



TEXAS RACING COMMISSION

**P. O. Box 12080
Austin, TX 78711-2080
(512) 833-6699
Fax (512) 833-6907**

Texas Racing Commission
Tuesday, December 15, 2015
10:30 a.m.
John H. Reagan Building
105 W. 15th Street
Austin, Texas 78701

AGENDA

I. CALL TO ORDER
Roll Call

II. CEREMONIAL ITEMS
Recognition of former Commissioner Michael Martin, DVM

III. PUBLIC COMMENT

IV. GENERAL BUSINESS
Discussion and consideration of the following matters:

A. Reports by the Executive Director and Staff regarding Administrative Matters

- 1) Budget and Finance Update
- 2) Report on Wagering Statistics
- 3) Inspection and Enforcement Reports

B. Discussion of Process for Election of the Vice Chair

Discussion, consideration, and possible action on the following matters:

C. Approval of the Internal Audit Plan for Fiscal Year 2016

V. PROCEEDINGS ON RACETRACKS

Discussion and consideration of the following matter:

- A. Discussion of Live Race Dates and the Privilege of Conducting Simulcasting

Discussion, consideration and possible action on the following matters:

- B. Allocation of Live Race Dates for Greyhound Racetracks under Commission Rule 303.41 for the Period beginning January 1, 2016, and ending August 31, 2018
- C. Allocation by the Texas Greyhound Association of Interstate Cross-Species Purse Money
- D. Allocation of funds for the Texas Bred Incentive Program as provided under Commission Rule 321.505(b)
- E. Allocation of Purses as provided under Commission Rule 321.505(a)
- F. Distribution of Funds in the Escrowed Purse Account among the Various Breeds of Horses under Commission Rule 321.509
- G. Request by Lone Star Park for Approval of Totalisator Contract with Sportech Racing, LLC

VI. PROCEEDINGS ON OCCUPATIONAL LICENSES

Discussion, consideration and possible action on the following matters:

- A. The Proposal for Decision in SOAH No. 476-15-4140; *In Re: The Appeal of Judd Kearn from Stewards' Ruling Nos. LSP3039, LSP3040, LSP3042, LSP3043, LSP3044, LSP3045, LSP3046, and LSP3047*
- B. The Proposal for Decision in SOAH No. 476-15-4141; *In Re: The Appeal of Dee Allen Keener from Stewards' Ruling Nos. LSP3049, LSP3050, LSP3051, and LSP3052*
- C. The Proposal for Decision in SOAH No. 476-15-4142; *In Re: The Appeal of John Stinebaugh from Stewards' Ruling No. LSP3041*

VII. PROCEEDINGS ON RULEMAKING

Discussion, consideration and possible action on the following matters:

- A. Rule Proposals. If approved by the Commission, these proposals will be published in the *Texas Register* for public comment.
 - 1) Proposal to Amend Rule 307.62, Disciplinary Action
 - 2) Proposal to Amend Rule 309.126, Videotape Equipment
 - 3) Proposal to Amend Rule 309.127, Maintenance of Negatives and Videotapes
 - 4) Proposal to Amend Rule 311.2, Application Procedure
 - 5) Proposal to Amend Rule 313.310, Restrictions on Claims

- B. Adoption of Amendments and Adoption of Repeals of Rules Related to Historical Racing as published in the June 26, 2015, edition of the *Texas Register*.
 - 1) Adoption of Amendment to Rule 301.1, Definitions
 - 2) Adoption of Amendment to Rule 303.31, Regulation of Racing
 - 3) Adoption of Amendment to Rule 303.42, Approval of Charity Race Days
 - 4) Adoption of Amendment to Rule 309.297, Purse Accounts
 - 5) Adoption of Amendment to Rule 309.299, Horsemen's Representative
 - 6) Adoption of Amendment to Rule 309.361, Greyhound Purse Account and Kennel Account
 - 7) Adoption of Amendment to Rule 321.5, Pari-Mutuel Auditor
 - 8) Adoption of Amendment to Rule 321.12, Time Synchronization
 - 9) Adoption of Amendment to Rule 321.13, Pari-Mutuel Track Report
 - 10) Adoption of Amendment to Rule 321.23, Wagering Explanations
 - 11) Adoption of Amendment to Rule 321.25, Wagering Information
 - 12) Adoption of Amendment to Rule 321.27, Posting of Race Results
 - 13) Adoption of Repeal of Subchapter F, Regulation of Historical Racing, including the Repeal of the Following Rules:
 - a) Rule 321.701, Purpose
 - b) Rule 321.703, Historical Racing
 - c) Rule 321.705, Request to Conduct Historical Racing
 - d) Rule 321.707, Requirements for Operating a Historical Racing Totalisator System
 - e) Rule 321.709, Types of Pari-Mutuel Wagers for Historical Racing
 - f) Rule 321.711, Historical Racing Pools; Seed Pools
 - g) Rule 321.713, Deductions from Pari-Mutuel Pools

- h) Rule 321.715, Contract Retention, Pari-Mutuel Wagering Record Retention
- i) Rule 321.717, Effect of Conflict
- j) Rule 321.719, Severability

C. Withdrawal of Proposed Amendments and Withdrawal of Proposed Repeals of Rules Related to Historical Racing as published in the June 26, 2015, edition of the *Texas Register*.

- 1) Withdrawal of Proposed Amendment to Rule 301.1, Definitions
- 2) Withdrawal of Proposed Amendment to Rule 303.31, Regulation of Racing
- 3) Withdrawal of Proposed Amendment to Rule 303.42, Approval of Charity Race Days
- 4) Withdrawal of Proposed Amendment to Rule 309.297, Purse Accounts
- 5) Withdrawal of Proposed Amendment to Rule 309.299, Horsemen's Representative
- 6) Withdrawal of Proposed Amendment to Rule 309.361, Greyhound Purse Account and Kennel Account
- 7) Withdrawal of Proposed Amendment to Rule 321.5, Pari-Mutuel Auditor
- 8) Withdrawal of Proposed Amendment to Rule 321.12, Time Synchronization
- 9) Withdrawal of Proposed Amendment to Rule 321.13, Pari-Mutuel Track Report
- 10) Withdrawal of Proposed Amendment to Rule 321.23, Wagering Explanations
- 11) Withdrawal of Proposed Amendment to Rule 321.25, Wagering Information
- 12) Withdrawal of Proposed Amendment to Rule 321.27, Posting of Race Results
- 13) Withdrawal of Proposed Repeal of Subchapter F, Regulation of Historical Racing, including the Withdrawal of the Proposed Repeal of the Following Rules:
 - a) Rule 321.701, Purpose
 - b) Rule 321.703, Historical Racing
 - c) Rule 321.705, Request to Conduct Historical Racing
 - d) Rule 321.707, Requirements for Operating a Historical Racing Totalisator System
 - e) Rule 321.709, Types of Pari-Mutuel Wagers for Historical Racing
 - f) Rule 321.711, Historical Racing Pools; Seed Pools

- g) Rule 321.713, Deductions from Pari-Mutuel Pools
- h) Rule 321.715, Contract Retention, Pari-Mutuel Wagering Record Retention
- i) Rule 321.717, Effect of Conflict
- j) Rule 321.719, Severability

D. Proposals to Amend and Repeal Rules Related to Historical Racing. If approved by the Commission, these proposals will be published in the *Texas Register* for public comment.

- 1) Proposal to Amend Rule 301.1, Definitions
- 2) Proposal to Amend Rule 303.31, Regulation of Racing
- 3) Proposal to Amend Rule 303.42, Approval of Charity Race Days
- 4) Proposal to Amend Rule 309.8, Racetrack License Fees
- 5) Proposal to Amend Rule 309.297, Purse Accounts
- 6) Proposal to Amend Rule 309.299, Horsemen's Representative
- 7) Proposal to Amend Rule 309.361, Greyhound Purse Account and Kennel Account
- 8) Proposal to Amend Rule 321.5, Pari-Mutuel Auditor
- 9) Proposal to Amend Rule 321.12, Time Synchronization
- 10) Proposal to Amend Rule 321.13, Pari-Mutuel Track Report
- 11) Proposal to Amend Rule 321.23, Wagering Explanations
- 12) Proposal to Amend Rule 321.25, Wagering Information
- 13) Proposal to Amend Rule 321.27, Posting of Race Results
- 14) Proposal to Repeal Subchapter F, Regulation of Historical Racing, including the Repeal of the Following Rules:
 - a) Rule 321.701, Purpose
 - b) Rule 321.703, Historical Racing
 - c) Rule 321.705, Request to Conduct Historical Racing
 - d) Rule 321.707, Requirements for Operating a Historical Racing Totalisator System
 - e) Rule 321.709, Types of Pari-Mutuel Wagers for Historical Racing
 - f) Rule 321.711, Historical Racing Pools; Seed Pools
 - g) Rule 321.713, Deductions from Pari-Mutuel Pools
 - h) Rule 321.715, Contract Retention, Pari-Mutuel Wagering Record Retention
 - i) Rule 321.717, Effect of Conflict
 - j) Rule 321.719, Severability

E. Closing of Rule Reviews

- 1) Chapter 307, Proceedings before the Commission
- 2) Chapter 323, Disciplinary Action and Enforcement

F. Opening of Rule Reviews

- 1) Chapter 301, Definitions
- 2) Chapter 303, General Provisions
- 3) Chapter 319, Veterinary Practices and Drug Testing
- 4) Chapter 321, Pari-mutuel Wagering, Subchapters A through E

VIII. EXECUTIVE SESSION

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

- A. Under Government Code Sec. 551.071(1), the Commission may open an executive session to seek the advice of its attorney regarding pending or contemplated litigation, or regarding a settlement offer.
- B. Under Government Code Sec. 551.071(2), the Commission may open 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 Texas Racing Act, Tex. Rev. Civ. Stat. Ann. art. 179e, Sec. 6.03, the Commission may open an executive session to review security plans and management, concession, and totalisator contracts.

IX. SCHEDULING OF NEXT COMMISSION MEETING

X. ADJOURN

IV. GENERAL BUSINESS

- A. Reports by the Executive Director and Staff regarding Administrative Matters
 - 1) Budget and Finance Update
 - 2) Report on Wagering Statistics
 - 3) Inspections and Enforcement Reports

- C. Approval of the Internal Audit Plan for Fiscal Year 2016

Texas Racing Commission

FYE 08/31/2016
Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2016 Annual Budget	FY 2016 Expended Thru 10/31/2015	FY 2016 Unexpended Bal 8/31/2016	With 16.67% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.1.1.	- FTE's = 4.50 <u>Regulate Racetrack Owners</u>				
Base Appr =	1001 Salaries and Wages	360,810.39	60,196.24	300,614.15	16.68%
\$ 359,315.00	1002 Other Personnel Cost	9,891.51	1,604.70	8,286.81	16.22%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 8,218.11	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 367,533.11	2005 Travel	9,250.00	540.00	8,710.00	5.84%
Budgeted =	2006 Rent Building	-	-	-	
\$ 387,021.32	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	7,069.42	561.56	6,507.86	7.94%
19,488.22	CB Computer Equipment	-	-	-	
5.42%	Total Strategy A.1.1.	387,021.32	62,902.50	324,118.82	16.25%
<i>Appropriated</i> A.2.1.	0 FTE's = 0 <u>Texas Bred Incentive</u>				
	ATB Money Expended	3,475,000.00	500,729.79	2,974,270.21	14.41%
3,475,000.00	Total Strategy A.2.1.	3,475,000.00	500,729.79	2,974,270.21	14.41%
<i>Appropriated</i> A.3.1.	(1.80) FTE's = 7.50 <u>Supervise Racing and Licensees</u>				
Base Appr =	1001 Salaries and Wages	447,802.74	95,065.13	352,737.61	21.23%
\$ 690,724.00	1002 Other Personnel Cost	62,923.82	4,227.97	58,695.85	6.72%
Sup Appr =	2001 Prof Fees and Services	9,000.00	8,012.02	987.98	89.02%
\$ 9,178.35	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 699,902.35	2005 Travel	53,000.00	686.30	52,313.70	1.29%
Budgeted =	2006 Rent Building	-	-	-	
\$ 586,489.69	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	13,763.12	751.44	13,011.68	5.46%
(113,412.66)	CB Computer Equipment	-	-	-	
-16.42%	Total Strategy A.3.1.	586,489.69	108,742.86	477,746.83	18.54%
<i>Appropriated</i> A.3.2.	- FTE's = 3.30 <u>Monitor Occupational Licensee Act.</u>				
Base Appr =	1001 Salaries and Wages	182,183.65	30,149.64	152,034.01	16.55%
\$ 245,602.00	1002 Other Personnel Cost	18,218.37	3,014.96	15,203.41	16.55%
Sup Appr =	2001 Prof Fees and Services	1,000.00	-	1,000.00	0.00%
\$ -	2003 Consumables	2,500.00	-	2,500.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 245,602.00	2005 Travel	38,199.98	1,435.01	36,764.97	3.76%
Budgeted =	2006 Rent Building	-	-	-	
\$ 245,602.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	3,500.00	156.04	3,343.96	4.46%
\$ (0.00)	CB Computer Equipment	-	-	-	
0.00%	Total Strategy A.3.2.	245,602.00	34,755.65	210,846.35	14.15%
<i>Appropriated</i> A.4.1.	0.05 FTE's = 3.15 <u>Inspect and Provide Emerg. Care</u>				
Base Appr =	1001 Salaries and Wages	225,269.80	33,172.06	192,097.74	14.73%
\$ 340,949.00	1002 Other Personnel Cost	12,939.49	2,109.13	10,830.36	16.30%
Sup Appr =	2001 Prof Fees and Services	85,000.00	6,139.00	78,861.00	7.22%
\$ 5,293.32	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 346,242.32	2005 Travel	24,100.00	1,982.61	22,117.39	8.23%
Budgeted =	2006 Rent Building	-	-	-	
\$ 353,653.59	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	6,344.29	558.88	5,785.41	8.81%
\$ 7,411.26	CB Computer Equipment	-	-	-	
2.17%	Total Strategy A.4.1.	353,653.59	43,961.68	309,691.91	12.43%

Texas Racing Commission

FYE 08/31/2016
Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2016 Annual Budget	FY 2016 Expended Thru 10/31/2015	FY 2016 Unexpended Bal 8/31/2016	With 16.67% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.4.2.	(0.55) FTE's = <u>Administer Drug Testing</u> 3.75				
Base Appr =	1001 Salaries and Wages	205,374.80	45,446.37	159,928.43	22.13%
\$ 283,998.00	1002 Other Personnel Cost	21,778.37	761.06	21,017.31	3.49%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 4,917.68	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 288,915.68	2005 Travel	23,500.00	1,151.36	22,348.64	4.90%
Budgeted =	2006 Rent Building	-	-	-	
\$ 257,369.42	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	6,716.25	337.60	6,378.65	5.03%
\$ (31,546.26)	CB Computer Equipment	-	-	-	
-11.11%	Total Strategy A.4.2.	257,369.42	47,696.39	209,673.03	18.53%
<i>Appropriated</i> B.1.1.	- FTE's = <u>Occupational Licensing</u> 7.10				
Base Appr =	1001 Salaries and Wages	259,474.00	42,915.96	216,558.04	16.54%
\$ 512,164.00	1002 Other Personnel Cost	9,537.37	1,434.56	8,102.81	15.04%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 6,325.58	2003 Consumables	5,000.00	-	5,000.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 518,489.58	2005 Travel	26,954.43	2,647.43	24,307.00	9.82%
Budgeted =	2006 Rent Building	-	-	-	
\$ 496,884.54	2007 Rent Machine	4,000.00	1,440.00	2,560.00	36.00%
Difference	2009 Other Operating Cost	191,918.74	1,719.49	190,199.25	0.90%
\$ (21,605.04)	CB Computer Equipment	-	-	-	
-4.22%	Total Strategy B.1.1.	496,884.54	50,157.44	446,727.10	10.09%
<i>Appropriated</i> B.1.2.	- FTE's = <u>Texas OnLine</u> 0				
Base Appr =	1001 Salaries and Wages	-	-	-	
\$ 22,500.00	1002 Other Personnel Cost	-	-	-	
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 22,500.00	2005 Travel	-	-	-	
Budgeted =	2006 Rent Building	-	-	-	
\$ 22,500.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	22,500.00	1,694.00	20,806.00	7.53%
\$ -	CB Computer Equipment	-	-	-	
0.00%	Total Strategy B.1.2.	22,500.00	1,694.00	20,806.00	7.53%
<i>Appropriated</i> C.1.1.	(0.30) FTE's = <u>Monitor Wagering and Audit</u> 4.50				
Base Appr =	1001 Salaries and Wages	250,217.94	45,436.32	204,781.62	18.16%
\$ 326,775.00	1002 Other Personnel Cost	16,313.26	1,421.13	14,892.13	8.71%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 6,102.88	2003 Consumables	1,000.00	-	1,000.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 332,877.88	2005 Travel	20,000.00	1,036.91	18,963.09	5.18%
Budgeted =	2006 Rent Building	-	-	-	
\$ 312,387.94	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	24,856.74	387.92	24,468.82	1.56%
\$ (20,489.94)	CB Computer Equipment	-	-	-	
-6.27%	Total Strategy C.1.1.	312,387.94	48,282.28	264,105.66	15.46%

