

1 **Sec. 309.51. Designation of Active and Inactive Racetrack**
2 **Licenses**

3 (a) Initial Designation. The Commission shall designate a
4 racetrack license as either active or inactive as those
5 terms are defined in subsection (b). The Commission shall
6 make the initial designation for each racetrack license not
7 later than September 1, 2012.

8 (b) Definitions.

9 (1) "Active-Operating" means the license holder
10 conducted live racing events at the racetrack during the
11 previous State Fiscal Year and has been granted future live
12 race dates.

13 (2) "Active-Other" means the license holder has
14 applied for and received pending live race dates under
15 §303.41, Allocation of Race Dates, and taken the following
16 actions to demonstrate good faith efforts to conduct live
17 racing:

18 (A) is presently conducting pre-opening
19 simulcasting;

20 (B) has demonstrated that the conduct of
21 simulcast ~~or and~~ live racing ~~at its racetrack facility~~
22 is imminent. ~~Factors the Commission may consider~~
23 ~~include, but are not limited to, the license holder's:~~
24 ~~by completing the following:~~

25 (i) securing sufficient financial
26 commitments to fund construction of the racetrack
27 facility;

28 ~~(ii)-(i) securing purchasing~~ the real
29 property of the designated racetrack ~~location for~~
30 ~~which the racetrack license was granted, either~~

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1 by purchase or through a long-term lease of 20
2 years or more; site;

3 (iii) entering into contracts for the
4 construction of the simulcasting and racetrack
5 facilities;

6 (iv) ~~(iii)~~ securing Commission approval of the
7 racing facility's construction plans;

8 (v) ~~(iii)~~ securing all permits and utilities
9 necessary for the construction of the racing
10 facilities;

11 ~~(iv) providing to the Commission executed~~
12 ~~contracts for the construction of the racing~~
13 ~~facilities;~~ (vi) beginning and sustaining
14 construction of the simulcasting or live racing
15 facilities; and

16 (vii) providing to the Commission a
17 construction and operations management schedule
18 demonstrating that simulcasting is imminent ~~will~~
19 ~~begin within four months of the designation~~ and
20 that the facilities will be ready to conduct live
21 racing by the beginning of the approved live race
22 dates; or

23 (C) voluntarily providing a bond under subsection
24 (e) of this section to ensure that the license holder
25 conducts pre-opening simulcasting and completes the
26 pending allocated live race dates.

27 (3) "Inactive" means the license holder does not meet
28 the requirements for the racetrack license to be designated
29 as Active-Operating or Active-Other.

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1 (c) Subsequent Designation. After the initial racetrack
2 designation is made under subsection (a) of this section,
3 the Commission may change the designation of the racetrack
4 license at any time if the facts that supported the current
5 designation change.

6 (d) Racetrack Reviews.

7 (1) Racetracks designated "Active-Operating" or
8 "Active-Other" will undergo an ownership and management
9 review every five years pursuant to §6.06(k) of the Act.

10 (2) Racetracks designated "Inactive" will undergo an
11 annual review described by §309.52 of this Chapter.

12 (e) Bonds.

13 (1) To be designated as Active-Other under
14 subparagraph (b) (2) (C) of this section, a license holder
15 shall submit a bond by September 1 of the State Fiscal Year
16 for which it is offered.

17 (2) The amount of the bond for the State Fiscal Year
18 beginning September 1, 2012, and each year thereafter is
19 \$400,000.

20 (3) Return or Forfeiture of Bond.

21 (A) If the racetrack conducts pre-opening
22 simulcasting during the first fiscal year of the bond,
23 the bond shall be retained for an additional fiscal
24 year or until the racetrack completes its live race
25 dates. Upon successful completion of all of the
26 racetrack's live race dates allocated for the first
27 two fiscal years of the bond, the Commission shall
28 return the bond to the license holder.

29 (B) If the racetrack does not conduct pre-opening
30 simulcasting during the initial fiscal year of the

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1 bonding period, the bond shall be forfeited on August
2 31 of the same fiscal year.

