10, 2019) for the time period of September 1, 2019 – December 31, 2020 will be the best way to increase interest, attendance, handle and field size in Texas, as well as stimulating increases in all categories of the Texas horse breeding industry. We urge the Texas Racing Commission to approve this proposal as presented.

Respectfully,

Lone Star Park at Grand Prairie

Sam Houston Race Park

Retama Park

Gillespie County Fair & Festivals Assn.

Texas Horsemen's Association

Texas Quarter Horse Association

Texas Thoroughbred Horsemen's Association

Texas Thoroughbred Association

Texas Paint Horse Breeders Association



Texas Arabian Breeders Association

VI. PROCEEDINGS ON OCCUPATIONAL LICENSES

Discussion and possible action regarding:

- A. The proposal for decision in SOAH No. 0476-19-3110, Joseph Michael Davis v. Texas Racing Commission
- B. The proposal for decision in SOAH No. 0476-19-3111, Rolando Almanza v. Texas Racing Commission
- C. The proposal for decision in SOAH No. 0476-19-2614, Sigifredo Gonzalez Jr. v. Texas Racing Commission

Texas Racing Commission
Ruling Report for Licensee

Ruling Date: 02/19/2019 Violation Date: 09/21/2018 Ruling #: LSP3513
 Licensee: JOSEPH MICHAEL DAVIS Status: CLSD
 License # 167229 Type OWNER-TRAINER Status ACTIVE

Actions	Begin Date	End Date
SUSPENDED	04/01/2019	04/15/2019

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: 02/22/2019 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:

Owner - Trainer Joe Davis was duly noticed and appeared for a formal hearing before the Sam Houston Race Park Board of Stewards on 2/14/19.

The Board of Stewards considered all of the testimony and documentary evidence presented during the hearing. Mr. Davis is hereby fined five hundred (\$500.00) dollars and suspended for fifteen days (4/1/19 through 4/15/19) because a post-race urine sample taken from his horse, "Stone Cold Leader," that finished second in the 11th race at Lone Star Park on 9/21/18, tested positive for the Class 3B prohibited substance, Clenbuterol. First violation within 365 days.

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

The horse, "Stone Cold Leader," is hereby disqualified from the 11th race at Lone Star Park on 9/21/19. That race was a trial race for the Dash For Cash Derby, and because "Stone Cold Leader," is disqualified from the trial, he is therefore disqualified from the Dash For Cash Derby, race 10 on 10/6/18. The purses for both races are hereby ordered redistributed as follows:

Race 11 at Lone Star Park on 9/21/18:

1. (10) Lions Express
2. (7) Ivory Noche
3. (1) Ebrima
4. (6) JCM Dashn Fast
5. (9) Illusively Going
6. (2) Dynamic Jake
7. (8) JRS Eggs Runaway

 ANNE ALLEY

Dennis Sidener

 DENNIS SIDENER

Jerry Burgess

 JERRY BURGESS

Ruling #: LSP3513

- 8. (3) Eagle Streakin
- 9. (4) Prison Break Pilsner
- Unplaced: (5) Stone Cold Leader.

Race 10 at Lone Star Park on 10/6/18:

- 1. (1) EOS a Political Win
- 2. (2) Cartel Cupid
- 3. (3) T Velocity
- 4. (7) SR Shambles
- 5. (6) Lions Express (DQ from 3rd for interference).
- 6. (9) Ivory Noche
- 7. (10) JCM Dashn Fast
- 8. (5) Ebrima
- Unplaced: (8) Krash Course (DQ per ruling # LSP3503).
- Unplaced: (4) Stone Cold Leader.



ANNE ALLEY



DENNIS SIDENER



JERRY BURGESS

SOAH DOCKET NO. 476-19-3110

JOSEPH MICHAEL DAVIS,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
TEXAS RACING COMMISSION,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION
ON SUMMARY DISPOSITION**

Joseph Michael Davis (Petitioner) appealed Sam Houston Race Park (SHRP) Board of Stewards (Stewards) Ruling No. LSP 3513 to the Texas Racing Commission (Commission). The Stewards' ruling determined that one horse trained by Petitioner had participated in a race at Lone Star Race Park in Grand Prairie, Texas, on September 21, 2018, and that the horse's urine had tested positive for a Class 3B prohibited substance following the race. The Stewards suspended Petitioner's license for 15 days and imposed an administrative penalty of \$500, disqualified the horse, and redistributed the purse.

The Commission staff (Staff) filed a Motion for Summary Disposition on April 1, 2019. Petitioner did not file a response. The Administrative Law Judge (ALJ) found the evidence sufficient to support summary disposition, and issued an order on April 22, 2019, cancelling the hearing and closing the record. Based on the pleadings, the summary judgment evidence, and the applicable law, the ALJ finds that summary disposition should be granted in favor of Staff.

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.

The Stewards held an evidentiary hearing on February 14, 2019, on the alleged violation. On February 23, 2019, the Stewards issued a ruling, suspending Petitioner's license for 15 days

and fining him \$500.¹ Petitioner filed with the Commission a Notice of Appeal and Request for Stay Regarding Suspension and Fine on February 26, 2019.² Staff referred the appeal to the State Office of Administrative Hearings (SOAH) on February 28, 2019.

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.³ 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."⁴ 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.⁵ 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.⁶

The rules go on to state that "clenbuterol is prohibited and shall not be administered to a horse participating in racing at any time."⁷ Any horse that has a test specimen containing clenbuterol must be placed on the "Veterinarian's List" (List) for not less than 60 days and would have to test negative to be removed from the List.⁸

¹ Staff Ex. B.

² Staff Ex. N.

³ Tex. Rev. Civ. Stat. art. 179e (Act), 16 Tex. Admin. Code part 8. Effective April 1, 2019, the Act was re-codified and is now found in Texas Occupations Code ch. 2021. In this Proposal for Decision, the ALJ has cited to the version in effect when the underlying Stewards' ruling was made.

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

⁵ 16 Tex. Admin. Code § 319.302.

⁶ 16 Tex. Admin. Code § 319.3(e).

⁷ 16 Tex. Admin. Code § 319.3(f). The rules set out some exceptions to this rule which are not applicable in this case. 16 Tex. Admin. Code § 319.3(f)(2)-(3).

⁸ 16 Tex. Admin Code § 319.3(f)(1).

A horse may only be administered clenbuterol by a licensed veterinarian and under certain specified conditions. If those conditions are met, the horse will be placed on the List for 30 days following the date of administration of the drug as prescribed, and may not be removed from the List until it tests negative. A horse placed on the List may not be entered in a race until it has been removed from the List.⁹

The Commission's rules provide that an administrative penalty may be assessed against an individual who violates the Act or a Commission rule.¹⁰ The 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.¹¹ The Commission's rules state that if a race horse tests positive for a prohibited substance, the trainer may be assessed a penalty, the horse disqualified, the purse redistributed, and the horse declared ineligible to race for a period of time.¹² The Commission has adopted further guidelines for penalties (Guidelines).¹³ Under the Guidelines, if a horse tests positive for a Class 3B prohibited substance such as clenbuterol, the appropriate penalty is a 15-day license suspension, \$500 fine, and loss of the purse.¹⁴

A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.¹⁵ In an appeal, the petitioner has the burden of proving that the Stewards' ruling was clearly erroneous.¹⁶

⁹ 16 Tex. Admin. Code § 319.3(f)(2)-(3).