Texas Racing Commission

FYE 08/31/2016
Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2016 Annual Budget	FY 2016 Expended Thru 10/31/2015	FY 2016 Unexpended Bal 8/31/2016	With 16.67% of Year Lapsed % of Budget Expended
<i>Appropriated</i> C.1.2.	- FTE's = 3.00				
	<u>Wagering & Compliance Inspections</u>				
Base Appr =	1001 Salaries and Wages	146,425.23	24,404.18	122,021.05	16.67%
\$ 167,211.00	1002 Other Personnel Cost	3,912.13	642.02	3,270.11	16.41%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 3,571.35	2003 Consumables	1,000.00	-	1,000.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 170,782.35	2005 Travel	16,000.00	1,706.74	14,293.26	10.67%
Budgeted =	2006 Rent Building	-	-	-	
\$ 169,701.61	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	2,364.25	307.12	2,057.13	12.99%
\$ (1,080.74)	CB Computer Equipment	-	-	-	
-0.65%	Total Strategy C.1.2.	169,701.61	27,060.06	142,641.55	15.95%
<i>Appropriated</i> D.1.1.	- FTE's = 7.00				
	<u>Central Administration</u>				
Base Appr =	1001 Salaries and Wages	449,493.94	72,265.22	377,228.72	16.08%
\$ 742,938.00	1002 Other Personnel Cost	32,707.47	4,840.03	27,867.44	14.80%
Sup Appr =	2001 Prof Fees and Services	16,500.00	-	16,500.00	0.00%
\$ 9,190.18	2003 Consumables	12,500.00	951.63	11,548.37	7.61%
Total Appr =	2004 Utilities	58,000.00	2,892.56	55,107.44	4.99%
\$ 752,128.18	2005 Travel	16,500.00	283.90	16,216.10	1.72%
Budgeted =	2006 Rent Building	86,250.00	21,493.36	64,756.64	24.92%
\$ 752,128.18	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	80,176.77	3,912.01	76,264.76	4.88%
\$ (0.00)	CB Computer Equipment	-	-	-	0.00%
0.00%	Total Strategy D.1.1.	752,128.18	106,638.71	645,489.47	14.18%
<i>Appropriated</i> D.1.2.	- FTE's = 4.80				
	<u>Information Resources</u>				
Base Appr =	1001 Salaries and Wages	320,927.16	48,660.58	272,266.58	15.16%
\$ 514,024.00	1002 Other Personnel Cost	12,967.37	1,875.46	11,091.91	14.46%
Sup Appr =	2001 Prof Fees and Services	56,000.00	-	56,000.00	0.00%
\$ 6,322.30	2003 Consumables	12,000.00	-	12,000.00	0.00%
Total Appr =	2004 Utilities	1,200.00	-	1,200.00	0.00%
\$ 520,346.30	2005 Travel	2,500.00	136.73	2,363.27	5.47%
Budgeted =	2006 Rent Building	2,700.00	37.00	2,663.00	1.37%
\$ 520,346.29	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	112,051.76	28,852.66	83,199.10	25.75%
\$ (0.00)	CB Computer Equipment	-	-	-	
0.00%	Total Strategy D.1.2.	520,346.29	79,562.43	440,783.86	15.29%
<i>Appropriated</i> D.1.3.	(2.60) FTE's = 48.60				
	<u>Other Support Services</u>				
Base Appr =	1001 Salaries and Wages	-	-	-	
\$ 7,681,200.00	1002 Other Personnel Cost	-	-	-	
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 59,119.74	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 7,740,319.74	2005 Travel	-	-	-	
Budgeted =	2006 Rent Building	-	-	-	
\$ 7,579,084.57	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	-	-	-	
\$ (161,235.17)	CB Computer Equipment	-	-	-	
-2.10%	Total Strategy D.1.3.	-	-	-	
\$ 4,265,320	Regulatory Program Operating Budget	4,104,084.57	611,454.00	3,492,630.57	14.90%
\$ 3,475,000	TX Bred Program Operating Budget	3,475,000.00	500,729.79	2,974,270.21	14.41%
\$ 7,740,320	Total M.O.F. (TXRC Acct. 597 & GR)	7,579,084.57	1,112,183.79	6,466,900.78	14.67%
	Total All Programs Operating Budget				

Texas Racing Commission

FYE 08/31/2016
Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2016 Annual Budget	FY 2016 Expended Thru 10/31/2015	FY 2016 Unexpended Bal 8/31/2016	With 16.67% of Year Lapsed % of Budget Expended
\$ -	(2.60) FTE's = 48.60				
<i>Appropriated</i>	Direct Expense of Regulatory Programs				
	1001 Salaries and Wages	2,847,979.65	497,711.70	2,350,267.95	17.48%
	1002 Other Personnel Cost	201,189.16	21,931.02	179,258.14	10.90%
	2001 Prof Fees and Services	167,500.00	14,151.02	153,348.98	8.45%
	2003 Consumables	34,000.00	951.63	33,048.37	2.80%
	2004 Utilities	59,200.00	2,892.56	56,307.44	4.89%
	2005 Travel	230,004.41	11,606.99	218,397.42	5.05%
	2006 Rent Building	88,950.00	21,530.36	67,419.64	24.21%
	2007 Rent Machine	4,000.00	1,440.00	2,560.00	36.00%
	2009 Other Operating Cost	471,261.35	39,238.72	432,022.63	8.33%
	CB Computer Equipment	-	-	-	0.00%
\$ 4,265,320	Total Direct Expense of Regulatory Program	4,104,084.57	611,454.00	3,492,630.57	14.90%
\$ 3,475,000	FTE's = - Direct Expense of TX Bred Program	3,475,000.00	500,729.79	2,974,270.21	14.41%
\$ 7,740,320	(2.60) FTE's = 48.60 Total Direct Expense of All Programs	7,579,084.57	1,112,183.79	6,466,900.78	14.67%
\$ -	Indirect Expense of All Programs				
<i>Un-Appropriated</i>	OASI Match	218,367.69	37,959.63	180,408.06	17.38%
	Group Insurance	299,720.36	49,537.98	250,182.38	16.53%
	State Retirement	236,222.16	40,926.59	195,295.57	17.33%
	Benefit Replacement	9,700.00	-	9,700.00	0.00%
	ERS Retiree Insurance	275,000.00	56,710.98	218,289.02	20.62%
	SWCAP GR Reimburse	30,000.00	-	30,000.00	0.00%
	Unemployment Cost	10,000.00	-	10,000.00	0.00%
	Other	-	-	-	-
\$ 1,079,010	Total Indirect Expense of All Programs	1,079,010.21	185,135.18	893,875.03	17.16%
\$ 8,819,330	Total Direct and Indirect Expense of All Programs	8,658,094.78	1,297,318.97	7,360,775.81	14.98%

Source Of Funds	Agency Method Of Finance	FY 2016 Projected Revenue	FY 2016 Actual Revenue Thru 10/31/2015	N/A	With 16.67% of Year Lapsed % of Revenue Collected
	Regulatory Program MOF:				
Acct. 597	Cash Balance Carry Forward	\$ 750,000.00	\$ 750,000.00		n/a
Acct. 597	Live Race Day Fees	\$ -	\$ -		
Acct. 597	Simulcast Race Day Fees	\$ -	\$ -		
Acct. 597	Annual License Fees (Active & Inactive)	\$ 4,183,750.00	\$ 805,412.64		19.25%
Acct. 597	Outs	\$ -	\$ -		
Acct. 597	Occupational License Fees and Fines	\$ 747,458.00	\$ 127,769.50		17.09%
Acct. 597	Other Revenue	\$ 23,867.00	\$ 4,199.77		17.60%
Acct. 1	GR Funds	\$ -	\$ -		
	Sub-Total Regulatory Prgm. MOF	\$ 5,705,075.00	\$ 1,687,381.91		29.58%
	Texas Bred Program MOF:				
Acct. 597	Cash Balance Carry Forward	\$ -	\$ -		
Acct. 597	Breakage and 1% Exotic	\$ 3,475,000.00	\$ 500,729.79		14.41%
Acct. 597	Other	\$ -	\$ -		
	Sub-Total Texas Bred Prgm. MOF	\$ 3,475,000.00	\$ 500,729.79		14.41%
All Sources	Total MOF	\$ 9,180,075.00	\$ 2,188,111.70		23.84%
	MOF Estimated to Exceed or (Fall-Short of Covering) Direct & Indirect Expenses of Operating Budget	\$ 521,980.22	\$ 890,792.73		



Fiscal Year 2016 Operational Budget

Updated: December 2, 2015
Thru: October 31, 2015

Summary of Operating Revenue

By Revenue Type:	Budget	Collected	Suspended	Uncollected Balance	%
Account 597 - Racing Commission - GRD	\$ 9,180,075	\$ 2,188,112	\$ -	\$ 6,991,963	76%
Account 1 - State of Texas - GR	\$ -	\$ -	\$ -	\$ -	
TOTAL - ALL REVENUES	\$ 9,180,075	\$ 2,188,112	\$ -	\$ 6,991,963	76%

Summary of Appropriated Operating Expenses

	Budget	Expended	Encumbered	Unexpended Balance	%
1001 - Salaries and Wages:	\$ 2,847,980	\$ 497,712	\$ -	\$ 2,350,268	83%
1002 - Other Personnel Cost:	\$ 201,189	\$ 21,931	\$ -	\$ 179,258	89%
2001 - Professional Fees and Services:	\$ 167,500	\$ 14,151	\$ -	\$ 153,349	92%
2003 - Consumable Supplies:	\$ 34,000	\$ 952	\$ -	\$ 33,048	97%
2004 - Utilities:	\$ 59,200	\$ 2,893	\$ -	\$ 56,307	95%
2005 - Travel:	\$ 230,004	\$ 11,607	\$ -	\$ 218,397	95%
2006 - Rent Building:	\$ 88,950	\$ 21,530	\$ -	\$ 67,420	76%
2007 - Rent Machine and Other:	\$ 4,000	\$ 1,440	\$ -	\$ 2,560	64%
2009 - Other Operating Expense:	\$ 471,261	\$ 39,239	\$ -	\$ 432,023	92%
4000 - Grants	\$ 3,475,000	\$ 500,730	\$ -	\$ 2,974,270	86%
5000 - Capital Expenditures:	\$ -	\$ -	\$ -	\$ -	0%
TOTAL - ALL APPROPRIATED EXPENDITURES	\$ 7,579,085	\$ 1,112,184	\$ -	\$ 6,466,901	85%

Unappropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
TOTAL - ALL UNAPPROPRIATED EXPENDITURES	\$ 1,079,010	\$ 185,135	\$ -	\$ 893,875	83%
TOTAL - ALL EXPENDITURES	\$ 8,658,095	\$ 1,297,319	\$ -	\$ 7,360,776	85%
OPERATING SURPLUS / (DEFICIT)	\$ 521,980	\$ 890,793			

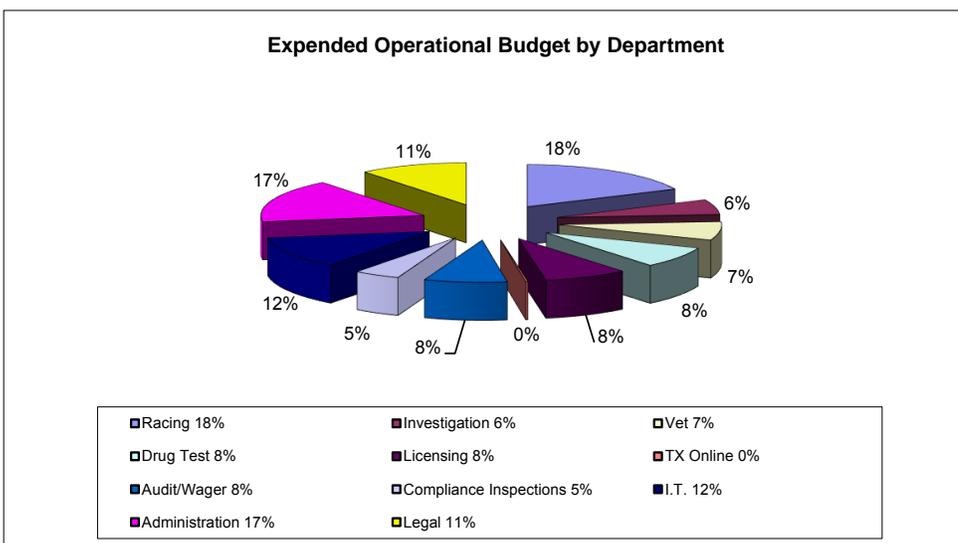
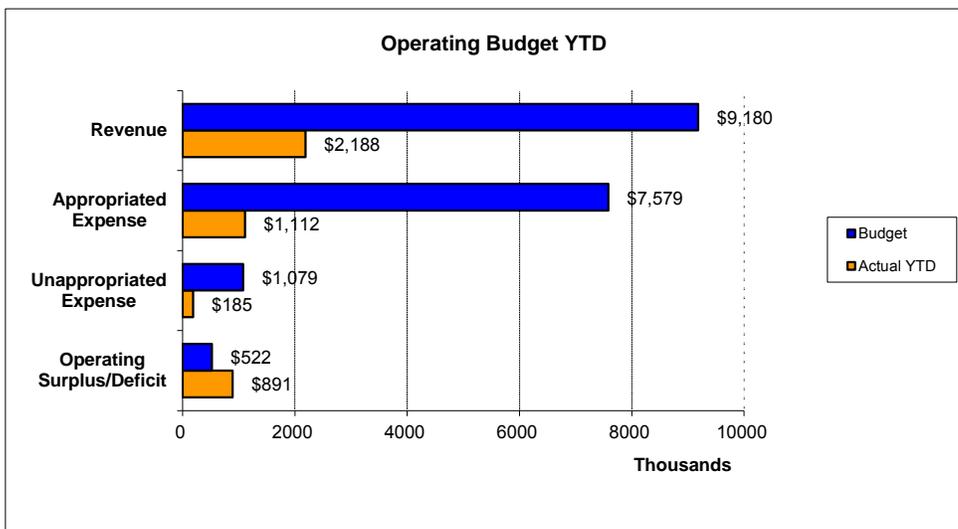
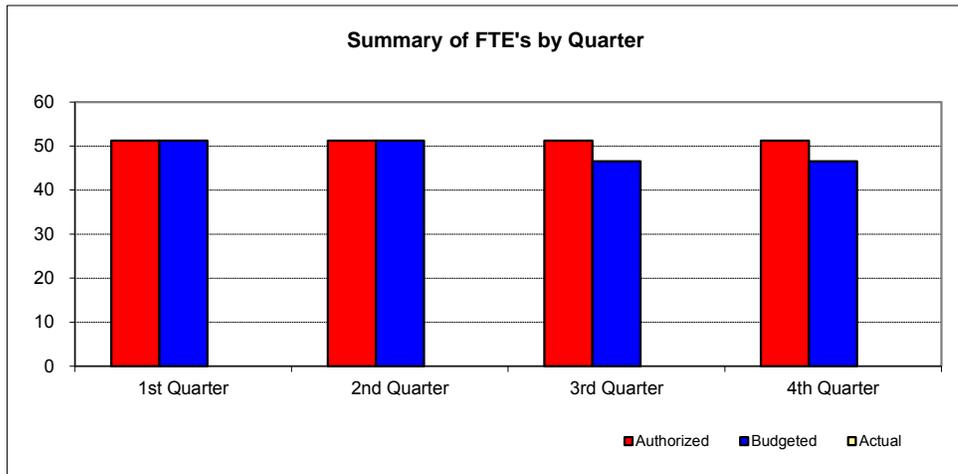
Summary of FTE's

By Fiscal Quarter:	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Authorized FTE's	51.20	51.20	51.20	51.20
Budgeted FTE's	51.20	51.20	46.50	46.50
Actual FTE's	0.00	0.00	0.00	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



Fiscal Year 2016 Operational Budget

Updated: December 2, 2015
Thru: October 31, 2015





**Texas Pari-Mutuel Racetracks Wagering Statistics
Comparison Report on Total Wagers Placed**

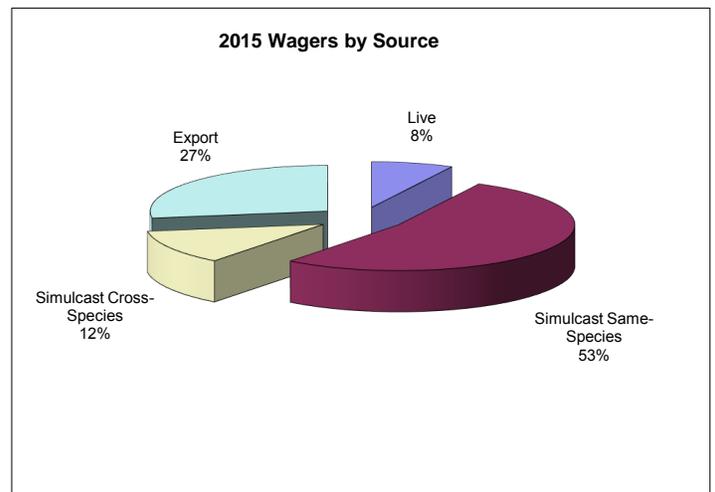
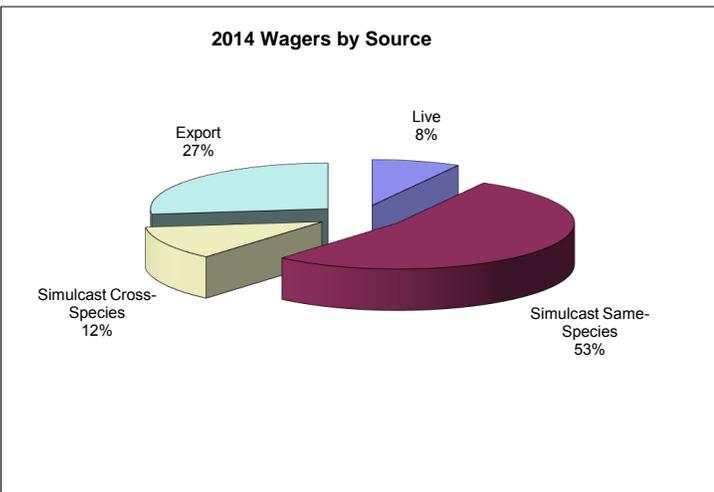
For the Period: 01/01/14 -12/06/14 to 01/01/15 -12/06/15

Sources of Wagers	Year 2014 01/01 - 12/06				Year 2015 01/01 -12/06				Percentage Change In	
	# Days	Total Wagers	Avg. Wager	# Days	Total Wagers	Avg. Wager	Total Wagers	Avg. Wagers		
Greyhound Racetracks										
Live	220	6,521,995	\$ 29,645	236	5,798,784	\$ 24,571	-11.09%	-17.12%		
Simulcast Same-Species	875	26,209,657	\$ 29,954	872	25,233,360	\$ 28,937	-3.72%	-3.39%		
Simulcast Cross-Species	876	20,040,095	\$ 22,877	872	19,162,501	\$ 21,975	-4.38%	-3.94%		
Export	220	9,957,469	\$ 45,261	236	10,322,575	\$ 43,740	3.67%	-3.36%		
Total Wagers		62,729,216	N/A		60,517,220	N/A	-3.53%	N/A		

Sources of Wagers										
Horse Racetracks										
Live	186	27,165,082	\$ 146,049	187	25,247,315	\$ 135,012	-7.06%	-7.56%		
Simulcast Same-Species	1,214	196,064,999	\$ 161,503	1,210	194,553,389	\$ 160,788	-0.77%	-0.44%		
Simulcast Cross-Species	1,211	29,527,744	\$ 24,383	1,210	31,193,873	\$ 25,780	5.64%	5.73%		
Export	178	102,289,117	\$ 574,658	179	103,460,274	\$ 577,990	1.14%	0.58%		
Total Wagers		355,046,941	N/A		354,454,851	N/A	-0.17%	N/A		

Sources of Wagers										
All Texas Racetracks										
Live	406	33,687,076	\$ 82,973	423	31,046,100	\$ 73,395	-7.84%	-11.54%		
Simulcast Same-Species	2,089	222,274,655	\$ 106,402	2,082	219,786,749	\$ 105,565	-1.12%	-0.79%		
Simulcast Cross-Species	2,087	49,567,839	\$ 23,751	2,082	50,356,374	\$ 24,187	1.59%	1.83%		
Export	398	112,246,586	\$ 282,027	415	113,782,849	\$ 274,176	1.37%	-2.78%		
Total Wagers		417,776,157	N/A		414,972,071	N/A	-0.67%	N/A		