3 (C) If the racetrack conducts pre-opening
4 simulcasting during the first fiscal year but fails to
5 conduct all of its allocated live race dates during
6 the first two fiscal years of the bond, the bond shall
7 be forfeited on August 31 of the second fiscal year.

8 (D) A bond is automatically forfeited on the date
9 provided in this subsection unless the Commission
10 takes action in an open meeting to return the bond or
11 extend the date of automatic forfeiture.

12 (E) For purposes of this paragraph, live race
13 dates do not include those race dates that have been
14 excused by the executive secretary under §303.41(h) of
15 Chapter 303, General Provisions.

16 (4) The bond of a horse racetrack that is forfeited
17 under this section shall accrue to the Escrowed Purse
18 Account under §321.509 of Chapter 321 and shall be
19 distributed in accordance with that section. The bond of a
20 greyhound racetrack that is forfeited under this section
21 shall accrue to the state greyhound breed registry and be
22 distributed through the Accredited Texas Bred Program.

23 (5) If an Active-Other racetrack forfeits a bond under
24 this section, the Commission shall review and may change
25 the license's designation at a regularly scheduled meeting
26 to be held within the following four months of the bond
27 forfeiture.

28 (f) Failure to Conduct Granted Live Race Dates.
29 Except as excused by the executive secretary under
30 §303.41(h) of Chapter 303, General Provisions, if an

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1 Active-Operating or an Active-Other racetrack fails to
2 conduct any live race dates granted to it by the
3 Commission, the Commission shall review and may change the
4 license's designation at a regularly scheduled meeting to
5 be held within the following four months. This subsection
6 does not apply to an Active-Other racetrack that has
7 provided a bond under subsection (e) of this section.

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1 **Sec. 309.52. Review and Renewal of Inactive Racetrack**
2 **Licenses.**

3 (a) The Commission shall annually review each inactive
4 racetrack license. At the conclusion of each review, the
5 Commission may:

6 (1) designate the license as Active-Operating;

7 (2) designate the license as Active-Other;

8 (3) renew the license as Inactive; or

9 (4) refer the inactive racetrack license to the State

10 Office of Administrative Hearings for an evidentiary
11 hearing and Proposal for Decision as to whether the
12 Commission should refuse to renew the license.

13 (b) Notice of Review

14 The executive secretary shall provide written notice to an
15 inactive license holder that the license holder must file
16 an application for renewal. Such notice must be provided
17 by certified or registered mail no later than June 1 of
18 each year the license remains in effect and is designated
19 as inactive. The first such notice shall be sent by the
20 executive secretary by June 1, 2013. The notice must
21 specify the procedure for filing an application for renewal
22 and the information to be included in the application. The
23 application for renewal shall be filed on or before July 1
24 following the receipt of the notice. The first application
25 for renewal shall be filed by July 1, 2013, with additional
26 applications filed annually on July 1 thereafter. The
27 executive secretary may extend the deadline for filing the
28 renewal application. The timely filing of an application
29 for renewal extends the license until the Commission renews
30 or refuses to renew the license. If an inactive racetrack

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1 license holder does not file a timely application for
2 renewal, the Commission may either renew the license or
3 refer the license to the State Office of Administrative
4 Hearings for an evidentiary hearing and Proposal for
5 Decision as to whether the Commission should refuse to
6 renew the license.

7 (c) Application for Renewal.

8 (1) Each inactive racetrack license holder must submit
9 an application for renewal on a form prescribed by the
10 executive secretary.

11 (2) The applicant must submit one original and two
12 copies of the application and any supplemental documents.

13 (3) The applicant must swear before a notary public to
14 the truth and validity of the information in the
15 application and its supplemental documents. If the
16 applicant is not an individual, the chief executive officer
17 of the applicant must swear before a notary public to the
18 truth and validity of the information in the application
19 and its supplemental documents.

20 (4) The applicant must state the name, address, and
21 telephone number of an individual designated by the
22 applicant to be the primary contact person for the
23 Commission during the review and renewal process.