¹⁰ 16 Tex. Admin. Code § 323.101(a).

¹¹ Act § 3.07(b), 16 Tex. Admin. Code § 307.64(a).

¹² 16 Tex. Admin. Code § 319.304(a).

¹³ Staff Ex. M, Revised Equine Medication Classification Policy and Penalty Guidelines (Guidelines) effective Sept. 10, 2018.

¹⁴ Staff Ex. M.

¹⁵ 16 Tex. Admin. Code § 307.67.

¹⁶ 16 Tex. Admin. Code § 307.67(c).

In this case, Petitioner has alleged that the Stewards made an “error of law” and failed to follow the Commission’s rules.¹⁷ At the Stewards’ hearing, Petitioner argued that he was not given sufficient notice of the adoption of the rule prohibiting clenbuterol.¹⁸ An agency must publish notice of a proposed rule a minimum of 30 days in advance of the intended adoption date.¹⁹ Upon adopting the proposed rule, the agency publishes the rule in the Texas Register. The rule may become effective no sooner than 20 days following the filing of the adopted rule with the Texas Secretary of State.²⁰

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.²¹

III. DISCUSSION

A. Undisputed Facts

Petitioner is licensed by the Commission as an owner/trainer with license number 167229.²² On September 21, 2018, the horse named Stone Cold Leader, which was trained by Petitioner, participated in the 11th race at Lone Star Race Park in Grand Prairie, Texas, and finished in second place.²³ After the race, a urine sample was taken from Stone Cold Leader which was separated into two specimens.²⁴ On September 24, 2018, one-half of the urine sample taken from the horse following the race was sent to Texas Veterinary Medical Diagnostic Laboratory

¹⁷ Staff Ex. N (Petitioner’s Notice of Appeal).

¹⁸ Staff Ex. C.

¹⁹ Tex. Gov’t Code § 2001.023(a).

²⁰ Tex. Gov’t Code § 2001.036.

²¹ 1 Tex. Admin. Code § 155.505(a).

²² Staff Ex. J at 28.

²³ Staff Exs. I, J.

²⁴ Staff Ex. J at 22.

(Texas Lab).²⁵ On October 15, 2018, the Texas Lab reported that the sample tested positive for the Class 3B prohibited substance clenbuterol.²⁶ The second half of the sample was sent to the Ohio Analytical Toxicology Laboratory (Ohio Lab) for testing on October 25, 2018.²⁷ On December 3, 2018, the Ohio Lab reported that the second specimen also tested positive for clenbuterol.²⁸

After a hearing was conducted by the Stewards, a ruling was issued that found Petitioner in violation of 16 Texas Administrative Code §§ 311.104 (duty to ensure horse is drug-free), 319.3 (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race). Petitioner was assessed a \$500 penalty, his license was suspended for 15 days from April 1-15, 2019, and the horse was disqualified and the prize purse redistributed.

B. Petitioner's Evidence and Argument

Petitioner submitted no summary disposition evidence or argument. However, Staff submitted the recording of the testimony and argument submitted at the hearing before the Stewards.²⁹

At the Stewards' hearing, Petitioner argued that the Commission did not give trainers and owners enough time from the date of the adoption of the rule prohibiting clenbuterol (September 10, 2018) until the date of the race (September 21, 2018) to clear the clenbuterol from the horse's system. Petitioner compared Texas to other states, which he stated gave licensees three months or longer from the announcement of a prohibition on a substance to enforcement of the prohibition.³⁰ Petitioner submitted summaries of studies done on the effect of clenbuterol on horses suggesting (1) that it does not have much effect on performance and (2) possible reasons

²⁵ Staff Ex. J at 10.

²⁶ Staff Ex. J at 2.

²⁷ Staff Ex. J at 29.

²⁸ Staff Ex. J at 30-31.

²⁹ Staff Ex. C.

³⁰ Staff Ex. C.

for prolonged excretion in urine.³¹ In his Appeal, Petitioner stated that he was filing the appeal because of “Error of law by Stewards” and because the “[Stewards’] decision is contrary to Rules of Racing.”³²

C. Staff’s Evidence and Argument

Staff presented evidence in support of its motion showing that the amendment to 16 Texas Administrative Code § 319.3(f) prohibiting clenbuterol was proposed by the Commission at a June 12, 2018 open meeting, notice of which was published as required in the Texas Register.³³ The proposed rule was published in the Texas Register on June 29, 2018.³⁴ The rule was adopted on August 14, 2018, and filed with the Texas Secretary of State on August 15, 2018.³⁵ The rule was filed in the Texas Register, with an effective date of September 10, 2018.³⁶ Staff argued that the notice and comment period provided 90-days-notice before the race, which was sufficient for Petitioner’s horse to clear any clenbuterol in its system to a zero detection level. Furthermore, Staff noted that the Commission met the legal requirement for notice by adopting the rule more than 30 days (August 14, 2018) after it was published as a proposed rule (June 29, 2018),³⁷ and by giving it an effective date (September 10, 2018) of more than 20 days following the date it was filed with the Texas Secretary of State (August 15, 2018).³⁸

In support of its motion for summary disposition, Staff also submitted the documentary evidence from the Stewards’ hearing as well as the recording of that hearing.³⁹ Staff argued that, at the Stewards’ hearing, Petitioner did not contest the fact that his horse tested positive for

³¹ Staff Ex. L.

³² Staff Ex. N.

³³ Staff Ex. D.

³⁴ Staff Ex. E; *see* 43 Tex. Reg. 4291 (June 29, 2018).

³⁵ Staff Exs. E, G at 8; *see* 43 Tex. Reg. 5673 at 5680 (August 31, 2108).

³⁶ Staff Ex. G at 8.

³⁷ Tex. Gov’t Code § 2001.023(a).

³⁸ Tex. Gov’t Code § 2001.036.

³⁹ Staff Ex. C.

clenbuterol following the race. Rather, Staff submitted transcriptions of Petitioner's testimony to show that Petitioner based his appeal on the argument that the Commission did not provide sufficient time to allow his horse to clear the clenbuterol from its system.⁴⁰ In response, Staff contends that as a matter of law, based on the uncontested facts and summary disposition evidence, there is no genuine material fact issue regarding whether the Stewards' rulings were in clear error and the rulings should be upheld.

IV. ANALYSIS

The ALJ finds that there are no genuine issues of material fact and Staff is entitled to summary disposition on Petitioner's violations of 16 Texas Administrative Code §§ 311.104(b)(2) (duty to ensure horse is drug-free), 319.3(f) (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race). Staff is also entitled to summary disposition regarding the sanction of the \$500 penalty, the 15-day license suspension, and the disqualification of the horse and the prize purse redistribution.