Total Wagers Placed in Texas		305,529,571	N/A		301,189,222	N/A	-1.42%	N/A
Total Wagers Placed on Texas Races		145,933,662	N/A		144,828,948	N/A	-0.76%	N/A





**Greyhound Racetrack Wagering Statistics
Comparison Report on Total Wagers Placed**

in Texas & on Texas Races

For the Period: 01/01/14 -12/06/14 to 01/01/15 -12/06/15

Sources of Wagers <u>Gulf Coast Racing</u>	Year 2014 01/01 - 12/06			Year 2015 01/01 - 12/06			Percentage Change In	
	# Days	Total Wagers	Avg. Wager	# Days	Total Wagers	Avg. Wager	Total Wagers	Avg. Wager
Live	0	0	N/A	0	0	N/A	N/A	N/A
Simulcast Same-Species	246	7,651,864	\$ 31,105	244	7,916,682	\$ 32,445	3.46%	4.31%
Simulcast Cross-Species	246	3,952,251	\$ 16,066	244	3,896,424	\$ 15,969	-1.41%	-0.60%
Export	0	0	N/A	0	0	N/A	N/A	N/A
Total Wagers		11,604,115	N/A		11,813,107	N/A	1.80%	N/A

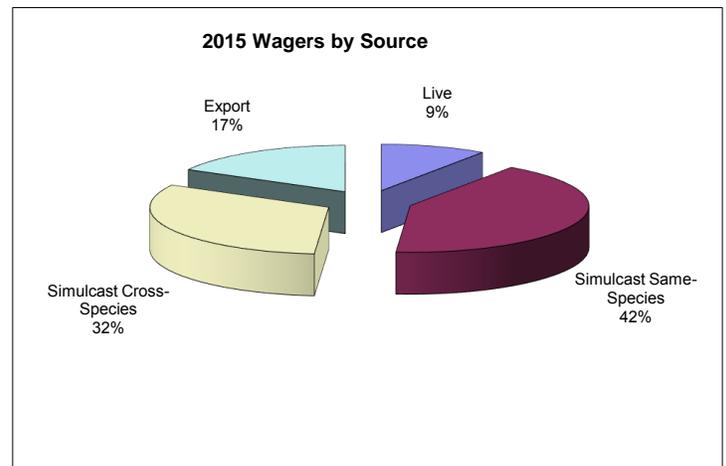
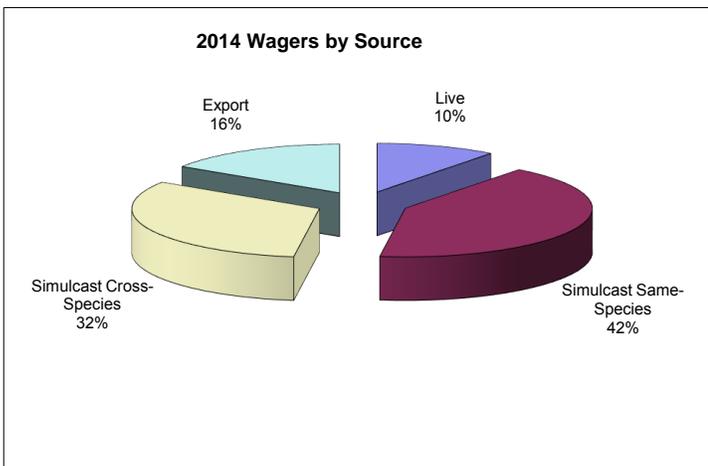
Sources of Wagers <u>Gulf Greyhound Park</u>								
	# Days	Total Wagers	Avg. Wager	# Days	Total Wagers	Avg. Wager	Total Wagers	Avg. Wager
Live	220	6,521,995	\$ 29,645	236	5,798,784	\$ 24,571	-11.09%	-17.12%
Simulcast Same-Species	338	11,477,800	\$ 33,958	337	10,418,642	\$ 30,916	-9.23%	-8.96%
Simulcast Cross-Species	338	9,875,897	\$ 29,219	337	9,730,245	\$ 28,873	-1.47%	-1.18%
Export	220	9,957,469	\$ 45,261	236	10,322,575	\$ 43,740	3.67%	-3.36%
Total Wagers		37,833,161	N/A		36,270,246	N/A	-4.13%	N/A

Sources of Wagers <u>Valley Race Park</u>								
	# Days	Total Wagers	Avg. Wager	# Days	Total Wagers	Avg. Wager	Total Wagers	Avg. Wager
Live	0	0	N/A	0	0	\$ -	N/A	N/A
Simulcast Same-Species	291	7,079,993	\$ 24,330	291	6,898,036	\$ 23,705	-2.57%	-2.57%
Simulcast Cross-Species	292	6,211,947	\$ 21,274	291	5,535,832	\$ 19,023	-10.88%	-10.58%
Export	0	0	N/A	0	0	N/A	N/A	N/A
Total Wagers		13,291,940	N/A		12,433,867	N/A	-6.46%	N/A

Sources of Wagers <u>All Greyhound Racetracks</u>								
	# Days	Total Wagers	Avg. Wager	# Days	Total Wagers	Avg. Wager	Total Wagers	Avg. Wager
Live	220	6,521,995	\$ 29,645	236	5,798,784	\$ 24,571	-11.09%	-17.12%
Simulcast Same-Species	875	26,209,657	\$ 29,954	872	25,233,360	\$ 28,937	-3.72%	-3.39%
Simulcast Cross-Species	876	20,040,095	\$ 22,877	872	19,162,501	\$ 21,975	-4.38%	-3.94%
Export	220	9,957,469	\$ 45,261	236	10,322,575	\$ 43,740	3.67%	-3.36%
Total Wagers		62,729,216	N/A		60,517,220	N/A	-3.53%	N/A

Total Wagers Placed in Texas	52,771,747	N/A	50,194,645	N/A	-4.88%	N/A
-------------------------------------	------------	-----	------------	-----	--------	-----

Total Wagers Placed on Texas Races	16,479,464	N/A	16,121,359	N/A	-2.17%	N/A
---	------------	-----	------------	-----	--------	-----



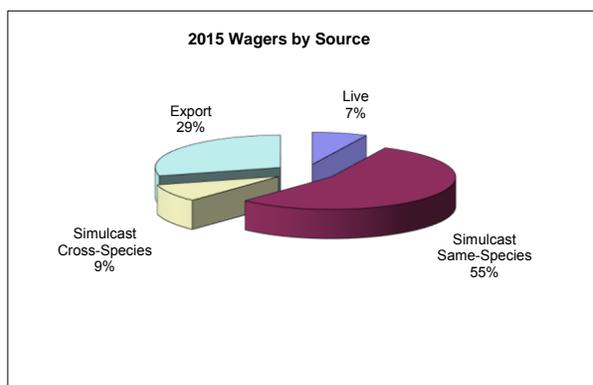
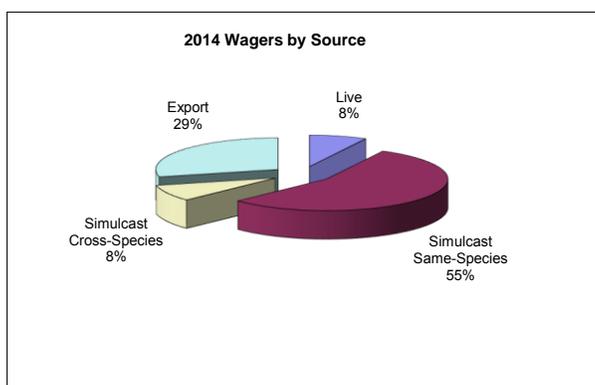


Horse Racetrack Wagering Statistics Comparison Report on Total Wagers Placed

in Texas & on Texas Races

For the Period: 01/01/14 -12/06/14 to 01/01/15 -12/06/15

Sources of Wagers	Year 2014 01/01 - 12/06				Year 2015 01/01 -12/06				Percentage Change In	
	# Days	Total Wagers	Avg. Wager	# Days	Total Wagers	Avg. Wager	Total Wagers	Avg. Wager		
Gillespie County Fair										
Live	8	1,324,453	\$ 165,557	8	1,214,934	\$ 151,867	-8.27%	-8.27%		
Simulcast Same-Species	194	2,847,350	\$ 14,677	196	3,296,124	\$ 16,817	15.76%	14.58%		
Simulcast Cross-Species	194	454,919	\$ 2,345	196	413,967	\$ 2,112	-9.00%	-9.93%		
Export	0	0	N/A	0	0	N/A	N/A	N/A		
Total Wagers		4,626,722	N/A		4,925,025	N/A	6.45%	N/A		
Lone Star Park										
Live	76	16,100,971	\$ 211,855	76	14,684,732	\$ 193,220	-8.80%	-8.80%		
Simulcast Same-Species	340	95,072,725	\$ 279,626	339	95,852,064	\$ 282,749	0.82%	1.12%		
Simulcast Cross-Species	339	6,466,967	\$ 19,077	338	5,316,109	\$ 15,728	-17.80%	-17.55%		
Export	76	37,845,699	\$ 497,970	76	35,322,721	\$ 464,773	-6.67%	-6.67%		
Total Wagers		155,486,361	N/A		151,175,626	N/A	-2.77%	N/A		
Retama Park										
Live	46	3,888,908	\$ 84,541	46	3,547,166	\$ 77,112	-8.79%	-8.79%		
Simulcast Same-Species	340	35,847,878	\$ 105,435	339	34,196,594	\$ 100,875	-4.61%	-4.32%		
Simulcast Cross-Species	339	6,519,194	\$ 19,231	338	7,960,169	\$ 23,551	22.10%	22.46%		
Export	46	16,008,049	\$ 348,001	46	13,005,776	\$ 282,734	-18.75%	-18.75%		
Total Wagers		62,264,029	N/A		58,709,705	N/A	-5.71%	N/A		
Sam Houston Race Park										
Live	56	5,850,750	\$ 104,478	57	5,800,483	\$ 101,763	-0.86%	-2.60%		
Simulcast Same-Species	340	62,297,046	\$ 183,227	339	61,208,607	\$ 180,556	-1.75%	-1.46%		
Simulcast Cross-Species	339	16,086,664	\$ 47,453	338	17,503,629	\$ 51,786	8.81%	9.13%		
Export	56	48,435,369	\$ 864,917	57	55,131,777	\$ 967,224	13.83%	11.83%		
Total Wagers		132,669,829	N/A		139,644,495	N/A	5.26%	N/A		
All Horse Racetracks										
Live	186	27,165,082	\$ 146,049	187	25,247,315	\$ 135,012	-7.06%	-7.56%		
Simulcast Same-Species	1,214	196,064,999	\$ 161,503	1,210	194,553,389	\$ 160,788	-0.77%	-0.44%		
Simulcast Cross-Species	1,211	29,527,744	\$ 24,383	1,210	31,193,873	\$ 25,780	5.64%	5.73%		
Export	178	102,289,117	\$ 574,658	179	103,460,274	\$ 577,990	1.14%	0.58%		
Total Wagers		355,046,941	N/A		354,454,851	N/A	-0.17%	N/A		
Total Wagers Placed in Texas		252,757,824	N/A		250,994,577	N/A	-0.70%	N/A		
Total Wagers Placed on Texas Races		129,454,199	N/A		128,707,589	N/A	-0.58%	N/A		



Texas Racing Commission

Report on Racetrack Inspection Activities

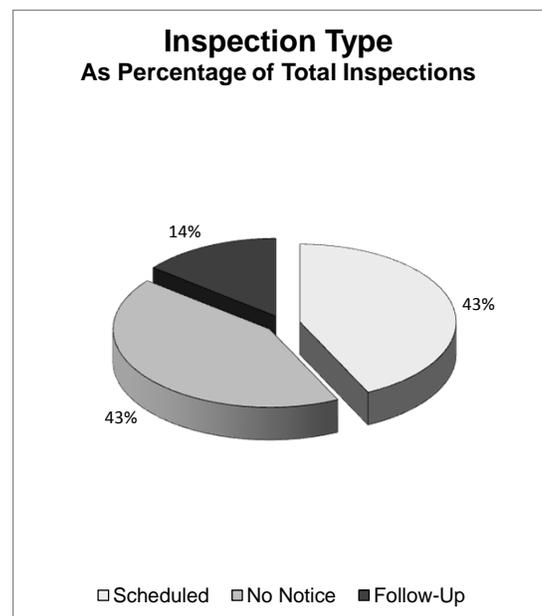
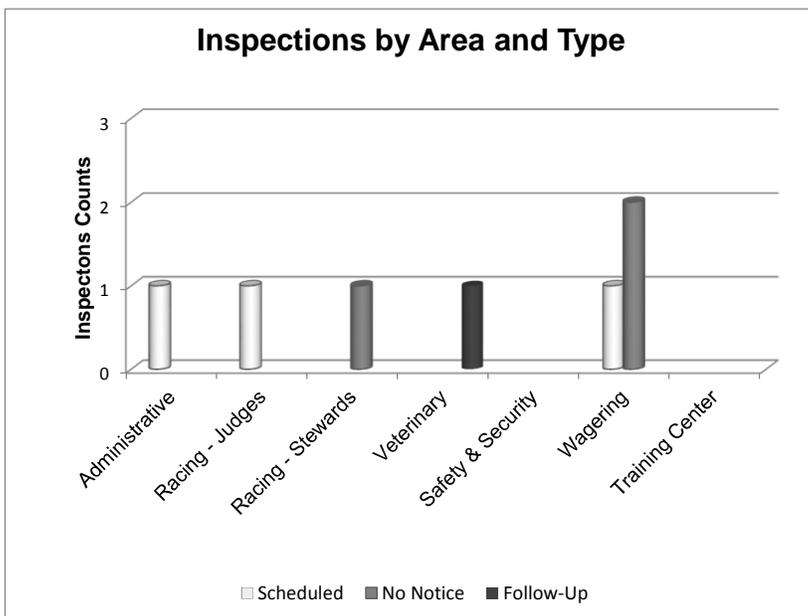
December 15, 2015

Summary of Inspections Performed For the Period of October 1, 2015 through November 30, 2015					
Track	Area of Inspection	Date of Inspection	Number of Unsatisfactory Items	Track Remediation	Remaining Unsatisfactory Items
Lone Star Park	Veterinarian	10/9/2015	0	1 (Follow up from 9/17/15)	0
	Wagering	10/23/2015	0		
	Racing	11/10/2015	0		
Gulf Coast Racing	Wagering	11/20/2015	0		
	Administrative	11/20/2015	0		
Gulf Greyhound Park	Racing	11/6/2015	0		
Sam Houston Race Park	Wagering	10/27/2015	0		

Inspection Counts by Area and Type				
Area of Inspection	Scheduled	No Notice	Follow-Up	Totals
Administrative	1			1
Racing - Judges	1			1
Racing - Stewards		1		1
Veterinary			1	1
Safety & Security				
Wagering	1	2		3
Training Center				
TOTAL INSPECTIONS	3	3	1	7

Important Notes Regarding Inspections at Racetracks:

- 1) Scheduled inspections typically occur before the beginning of each race meet. No Notice inspections typically are planned to occur during the middle of a meet, but may occur at any time.
- 2) Follow-Up inspections are performed when a Scheduled or No Notice inspection identifies an unsatisfactory item. The Follow-Up inspection is performed after the association has had an opportunity to remedy any unsatisfactory item initially reported.



REGULATORY ACTIVITIES

Retama Park and Lone Star Park Fall Meets

Currently the only racetrack conducting a live meet is Gulf Greyhound Park. Lone Star Park, Retama Park, Sam Houston Race Park, Valley Race Park, Gulf Coast Racing and the Race Barn in Fredericksburg are conducting simulcast operations. Since the last Enforcement Report, Retama Race Park and Lone Star Park have concluded their fall meets.

Retama Race Park – The Thoroughbred horse meet ran from August 21st through October 17th.
Regulatory activities during this meet included:

Class 1 and 2 Drug Positives	0
Class 3 and 4 Drug Positives	7
Class 5	0
Ruling Activity	Thirty-three (33) rulings for various trainer infractions, jockey riding and non-riding infractions, medication violations, contraband, and financial obligation cases
Outstanding Inspection Items	None

Lone Star Park – The Quarter-Horse meet ran from September 18th through November 14th.
Regulatory activities during this meet included:

Class 1 and 2 Drug Positives	0
Class 3 and 4 Drug Positives	10
Class 5	1
Ruling Activity	Forty-five (45) rulings for various trainer infractions, human drug and alcohol violations, medication violations, contraband, and licensing violations.
Outstanding Inspection Items	None

**Internal Audit Plan
Fiscal Year 2016
Texas Racing Commission**

 **MONDAY N. RUFUS, P.C.**
Certified Public Accountants and Consultants

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

Table of Contents

	<u>Page</u>
Transmittal Letter	2
Purpose	3
Background Information	3
Internal Audit Plan Methodology	8
Internal Audit Plan	10
Reporting	11
Appendix A: Organizational Chart	12
Appendix B: Risk Assessment	13

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

MONDAY N. RUFUS, P.C.
Certified Public Accountants & Consultants

Member: American Institute of Certified Public Accountants

October 5, 2015

Commissioners of the
Texas Racing Commission
Austin, Texas

Dear Commissioners:

As required by the Internal Auditing Act (Texas Government Code, Section 2102.008), we have prepared the audit plan for Fiscal Year 2016.

We prepared a risk assessment to determine the areas in the Texas Racing Commission that should be considered for audit. Based on that risk assessment, our audit plan for Fiscal Year 2016 is shown below:

• Cash Disbursements	Total Hours	<u>110</u>
		110

Your approval of the audit plan is required.

Sincerely,



Monday N. Rufus, MBA, CISA, CPA
Audit Director
Monday N. Rufus, P.C., CPAs

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

I. Purpose

The Purpose of this internal audit plan is to document the development, risk assessment, scope of assignments, and implementation timetable for fiscal year 2016 internal audit activities. This document will serve as a primary tool to carry out internal audit responsibilities in an efficient manner and prioritize the audit areas based on risk assessments agreed to by the Commissioners of the Texas Racing Commission (Agency). Due to the nature, scope and timing of audit procedures contemplated here, planning for specific aspects of the audits is a continuing process. Accordingly, the plan will be revised as necessary and reviewed at least annually.

This plan has been prepared to meet planning guidelines as required by both generally accepted auditing standards and the standards for the Professional Practice of Internal Auditing as determined by the Institute of Internal Auditors, Inc.