24 (d) Renewal Criteria. In determining whether to renew an
25 inactive racetrack license, the Commission shall consider:

26 (1) the inactive racetrack license holder's:

27 (A) financial stability;

28 (B) ability to conduct live racing;

29 (C) ability to construct and maintain a racetrack
30 facility;

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1 (D) other good faith efforts to conduct live racing;

2 and

3 (2) other necessary factors considered in the issuance
4 of the original license.

5 (3) For purposes of this section, the Commission will

6 consider actions that demonstrate good faith efforts
7 towards conducting live racing, although live racing is not
8 imminent. Actions the Commission may consider include, but
9 are not limited to: , but is not limited to, the following
10 actions as evidence that a license holder is making good
11 faith efforts to conduct live racing:

12 (A) securing sufficient financial commitments to
13 fund construction of the racetrack facility;

14 (B) ~~securing purchasing~~ the real property of the
15 designated location for which the racetrack license
16 was granted, either by purchase or through a long-term
17 lease of 20 years or more;

18 (C) entering into contracts for the construction of
19 the simulcasting and racetrack facilities;

20 (D) securing Commission approval of ~~the racing~~
21 facility's construction plans;

22 (E) ~~securing permits and utilities necessary for the~~
23 construction of the racing facilities; ~~securing~~
24 permits from regulatory authorities concerning pre-
25 construction matters such as utilities and road
26 improvements; and

27 (F) beginning and sustaining construction of the
28 simulcasting ~~or and~~ live racing facilities.

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1 (e) Nonrenewal. The Commission may refuse to renew an
2 inactive racetrack license if, after notice and a hearing,
3 the Commission determines that:

4 (1) renewal of the license is not in the best
5 interests of the racing industry or the public; or

6 (2) the license holder has failed to make a good faith
7 effort to conduct live racing.

8 (f) For purposes of this section, the Commission will
9 consider, but is not limited to, the following factors as
10 evidence that renewal of a license is not in the best
11 interests of the racing industry or the public:

12 (1) the presence of any ground for denial, revocation,
13 or suspension of a license under §6.06 or §6.0603 of the
14 Act;

15 (2) forfeiture of any bond by an inactive racetrack
16 license holder that was required by the Commission;

17 (3) failure by an inactive racetrack license holder to
18 comply with any condition or order placed on the license by
19 the Commission;

20 (4) failure to maintain the ownership or leasehold
21 interest in the real property constituting the designated
22 location; or

23 (5) any factor identified in subsection (a) of §6.04
24 of the Act.

25 (g) The presence of any particular factor or factors under
26 this section does not require the Commission to renew or
27 refuse to renew an inactive racetrack license.

28 ~~(h) Bonds. The Commission may require an inactive racetrack~~
29 ~~license holder to provide a bond under §6.032 of the Act to~~
30 ~~ensure completion of any or all of the factors listed in~~

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~~subsection (d) of this section. The amount and terms of the bond shall be determined by the Commission in accordance with §309.6 of this Chapter.~~

~~(h)-(i) Review Fees.~~

(1) Each inactive racetrack license must submit a review fee with its application for renewal. The review fee is composed of a variable processing charge. The processing charge is the amount needed by the Commission to cover the administrative and enforcement costs of processing the request for renewal, including any costs associated with processing a hearing at the State Office of Administrative Hearings. A license holder must pay the initial review fee contemporaneously with filing the application for renewal. The Commission shall hold the review fee in the state treasury in a suspense account. The Commission may transfer the processing funds due to the Commission to the Texas Racing Commission Fund as costs are incurred. If the actual cost to the Commission of processing the request exceeds the amount deposited for the applicable charge, the requestor shall pay the remaining amount not later than 10 business days after receipt of a bill from the Commission. If the costs of processing the request are less than the amount of the charge, the Commission shall refund the excess not later than 10 business days after the Commission's decision on the request becomes final.

(2) The initial review fee for an inactive racetrack license is \$5,000. If the Commission refers an application to the State Office of Administrative Hearings under subsection (a) of this section, the applicant for renewal

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- 1 shall submit an additional \$50,000 review fee within 30
- 2 days of the referral.