Petitioner failed to establish any material issue of fact regarding whether the Stewards erred in finding that he violated 16 Texas Administrative Code §§ 311.104(b)(2), 319.3(f), and 319.302. The lab results showing the presence of clenbuterol in his horse's urine samples following the race on September 21, 2018, were not contested. The only issue raised by Petitioner's appeal was a legal issue: whether the Commission provided proper notice of the adoption and implementation of the rule prohibiting clenbuterol. As a matter of law, the evidence showed that the Commission complied with the notice requirements of the Texas Administrative Procedure Act.⁴¹ Petitioner did not make any argument, or cite any legal authority, to contradict or raise a fact issue regarding appropriate notice under the law.

Petitioner's undisputed violations support the penalties imposed by the Stewards. The Act grants the Stewards discretion to impose a penalty of up to \$25,000 and a suspension of up to five

⁴⁰ Staff Ex. C, Stewards' Hearing Recording at 20:15-33:15.

⁴¹ Tex. Gov't Code §§ 2001.023(a), .036.

years for unethical practices or violations of racing rules.⁴² The Guidelines adopted by the Commission support a 15-day license suspension, \$500 penalty, and loss of the race purse for these violations. As a matter of law, the sanction is not clearly erroneous given Petitioner's violations of the Commission rules. The scope of the ALJ's inquiry is limited to determining whether such a penalty is clearly in error. No material fact issue was raised regarding this question.

Accordingly, the ALJ finds that the Stewards' decision regarding Petitioner's violations of 16 Texas Administrative Code §§ 311.104(b)(2), 319.3(f), and 319.302, as well as the suspension and penalty imposed, is supported by the evidence presented, and there is no issue of material fact regarding whether the Stewards' holdings are clearly erroneous. Therefore, as a matter of law, Staff is entitled to summary disposition on those violations and the associated sanctions.

V. FINDINGS OF FACT

1. Joseph Michael Davis (Petitioner) is licensed by the Texas Racing Commission (Commission) as a trainer/owner under license number 167229.
2. On September 21, 2018, the horse named Cold Stone Leader, which was trained by Petitioner, participated in the 11th race at Lone Star Race Park in Grand Prairie, Texas, and finished in second place.
3. On September 24, 2018, one-half of a urine sample taken from Stone Cold Leader following the race was sent to Texas Veterinary Medical Diagnostic Laboratory (Texas Lab).
4. On October 15, 2018, the Texas Lab reported that the sample from Stone Cold Leader tested positive for the Class 3B prohibited substance clenbuterol.
5. The second half of Stone Cold Leader's sample was sent to the Ohio Analytical Toxicology Laboratory (Ohio Lab) for testing on October 25, 2018.
6. On December 3, 2018, the Ohio Lab reported that the second specimen also tested positive for clenbuterol.

⁴² See 16 Tex. Admin. Code § 307.64(a).

7. After a hearing was conducted by the Sam Houston Race Park (SHRP) Board of Stewards (Stewards), the Stewards issued a ruling (SHRP Ruling No. LSP3513) on February 23, 2019.
8. In SHRP Ruling No. LSP3513, the Stewards found Petitioner in violation of 16 Texas Administrative Code §§ 311.104(b)(2) (duty to ensure horse is drug-free), 319.3(f) (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race).
9. Petitioner was assessed a \$500 penalty, his license was suspended for 15 days from April 1-15, 2019, his horse was disqualified, and the prize purse was redistributed.
10. The Commission adopted 16 Texas Administrative Code § 319.3 (making clenbuterol a prohibited drug) on August 14, 2018, more than 30 days after the rule was published as a proposed rule on June 29, 2018.
11. The Commission gave 16 Texas Administrative Code § 319.3 (making clenbuterol a prohibited drug) an effective date of September 10, 2018, which is more than 20 days following the date it was filed with the Texas Secretary of State (August 15, 2018).
12. On February 26, 2019, Petitioner timely filed with the Commission a Notice of Appeal and Request for Stay Regarding Suspension and Fine.
13. Commission Staff referred the appeal to the State Office of Administrative Hearings (SOAH) on February 28, 2019.
14. On March 4, 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.
15. Staff filed a Motion for Summary Disposition, along with summary disposition evidence, on April 1, 2019. Petitioner did not file a response. Staff's summary judgement evidence was admitted into the record without objection.
16. The first page of Staff's Motion for Summary Disposition contained the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the judge to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits. See SOAH's rules at 1 Texas Administrative Code §155.505. These rules are available on SOAH's public website."
17. The Administrative Law Judge (ALJ) found the evidence sufficient to support summary disposition, and issued an order on April 22, 2019, cancelling the hearing on the merits and closing the record on April 22, 2019.

VI. CONCLUSIONS OF LAW

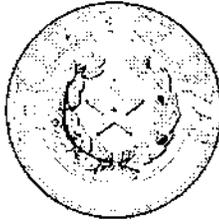
1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act. Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act) §§ 3.16, 7.04 (since re-codified at Tex. Occ. Code ch 2021).
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority 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. Texas Racing Act § 3.07(b); 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. The Commission shall refer a matter to SOAH if, after a reasonable time, the proceeding cannot be settled through agreement. 16 Tex. Admin. Code § 307.31(c).
8. 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).
9. Clenbuterol 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(f).
10. The positive findings by a chemist of a prohibited drug in the test specimens of Petitioner's horse collected on the day of the race, subject to the rules of the Commission relating to split specimens, is prima facie evidence that the prohibited drug was administered to the horse and was carried in the body of the horse while participating in the race. 16 Tex. Admin. Code § 319.3(e).
11. As a trainer, Petitioner violated Commission rules by failing to ensure that a horse running a race while in his care and custody was free from all prohibited drugs, chemicals, or other substances. 16 Tex. Admin. Code § 311.104(b)(2).
12. As a trainer, Petitioner violated Commission rules by failing to guard each horse in his custody to prevent the administration of a prohibited drug, chemical, or other substance. 16 Tex. Admin. Code § 319.302.

13. The Commission gave the required notice for adopting and establishing an effective date for 16 Texas Administrative Code § 319.3(f) (making clenbuterol a prohibited drug). Tex. Gov't Code §§ 2001.023(a); .036.
14. 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. Texas Racing Act § 3.07(b); 16 Tex. Admin. Code § 307.64(a).
15. 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).
16. As a matter of law, the Stewards' ruling that on September 21, 2018, Petitioner violated 16 Texas Administrative Code §§ 311.104(b)(2) (duty to ensure horse is drug-free), 319.3(f) (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race) was not clearly erroneous. 16 Tex. Admin. Code § 307.67(c).
17. As a matter of law, the Stewards' sanctions against Petitioner of a 15-day license suspension, \$500 penalty, and the disqualification of Petitioner's horse and redistribution of the purse were not clearly in error. Texas Racing Act § 3.07(b); 16 Tex. Admin. Code § 307.64(a), .69.
18. Staff is entitled to summary disposition upholding the Stewards' determination regarding Petitioner's violations of 16 Texas Administrative Code §§ 311.104(b)(2), 319.3(f), 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 May 6, 2019.



JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

May 20, 2019

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

VIA FACSIMILE 512/ 833-6907

RE: Docket No. 476-19-3110; Joseph Michael Davis v Texas Racing Commission

Dear Mr. Trout:

On May 6, 2019, I issued a Proposal for Decision on Summary Disposition (PFD) in this case. It contains my recommendation and underlying rationale.

On May 7, 2019, Oklahoma-licensed attorney Joe Mac Hayes filed a Notice of Intent to Seek Pro Hac Vice Admission in this Matter and a Motion to Set Aside Default Judgment on behalf of Petitioner Joseph Michael Davis. Staff of the Texas Racing Commission filed a response on May 8, 2019, opposing both the request for pro hac vice admission and the motion to set aside default. Because I have already issued a PFD, the State Office of Administrative Hearings no longer has jurisdiction to rule on either the request or the motion. Since both were filed within the time period for exceptions, I will provide comments in this exceptions letter addressing Mr. Hayes' motion, even though it was not expressly designated as exceptions. I will not comment on the request for pro hac vice, as it does not involve the findings in the PFD.

As Staff points out in its response, the PFD is not a default judgment governed by 1 Texas Administrative Code § 155.501; rather, it is a PFD on summary disposition governed by 1 Texas Administrative Code § 155.505:

Summary disposition shall be granted 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

SOAH DOCKET NO. 476-19-3110
EXCEPTIONS LETTER
PAGE NO. 2

of the issues expressly set out in the motion. *Summary disposition is not permitted based on the ground that there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at hearing.* (Emphasis added.)

The fact that Petitioner did not respond or present evidence does not change the burden of proof in a summary disposition proceeding. Staff was required to prove that it was entitled to summary disposition *as a matter of law*. As fully set out in the PFD, Staff met its burden of proving that there were no genuine issues as to any material fact and, as a matter of law, Staff was entitled to judgment in its favor.

For the above reasons, and as further detailed in the PFD, I do not recommend any changes to the PFD and I will not take further action to address the Motion to Set Aside Default Judgment.

Sincerely,



Joanne Summerhays
Administrative Law Judge

JS/db

cc: Virginia Fields, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 – **VIA FACSIMILE 512-833-6907**
Joseph Michael Davis, Post Office Box 589, Lawtell, LA, 70550 – **VIA REGULAR MAIL**
John Mac Hayes, 115 East 16th Street, Unit # 1, Tulsa, OK, 74119 – **VIA REGULAR MAIL**

IN RE: THE APPEAL OF

JOSEPH MICHAEL DAVIS FROM

STEWARDS RULING LSP 3513

§
§
§
§
§
§
§

BEFORE THE

TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On October 29, 2019, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of Joseph Michael Davis (“Petitioner”), trainer/owner license number 167229, from Stewards’ Ruling LSP 3513 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about February 19, 2019, the Sam Houston Race Park Board of Stewards issued Ruling LSP 3513, 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 “Cold Stone Leader” participating and placing in the eleventh race at Sam Houston Race Park on September 21, 2018, with the prohibited substance clenbuterol.

(b) In the ruling, Petitioner was fined \$500 and suspended for fifteen (15) days from April 1-15, 2019, the horse was disqualified and declared unplaced, and the purse was redistributed.

(c) On or about February 26, 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 March 14, 2019, the Commission's Executive Director denied Petitioner's request for a stay of the suspension.

(e) On or about May 6, 2019, based on Respondent's Motion for Summary Disposition, 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, is adopted in full. Stewards' Ruling LSP 3513 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 October 2019.

John T. Steen III, Chair

Ronald F. Ederer, Vice Chair

Tim Kleinschmidt

Steven Mach

Margaret Martin

Connie McNabb, DVM

Michael Moore

Robert C. Pate

Arvel Waight, Jr.

Texas Racing Commission
Ruling Report for Licensee

Ruling Date: 02/19/2019 Violation Date: 09/22/2018 Ruling #: LSP3514
 Licensee: ROLANDO ALMANZA Status: CLSD
 License # 157588 Type OWNER-TRAINER Status ACTIVE

Actions	Begin Date	End Date
SUSPENDED	04/01/2019	04/15/2019

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: 02/22/2019 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:

Owner - Trainer Rolando Almanza was duly noticed and appeared for a formal hearing before the Sam Houston Race Park Board of Stewards on 2/14/19.

Mr. Almanza was notified of two positive tests, both arising from trial races for the Dash For Cash Futurity that were run at Lone Star Park on 9/22/18. The trial races in question were race 8 and race 11. This ruling applies to race 8. Both cases were heard in a single hearing, pursuant to Mr. Almanza's request.

The Board of Stewards considered all of the testimony and documentary evidence presented during the hearing. Mr. Almanza is hereby fined five hundred (\$500.00) dollars and suspended for 15 days (4/1/19 through 4/15/19) because a post - race urine sample taken from his horse, "Mr. Corona Crystal," that won the 8th race at Lone Star Park on 9/22/18, tested positive for the Class 3B prohibited substance Clenbuterol. First violation within 365 days.

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

The horse, " Mr. Corona Crystal," is hereby disqualified from the 8th race at Lone Star Park on 9/22/18. That race was a trial race for the Dash For Cash Futurity, and because "Mr. Corona Crystal," is disqualified from the trial, he is therefore disqualified from the Dash For Cash Futurity, race 11 on 10/6/18. The purses for both races are hereby ordered redistributed as follows:

Race 8 at Lone Star Park on 9/22/18:

1. (5) New News
2. (3) Devil Of Ramadi
3. (2) The Kings Horse


 ANNE ALLEY


 DENNIS SIDENER


 JERRY BURGESS

Ruling #: LSP3514

- 4. (9) JT Litemyfire
- 5. (6) Watah Flash
- 6. (4) Royal Gray Corona
- 7. (8) Class With Flash
- 8. (1) Little Kool Baby
- Unplaced: (7) One Famous Stone (DQ per Ruling # LSP3510).
- Unplaced: (10) Mr. Corona Crystal.

Race 11 at Lone Star Park on 10/6/18:

- 1. (4) Paint Me a Sinner
- 2. (1) MPshinning
- 3. (6) Some Tempting Dash
- 4. (9) Parti Wagon
- 5. (5) FM Im A Zatanaz Too
- Scratched: (3) Washita Jack.
- Unplaced: (8) One Famous Stone (DQ per Ruling #LSP3510).
- Unplaced: (7) Acoronas Toast (DQ per Ruling #LSP3479).
- Unplaced (10) Im Sporting Rock (DQ per Ruling #LSP3511).
- Unplaced: (2) Mr. Corona Crystal.