II. Background Information

The Texas Racing Commission regulates all aspects of pari-mutuel horse and greyhound racing through licensing, on-site monitoring, and enforcement. Statute and rule require the Commission to:

- License racetracks that offer racing and the people directly involved with pari-mutuel wagering who work at the racetracks or own race animals.
- Allocate race dates, supervise the conduct of all races, monitor the health and safety of the race animals, and conduct drug tests to ensure the animals race without prohibited substances.
- Oversee all pari-mutuel wagering activity, approve simulcasts, test the totalisator systems (complex computer systems that tally and calculate pari-mutuel wagers), and ensure the proper allocation and distribution of revenue generated by pari-mutuel wagering.
- Administer the Texas-Bred Incentive Program, which provides economic incentives to support a healthy and vigorous breeding industry in the state.

The Racing Act allows pari-mutuel wagering on horse and greyhound racing and provides for the strict regulation and control of pari-mutuel wagering in connection with that racing.

Principal responsibilities of the Commission are to:

1. Adopt rules and regulations for conducting racing involving wagering;
2. Administer and enforce all laws, rules, and regulations affecting horse racing, greyhound racing, and pari-mutuel wagering;
3. Adjudicate disciplinary matters arising from the enforcement of those laws and regulations dealing with horse racing and greyhound racing and pari-mutuel wagering; and
4. Regulate and supervise each racing meeting conducted in the state of Texas, the operations of racetracks, and the participants in a race meeting.

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

Extensive rulemaking authority is granted to the Commission throughout the Racing Act. The rulemaking authority vested in the Texas Racing Commission is authorized for administration and enforcement purposes.

The Racing Commission consists of seven members appointed by the governor with the advice and consent of the Senate to serve overlapping six year terms. Five members must represent the general public and have general knowledge of business or agribusiness. At least one of those appointed members may be a veterinarian, and being licensed as a veterinarian satisfies the requirement that the person have general knowledge of business or agribusiness. One member must have special knowledge or experience related to horse racing and one member must have special knowledge or experience related to greyhound racing. In addition to the appointed members, there are two ex-officio members, the Chair of the Public Safety Commission and the Comptroller of Public Accounts. The Governor appoints the chair and the members elect the vice-chair.

The Commission appoints an Executive Director to supervise the agency's daily activities as a whole and manages the agency's two divisions and its information team. The Agency's operating budget is prepared and approved by the Commission on an annual basis, whereas the State legislative appropriation request is determined every two years. Both the budget and appropriations are reviewed and approved by the State Legislature.

The 82nd Legislature, Regular Session, passed House Bill 2271 which altered the Commission's method of finance eliminating outstanding uncashed winning tickets as a source of revenue. The Commission is now self-funded from fees assessed to racetracks and occupational licenses from the entities it regulates and is typically appropriated only General Revenue – Dedicated funds. Approximately 50% of the expenditures are passed through the Agency to the official breed registries for the Texas Bred Incentive Programs. Funds collected by the Agency are directly utilized for operations, and not passed on to the State.

The agency's structure consists of two divisions and an Executive group. The Executive group is headed by the Executive Director; a Racing Oversight Division is directed by a Deputy Executive Director; and a Finance Division is directed by a Chief Financial Officer.

A. Executive Group

- i. **Executive Director** - The Executive Director supervises agency activities as a whole and manages the agency's two divisions and its information technology team. The Executive Director oversees development of agency operating policies and procedures and ensures that the agency's regulatory responsibilities are carried out. The Executive Director represents the agency before the Legislature and other governmental agencies and serves a primary role in external relations with industry stakeholders, regulators in other states, and a national regulatory association.

The Executive Director, with the assistance of the General Counsel's staff oversees coordination of the evaluation of racetrack license applications, the race date allocation process, and assesses administrative penalties against

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

racetrack licensees. The Executive Director's office is also responsible for other administrative functions including responding to public information and media requests.

- ii. **General Counsel** – The General Counsel advises the Commissioners and staff on legal and regulatory enforcement issues affecting the agency. The General Counsel coordinates all aspects of Commission meetings and rulemaking proceedings and also represents the agency before the State Office of Administrative Hearings when prosecuting appeals from decisions made by the Board of Stewards/Judges and disciplinary cases initiated by the Executive Director.
- iii. **Department of Information Technology (IT)**
The IT division develops and maintains the agency's network, database and Web site. This division recommends and supports all hardware and software necessary for the day-to-day activities of the Commission. The Commission's custom programs and database operate twenty-four hours a day, seven days a week, providing staff, licensees, the Department of Public Safety (DPS), the Texas A&M Veterinary Medical Diagnostic Laboratory and the general public with up-to-date information regarding all aspects of the Commission's regulatory programs.
- iv. **Compliance Administrator** deals with examining, investigating, and reviewing records, reports, financial documents, management practices to ensure legal compliance with the Racing Act, Rules of Racing, agency policies, and operating procedures; and conducting audits for program economy, efficiency, and effectiveness.

B. Divisional Information

The Agency's staff is organized into two operating divisions which have specific duties and responsibilities in carrying out the overall mission of the Agency. The two operating divisions are the Racing Oversight Division and the Finance and Wagering Division.

- i. **Racing Oversight Division** – This division is focused on enforcement and oversight of day-to-day racetrack operations. The members of this division make up the agency's presence at Texas tracks. The Deputy Executive Director supervises personnel directly responsible for regulating the conduct of live racing and is responsible for the following teams: Licensing, Investigations, Stewards/Judges, and Veterinarians/Drug Testing.

- Licensing

Staff in licensing issue occupational licenses to all people in positions that afford the person an opportunity to influence pari-mutuel wagering and to those who will likely have significant

TEXAS RACING COMMISSION

Internal Audit Plan – Fiscal Year 2016

access to the restricted areas of a racetrack. Licensing staff at each racetrack help maintain the integrity of the industry by ensuring that all appropriate participants are licensed and in good standing.

To ensure that that all participants in racing are properly licensed, the Commission has more than fifty categories of occupational licenses. Stable and kennel area occupations – jockeys, owners, kennel owners, trainers and grooms – must secure licenses, as must racetrack employees.

- Investigations

The investigators, who must be licensed peace officers, coordinate enforcement of the Commission’s Rules and the Texas Racing Act.

Investigations are conducted on animal drug positives, criminal histories returned on license applicants, illegal wagering, use and possession of contraband, drug abuse and narcotics trafficking, and other illicit activities that could affect the integrity of pari-mutuel racing.

Drug testing of licensees suspected of using illegal drugs while performing their duties has become an important aspect of regulating the industry. If a licensee tests positive for an illegal controlled substance or alcohol, the licensee faces a suspension and must seek professional help.

- Stewards/Judges

The division includes stewards at horse tracks and judges at greyhound tracks. The judges and stewards monitor the conduct of live races and enforce the Racing Act and the Commission’s Rules of Racing. The stewards and judges have broad authority to resolve matters arising during a race meeting. They may redistribute purses, issue fines up to \$5,000 and suspend licensees for up to one year.

- Veterinarians

The Veterinary Medical Director oversees this division, supervising the veterinarians and test barn supervisors working at the racetracks.

Employees in this division inspect all race animals before a competition to ensure they are sound to compete, inspect the stable and kennel areas for animal health and safety issues, and implement the Commission’s race animal drug testing program.

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

The Veterinary Medical Director also serves as a liaison between the Commission and veterinary-related organizations and agencies, such as the Texas Animal Health Commission, the American Association of Equine Practitioners, and the Texas Veterinary Medical Association.

- **Pari-mutuel Auditors**

The pari-mutuel auditors protect the interest of the wagering public and industry participants by assuring the proper collection and distribution of funds in accordance with the Act and providing reliable information on wagering. The auditors review, verify and report all live and simulcast wagering activity at the racetracks to ensure the public is paid the correct amount on each winning wager. On-site pari-mutuel auditors perform daily audits and verifications of handle, earned purse, paid purse, outs balances, deposit reports and requests for simulcast approval in compliance with the Interstate Horse Racing Act (IHA). The audit staff ensure the daily collection of the escrowed horse purse funds earned from interstate cross-species wagers placed at greyhound racetracks and the allocation of these funds to the various horse racetracks based on Commission-approved formulas.

- ii. **Finance** – This division is responsible for agency finance and administrative functions to include budget, accounting, purchasing, personnel, human resources, travel coordination and related administrative functions.

Staff members prepare the biennial Legislative Appropriations Request (LAR), the operating budget, the annual financial report, reports on performance measures, and other administrative reports. Staff members in this area are responsible for the agency’s purchasing, personnel, human resources and travel coordination activities.

- C. The Agency’s General Appropriations Act authority for fiscal year 2016 is as follows:

	<u>2016</u>
License/Regulate Racetracks	\$359,315
Texas Bred Incentive Program	3,475,000
Supervise & Conduct Live Races	690,724
Monitor Licensee Activities	245,602
Inspect & Provide Emergency Care	340,949

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

Administer Drug Tests	283,998
Occupational Licensing Program	512,164
TEXASONLINE	22,500
Monitor Wagering and Audit	326,775
Wagering Compliance Inspections	167,211
Central Administration & Other Support Services	742,938
Information Resources	514,024
Supplemental Appropriation made in Riders	635,637
Total	<u>\$ 8,316,837</u> =====

III. Internal Audit Plan Methodology

This section summarizes the methodology used in preparing the fiscal year 2016 internal audit plan. In order to understand the Agency and develop our risk assessment process, we reviewed the Agency's:

- Enabling Legislation
- Strategic plan
- Legislative appropriations request/operating budget
- Prior internal audit reports
- Reports from the State Auditor's Office
- Sunset Commission Report
- Other documents available to us

In planning internal audit procedures, financial, operational, as well as compliance issues are considered in determining processes/systems of interest. Functional areas that cross many divisions and the interaction between divisions are key criteria in the process of identifying areas of interest. Agency financial reports, planning documents, laws, rules, and regulations, in addition to soliciting input from management and commission members, were all considered in developing the list of areas of interest. Upon completion of this list, each area was subjected to our risk analysis process.

The following Agency processes/systems have been considered during the development of the areas of interest list:

- Cash receipts and fee processing
- Cash Disbursements
- Payroll and Personnel Processes

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

- Reporting – Key Performance Measures
- Budgeting and Reporting
- Licensing application and registrations
- Complaints/Investigation process
- Pari-mutuel Auditing Process
- EDP Wagering Reviews/Audits
- Business Continuity/Disaster Recovery
- Information Systems - Security
- Information Technology System Development
- Drug testing
- Inspection Program
- Compliance Administrator
- Racing Administration
- Texas Bred Incentive Program – Associations
- Texas Bred Incentive Program – TxRC’s Policies and Procedures
- Equine Research
- Historically Underutilized Businesses (HUB)
- Fixed Asset Management

There are numerous other areas that may be identified during the process of performing internal audit procedures during the year. Continuing input from both the Commissioners and management will be essential in identifying additional or new areas of risk that should be considered in the future.

Our risk assessment was performed through the consideration of various factors, including:

1. Exposure Level (Adverse impact of errors within the process/unit)
2. Complexity of unit (Volatility of activities)
3. Materiality (Financial and Non Financial Impact)
4. Results of last audit (Positive, Some Findings, Negative)
5. Extent of other coverage or oversight (More coverage, Some coverage, No coverage)
6. Quality of internal controls/adherence to laws (Excellent, Good, & Poor controls)
7. Changes in systems and processes (More changes, Some changes, No changes)
8. Normal audit interval (Audited in last 1 year, 2-4 years, >4 years or Never)

All of the above factors were considered in assessing risk and were taken into consideration for each process/system as to their impact on the Agency. Once each area of interest was evaluated, it was assigned a risk factor of high, moderate or low. The following is the result of our risk assessment process.

Processes Identified as High Overall Risk

Licensing Applications and Registrations

Cash Disbursements

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

Information Systems – Security
Reporting – Key Performance Measures
Business Continuity/Disaster Recovery
Texas Bred Incentive Program – Associations
Texas Bred Incentive Program – TxRC’s Policies and Procedures
Racing Administration

Processes Identified as Moderate Overall Risk

Cash Receipts and Fee Processing
Inspection Program
Payroll & Personnel Processes
Pari-mutuel Auditing Process
Complaints/Investigation process
EDP Wagering Reviews/Audits
Historically Underutilized Businesses
Budgeting & Reporting
Compliance Administrator
Information Technology System Development

Processes Identified as Low Overall Risk

Drug Testing
Equine Research
Fixed Asset Management

IV. Internal Audit Plan

The internal audit plan is designed to provide a review of all areas considered risky. Although the plan is structured in this manner, it should not prevent the review of areas on a more frequent basis, in the case of future restructuring or development of new processes/systems. Also, special reviews might be added in the future as requested by the Commissioners or when deemed necessary by the internal audit function after performance of in-depth review of the specific divisions/systems and approval by the Commission.

Internal audit activities will be primarily concerned with documenting, testing and evaluating each division or system’s internal control policies and procedures and the quality of performance in carrying them out. This will include reporting conditions and suggestions to management and evaluating management’s response and plans for corrective actions. Opportunities for improved efficiency identified as a result of performing internal activities will be communicated to management and the Commissioners as part of the reporting process.

Internal Audit reviews for the fiscal year ending 2016 are planned for the following processes/systems:

<u>Fiscal Year 2016</u>	<u>Hours</u>
• Cash Disbursements	<u>110</u>
Total Hours	110

TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

This audit will take place from October 2016 through August 2016 with final reporting occurring in September 2016. The above plan does not preclude the internal audit function from identifying and assessing risk relating to new divisions or systems added to the Agency.

These processes/systems were identified for review through risk assessment methodology. As discussed above, this methodology included personnel inquiries, identifying financial and non-financial risk, identifying interaction of divisions amongst each other, identifying rules and regulations various divisions must comply with and identifying the volume of transactions and personnel involved with each division.

V. Reporting

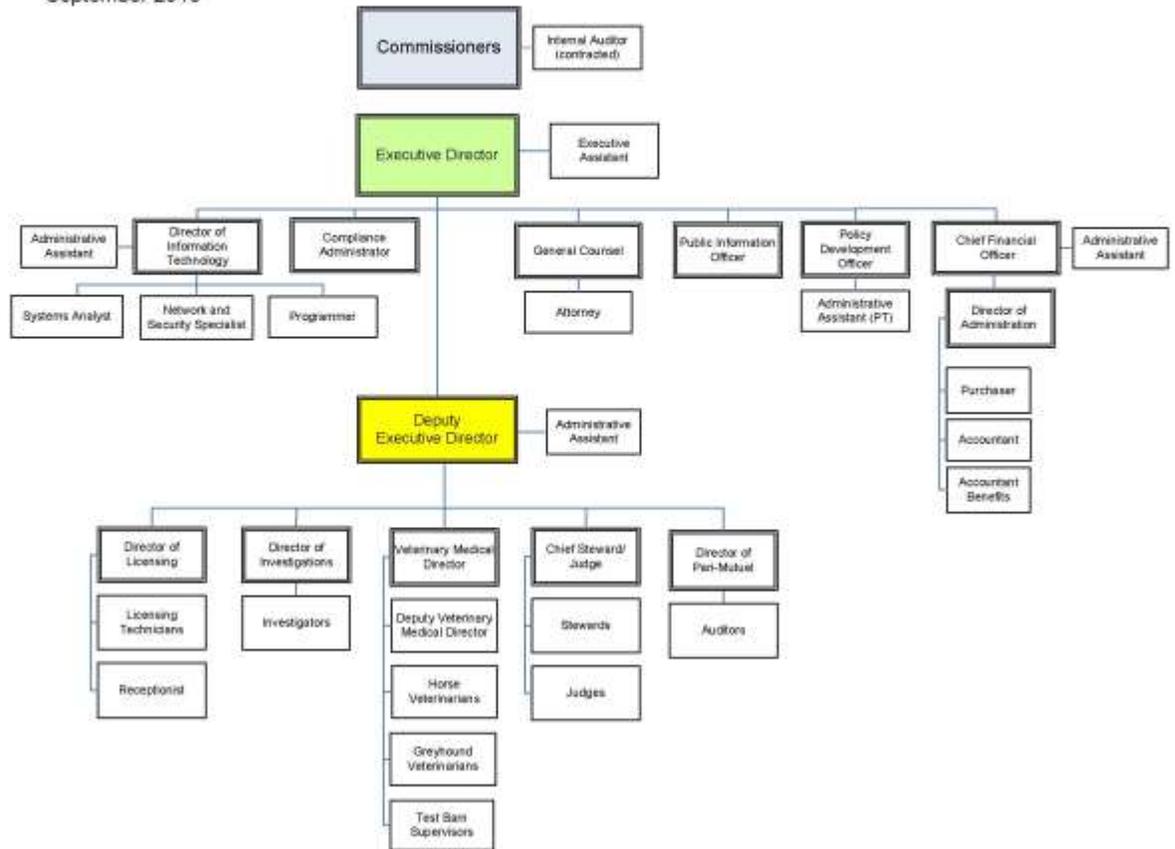
In compliance with the Texas Internal Auditing Act, the annual internal audit report will be filed with the Governor, the Legislative Budget Board, the Sunset Advisory Commission, the State Auditor, the Commissioners of the Agency, and the Agency's Executive Director by November 1, 2016. The annual internal audit report will be in the form specified by the State Auditor.

TEXAS RACING COMMISSION

Internal Audit Plan – Fiscal Year 2016

Appendix A: Organizational Chart

TEXAS RACING COMMISSION
Organizational Chart
September 2015



TEXAS RACING COMMISSION
Internal Audit Plan – Fiscal Year 2016

Appendix B: Risk Assessment

High = 38 and up
Med = 30-37
Low = less than 30

	<u>Weighed Risk</u>
Licensing Applications and Registrations	41
Cash Disbursements	40
Information Systems – Security	39
Reporting – Key Performance Measures	39
Texas Bred Incentive Program – TxRC’s Policies and Procedures	39
Texas Bred Incentive Program – Associations	39
Racing Administration	39
Business Continuity/Disaster Recovery	39
Cash Receipts and Fee Processing	37
Inspection Program	37
Payroll & Personnel Processes	37
Pari-mutuel Auditing Process	37
Complaints/Investigation Process	35
EDP Wagering Reviews/Audits	33
Historically Underutilized Businesses (HUB)	33
Budgeting and Reporting	32
Compliance Administrator	31
Information Technology System Development	30
Drug Testing	29
Equine Research	28
Fixed Asset Management	28

- V. PROCEEDINGS ON RACETRACKS
 - A. Discussion of Live Race Dates and the Privilege of Conducting Simulcasting
 - B. Allocation of Live Race Dates for Greyhound Racetracks under Commission Rule 303.41 for the Period beginning January 1, 2016, and ending August 31, 2018
 - C. Allocation by the Texas Greyhound Association of Interstate Cross-Species Purse Money
 - D. Allocation of funds for the Texas Bred Incentive Program as provided under Commission Rule 321.505(b)
 - E. Allocation of Purses as provided under Commission Rule 321.505(a)
 - F. Distribution of Funds in the Escrowed Purse Account among the Various Breeds of Horses under Commission Rule 321.509
 - G. Request by Lone Star Park for Approval of Totalisator Contract with Sportech Racing, LLC



TEXAS RACING COMMISSION
P. O. Box 12080
Austin, TX 78711-2080
(512) 833-6699
Fax (512) 833-6907

Date: December 7, 2015

To: Texas Racing Commissioners

From: Chuck Trout, Executive Director

Re: Discussion of Live Race Dates and the Privilege of Conducting
Simulcasting

At the Commission's meeting on December 15, 2015, I will seek the Commission's guidance regarding the approval of wagering on simulcast import races when the racetrack requesting approval has no, or very few, race dates granted in the near future. I am particularly interested in receiving guidance on whether approving simulcasting is in the public interest under these circumstances.

On the same meeting agenda, Gulf Greyhound Park (GGP) has requested approval to conduct 172 live racing performances in 2018. However, GGP has not requested any performances in 2016 or 2017. Gulf Coast Racing has five granted performances in 2016 and has requested an additional five performances in 2018. Similarly, Valley Race Park has one granted performance in 2016 and has requested an additional performance in 2018.

During the past five years, Gulf Greyhound Park received 1,356 total performances and, with the occasional exception due to weather or track conditions, conducted all of them. Valley Race Park received one live performance in 2013 and five performances in 2011, and conducted all of them. Gulf Coast Racing received five performances in 2011 and five performances in 2014, but did not conduct any of them.

Revenues generated at the three greyhound racetracks, which come primarily from simulcasting, can be significant. See the chart on the page following this memo for a summary of those revenues in Calendar Year 2014. Excess purse and Accredited Texas Bred revenues from Valley Race Park and Gulf Coast Racing were used to supplement purses at Gulf Greyhound Park. In addition, all

three greyhound tracks generated revenues for the Escrow Horse Purse Account and paid state taxes on simulcast wagering.

Following the chart are selections from the Texas Racing Act and the Commission's Rules that are relevant to this discussion.

Following the selections from the Texas Racing Act and the Commission's Rules is a 1996 Opinion Letter from the Attorney General's Office addressing the issue of whether the Commission may approve simulcasting at racetrack facilities that are under construction, incomplete, or otherwise incapable of accommodating a live race event at the time the racetrack begins accepting wagers on simulcast races.

If you have any questions on this issue before the Commission meeting, please let me know.

ANNUAL REVENUES GENERATED AT GREYHOUND RACETRACKS
Based on Calendar Year 2014 Results

	GULF GREYHOUND PARK	GULF COAST RACING	VALLEY RACE PARK	ALL GREYHOUND TRACKS
REVENUE TO GREYHOUNDS				
Greyhound Purses	\$917,080.98	\$334,889.86	\$219,616.90	\$1,471,587.74
TGA Escrow Greyhound Purses (per Global Agreement)	\$2,604.23	\$0.00	\$0.00	\$2,604.23
<u>Accredited Texas Bred Fund</u>	<u>\$199,761.65</u>	<u>\$109,415.09</u>	<u>\$120,691.65</u>	<u>\$429,868.39</u>
TOTAL	\$1,119,446.86	\$444,304.95	\$340,308.55	\$1,904,060.36
REVENUE TO HORSEMEN				
Escrow Horse Purse Account	\$424,104.17	\$161,808.86	\$269,835.97	\$855,749.00
Horse Purses	\$17,862.73	\$9,700.66	\$14,752.78	\$42,316.17
THP Escrow Horse Purses (per Global Agreement)	\$63,739.35	\$24,809.49	\$38,671.60	\$127,220.44
TQHA Purses	\$76,532.94	\$29,799.51	\$46,438.75	\$152,771.20
<u>TTA Purses</u>	<u>\$76,531.11</u>	<u>\$29,799.51</u>	<u>\$46,438.75</u>	<u>\$152,769.37</u>
TOTAL	\$658,770.30	\$255,918.03	\$416,137.85	\$1,330,826.18
REVENUE TO RACETRACKS				
Associations' Share	\$4,090,826.69	\$1,409,077.07	\$1,664,138.04	\$7,164,041.80
<u>HUB Fee</u>	<u>\$153,225.91</u>	<u>\$59,699.65</u>	<u>\$93,066.99</u>	<u>\$305,992.55</u>
TOTAL	\$4,244,052.60	\$1,468,776.72	\$1,757,205.03	\$7,470,034.35
REVENUE TO STATE				
State Tax	\$254,011.77	\$133,542.02	\$156,005.79	\$543,559.58
TOTAL REVENUE	\$6,276,281.53	\$2,302,541.72	\$2,669,657.22	\$11,248,480.47

TEXAS RACING ACT

Sec. 11.011. Simulcast Races.

(c) With approval of the commission, wagers accepted by a licensed racetrack association in this state on a race simulcast from out-of-state may be included in the pari-mutuel pools for the race at the out-of-state sending racetrack.

(f) Nothing in this Act is to be construed to allow wagering in Texas on simulcast races at any location other than a racetrack licensed under this Act that has been granted live race dates by the commission.

RULES OF RACING

Chapter 321 - Pari-Mutuel Wagering

Subchapter D - Simulcast Wagering

Division 1 - General Provisions

§321.401 Purpose

The Commission finds that, although wagering on simulcast races provides additional revenue for the state treasury, the primary advantage of wagering on simulcast races is the additional revenue it provides for purses for live races conducted in this state. The Commission further finds it is in the public interest to encourage live racing, which promotes economic development in a variety of racing-related industries. Therefore, it is the Commission's intent to adopt and enforce rules relating to simulcast wagering in a manner that will encourage live racing and enhance the horse breeding, owning, and training industries and the greyhound breeding, owning, and training industries.

§321.403 Simulcasting License

(a) A license to operate a pari-mutuel racetrack in this state held by an association that has been granted live race dates includes as a part of its privileges the privilege of conducting pari-mutuel wagering on simulcast races and to simulcast races conducted by the association. The conducting of pari-mutuel wagering on simulcast races and the simulcasting of races conducted by the association is subject to the approval of the executive secretary.

(b) The approval of any particular simulcasting or wagering on particular simulcast races or programs is not binding on the executive secretary for other requests for approval of simulcasting or wagering on simulcast races or programs.

§321.407 Approval of Wagering on Simulcast Import Races

(a) To receive approval to conduct pari-mutuel wagering on a simulcast import, an association must file a request for approval to import to the executive secretary on a form prescribed by the executive secretary. A request for approval to import a simulcast must be filed at least one day before the first simulcast race covered by the request.

(b) The executive secretary may approve a request for approval to import a simulcast, subject to rescission of the approval by the Commission at its next regular meeting.

(c) The executive secretary may require the association to submit additional information if the executive secretary determines the additional information is necessary to effectively evaluate the request.

(d) In considering whether or not to approve a request for approval to import a simulcast, the executive secretary shall consider:

- (1) the financial stability of the association and the effect simulcasting will have

- on the economic viability of the association;
- (2) the operating experience of the association;
- (3) the regulatory compliance and conduct of the association;
- (4) the impact of the association's proposed simulcasting on purses at the association's racetrack; and
- (5) the public interest that will be served by the simulcasting.

(e) An association may not conduct pari-mutuel wagering on a simulcast import in place of a regularly scheduled live race, except as authorized by the executive secretary.

(f) For the purposes of this section, a simulcast import horse race can be a race of Thoroughbreds, Quarter Horses, Arabians, Paint Horses, Appaloosas, Standardbreds, or a mixture of the aforementioned breeds of horses.



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1996

The Honorable David Sibley
Chair
Economic Development Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 96-137

Re: Whether the Texas Racing Commission may approve an application for wagering on simulcast races by a facility that is as yet incapable of hosting live racing events and related question (ID# 36913)

Dear Senator Sibley:

You request our opinion regarding a situation that apparently has arisen at the Lone Star Jockey Club (the "club") in Grand Prairie. You indicate that the club facilities are still under construction. The Texas Racing Commission (the "commission"), you state, has awarded the club eleven live racing days in December 1996. You further state that the club has announced a plan to apply to the commission for administrative approval to simulcast races from the club beginning in March 1996.

You ask whether the commission may approve an application for wagering on simulcast races from a licensed racing association whose facilities will be, at the time it begins simulcasting, under construction, incomplete, or otherwise incapable of accommodating a live race event. You also ask whether the Texas Racing Act (the "act"), V.T.C.S. article 179e, requires that a racetrack conduct a live race prior to being able to offer simulcast racing. Before we consider your questions, we will discuss the relevant provisions of the act.

Each entity that desires to operate a racetrack must apply to the commission for a license. *See* V.T.C.S. art. 179e, § 6.03. The applicant must inform the commission of the kind of racing to be conducted and the dates on which the applicant desires to conduct racing. *Id.* § 6.03(a)(9). The act refers to simulcasting¹ as a kind of racing. *See id.* § 6.02(e), (f) (referring to live races as well as "simulcast races").

¹To simulcast is to telecast or otherwise transmit "live audio and visual signals of a race, . . . from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location." V.T.C.S. art. 179e, § 1.03(61). A sending track is "any licensed track for racing in this state or out-of-state from which a race is transmitted." *Id.* § 1.03(66). A receiving location is "a licensed racetrack association in this state that has been allocated live and simulcast race dates or a

Section 6.02(f) of the act authorizes a racetrack to present simulcast races on dates other than those on which the racetrack is approved to conduct live races. *See also* House Research Organization, Bill Analysis, H.B. 2263, 72d Leg., R.S. (1991) (stating that, with commission approval, racetracks may show simulcast races on dates when they have no live racing). Significantly, however, the act expressly does not “allow wagering . . . on simulcast races at any location other than a racetrack licensed under [the act] *that has been granted live race dates* by the commission.” V.T.C.S. art. 179e, § 11.011(f) (emphasis added).

Section 11.011(f) thus does not premise wagering on simulcast races at a particular racetrack on whether live races have been conducted at that location. Rather, the section premises wagering on simulcast races on whether the commission has granted the licensed racetrack live race dates. In answer to your first question, we conclude that the statute does not prohibit the commission from approving the application of a licensed racetrack for wagering on simulcast races so long as the commission has granted the racetrack live race dates. Thus, whether to permit wagering on simulcast races at an unfinished facility that has been granted live race dates lies within the commission’s discretion and broad rulemaking authority. *See* V.T.C.S. art. 179e, § 11.011(a).

In answer to your second question, we find no requirement in the act that a licensed racetrack must conduct a live race event at the facility before it may offer simulcast racing. To the contrary, the only statutory prerequisite is that the commission has granted live race dates to the licensed racetrack. *See id.*

(footnote continued)

facility not located in this state that is authorized to conduct wagering under the law of the jurisdiction in which it is located.” *Id.* § 1.03(64).

S U M M A R Y

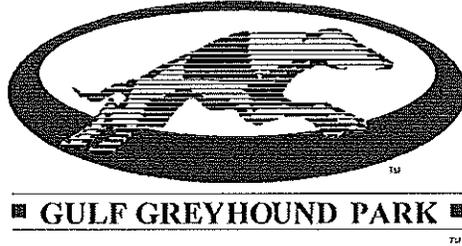
Section 11.011(f) of the Texas Racing Act, V.T.C.S. article 179e, authorizes the Texas Racing Commission to approve the application of a licensed racetrack for wagering on simulcast races so long as the commission has granted the racetrack live race dates. Under the statute, the fact that the racetrack facilities are under construction, incomplete, or otherwise incapable of accommodating a live race event at the time the racetrack begins accepting wagers on simulcast races is inconsequential.

Similarly, nothing in the act requires a licensed racetrack to conduct a live race event at the facility before it may offer simulcast racing. To the contrary, the only statutory prerequisite is that the commission has granted live race dates to the licensed racetrack.

Yours very truly,



KyMBERLY K. Oltrogge
Assistant Attorney General
Opinion Committee



Sally B. Briggs
General Manager

September 30, 2015

Mr. Joel Speight
Deputy Executive Director
Texas Racing Commission
P. O. Box 12080
Austin, TX 78711-2080

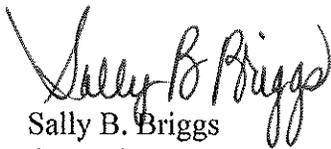
Via E-Mail and US Mail

Dear Mr. Speight:

Attached please find a Request for Performances for Gulf Greyhound Park beginning January 3, 2018 and ending August 31, 2018 for a total of 172 performances.

If you have questions, please let me know. Thank you.

Respectfully,


Sally B. Briggs
General Manager

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 - August 2018

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 September 30, 2015.

I. Schedule Requested

Name of Racetrack: Gulf Greyhound Park

Opening Day: 1 / 3 / 2018 Closing Day: 8 / 31 / 2018

Number of Performances per week 5

Projected Number of Races per Performance 14

TOTAL NUMBER OF PERFORMANCES REQUESTED 172

II. Charity Days

A greyhound association shall conduct at least five charity race days each year. The association shall pay at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a charity that directly benefits the person who work on the backside. At least one percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: February 7, 2018

Day 2: March 21, 2018

Day 3: May 9, 2018

Day 4: June 20, 2018

Day 5: August 8, 2018

Identify the charities:

DESIGNATED BY RULE (1% EACH)

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

Texas Greyhound Association
(Name of Charity)

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

Texas A&M University Scholarship Fund
(Name of Charity)

Optional (Amounts beyond 2% voluntarily contributed)

Texas City/LaMarque Chamber of Commerce
(Name of Charity)

Independence Village
(Name of Charity)

Texas City ISD Foundation for the Future
(Name of Charity)

For each charity listed, attach the following information:

- 1. A brief description of the activities or purposes of the charity;**
- 2. The name and address of each individual who serves as an officer or director; and**
- 3. A copy of an I.R.S. letter of determination that qualifies the charity as an exempt organization for federal income tax purposes.**

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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Valley Race Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input 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"/>

GULF GREYHOUND PARK
(Name of Racetrack)
Requested Live Race Dates for 2018

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3 M 12 PM	4 E 7 PM	5 E 7 PM	6 E 7 PM
7 M 1:30 PM	8	9	10 M 12 PM	11 E 7 PM	12 E 7 PM	13 E 7 PM
14 M 1:30 PM	15 M.L. King Day	16	17 M 12 PM	18 E 7 PM	19 E 7 PM	20 E 7 PM
21 M 1:30 PM	22	23	24 M 12 PM	25 E 7 PM	26 E 7 PM	27 E 7 PM
28 M 1:30 PM	29	30	31 M 12 PM			

February						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 E 7 PM	2 E 7 PM	3 E 7 PM
4 M 1:30 PM	5	6	7 M 12 PM	8 E 7 PM	9 E 7 PM	10 E 7 PM
11 M 1:30 PM	12	13	14 M 12 PM	15 E 7 PM	16 E 7 PM	17 E 7 PM
18 M 1:30 PM	19 Presidents' Day	20	21 M 12 PM	22 E 7 PM	23 E 7 PM	24 E 7 PM
25 M 1:30 PM	26	27	28 M 12 PM			

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

GULF GREYHOUND PARK

(Name of Racetrack)

Requested Live Race Dates for 2018

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

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

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

GULF GREYHOUND PARK

(Name of Racetrack)

Requested Live Race Dates for 2018

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

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

K&L GATES

K&L GATES LLP

2801 VIA FORTUNA

SUITE 350

AUSTIN, TX 78746

T +1 512 482 6800 F +1 512 482 6859 klgates.com

2015 SEP 30 PM 3:13

TEXAS RACING
COMMISSION

September 30, 2015

Janessa Glenn
Janessa.glenn@klgates.com

T (512) 482-6866
F (512) 482-6859

Joel Speight
Deputy Director for Wagering & Racing Review
Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, Texas 78754

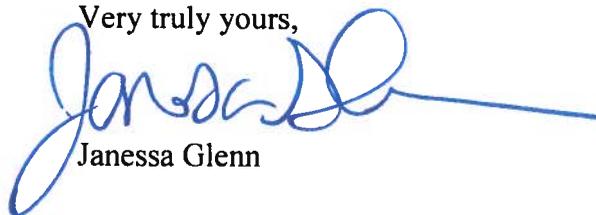
Re: Gulf Coast Racing -- Request for Live Race Dates

Dear Mr. Speight:

Enclosed is Gulf Coast Racing's Request for Live Race Dates for August of 2018.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Janessa Glenn

JG/ktg
Enclosure

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

January - August 2018

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 September 30, 2015.

I. Schedule Requested

Name of Racetrack: Gulf Coast Racing

Opening Day: 8 / 22 / 2018 Closing Day: 8 / 26 / 2018

Number of Performances per week 5

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 at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a charity that directly benefits the person who work on the backside. At least one percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: Texas Greyhound Association/Texas A&M University Scholarship Fund

Day 2: Texas Greyhound Association/Texas A&M University Scholarship Fund

Day 3: Texas Greyhound Association/ Texas A&M University Scholarship Fund

/STARS-South Texas Academic Rising Scholars

Day 4: Texas Greyhound Association/ Texas A&M University Scholarship Fund

/Charlie's Place

Day 5: Texas Greyhound Association/ Texas A&M University Scholarship Fund
/STARS-South Texas Academic Rising Scholars

Identify the charities:

DESIGNATED BY RULE (1% EACH)

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

Texas Greyhound Association

(Name of Charity)

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

Texas A&M Scholarship Fund

(Name of Charity)

Optional (Amounts beyond 2% voluntarily contributed)

STARS-South Texas Academic Rising Scholars

(Name of Charity)

Charlie's Place

(Name of Charity)

STARS-South Texas Academic Rising Scholars

(Name of Charity)

For each charity listed, attach the following information:

- 1. A brief description of the activities or purposes of the charity;**
- 2. The name and address of each individual who serves as an officer or director; and**
- 3. A copy of an I.R.S. letter of determination that qualifies the charity as an exempt organization for federal income tax purposes.**

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.¹

<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input 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"/>

¹ Gulf Coast Racing spoke with representatives from Gulf Greyhound Park and Valley Race Park to coordinate with them regarding the proposed race dates in August of 2018 and they are not opposed.

GULF COAST RACING

(Name of Racetrack)

Requested Live Race Dates for 2018

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15 M.L. King Day	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 Presidents' Day	20	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
18	19	20	21	22	23	24
25	26	27	28	29	30	31

GULF COAST RACING

(Name of Racetrack)

Requested Live Race Dates for 2018

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

May						
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
29	21	22	23	24	25	26
27	28 Memorial Day	29	30	31		

June						
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

GULF COAST RACING

(Name of Racetrack)

Requested Live Race Dates for 2018

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 Independence Day	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	21	22	23	24	25
			E	E	E	E
26	27	28	29	30	31	
E						



September 24, 2015

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

Dear Mr. Trout:

Please find enclosed Valley Race Park's 2018 race date application for the Commission's consideration. We are pleased to request the following date at this time:

- Wednesday July 4, 2018

If you have any questions or should require any further information, please feel free to contact me.