ANNE ALLEY



DENNIS SIDENER



JERRY BURGESS

Texas Racing Commission
Ruling Report for Licensee

Ruling Date: 02/19/2019 Violation Date: 09/22/2018 Ruling #: LSP3515
 Licensee: ROLANDO ALMANZA Status: CLSD
 License # 157588 Type OWNER-TRAINER Status ACTIVE

Actions	Begin Date	End Date
SUSPENDED	04/01/2019	04/15/2019

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: 02/22/2019 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:

Owner - Trainer Rolando Almanza was duly noticed and appeared for a formal hearing before the Sam Houston Race Park Board of Stewards on 2/14/19.

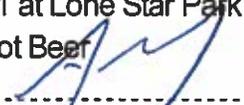
Mr. Almanza was notified of two positive tests, both arising from trial races for the Dash For Cash Futurity that were run at Lone Star Park on 9/22/19. The trial races in question were race 8 and race 11. This ruling applies to race 11. Both cases were heard in a single hearing, pursuant to Mr. Almanza's request.

The Board of Stewards considered all of the testimony and documentary evidence presented at the hearing. Mr. Almanza is hereby fined five hundred (\$500.00) dollars and suspended for 15 days (4/1/19 through 4/15/19) because a post - race urine sample taken from his horse, "Zoomin Patriot," that finished second in the 11th race at Lone Star Park on 9/22/19 tested positive for the Class 3B prohibited substance, Clenbuterol. In mitigation, this positive test was incurred on the same day as the test referred to in LSP3514. Therefore, both positives are considered first violations, and the suspensions imposed shall be concurrent.

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

The horse, "Zoomin Patriot," is hereby disqualified from the 11th race at Lone Star Park on 9/22/18. That race was a trial race for the Dash For Cash Futurity. "Zoomin Patriot," did not qualify for the final, but he did qualify for the consolation, the Dash For Cash Juvenile Stake. Because he is disqualified from the trials, he is disqualified from the Dash For Cash Juvenile Stake, race 9 on 10/6/18. The purses for both races are hereby ordered redistributed as follows:

Race 11 at Lone Star Park on 9/22/18:

1. (6) Hot Beer

 ANNE ALLEY


 DENNIS SIDENER

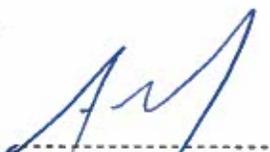

 JERRY BURGESS

Ruling #: LSP3515

- 2. (3) Leading Game
 - 3. (4) UR Jess Blue
 - 4. (1) Dashlilsecrets
 - 5. (7) Tempting Sass
 - 6. (5) Gentlemans Best
 - 7. (8) Eddies Badd Boy
 - 8. (10) PH Maria Felix
- Unplaced: (2) Im Sporting Rock (DQ per Ruling# LSP3511).
Unplaced: (9) Zoomin Patriot.

Race 9 at Lone Star Park on 10/6/18:

- 1. (4) Jordan Eagle
 - 2. (2) Moment of Fury
 - 3. (1) This Guys A Volcom
 - 4. (10) Fast Prize Drew
 - 5. (8) AHS Streakin Patriot
 - 6. (6) Abygale
 - 7. (7) Jakes Baby Wagon
- Scratched: New News & The Fisher Cartel.
Unplaced: (9) Zoomin Patriot.



ANNE ALLEY



DENNIS SIDENER



JERRY BURGESS

SOAH DOCKET NO. 476-19-3111

**ROLANDO ALMANZA,
Petitioner**

v.

**TEXAS RACING COMMISSION,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION
ON SUMMARY DISPOSITION**

Rolando Almanza (Petitioner) appealed Sam Houston Race Park (SHRP) Board of Stewards (Stewards) Rulings Nos. LSP3514 and LSP 3515 to the Texas Racing Commission (Commission). The Stewards' rulings determined that two horses trained by Petitioner had participated in races at Lone Star Race Park in Grand Prairie, Texas, and that both horses' urine had tested positive for a Class 3B prohibited substance following the races. The Stewards suspended Petitioner's license for 15 days and imposed an administrative penalty of \$500 for each horse, disqualified both horses from the races, and redistributed the purses.

The Commission staff (Staff) filed a Motion for Summary Disposition on April 1, 2019. Petitioner did not file a response. The Administrative Law Judge (ALJ) found the evidence sufficient to support summary disposition in favor of Staff, and issued an order on April 22, 2019, cancelling the hearing and closing the record. Based on the pleadings, the summary judgment evidence, and the applicable law, the ALJ finds that summary disposition should be granted in favor of Staff.

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.

The Stewards held a joint evidentiary hearing on February 14, 2019, on the alleged violations for both horses. On February 23, 2019, the Stewards issued two rulings, one for each horse, suspending Petitioner's license for 15 days¹ and fining him \$500 under each ruling. Petitioner timely filed with the Commission a Notice of Appeal and Request for Stay Regarding Suspension and Fine on February 26, 2019.² Staff referred the appeal to the State Office of Administrative Hearings (SOAH) on February 28, 2019.

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.³ 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."⁴ 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.⁵ 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.⁶

The rules go on to state that "clenbuterol is prohibited and shall not be administered to a horse participating in racing at any time."⁷ Any horse that has a test specimen containing

¹ The suspensions were to run concurrently. Staff Ex. B.

² Staff Ex. R.

³ Tex. Rev. Civ. Stat. art. 179e (Act); 16 Tex. Admin. Code part 8. Effective April 1, 2019, the Act was re-codified and is now found in Texas Occupations Code ch. 2021. In this Proposal for Decision, the ALJ has cited to the version in effect when the underlying Stewards' ruling was made.

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

⁵ 16 Tex. Admin. Code § 319.302.

⁶ 16 Tex. Admin. Code § 319.3(e).

⁷ 16 Tex. Admin. Code § 319.3(f). The rules set out some exceptions to this rule which are not applicable in this case. 16 Tex. Admin. Code § 319.3(f)(2)-(3).

clenbuterol must be placed on the “Veterinarian’s List” (List) for not less than 60 days and would have to test negative to be removed from the List.⁸

A horse may only be administered clenbuterol by a licensed veterinarian and under certain specified conditions. If those conditions are met, the horse will be placed on the List for 30 days following the date of administration of the drug as prescribed, and may not be removed from the List until it tests negative. A horse placed on the List may not be entered in a race until it has been removed from the List.⁹

The Commission’s rules provide that an administrative penalty may be assessed against an individual who violates the Act or a Commission rule.¹⁰ The 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.¹¹ The Commission’s rules state that if a race horse tests positive for a prohibited substance, the trainer may be assessed a penalty, the horse disqualified, and the purse redistributed, and the horse may be declared ineligible to race for a period of time.¹² The Commission has adopted further guidelines for penalties (Guidelines).¹³ Under the Guidelines, if a horse tests positive for a Class 3B prohibited substance such as clenbuterol, the appropriate penalty is a 15-day license suspension, \$500 fine, and loss of the purse.¹⁴

⁸ 16 Tex. Admin Code § 319.3(f)(1).

⁹ 16 Tex. Admin. Code § 319.3(f)(2)-(3).