Sincerely,

Matthew Stahlbaum
Vice President of Finance and Business Development

Enclosure

cc: Joel Speight, Texas Racing Commission
Lois Mowery, Texas Greyhound Association
Sally Briggs, Gulf Greyhound

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

July 2018

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 September 30, 2015.

I. Schedule Requested

Name of Racetrack: **Valley Race Park**

Opening Day: 07/04/2018

Closing Day: 07/04/2018

Number of Performances per week 1

Projected Number of Races per Performance 10

TOTAL NUMBER OF PERFORMANCES REQUESTED 1

II. Charity Days

A greyhound association shall conduct at least five charity race days each year. The association shall pay at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a charity that directly benefits the person who work on the backside. At least one percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: 07/04/2018

Day 2: 07/05/2018

Day 3: 07/06/2018

Day 4: 07/07/2018

Day 5: 07/08/2018

Identify the charities:

DESIGNATED BY RULE (1% EACH)

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

07/04/2018 for TBD
(Name of Charity)

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

07/05/2018 for TBD
(Name of Charity)

07/06/2018 for TBD
(Name of Charity)

07/07/2018 for TBD
(Name of Charity)

07/08/2018 for TBD
(Name of Charity)

Optional (Amounts beyond 2% voluntarily contributed)

(Name of Charity)

(Name of Charity)

(Name of Charity)

For each charity listed, attach the following information:

- 1. A brief description of the activities or purposes of the charity;**
- 2. The name and address of each individual who serves as an officer or director;
and**
- 3. A copy of an I.R.S. letter of determination that qualifies the charity as an exempt organization for federal income tax purposes.**

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 type="checkbox"/>	<input type="checkbox"/>
Gulf Greyhound Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valley Race Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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 type="checkbox"/>	<input type="checkbox"/>

Valley Race Park

(Name of Racetrack)

Requested Live Race Dates for 2018

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 Independence Day M1	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				



texas greyhound association

December 9, 2015

via Electronic Mail

Andrea Young
Valley Race Park
2601 S. Ed Carey Drive
Harlingen, TX 78552

Dear Andrea,

The Texas Greyhound Association (TGA) Board of Directors has concluded that we do not have sufficient time to make the necessary and informed decisions regarding a long term simulcast agreement with Valley Race Park (VRP). However, we have agreed to sign the simulcast agreement with VRP until February 29, 2016. We feel this allows the TGA to work out the details of live race dates with you and hopefully Gulf Coast Racing and Gulf Greyhound Park, as well.

As stated above, we will sign the simulcast agreement with VRP to the date specified and look forward to working toward a suitable agreement that will be in the best interest of both the TGA and VRP. If this is agreeable with you, please contact me.

Thank you for working with the us to preserve live racing in the state of Texas and if you have any questions, don't hesitate to call.

Thank you,

David Peck, President

Board of Directors

Cc: Chuck Trout, TxRC



texas greyhound association

December 4, 2015

via electronic mail

Lila Smith
Director of Pari-Mutuel
Texas Racing Commission
PO Box 12080
Austin, TX 78711

Dear Ms. Smith,

The Texas Greyhound Association (TGA) respectfully requests to be placed on the agenda for the December 2015 meeting for consideration and approval of the 2016 TGA Cross Species allocation under TxRC Rule Section 303.102 (d) (2).

Effective January 1, 2016, the TGA requests that the Interstate cross-species simulcast purses received under Texas Racing Act Sec. 6.091 (d) (2), after allowable TGA administrative expenses, be held in the TGA Restricted Cross Species bank account until agreements between the TGA and the Racetracks have been reached.

If you have any questions, my contact information is listed below.

Thank you,

David Peck, President
drpeck5@embarqmail.com

TGA Board of Directors

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

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 – 2015, it is agreed that funds generated at licensed Texas horse tracks for the Accredited Texas-Bred Incentive Program 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.

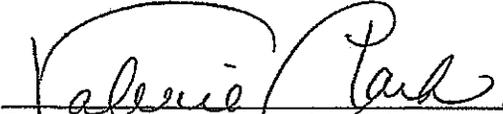
This agreement shall be in effect for calendar year 2016.

The foregoing is acknowledged and agreed to on this 5th day of November 2015.

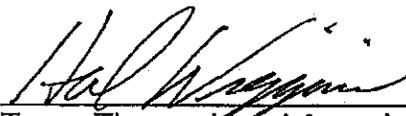
Texas Arabian Breeders Association



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

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).

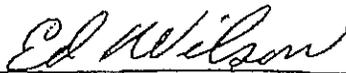
As previously allocated for calendar years 2011 – 2015, it is agreed that funds generated at licensed Texas horse tracks for the Accredited Texas-Bred Incentive Program shall be allocated to the respective breeds as follows:

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 2016.

The foregoing is acknowledged and agreed to on this 5th day of November 2015.



Texas Arabian Breeders Association



Texas Paint Horse Breeders Association

Texas Quarter Horse Association

Texas Thoroughbred Association



TEXAS RACING COMMISSION

Mailing Address: PO Box 12080, Austin, TX 78711-2080
Phone: 512.833.6699 Facsimile: 512.833.6907
www.txrc.texas.gov

October 19, 2015

Henry Sagebiel
General Manager
Gillespie County Fair
P.O. Box 526
Fredericksburg, TX 78624

Scott Wells
President and General Manager
Lone Star Park
1000 Lone Star Parkway
Grand Prairie, TX 75050

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

Andrea Young
Chief Operating Officer
Sam Houston Race Park
7575 N Sam Houston Pky
Houston, TX 77064-3417

RE: Simulcast and Escrowed Purse Allocations

Racetrack Managers:

Under subsection 321.505(a) of the Commission's Rules, each association shall recommend to the Commission as to how the purse revenue shall be allocated among the various breeds of horses. At least 30 days before making the recommendation, associations shall begin negotiations with the organizations recognized by the Commission or in the Act as representatives of horse owners, trainers, and /or breeders. If the association and all of the organizations reach a signed agreement, the association may submit the agreement to the Commission for approval. If there is no agreement, the association shall submit studies, statistics, or other documentation that support its application of the criteria described in paragraph 321.505(a)(4) along with its recommended purse allocation.

Under Rule 321.509, the Commission distributes the funds accrued in the escrowed purse account to the horse racetrack associations at least once per year. In making requests for distribution from the account, associations shall also recommend the percentages by which the distribution will be divided among the breeds. In support of their breed split recommendations, associations shall present written studies, statistics, or other documentation. The Commission may look to the criteria listed in subsection 321.509(c) when evaluating those recommendations. Alternatively, the Commission may approve an agreement that is signed by the association and all of the official

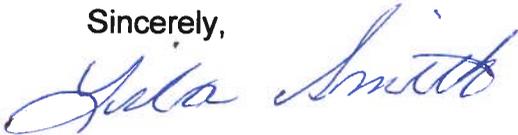
horsemen's organizations and that sets out the percentages by which these funds are to be divided among the various breeds of horses.

The due date for receiving each request, recommendation, or agreement, as well as the supporting documentation, is November 20, 2015.

Attached are two forms for you to use to submit your recommendations. One form is for the allocation of 2016 simulcast purse funds. The second form is for the distribution of the escrow purse account.

Should you have any questions, please feel free to contact me at 512-833-6699.

Sincerely,



Lila Smith
Director of Pari-Mutuel

CC: Chuck Trout, Executive Director
Mark Fenner, General Counsel
Joel Speight, Deputy Executive Director
Ricky Walker, Chief Steward

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



LONE STAR PARK
at Grand Prairie®

*Our Mission:
Create Winning Experiences.*

November 20, 2015

Lila Smith
Director of Pari-Mutuel
Texas Racing Commission
P.O. Box 12080
Austin, TX 78711

Dear Lila,

Please find attached Lone Star Park at Grand Prairie's
"Association Recommended Allocation of 2016 Simulcast Purse
Funds" and "Association Request for 2016 Escrowed Purse
Account Distribution" forms.

Please let us know if you need any further information.

Thanks for your consideration.

Sincerely,

Bart Lang
Director of Racing

Association Recommended Allocation of 2016 Simulcast Purse Funds

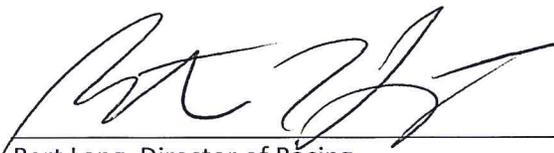
Association Name: Lone Star Park at Grand Prairie

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	
X Texas Arabian Breeders' Association	X Texas Paint Horse Breeders Association
X Texas Thoroughbred Association	X Texas Quarter Horse Association
X Texas Horsemen's Partnership	

Prepared by: 
Bart Lang, Director of Racing

Date: 11/20/15

Association Request for 2016 Escrowed Purse Account Distribution

Association Name: Lone Star Park at Grand Prairie

Rule §321.509 (a) stipulates at least once a year, the Commission shall distribute all funds accrued in the escrowed purse account created by the Act, §6.091(e). An association shall request to the Commission for a distribution from the escrowed purse account.

Type of Distribution Requested <i>(select one)</i>	Percentage Requested
<input checked="" type="checkbox"/> Monthly	24.65%
<input type="checkbox"/> Annual	

Rule §321.509 (a) stipulates that an association when requesting for distribution from the escrowed purse account shall also recommend the percentages by which it will divide the escrowed purse account revenue 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	3.5%
Paint Horse	3.5%
Quarter Horse	72.075%
Thoroughbred	20.925%

Prepared by:


Bart Lang, Director of Racing

Date:

11/20/15



2015 NOV 17 PM 3: 03

THURSDAY
NOV 19 2015

November 12, 2015

Ms. Lila Smith
Director of Pari- Mutuel
Texas Racing Commission
8505 Cross Park Drive Suite 110
Austin, Texas 78754

Dear Ms. Smith:

Sam Houston Race Park requests the following for approvals by the Texas Racing Commission:

- Allocation to the various breeds of 2016 simulcast funds; and
- Allocation to the various breeds of 2016 escrowed purse account

Included with this submission is documentation to support our request as described in paragraph 321.505(a) (4).

Please feel free to reach out to me with any questions or concerns.

Sincerely,

Frank Hopf
Sr. Director of Racing Operations

Cc: Marsha Rountree, THP
Rob Werstler, TQHA
Mary Ruyle, TTA
Andrea Young, SHRP

Association Recommended Allocation of 2016 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 which 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: JUNYU Date: 10-30-2015

Association Request for 2016 Escrowed Purse Account Distribution

Association Name: SAM HOUSTON RICE PARK

Rule §321.509(a) stipulates at least once a year, the Commission shall distribute all funds accrued in the escrowed purse account created by the Act, §6.091(e). An association may submit a request to the Commission for a distribution from the escrowed purse account.

Type of Distribution Requested <i>(select one)</i>	Percentage Requested
<input checked="" type="checkbox"/> Monthly	41.3%
<input type="checkbox"/> Annual	

Rule §321.509(a) stipulates that an association when requesting for distribution from the escrowed purse account shall also recommend the percentages by which it will divide the escrowed purse account revenue 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	3.50%
Paint Horse	3.50%
Quarter Horse	72.075%
Thoroughbred	20.925%

Prepared by: JANVA

Date: 10-30-2015

Sam Houston Race Park Allocation of Purse Funds

Allocation of Purses

Sam Houston Race Park has reviewed its operational data and statistics from the Thoroughbred (TB) and Quarter Horse (QH) from the last full calendar year - 2015. Based on local and national interest, the 2016 race dates and the availability and ability to attract competitive horses, SHRP advocates the following splits which would remain unchanged from the previous year:

<u>Breed</u>	<u>2016 Proposed</u>	<u>2015 Actual</u>
TB	76.44%	76.44%
QH	21.56%	21.56%
Arabian	1.40%	1.40%
Paint	0.60%	0.60%

Factors for Consideration as Defined By Commission Rule 321.505 And 321.509

1. Earnings

Net commissions represent SHRP's earnings from wagering after mandatory deductions and other track fees. The combined net commissions earned from live, export and simulcast handle by breed year-to-date are listed below:

• Thoroughbred	86.8%
• Quarter Horse	11.6%
• Arabian	1.4%
• Paint	0.2%

Net commissions from Thoroughbred handle are a significant source of revenue for SHRP. The significant premium in earnings is driven in part by higher per caps and overall attendance statistics. In addition, the ability to run one additional day per week during the Thoroughbred meet (more supply) drives a significant difference in operating income between the two meets for SHRP.

For the first three months of 2015 when running primarily Thoroughbreds, SHRP earned more than \$739,000 (or 16% increase from 2014) in positive EBITDA. However, during April and May in 2015 when running Quarter Horses, SHRP suffered over \$197,000 in EBITDA losses (or 41% decrease over 2014) despite premium simulcast dates like the Kentucky Derby and Preakness.

2. National Public Interest

National public interest can be clearly demonstrated by export handle. Please note, not all interstate jurisdictions that accept wagering on Texas Thoroughbreds are able to accept wagering on Texas Quarter Horses. The percentage of export handle for 2015 attracted by each breed is listed below.

• Thoroughbred	83.7%
• Quarter Horse	13.6%
• Arabian	2.5%
• Paint	0.2%

SHRP's daily export handle for the Thoroughbred meet averaged \$1.48 million compared to \$331,000 for the Quarter Horse meet.

3. Local Interest

One way to gauge local interest at SHRP is through simulcast handle as SHRP operates as simulcast-only for about half of the calendar year. Below is simulcast handle for the four breeds in 2015:

- Thoroughbred 93.64%
- Quarter Horse 6.16%
- Arabian 0.17%
- Paint 0.04%

Another way to gauge interest is through live handle and live attendance. Below is live handle and attendance data for 2015 as percentages:

Live Handle

- Thoroughbred 62.77%
- Quarter Horse 34.97%
- Arabian 1.87%
- Paint 0.39%

Live Attendance

- Thoroughbred 60.4%
- Quarter Horse 39.6%

Over the past three years, SHRP's daily average live handle for Thoroughbreds has grown each and every year bucking all national trends. However, despite maintaining daily purses during the 2015 Quarter Horse meet, daily live handle fell 8% year-over-year. Unfortunately, the results of the QH meet are consistent with national trends.

The average live handle on an "apples to apples basis" for Fridays and Saturdays during the 2015 Thoroughbred meet was approximately \$178,000 per day compared to only \$117,000 for the Quarter Horse meet, a difference of about 51%.

Both meets enjoy similar marketing budgets. However, in 2015, the Quarter Horse meet enjoys the unique advantages created by post-race concerts, and premium simulcast days like the Kentucky Derby and Preakness.

4. Race Date Request

SHRP has been granted 32 Thoroughbred race days and 24 Quarter Horse race days for 2016. These dates translate into the following percentages:

- Thoroughbred 57%
- Quarter Horse 43%

5. Availability and Ability to Attract Competitive Horses

A four-day race week allows SHRP to maximize its assets and turn a profit while three-day race weeks struggle. Below please find statistics from SHRP's 2015 racing season:

- Thoroughbred, 8.4 runners per race, 4 days per week
- Quarter Horse, 8.1 runners per race, 3 days per week

Escrowed Purse Account

Sam Houston Race Park, at this time, does not recommend changing the splits for the Escrowed Purse Account. The criteria listed in rule 321.509 are similar to those in rule 321.505. Despite the criteria in rule 321.509 clearly favoring a majority split to the Thoroughbred breed, the current allocation overwhelmingly favors the Quarter Horse breed. However, the industry is working against an un-level playing field with our competitors in neighboring states. SHRP acknowledges that a change in the splits would impact the Texas Quarter Horse breed significantly given the limited purse structure. Thus, SHRP recommends the following splits:

<u>Breed</u>	<u>2016 Proposed</u>	<u>2015 Actual</u>
TB	20.925%	20.925%
QH	72.075%	72.075%
Arabian	3.50%	3.50%
Paint	3.50%	3.50%



November 20, 2015

Mr. Joel Speight
Deputy Executive Director
Texas Racing Commission
8505 Cross Park Drive, Suite 100
Austin, TX 78754

Dear Joel,

Attached are Retama Park's 2016 requests for allocating simulcast import purse funds and the escrowed purse account among the four breeds that race in Texas; Thoroughbred, Quarter Horses, Arabians and Paints. These two requests represent no change from the 2015 allocations.

For simulcast import purse funds, we are requesting a 76/24 split (after minor breed purse money is removed). As we have done in recent years, we would like to have one set of splits in place for the period of time leading up to and including most of the Quarter Horse meet and a second set of splits for the balance of the year.

The breakdown for the year would be as follows:

- 67% Thoroughbred and 33% Quarter Horse for the period 1/1/16 through 7/31/16
- 91% Thoroughbred and 9% Quarter Horse for the period 8/1/16 through 12/31/16
- The above percentages are after payment of 2% to minor breeds

For the escrowed purse account, we are requesting a percentage, type of distribution, and allocation to each of the four breeds as indicated on the attached form. This distribution would be constant all year. Again, this is no change from the 2015 split.

Please let me know if you have any questions.

A handwritten signature in black ink that reads "Steven M. Ross". The signature is written in a cursive, flowing style.

Steven M. Ross
Director of Racing Operations
Retama Park

Association Recommended Allocation of 2016 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 which 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 Thoroughbred Association <input checked="" type="checkbox"/> Texas Horsemen's Partnership	<input checked="" type="checkbox"/> Texas Paint Horse Breeders' Association <input type="checkbox"/> Texas Quarter Horse Association

Prepared by: Steven M. Ross

Date: 11/20/2015

Association Request for 2016 Escrowed Purse Account Distribution

Association Name: Retama Park

Rule §321.509(a) stipulates at least once a year, the Commission shall distribute all funds accrued in the escrowed purse account created by the Act, §6.091(e). An association may submit a request to the Commission for a distribution from the escrowed purse account.

Type of Distribution Requested <i>(select one)</i>	Percentage Requested
<input checked="" type="checkbox"/> Monthly	32.45%
<input type="checkbox"/> Annual	

Rule §321.509(a) stipulates that an association when requesting for distribution from the escrowed purse account shall also recommend the percentages by which it will divide the escrowed purse account revenue 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	3.500%
Paint Horse	3.500%
Quarter Horse	72.075%
Thoroughbred	20.925%

Prepared by: _____

Steven M. Ross

Date: _____

11/20/2015

Association Request for 2016 Escrowed Purse Account Distribution

Association Name: FREDERICKSBURG DOWNS, INC.

Rule §321.509(a) stipulates at least once a year, the Commission shall distribute all funds accrued in the escrowed purse account created by the Act, §6.091(e). An association may submit a request to the Commission for a distribution from the escrowed purse account.