¹⁰ 16 Tex. Admin. Code § 323.101(a).

¹¹ Act § 3.07(b); 16 Tex. Admin. Code § 307.64(a).

¹² 16 Tex. Admin. Code § 319.304(a).

¹³ Staff Ex. N, Revised Equine Medication Classification Policy and Penalty Guidelines (Guidelines), effective Sept. 10, 2018.

¹⁴ Staff Ex. N.

A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.¹⁵ In an appeal, the petitioner has the burden of proving that the Stewards' ruling was clearly erroneous.¹⁶

In this case, Petitioner has alleged that the Stewards made an "error of law" and failed to follow the Commission's rules.¹⁷ At the Stewards' hearing, Petitioner argued that he was not given sufficient notice of the adoption of the rule prohibiting clenbuterol.¹⁸ An agency must publish notice of a proposed rule a minimum of 30 days in advance of the intended adoption date.¹⁹ Upon adopting the proposed rule, the agency publishes the rule in the Texas Register. The rule may become effective no sooner than 20 days following the filing of the adopted rule with the Texas Secretary of State.²⁰

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.²¹

III. DISCUSSION

A. Undisputed Facts

1. Mr. Corona Crystal (SHRP No. LSP3514)

¹⁵ 16 Tex. Admin. Code § 307.67.

¹⁶ 16 Tex. Admin. Code § 307.67(c).

¹⁷ Staff Ex. R (Petitioner's Notice of Appeal of SHRP Nos. LSP3514 and LSP3515).

¹⁸ Staff Ex. C.

¹⁹ Tex. Gov't Code § 2001.023(a).

²⁰ Tex. Gov't Code § 2001.036.

²¹ 1 Tex. Admin. Code § 155.505(a).

Petitioner is licensed by the Commission as an owner/trainer with license number 157588.²² On September 22, 2018, the horse named Mr. Corona Crystal, which was trained by Petitioner, participated in the eighth race at Lone Star Race Park in Grand Prairie, Texas, and finished in first place.²³ On September 24, 2018, one-half of a urine sample taken from the horse following the race was sent to Texas Veterinary Medical Diagnostic Laboratory (Texas Lab). On October 15, 2018, the Texas Lab reported that the sample tested positive for the Class 3B prohibited substance clenbuterol.²⁴ The second half of the sample was sent to the Ohio Analytical Toxicology Laboratory (Ohio Lab) for testing on October 25, 2018. On November 20, 2018, the Ohio Lab reported that the second specimen also tested positive for clenbuterol.²⁵

After a hearing was conducted by the Stewards, a ruling was issued that found Petitioner in violation of 16 Texas Administrative Code §§ 311.104 (duty to ensure horse is drug-free), 319.3 (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race). Petitioner was assessed a \$500 penalty, his license was suspended for 15 days from April 1-15, 2019, and the horse was disqualified and the prize purse redistributed.

2. Zoomin Patriot (SHRP No. LSP3515)

On September 22, 2018, the horse Zoomin Patriot, which was trained by Petitioner, participated in the eleventh race at Lone Star Race Park in Grand Prairie, Texas, and placed second.²⁶ On September 24, 2018, one half of a urine sample taken from the horse following the race was sent to the Texas Lab. On October 15, 2018, the Texas Lab reported that the sample tested positive for the Class 3B prohibited substance clenbuterol.²⁷ The second half of the sample

²² Staff Ex. J at 28.

²³ Staff Exs. I, J.

²⁴ Staff Ex. J at 2.

²⁵ Staff Ex. J at 33.

²⁶ Staff Exs. O, P.

²⁷ Staff Ex. P at 2.

was sent to the Ohio Lab for testing on October 25, 2018. On November 20, 2018, the Ohio Lab reported that the second specimen also tested positive for clenbuterol.²⁸

After a hearing was conducted by the Stewards, a ruling was issued on February 23, 2019, that found Petitioner in violation of 16 Texas Administrative Code §§ 311.104 (duty to ensure horse is drug-free), 319.3 (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race). Petitioner was assessed a \$500 penalty, his license was suspended for 15 days from April 1-15, 2019, to run concurrently with his suspension for Mr. Corona Crystal, Zoomin Patriot was disqualified, and the prize purse was redistributed.

B. Petitioner's Evidence and Argument

Petitioner submitted no summary disposition evidence or argument. However, Staff submitted the recording of the testimony and argument submitted at the hearing before the Stewards.²⁹

At the Stewards' hearing, Petitioner argued that the Commission did not give trainers and owners enough time from the date of the adoption of the rule prohibiting clenbuterol (September 10, 2018) until the date of the races (September 22, 2018) to clear the clenbuterol from the horses' systems. Petitioner compared Texas to other states, which he stated gave licensees three months or longer from the announcement of a prohibition on a substance to enforcement of the prohibition.

C. Staff's Evidence and Argument

Staff presented evidence in support of its motion showing that the amendment to 16 Texas Administrative Code § 319.3 prohibiting clenbuterol was proposed by the Commission at a

²⁸ Staff Ex. P at 30-31.

²⁹ Staff Ex. C.

June 12, 2018 open meeting, notice of which was published as required in the Texas Register.³⁰ The proposed rule was published in the Texas Register on June 29, 2018.³¹ The rule was adopted on August 14, 2018, and filed with the Texas Secretary of State on August 15, 2018.³² The rule was filed in the Texas Register, with an effective date of September 10, 2018.³³ Staff argued that the notice and comment period provided 90 days' notice before the race, which was sufficient for Petitioner's horses to clear any clenbuterol in their systems to a zero detection level. Furthermore, Staff noted that the Commission met the legal requirement for notice by adopting the rule more than 30 days (August 14, 2018) after it was published as a proposed rule (June 29, 2018),³⁴ and by giving it an effective date (September 10, 2018) of more than 20 days following the date it was filed with the Texas Secretary of State (August 15, 2018).³⁵

In support of its motion for summary disposition, Staff also submitted the documentary evidence from the Stewards' hearing as well as the recording of that hearing.³⁶ Staff argued that, at the Stewards' hearing, Petitioner did not contest the fact that his horses tested positive for clenbuterol following the races. Rather, Staff submitted transcriptions of Petitioner's testimony to show that Petitioner based his appeal on the argument that the Commission did not provide sufficient time to allow his horses to clear the clenbuterol from their systems.³⁷ In response, Staff contends that as a matter of law, based on the uncontested facts and summary disposition evidence, there is no genuine material fact issue regarding whether the Stewards' rulings were in clear error and the rulings should be upheld.

³⁰ Staff Ex. D.

³¹ Staff Ex. E; *see* 43 Tex. Reg. 4291 (June 29, 2018).

³² Staff Exs. E, G at 8; *see* 43 Tex. Reg. 5673 at 5680 (August 31, 2108).

³³ Staff Ex. G at 8.

³⁴ Tex. Gov't Code § 2001.023(a).

³⁵ Tex. Gov't Code § 2001.036.

³⁶ Staff Ex. C.

³⁷ Staff Ex. C, Stewards' Hearing Recording at 19:11-22:35, 30:40-35:30.

IV. ANALYSIS

The ALJ finds that there are no genuine issues of material fact and Staff is entitled to summary disposition on Petitioner's violations of 16 Texas Administrative Code §§ 311.104(b)(2) (duty to ensure horse is drug-free), 319.3(f) (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race). Staff is also entitled to summary disposition regarding the sanctions of the \$500 penalties, the 15-day license suspension, and the disqualifications and the prize purse redistributions.

Petitioner failed to establish any material issue of fact regarding whether the Stewards were clearly erroneous in finding that he violated 16 Texas Administrative Code §§ 311.104(b)(2), 319.3(f), and 319.302. The lab results showing the presence of clenbuterol in his horses' samples following the races on September 22, 2018, were not contested. The only issue raised by Petitioner's appeal was a legal issue: whether the Commission provided proper notice of the adoption and implementation of the rule prohibiting clenbuterol. As a matter of law, the evidence showed that the Commission complied with the notice requirements of the Texas Administrative Procedure Act.³⁸ Petitioner did not make any argument, or cite any legal authority, to contradict the summary disposition evidence or raise a fact issue regarding appropriate notice under the law.

Petitioner's undisputed violations support the penalties imposed by the Stewards. The Act grants the Stewards discretion 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.³⁹ The Guidelines adopted by the Commission support a 15-day license suspension, \$500 penalty, and loss of the race purse for these violations. Nothing in the record suggests that the sanction is clearly erroneous given Petitioner's violations of the Commission rules. The scope of the ALJ's inquiry is limited to determining whether such a penalty is clearly in error. No material fact issue was raised regarding this question.

³⁸ Tex. Gov't Code §§ 2001.023(a), .036.

³⁹ See 16 Tex. Admin. Code § 307.64(a).

Accordingly, the ALJ finds that the Stewards' decision regarding Petitioner's violations of 16 Texas Administrative Code §§ 311.104(b)(2), 319.3(f), and 319.302, as well as the suspension and penalty imposed, is supported by the evidence presented, and there is no issue of material fact regarding whether the Stewards' holdings are clearly erroneous. Therefore, Staff is entitled to summary disposition on those violations and the associated sanctions.

V. FINDINGS OF FACT

1. Rolando Almanza (Petitioner) is licensed by the Texas Racing Commission (Commission) as a trainer/owner under license number 157588.
2. On September 22, 2018, the horse named Mr. Corona Crystal, which was trained by Petitioner, participated in the eighth race at Lone Star Race Park in Grand Prairie, Texas, and finished in first place.
3. On September 24, 2018, one-half of a urine sample taken from Mr. Corona Crystal following the race was sent to Texas Veterinary Medical Diagnostic Laboratory (Texas Lab).
4. On October 15, 2018, the Texas Lab reported that the first Mr. Corona Crystal sample tested positive for the Class 3B prohibited substance clenbuterol.
5. The second half of the Mr. Corona Crystal sample was sent to the Ohio Analytical Toxicology Laboratory (Ohio Lab) for testing on October 25, 2018.
6. On November 20, 2018, the Ohio Lab reported that the second Mr. Corona Crystal specimen also tested positive for clenbuterol.
7. On September 22, 2018, the horse Zoomin Patriot, which was also trained by Petitioner, participated in the eleventh race at Lone Star Race Park in Grand Prairie, Texas, and placed second.
8. On September 24, 2018, one-half of a urine sample taken from Zoomin Patriot following the race was sent to the Texas Lab.
9. On October 15, 2018, the Texas Lab reported that the first Zoomin Patriot sample tested positive for the Class 3B prohibited substance clenbuterol.
10. The second half of the Zoomin Patriot sample was sent to the Ohio Lab for testing on October 25, 2018.
11. On November 20, 2018, the Ohio Lab reported that the second specimen from Zoomin Patriot also tested positive for clenbuterol.

12. After a joint hearing was conducted by the Sam Houston Race Park (SHRP) Board of Stewards (Stewards), the Stewards issued two rulings, one on Mr. Crystal Corona (SHRP Ruling No. LSP3514) and one on Zoomin Patriot (SHRP Ruling No. LSP3515), on February 23, 2019.
13. In each ruling, the Stewards found Petitioner in violation of 16 Texas Administrative Code §§ 311.104 (duty to ensure horse is drug-free), 319.3 (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race).
14. In each ruling, Petitioner was assessed a \$500 penalty, his license was suspended for 15 days from April 1-15, 2019, (to run concurrently), each horse was disqualified, and each prize purse was redistributed.
15. The Commission adopted 16 Texas Administrative Code § 319.3(f) (making clenbuterol a prohibited drug) on August 14, 2018, more than 30 days after the rule was published as a proposed rule on June 29, 2018.
16. The Commission gave 16 Texas Administrative Code § 319.3 (making clenbuterol a prohibited drug) an effective date of September 10, 2018, which is more than 20 days following the date it was filed with the Texas Secretary of State (August 15, 2018).
17. On February 26, 2019, Petitioner filed an appeal of the Stewards' rulings SHRP No. LSP3514 and SHRP No. LSP3515 with the Commission.
18. Commission Staff referred the appeals to the State Office of Administrative Hearings (SOAH) on February 28, 2019.
19. On March 4, 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.
20. Staff filed a Motion for Summary Disposition, along with summary disposition evidence, on April 1, 2019. Despite receiving notice of the motion, Petitioner did not file a response. Staff's summary judgement evidence was admitted into the record without objection.
21. The first page of Staff's Motion for Summary Disposition contained the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the judge to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits. See SOAH's rules at 1 Texas Administrative Code §155.505. These rules are available on SOAH's public website."

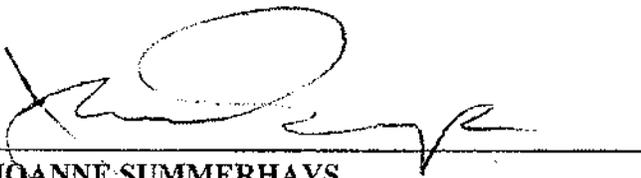
22. The Administrative Law Judge (ALJ) found the evidence sufficient to support summary disposition, and issued an order on April 22, 2019, cancelling the hearing on the merits and closing the record on April 22, 2019.

VI. CONCLUSIONS OF LAW

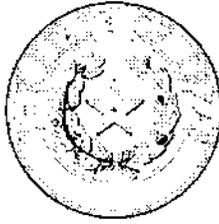
1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act. Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act) §§ 3.16, 7.04 (since re-codified at Tex. Occ. Code ch 2021).
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority 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. Texas Racing Act § 3.07(b); 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. The Commission shall refer a matter to SOAH if, after a reasonable time, the proceeding cannot be settled through agreement. 16 Tex. Admin. Code § 307.31(c).
8. 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).
9. Clenbuterol 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(f).
10. The positive findings by a chemist of a prohibited drug in the test specimens of Petitioner's horses collected on the day of the races, subject to the rules of the Commission relating to split specimens, is prima facie evidence that the prohibited drug was administered to the horses and was carried in the bodies of the horses while participating in the races. 16 Tex. Admin. Code § 319.3(e).
11. As a trainer, Petitioner violated Commission rules by failing to ensure that a horse running a race while in his care and custody was free from all prohibited drugs, chemicals, or other substances. 16 Tex. Admin. Code § 311.104(b)(2).