Type of Distribution Requested <i>(select one)</i>	Percentage Requested
<input checked="" type="checkbox"/> Monthly	1.6
<input type="checkbox"/> Annual	

Rule §321.509(a) stipulates that an association when requesting for distribution from the escrowed purse account shall also recommend the percentages by which it will divide the escrowed purse account revenue 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	3.5
Paint Horse	3.5
Quarter Horse	72.075
Thoroughbred	20.925

Prepared by: Rampage Date: 11-11-15

Association Recommended Allocation of 2016 Simulcast Purse Funds

Association Name: FREDERICKSBURG 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 which 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: *Pam Gray* Date: 11-11-15



Gillespie County Fair & Festivals Association

November 11, 2015

- 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 2016 Escrowed Purse Account Distribution and 2016 Simulcast Purse Funds

Please see the attached Request for 2016 Escrowed Purse Account Distribution form, along with the Recommended Allocation of 2016 Simulcast Purse Funds form from the GCFFA/Fredericksburg Downs, Inc. We are requesting the same percentages that we have used in the past 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,

Robert "Henry" Sagebiel
General Manager, Racing

Texas Arabian Breeders' Association

Texas Paint Horse Breeders' Association

Texas Quarter Horse Association

Texas Thoroughbred Association

Texas Horsemen's Partnership

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



Gillespie County Fair & Festivals Association

November 11, 2015

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 2016 Escrowed Purse Account Distribution and 2016 Simulcast Purse Funds

Please see the attached Request for 2016 Escrowed Purse Account Distribution form, along with the Recommended Allocation of 2016 Simulcast Purse Funds form from the GCFFA/Fredericksburg Downs, Inc. We are requesting the same percentages that we have used in the past 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,

Robert "Henry" Sagebiel
General Manager, Racing

Texas Arabian Breeders' Association

Texas Paint Horse Breeders' Association

Texas Quarter Horse Association

Texas Thoroughbred Association

Texas Horsemen's Partnership



Gillespie County Fair & Festivals Association

November 11, 2015

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 2016 Escrowed Purse Account Distribution and 2016 Simulcast Purse Funds

Please see the attached Request for 2016 Escrowed Purse Account Distribution form, along with the Recommended Allocation of 2016 Simulcast Purse Funds form from the GCFFA/Fredericksburg Downs, Inc. We are requesting the same percentages that we have used in the past 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,

Robert "Henry" Sagebiel
General Manager, Racing

Texas Arabian-Breeders' Association

Texas Quarter Horse Association

Texas Paint Horse Breeders' Association

Texas Thoroughbred Association

Texas Horsemen's Partnership



Gillespie County Fair & Festivals Association

November 11, 2015

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 2016 Escrowed Purse Account Distribution and 2016 Simulcast Purse Funds

Please see the attached Request for 2016 Escrowed Purse Account Distribution form, along with the Recommended Allocation of 2016 Simulcast Purse Funds form from the GCFFA/Fredericksburg Downs, Inc. We are requesting the same percentages that we have used in the past 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,

Robert "Henry" Sagebiel
General Manager, Racing

Texas Arabian Breeders' Association

Texas Paint Horse Breeders' Association

Texas Quarter Horse Association

Texas Thoroughbred Association

Texas Horsemen's Partnership



T E X A S
H O R S E M E N ' S
P A R T N E R S H I P

November 18, 2015

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

Dear Chuck:

I am pleased to submit this letter on behalf of the Texas Horsemen's Partnership, offering our support (Texas HBPA and Texas Thoroughbred HBPA) of the requested 2016 simulcast horse purse and Escrow Horse Purse for all four of the licensed horse tracks in Texas.

THP would like to urge the Commissioners to vote in favor of the submitted requests at their December meeting.

If any questions arise concerning this matter, please feel free to contact me.

Sincerely,

Marsha Rountree
Executive Director/Controller
Texas Horsemen's Partnership, LLP

P. O. Box 142533

Austin, Texas 78714

512.467.9799

Fax 512.467.9790



November 20, 2015

Joel Speight
Deputy Executive Director
Texas Racing Commission
P.O. Box 12080
Austin, TX 78711

Dear Mr. Speight,

The Texas Quarter Horse Association supports both the Escrowed Purse and simulcast breed splits proposed by each racetrack for the 2016 racing season.

If you have any questions feel free to contact me anytime.

Sincerely,

Rob Werstler
Director of Racing

A handwritten signature in black ink that reads "Rob Werstler". The signature is written in a cursive, flowing style.



November 20, 2015

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 2016 Simulcast Purse Funds and the 2016 Escrowed Horse Purse Account Distribution for Lone Star Park.

Please let me know if you need any further information.

Sincerely,

Mary Ruyle
Executive Director

cc: Bart Lang, Lone Star Park



November 20, 2015

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 2016 Simulcast Purse Funds and the 2016 Escrowed Horse Purse Account Distribution for Sam Houston Race Park.

Please let me know if you need any further information.

Sincerely,

Mary Ruyle
Executive Director



November 18, 2015

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 2016 Simulcast Purse Funds and the 2016 Escrowed Horse Purse Account Distribution for Retama Park.

Please let me know if you need any further information.

Sincerely,

Mary Ruyle
Executive Director

cc: Steve Ross, Retama Park

From:
To: [Mark Fenner](#)
Subject: Breed splits at Lone Star Park
Date: Wednesday, December 09, 2015 2:26:05 PM

The Texas Arabian Breeders Assoc. has agreed to the Lone Star Park recommended Breed Splits.

Ed Wilson

From:
To: lila@txrc.texas.gov
Cc: [Mark Fenner](#)
Subject: Breed Splits at SHRP
Date: Wednesday, December 09, 2015 1:46:15 PM

The Texas Arabian Breeders Assoc. agrees with the breed splits at Sam Houston to remain the same as in 2015.

Ed Wilson



Texas Arabian Breeders Association

P.O. Box 215 ☉ Forney, Texas 75126
972/564-9430 ☉ Fax 972/552-3613

November 19, 2015

Dear Steve,

I received your recommended 2016 Simulcast Split between Arabians and Paints and support it staying the same as in 2015 as you recommend. We also support the 2016 Escrowed Purse Account remaining the same as 2015 as you recommend.

The Arabians look forward to racing at Retama again 2016.

Yours Truly,

A handwritten signature in cursive script that reads "Ed Wilson".

Ed Wilson

President, TABA

From: Lex Smurthwaite
Sent: Wednesday, December 9, 2015 12:25 PM
To: Lila Smith
Subject: Lone Star Park Breed Splits

Hello Lila,

Thank you for your phone call earlier today. Texas Paint Horse Breeders' Association (TPHBA) is okay with the breed split submission from Lone Star Park.

Lex

Lex Smurthwaite
Executive Director
Texas Paint Horse Breeders' Association
817 781-5980 mobile

From: Lex Smurthwaite
Sent: Wednesday, December 9, 2015 12:27 PM
To: Lila Smith
Subject: Sam Houston Park Breed Split

Hello Lila,

Thank you for your phone call earlier today. Texas Paint Horse Breeders' Association (TPHBA) is okay with the breed split submission from Sam Houston Park.

Lex

Lex Smurthwaite
Executive Director
Texas Paint Horse Breeders' Association
817 781-5980 mobile



Texas Paint Horse Association, PO Box 163794, Fort Worth, TX 76161

November 18, 2015

Steve Ross
Director of Racing Operations
Retama Park
PO Box 47535
San Antonio, TX 78265-7535

Dear Steve,

This letter is in response to the Retama Park proposed breed splits for 2016. Texas Paint Horse Breeders' Association (TPHBA) appreciates the support from Retama Park we received for years in building a program.

TPHBA is in agreement with the proposed breed split of 1.5% Arabian and .5% from simulcast import purse funds. In addition, TPHBA is in agreement with the proposed breed split of 3.5% Arabian and 3.5% Paint Horse on the escrowed purse account.

Sincerely,

A handwritten signature in black ink, reading 'Lex Smurthwaite', is positioned below the 'Sincerely,' text.

Lex Smurthwaite
Executive Director
Texas Paint Horse Breeders Association
PO Box 163794
Fort Worth, TX 76161
(817) 781-5980 mobile

Cc: Pancho Villarreal



LONE STAR PARK
at Grand Prairie

*Our Mission:
Create Winning Experiences.*

November 16, 2015

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

Dear Mr. Trout:

In an effort to better serve one of the most important sectors of the horse racing industry—our horseplayers—Lone Star Park at Grand Prairie is hereby respectfully requesting approval of the accompanying contract with Sportech Racing, LLC for tote services, commencing on January 1, 2016. Members of our staff have spent more than a year studying the comparative advantages in equipment and services between all the major tote companies and we are confident that Sportech will be a step forward which will be widely appreciated.

To be sure I have provided your staff with the necessary information to place this item on the agenda for the December meeting, I have sent along the signed contract.

We have a plan in place to make all the minor carpentry changes, etc. and to allow for proper testing prior to implementation. Of course we will be glad to respond to any questions the TRC staff may have as we move toward this exciting improvement. As always, I can be reached directly at (405) 833-7566.

Respectfully,

Scott Wells
President and General Manager

Enclosure



TEXAS RACING COMMISSION
P. O. Box 12080
Austin, TX 78711-2080
(512) 833-6699
Fax (512) 833-6907

Date: December 8, 2015

To: Chuck Trout, Executive Director

From: Lila Smith, Director of Pari-Mutuel *LS*

Re: Totalisator Contract – Lone Star Park / Sportech Racing, LLC

Lone Star Park has requested Commission approval of a totalisator contract between Global Gaming LSP, LLC, and Sportech Racing, LLC. This contract, if approved, would allow Sportech Racing, LLC, to begin operations as Lone Star Park's new totalisator system provider on January 1, 2016, and continue through December 31, 2025.

Staff has completed its review of the new contract and finds it to be in compliance with the Texas Racing Act and Texas Rules of Racing.

If you have any questions, please feel free to contact me.

cc: Chuck Trout, Executive Director
Joel Speight, Deputy Executive Director

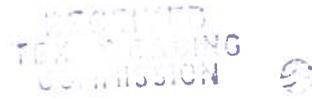
VI. PROCEEDINGS ON OCCUPATIONAL LICENSES

- A. The Proposal for Decision in SOAH No. 476-15-4140; *In Re: The Appeal of Judd Kearn from Stewards' Ruling Nos. LSP3039, LSP3040, LSP3042, LSP3043, LSP3044, LSP3045, LSP3046, and LSP3047*
- B. The Proposal for Decision in SOAH No. 476-15-4141; *In Re: The Appeal of Dee Allen Keener from Stewards' Ruling Nos. LSP3049, LSP3050, LSP3051, and LSP3052*
- C. The Proposal for Decision in SOAH No. 476-15-4142; *In Re: The Appeal of John Stinebaugh from Stewards' Ruling No. LSP3041*

State Office of Administrative Hearings



2015 OCT -7 PM 2:00



Cathleen Parsley
Chief Administrative Law Judge

October 6, 2015

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

INTER-AGENCY

RE: Docket No. 476-15-4140; Judd Kearn v. Texas Racing Commission

Dear Mr. Trout:

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

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

Sincerely,

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

Sarah Starnes
Administrative Law Judge

SS/Ls

Enclosures include 2 CDs of Certified Evidentiary Record

cc: Devon Bijansky, Staff Attorney, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 - **INTER-AGENCY**

John Mac Hayes, John Mac Hayes Law Firm, 1220 North Walker, Oklahoma City, OK 73103 - **REGULAR MAIL**

300 W. 15th Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)
www.soah.state.tx.us

SOAH DOCKET NO. 476-15-4140

**JUDD KEARL,
Appellant**

v.

**TEXAS RACING COMMISSION,
Respondent**

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Judd Kearn (Appellant) appealed Sam Houston Race Park Stewards (Stewards) Ruling Nos. LSP3039, LSP3040, LSP3042, LSP3043, LSP3044, LSP3045, LSP3046, and LSP3047 to the Texas Racing Commission (Commission). The Stewards' rulings determined that eight racehorses Appellant trained had tested positive for a prohibited substance. In each ruling, the Stewards fined Appellant \$500 and suspended his license for fifteen days. The horses were also disqualified from their respective races and the race purses were redistributed. Appellant asserted that the Commission could not consider the positive test results because, when he requested to have the split specimens tested by a second lab, there was only one Commission-approved lab that could test for the substance, and that lab was unacceptable to Appellant. The Administrative Law Judge (ALJ) concludes that the applicable rules do not prevent the Commission from considering the positive test results in these circumstances, and there was no evidence that the Stewards' ruling was clearly erroneous. Therefore, the Stewards' rulings should be upheld.

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.

This case is an appeal from a Stewards' hearing held on February 20, 2015. At the hearing, the Stewards jointly heard three cases involving the same counsel, similar facts, and the same legal issue; Appellant's case involved eight horses. On February 21, 2015, the Stewards

entered Ruling Nos. LSP3039, LSP3040, LSP3042, LSP3043, LSP3044, LSP3045, and on February 26, 2015, the Stewards entered Ruling Nos. LSP3046 and LSP3047, each finding Appellant had violated the Commission's rules at 16 Texas Administrative Code §§ 319.3, 319.302, and 311.104. As sanction, in each ruling the Stewards fined Appellant \$500, suspended his license for fifteen days (with the suspensions to be served in succession), and redistributed the race's purse. Appellant timely appealed the rulings, and the case was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing. The other two cases, involving different trainers, were also appealed to SOAH and docketed separately.

At SOAH, the case was assigned to ALJ Sarah Starnes and joined for hearing with the two other appeals.¹ In all three cases, the Appellants were represented by Oklahoma attorney John Mac Hayes, who was admitted *pro hac vice*, and Commission staff (Staff) was represented by Deputy General Counsel Devon V. Bijansky. The parties requested and agreed to waive an in-person hearing and to instead have the cases decided on an agreed evidentiary record. They submitted the stipulated record from the Stewards' hearing, comprised of the hearing recording, exhibits admitted in the hearing, and stipulated facts. The record closed on August 26, 2015, after the parties' legal arguments were submitted in written briefs.

II. FACTUAL BACKGROUND²

Appellant is licensed by the Commission as an owner-trainer with license number 91094, and has been a licensed horse trainer for twenty-two years.

In October 2014, eight racehorses trained by Appellant won or placed in races at Lone Star Park in Grand Prairie, Texas, and provided blood samples following their races as follows:

- On October 4, 2014, Easee Jubilee finished second in the second race and provided blood sample #LS051139;

¹ The related cases are docketed as SOAH Case No. 476-15-4141 and SOAH Case No. 476-15-4142. Separate Proposals for Decision are being issued in those cases.

² These facts are derived from the parties' Stipulated Facts, submitted as part of the record from the Stewards' hearing, and the testimony given at the Stewards' hearing by Appellant and by Commission investigator Melvin Bell.

- On October 9, 2014, Zoom Royalty won the fifth race and provided blood sample #LS051166;
- On October 9, 2014, Runaway Ante finished second in the eighth race and provided blood sample #LS051173;
- On October 10, 2014, Lethal Corona finished second in the fifth race and provided blood sample #LS051185;
- On October 10, 2014, Eye Agree finished second in the eighth race and provided blood sample #LS051191;
- On October 17, 2014, Saint Victoria won the fifth race and provided blood sample #LS051242;
- On October 17, 2014, Tempting Toro won the eighth race and provided test sample #LS051248; and
- On October 18, 2014, Last Man Standin finished second in the first race and provided test sample #LS051253.

Test barn staff divided each blood sample into two specimens. The first sample for each horse was sent to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing. On or about October 23, 2014, Commission investigator Melvin Bell notified Appellant that TVMDL determined that the blood sample for Easee Jubilee had tested positive for budesonide, a substance that is prohibited for use in racehorses. On or about November 5, 2014, Mr. Bell notified Appellant that Runaway Ante, Zoom Royalty, Eye Agree, and Lethal Corona had also tested positive for budesonide. And on or about November 7, 2015, Mr. Bell notified Appellant that Saint Victoria, Tempting Toro, and Last Man Standin had tested positive for budesonide, as well.

The Commission maintains a list of approved “split sample laboratories” that trainers may use for secondary testing following a positive test result from the Commission’s primary lab.³ When Appellant’s horses tested positive for budesonide, there were only four labs on the Commission’s list. Mr. Bell testified that he called each lab, and three of them reported that they were not capable of testing for budesonide. On the Commission’s list of approved split-sample

³ Stipulated Record at 10403.

labs, only one—the University of Florida Racing Laboratory (University of Florida)—was equipped and willing to test for budesonide.

Appellant testified that, given his choice of the four labs on the Commission's list of approved split-sample labs, he would never have selected the University of Florida and that the University of Florida lab was unacceptable to him. He explained that he has negative feelings about the lab because he has had to use it before in another jurisdiction and felt the lab took too long to provide test results. Of the labs on the Commission's list, Appellant would have preferred to send his sample to Industrial Laboratories in Colorado or, alternatively, to the Iowa State University lab. He explained that he has raced horses in jurisdictions that use those labs and they have tested many of his samples over the years, so he has confidence in their results. However, after Mr. Bell advised him that the University of Florida was the only Commission-approved lab that could accept the samples for budesonide testing, Appellant gave written permission to Mr. Bell to send the split specimen for Easee Jubilee to University of Florida for secondary testing.⁴

Appellant initially requested split-sample testing for all eight horses that had tested positive for budesonide at TVMDL. However, Mr. Bell suggested, and Appellant agreed, to hold off on sending samples for the other seven horses until test results for Easee Jubilee came back from the University of Florida. On or about November 13, 2014, the University of Florida confirmed the presence of budesonide in the blood sample provided by Easee Jubilee following the race on October 4, 2014. Appellant then elected not to pay the \$800 per test it would have cost to send the split samples for the other seven horses to the University of Florida for secondary testing.

⁴ The parties have stipulated that proper chain of custody and the integrity of each specimen were maintained at all times. Stipulated Record at 10004.

III. APPLICABLE LAW

Horseracing in Texas is governed by the Texas Racing Act (the Act) and the rules promulgated by the Commission pursuant to the Act.⁵ The Commission's rules provide that a horse participating in a race "may not carry in its body a prohibited drug, chemical, or other substance,"⁶ and require a trainer to "guard each animal in his or her custody before the animal races in the manner and for the time necessary to prevent the administration of a prohibited drug, chemical, or other substance."⁷ The Commission's rules also regard trainers as the "absolute insurer" for any horse entered into a race and require them to ensure that each horse in the care and custody of the trainer is "free from all prohibited drugs, chemicals, or other substances."⁸

After a race, a specimen must be collected from the horse that finished first, and may be collected from the horse that finished second, in a test barn at the racetrack.⁹ If the specimen is of sufficient quantity to be split, it is divided into two parts. One part of the specimen is delivered to a laboratory for testing, and the second part, or "split specimen," is stored pending possible further testing.¹⁰ This case turns on the interpretation of the Commission's rule governing testing of split specimens, found in 16 Texas Administrative Code § 319.362, which provides, in relevant part:

(c) An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the retained serum or urine, whichever provided the positive result, be submitted for testing to a Commission approved and listed laboratory that is acceptable to the owner or trainer. The owner or trainer must notify the executive secretary of the request not later than 48 hours after notice of the positive result. Failure to request the split within the prescribed time period will be deemed a waiver of the right to the split specimen.