12. As a trainer, Petitioner violated Commission rules by failing to guard each horse in his custody to prevent the administration of a prohibited drug, chemical, or other substance. 16 Tex. Admin. Code § 319.302.
13. The Commission gave the required notice for adopting and establishing an effective date for 16 Texas Administrative Code § 319.3(f) (making clenbuterol a prohibited drug). Tex. Gov't Code §§ 2001.023(a); .036.
14. 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. Texas Racing Act § 3.07(b); 16 Tex. Admin. Code § 307.64(a).
15. 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).
16. As a matter of law, the Stewards' rulings that on September 22, 2018, Petitioner violated 16 Texas Administrative Code §§ 311.104(b)(2) (duty to ensure horse is drug-free), 319.3(f) (prohibiting use of clenbuterol), and 319.302 (duty to guard horse prior to the race) were not clearly erroneous. 16 Tex. Admin. Code § 307.67(c).
17. As a matter of law, the Stewards' sanctions of two concurrent 15-day license suspensions, two \$500 penalties, and the disqualification of each horse and redistribution of each purse were not clearly in error. Texas Racing Act § 3.07(b); 16 Tex. Admin. Code §§ 307.64(a), .69.
18. Staff is entitled to summary disposition upholding the Stewards' determination regarding Petitioner's violations of 16 Texas Administrative Code §§ 311.104(b)(2), 319.3(f), 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 May 6, 2019.



**JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

May 20, 2019

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

VIA FACSIMILE 512/ 833-6907

RE: Docket No. 476-19-3111; Rolando Almanza v Texas Racing Commission

Dear Mr. Trout:

On May 6, 2019, I issued a Proposal for Decision on Summary Disposition (PFD) in this case. It contains my recommendation and underlying rationale.

On May 7, 2019, Oklahoma-licensed attorney Joe Mac Hayes filed a Notice of Intent to Seek Pro Hac Vice Admission in this Matter and a Motion to Set Aside Default Judgment on behalf of Petitioner Rolando Almanza. Staff of the Texas Racing Commission filed a response on May 8, 2019, opposing both the request for pro hac vice admission and the motion to set aside default. Because I have already issued a PFD, the State Office of Administrative Hearings no longer has jurisdiction to rule on either the request or the motion. Since both were filed within the time period for exceptions, I will provide comments in this exceptions letter addressing Mr. Hayes' motion, even though it was not expressly designated as exceptions. I will not comment on the request for pro hac vice admission, as it does not involve the findings in the PFD.

As Staff points out in its response, the PFD is not a default judgment governed by 1 Texas Administrative Code § 155.501; rather, it is a PFD on summary disposition governed by 1 Texas Administrative Code § 155.505:

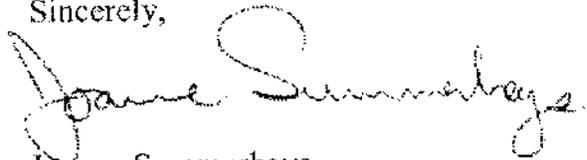
Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some

of the issues expressly set out in the motion. *Summary disposition is not permitted based on the ground that there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at hearing.* (Emphasis added.)

The fact that Petitioner did not respond or present evidence does not change the burden of proof in a summary disposition proceeding. Staff was required to prove that it was entitled to summary disposition *as a matter of law*. As fully set out in the PFD, Staff met its burden of proving that there were no genuine issues as to any material fact and, as a matter of law, Staff was entitled to judgment in its favor.

For the above reasons, and as further detailed in the PFD, I do not recommend any changes to the PFD and I will not take further action to address the Motion to Set Aside Default Judgment.

Sincerely,



Joanne Summerhays
Administrative Law Judge

JS/db

cc: Virginia Fields, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 – **VIA FACSIMILE 512-833-6907**
Rolando Almanza, 333 E. Lakewood Blvd, Lot 111, Holland, MI, 49424 – **VIA REGULAR MAIL**
John Mac Hayes, 115 East 16th Street, Unit # 1, Tulsa, OK, 74119 – **VIA REGULAR MAIL**

IN RE: THE APPEAL OF

ROLANDO ALMANZA FROM

STEWARDS RULINGS
LSP 3514 & LSP 3515

§
§
§
§
§
§
§

BEFORE THE

TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On October 29, 2019, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of Rolando Almanza (“Petitioner”), trainer/owner license number 157588, from Stewards’ Rulings LSP 3514 and LSP 3515 (“the rulings”). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about February 19, 2019, the Sam Houston Race Park Board of Stewards issued Ruling LSP 3514, 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 “Mr. Corona Crystal” participating and placing first in the eighth race at Lone Star Race Park on September 22, 2018, with the prohibited substance clenbuterol.

(b) In the ruling, Petitioner was fined \$500 and suspended for fifteen (15) days from April 1-15, 2019, the horse was disqualified and declared unplaced, and the purse was redistributed.

(c) On or about February 19, 2019, the Sam Houston Race Park Board of Stewards issued Ruling LSP 3515, 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 “Zoomin Patriot” participating and placing in the eleventh race

at Lone Star Race Park on September 22, 2018, with the prohibited substance clenbuterol.

(d) In the ruling, Petitioner was fined \$500 and suspended for fifteen (15) days from April 1-15, 2019, the horse was disqualified and declared unplaced, and the purse was redistributed.

(e) On or about February 26, 2019, Petitioner filed an appeal of the rulings with the Commission and requested a stays of the suspension while the appeal was pending.

(f) On or about March 14, 2019, the Commission's Executive Director denied Petitioner's request for a stay of the suspension.

(g) On or about May 6, 2019, based on Respondent's Motion for Summary Disposition, the administrative law judge issued a proposal for decision upholding the Stewards' rulings finding no clear error.

IT IS HEREBY ORDERED that the proposal for decision attached to this order is adopted in full. Stewards' Ruling LSP 3514 and Stewards' Ruling LSP 3515 are 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 October 2019.

John T. Steen III, Chair

Ronald F. Ederer, Vice Chair

Tim Kleinschmidt

Steven Mach

Margaret Martin

Connie McNabb, DVM

Michael Moore

Robert C. Pate

Arvel Waight, Jr.

VI. PROCEEDINGS ON OCCUPATIONAL LICENSES

C. The proposal for decision in SOAH
No. 0476-19-2614, Sigifredo Gonzalez
Jr. v. Texas Racing Commission

This item has been reset to the next Commission meeting.

VII. 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 open an executive session to review security plans and management, concession, and totalisator contracts.

VIII. SCHEDULING OF NEXT COMMISSION MEETING

IX. ADJOURN