⁵ Texas Racing Act, Tex. Rev. Civ. Stat. art. 179e; Texas Admin. Code title 16, part 8.

⁶ 16 Tex. Admin. Code § 319.3(a).

⁷ 16 Tex. Admin. Code § 319.302.

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

⁹ 16 Tex. Admin. Code § 319.361(b).

¹⁰ 16 Tex. Admin. Code §§ 319.334, .338, .362(a)-(b).

(d) If the retained part of a specimen is sent for testing, the commission staff shall arrange for the transportation of the specimen in a manner that ensures the integrity of the specimen. The person requesting the tests shall pay all costs of transporting and conducting tests on the specimen. To ensure the integrity of the specimen, the split specimen must be shipped to the selected laboratory no later than 10 days after the day the trainer is notified of the positive test. Subject to this deadline, the owner or trainer of the horse from whom the specimen was obtained is entitled to be present or have a representative present at the time the split specimen is sent for testing.

(e) If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of the applicable provisions of the chapter.

(f) If the test on the split specimen portion does not substantially confirm the findings of the original laboratory, the stewards may not take disciplinary action regarding the original test results.

(g) If an act of God, power failure, accident, labor strike, or any other event, beyond the control of the Commission, prevents the split from being tested, the findings of the original laboratory are prima facie evidence of the condition of the horse at the time of the race.

A positive finding of a prohibited substance in a test specimen, “subject to the rules of the [C]ommission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.”¹¹

The Commission has adopted the Equine Medication Classification Policy and Penalty Guidelines (Guidelines), which classify substances based on factors including a substance’s pharmacology, its ability to influence the outcome of a race, and whether it has a legitimate therapeutic purpose for use in race horses.¹² The Guidelines include several classifications of prohibited substances, with Class 1 applying to substances with the highest potential to affect race performance and no generally accepted medical use for racehorses, and Class 4 encompassing substances that have some therapeutic uses and only a limited ability to influence

¹¹ 16 Tex. Admin. Code § 319.3(e).

¹² Equine Medication Classification Policy and Penalty Guidelines (Guidelines), *available at* http://www.txrc.texas.gov/agency/structure/Equine_Medication_Classification.pdf.

performances. There is no dispute that budesonide, the substance at issue in this appeal, is listed as a Class 4 substance in the Guidelines.

If racing stewards find that a test specimen from a race animal contained a prohibited drug, chemical, or substance, the stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, or suspend the trainer's license for up to five years.¹³ For Class 4 substances, the Guidelines suggest a suspension of 15-60 days, a fine of up to \$1000, and possible loss of prize purse.

A person aggrieved by a ruling of the stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.¹⁴ In an appeal, the Appellant has the burden of proving that the stewards' rulings were clearly erroneous.¹⁵

IV. ANALYSIS

Appellant does not dispute that TVMDL found budesonide in the blood samples taken from Easee Jubilee, Runaway Ante, Zoom Royalty, Eye Agree, Lethal Corona, Saint Victoria, Tempting Toro, and Last Man Standin following the races in October 2014. Appellant also does not dispute that the University of Florida lab confirmed the presence of budesonide in the blood sample taken from Easee Jubilee following his race on October 4, 2014. However, Appellant contends that none of the test results can be considered by the Commission because he was not afforded the opportunity to have the split samples tested at a lab that was acceptable to him. Appellant contends that if there are no split-sample labs that are both approved by the Commission and acceptable to the trainer, then no disciplinary action can be taken. The Commission's rule on split-sample testing does not support Appellant's position.

After a horse tests positive for a prohibited substance, Rule 319.362 gives a trainer the right to submit the split sample for testing by "a Commission approved and listed laboratory that

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

¹⁴ 16 Tex. Admin. Code § 307.67.

¹⁵ 16 Tex. Admin. Code § 307.67(c).

is acceptable to the owner or trainer.”¹⁶ Nothing in the rule requires, as Appellant contends, that the owner or trainer be offered a selection of several Commission-approved laboratories to choose from. It says only that testing must be allowed by “a Commission approved and listed laboratory . . . ,” and the Commission met that requirement by offering Appellant the opportunity to have his horses’ split samples sent to University of Florida for secondary testing.

For seven of Appellant’s horses—Runaway Ante, Zoom Royalty, Eye Agree, Lethal Corona, Saint Victoria, Tempting Toro, and Last Man Standin—Respondent waived the right to have their split samples tested by a Commission-approved lab. Though Appellant made timely, initial requests for split-sample testing for those horses, the record is clear that he effectively withdrew those requests when he subsequently refused to have the samples sent to University of Florida, the only lab available for split-sample testing under Rule 319.362. Therefore, pursuant to Rule 319.3(e), the test results from TVMDL became prima facie evidence that budesonide had been carried in those horses’ bodies while participating in a race.¹⁷ Alternatively, the test results from TVMDL may be considered prima facie evidence of the violations for those seven horses pursuant to Rule 319.362, which contemplates situations where split-sample testing cannot occur. Specifically, the rule states that if an event “beyond the control of the Commission” prevents the split sample from being tested, then the original lab’s positive test result is taken as “prima facie evidence of the condition of the horse at the time of the race.”¹⁸ Appellant contends that he withheld the other seven samples from secondary testing at the University of Florida because that lab was not acceptable to him. The Commission has no control over whether labs are capable of testing for budesonide, or whether Appellant will withhold approval of any lab that is capable of testing for the substance. Therefore, when split-sample testing cannot occur because the trainer withholds acceptance of the Commission-approved lab that could perform the testing, the original lab’s positive test is, standing alone, prima facie evidence of a violation.

For the eighth horse at issue in this case—Easee Jubilee—Appellant indicated his approval of the University of Florida lab when he signed a “Split Sample Request” form asking

¹⁶ 16 Tex. Admin. Code § 319.362(c).

¹⁷ 16 Tex. Admin. Code § 319.3(e).

¹⁸ 16 Tex. Admin. Code § 319.362(g).

that Easee Jubilee's split sample be sent there for testing.¹⁹ It is undisputed that testing at that lab confirmed the original lab's results. Therefore, pursuant to Rule 319.362(e), the test results from the two labs are "a prima facie violation" of the Commission's rules on prohibited substances with respect to Easee Jubilee.²⁰

Appellant now asserts that he "never actually 'approved' [University of] Florida in a true procedural sense" and was effectively "intimidated and coerced" into accepting that lab after the Commission's investigator advised him it was the only lab on the Commission's approved list that was capable of testing for budesonide.²¹ The ALJ finds that Appellant waived the right to deem the University of Florida "unacceptable" when he signed the request to have Easee Jubilee's split sample tested there. However, even if the University of Florida test results are disregarded because the lab was not "acceptable to the owner or trainer," it does not follow that the Commission is then prohibited from taking disciplinary action against Appellant. As set forth above, where split-sample testing cannot occur for reasons beyond the Commission's control, Rule 319.362 provides that the original lab's positive test result constitutes prima facie evidence of a violation.

Finally, in urging that his due process rights are infringed if a violation is found without confirmatory split-sample testing, Appellant overstates the weight given to the positive test results from the first and second labs. Had split-sample testing contradicted the original lab's results, then Rule 319.362 would have prohibited the Commission from taking any disciplinary action against the trainer.²² However, positive test results are not similarly case-dispositive. Rule 319.362 states that positive test results from both the original lab and the split-sample lab will establish a "prima facie violation," or, if no split-sample testing can be performed, then the original lab's result can be "prima facie evidence" of a violation.²³ "Prima facie" means

¹⁹ Stipulated Record at 10048.

²⁰ 16 Tex. Admin. Code § 319.362(e).

²¹ Brief of Appellants at 16.

²² 16 Tex. Admin. Code § 319.362(f).

²³ 16 Tex. Admin. Code § 319.362(e), (g).

“[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.”²⁴ At the Stewards’ hearing, Appellant had the opportunity to rebut the presumption that the positive tests for budesonide proved violations. However, he offered no evidence that the test results from TVMDL or University of Florida were somehow inaccurate or unreliable, nor any other evidence that might support a determination that no violations had occurred. Therefore, the Stewards’ decisions were supported by the evidence presented, and Appellant has not met his burden of establishing that the decisions were clearly erroneous.

V. FINDINGS OF FACT

1. Judd Kearl (Appellant) is licensed by the Texas Racing Commission (Commission) as an owner-trainer with license number 91094.
2. On October 4, 2014, Easee Jubilee finished second in the second race at Lone Star Park in Grand Prairie, Texas.
3. After racing, Easee Jubilee provided blood sample #LS051139, which test barn staff divided into two specimens.
4. On October 9, 2014, Zoom Royalty won the fifth race at Lone Star Park in Grand Prairie, Texas.
5. After racing, Zoom Royalty provided blood sample #LS051166, which test barn staff divided into two specimens.
6. On October 9, 2014, Runaway Ante finished second in the eighth race at Lone Star Park in Grand Prairie, Texas.
7. After racing, Runaway Ante provided blood sample #LS051173, which test barn staff divided into two specimens.
8. On October 10, 2014, Lethal Corona finished second in the fifth race at Lone Star Park in Grand Prairie, Texas.
9. After racing, Lethal Corona provided blood sample #LS051185, which test barn staff divided into two specimens.
10. On October 10, 2014, Eye Agree finished second in the eighth race at Lone Star Park in Grand Prairie, Texas.

²⁴ *Prima Facie*, Black’s Law Dictionary (10th ed. 2014) (emphasis added).

11. After racing, Eye Agree provided blood sample #LS051191, which test barn staff divided into two specimens.
12. On October 17, 2014, Saint Victoria won the fifth race at Lone Star Park in Grand Prairie, Texas.
13. After racing, Saint Victoria provided blood sample #LS051242, which test barn staff divided into two specimens.
14. On October 17, 2014, Tempting Toro won the eighth race at Lone Star Park in Grand Prairie, Texas.
15. After racing, Tempting Toro provided test sample #LS051248, which test barn staff divided into two specimens.
16. On October 18, 2014, Last Man Standin finished second in the first race at Lone Star Park in Grand Prairie, Texas.
17. After racing, Last Man Standin provided test sample #LS051253, which test barn staff divided into two specimens.
18. One of the blood specimens for each horse was sent to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing.
19. TVMDL found that the blood specimens provided by Easee Jubilee, Runaway Ante, Zoom Royalty, Eye Agree, Lethal Corona, Saint Victoria, Tempting Toro, and Last Man Standin tested positive for budesonide.
20. On or about October 23, 2014, Commission investigator Melvin Bell notified Appellant of the positive finding for budesonide for Easee Jubilee.
21. On or about November 5, 2014, Mr. Bell notified Appellant of the positive findings for budesonide for Runaway Ante, Zoom Royalty, Eye Agree, and Lethal Corona.
22. On or about November 7, 2015, Mr. Bell notified Appellant of the positive findings for budesonide for Saint Victoria, Tempting Toro, and Last Man Standin.
23. The Commission maintains a list of approved “split sample laboratories” that trainers may use for secondary testing following a positive test result from the Commission’s primary lab. At the time Appellant’s horses tested positive for budesonide, there were four laboratories on the Commission’s list.
24. The Commission has no control over whether labs are capable of testing for budesonide, or whether owners or trainers will withhold approval of any lab that is capable of testing for the substance.
25. Three of the four laboratories on the Commission’s list of approved split-sample laboratories were unable to test for budesonide. Only one laboratory on the list—the

- University of Florida Racing Laboratory (University of Florida)—was willing and able to test for budesonide.
26. Mr. Bell notified Appellant that the University of Florida was the only laboratory approved by the Commission that was equipped to test for budesonide.
 27. Given his choice of all four labs on the Commission's list of approved split-sample laboratories, Appellant would never have selected the University of Florida. He would have preferred to use one of the other labs.
 28. Upon being notified that the University of Florida was the only laboratory approved by the Commission that was equipped to test for budesonide, Appellant gave Mr. Bell written permission to send the split specimen for Easee Jubilee to the University of Florida for secondary testing.
 29. Appellant's request for secondary testing for Easee Jubilee was timely pursuant to the Commission's rules on split-sample testing.
 30. Appellant initially requested split-sample testing for all eight horses that had tested positive for budesonide at TVMDL. However, Appellant elected not to send samples for the other seven horses until test results for Easee Jubilee came back from the University of Florida.
 31. On or about November 13, 2014, the University of Florida confirmed the presence of budesonide in the blood sample provided by Easee Jubilee following the race on October 4, 2014.
 32. Appellant then elected not to pay the \$800 per test it would have cost to send the split samples for the other seven horses to the University of Florida for secondary testing
 33. Proper chain of custody and the integrity of each specimen were maintained at all times.
 34. On February 20, 2015, the Sam Houston Race Park Board of Stewards (Stewards) conducted a hearing.
 35. On February 21, 2015, the Stewards entered Ruling Nos. LSP3039, LSP3040, LSP3042, LSP3043, LSP3044, LSP3045, and on February 26, 2015, the Stewards entered Ruling Nos. LSP3046 and LSP3047, each finding that Appellant violated 16 Texas Administrative Code §§ 319.3, 319.302, and 311.104. As a sanction, in each ruling the Stewards fined Appellant \$500, suspended his license for fifteen days (with the suspensions to be served in succession), and redistributed the race's purse.
 36. Appellant filed a timely appeal of the Stewards' decisions, and the appeal was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing.
 37. At SOAH, Appellant was represented by Oklahoma attorney John Mac Hayes, who was admitted *pro hac vice*, and Commission staff (Staff) was represented by Deputy General Counsel Devon V. Bijansky. The parties requested and agreed to waive an in-person

hearing and to instead have the cases decided on an agreed evidentiary record. They submitted the stipulated record from the Stewards' hearing, and the record closed on August 26, 2015, after the parties' legal arguments were submitted in written briefs.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act (Act). Tex. Rev. Civ. Stat. art.179e §§ 3.16, 7.04.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 16 Tex. Admin. Code § 307.31(c).
3. The Commission's Stewards have authority to conduct hearings and impose penalties. Act § 3.07(b); 16 Tex. Admin. Code § 307.61.
4. A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing. 16 Tex. Admin. Code § 307.67.
5. Appellant has the burden of proof in this matter to show the Stewards' ruling was clearly erroneous. 16 Tex. Admin. Code § 307.67(c).
6. A horse participating in a race may not carry in its body a prohibited drug, chemical, or other substance. 16 Tex. Admin. Code § 319.3(a).
7. A trainer must guard the horse he trains against administration of prohibited substances before the race and is subject to penalties if his horse races with a prohibited substance in its body. 16 Tex. Admin. Code §§ 319.302.
8. As trainer of Easee Jubilee, Runaway Ante, Zoom Royalty, Eye Agree, Lethal Corona, Saint Victoria, Tempting Toro, and Last Man Standin, Appellant was the absolute insurer that the horses would be free of prohibited substances when they raced. Tex. Rev. Civ. Stat art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
9. If a split sample is submitted for testing to a Commission-approved and listed laboratory that is acceptable to the owner or trainer, and the test on the split specimen confirms the findings of the original lab, it is a prima facie violation of the Commission's rules on racing with prohibited substances. 16 Tex. Admin. Code §§ 319.3(e), 319.362(c), (e).
10. If a trainer waives the right to have split-sample testing, or if an event beyond the control of the Commission prevents a split sample from being tested, then the original lab's positive test result is taken as prima facie evidence of the condition of the horse at the time of the race. 16 Tex. Admin. Code §§ 319.3(e), 319.362(g).
11. If racing stewards find that a test specimen from a race animal contained a prohibited drug, chemical, or substance, the stewards are authorized to disqualify the animal and

- order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, and/or suspend the trainer's license for up to five years. 16 Tex. Admin. Code §§ 307.64(a), 319.304(a).
12. Stewards' Ruling No. LSP3039 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Easee Jubilee with budesonide in his system.
 13. Stewards' Ruling No. LSP3040 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Zoom Royalty with budesonide in his system.
 14. Stewards' Ruling No. LSP3042 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Runaway Ante with budesonide in his system.
 15. Stewards' Ruling No. LSP3043 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Lethal Corona with budesonide in his system.
 16. Stewards' Ruling No. LSP3044 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Eye Agree with budesonide in his system.
 17. Stewards' Ruling No. LSP3045 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Saint Victoria with budesonide in his system.
 18. Stewards' Ruling No. LSP3046 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Tempting Toro with budesonide in his system.
 19. Stewards' Ruling No. LSP3047 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Last Man Standin with budesonide in his system.
 20. The Commission's Equine Medication Classification Policy and Penalty Guidelines (Guidelines) classify budesonide as a Class 4 prohibited substance. 16 Tex. Admin. Code § 319.304(b).
 21. Under the Guidelines, the penalty for the first instance of a Class 4 drug positive is suspension of one's license for 15-60 days, a fine of up to \$1000.00, and possible loss of the prize purse.
 22. The Commission should adopt the Stewards' Ruling Nos. LSP3039, LSP3040, LSP3042, LSP3043, LSP3044, LSP3045, LSP3046, and LSP3047 that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302.

23. The Commission should adopt the Stewards' Rulings fining Appellant \$500 for each ruling, imposing successive fifteen-day suspensions of his license, disqualifying his horses, and redistributing the race purses.

SIGNED October 6, 2015.


SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



2015 OCT -7 PM 2:00

RECEIVED
ADMINISTRATIVE HEARINGS
COMMISSION

Cathleen Parsley
Chief Administrative Law Judge

October 6, 2015

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

INTER-AGENCY

RE: Docket No. 476-15-4141; Dee Allen Keener v. Texas Racing Commission

Dear Mr. Trout:

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

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

Sincerely,

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

Sarah Starnes
Administrative Law Judge

SS/Ls

Enclosures include 2 CDs of Certified Evidentiary Record

cc: Devon Bijansky, Staff Attorney, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 – **INTER-AGENCY**

John Mac Hayes, John Mac Hayes Law Firm, 1220 North Walker, Oklahoma City, OK 73103 -
REGULAR MAIL

SOAH DOCKET NO. 476-15-4141

**DEE ALLEN KEENER,
Appellant**

v.

**TEXAS RACING COMMISSION,
Respondent**

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Dee Allen Keener (Appellant) appealed Sam Houston Race Park Stewards (Stewards) Ruling Nos. LSP3049, LSP3050, LSP3051, and LSP3052 to the Texas Racing Commission (Commission). The Stewards' rulings determined that four racehorses Appellant trained had tested positive for a prohibited substance. In each ruling, the Stewards fined Appellant \$500 and suspended his license for fifteen days. The horses were also disqualified from their respective races and the race purses were redistributed. Appellant asserted that the Commission could not consider the positive test results because, when he requested to have the split specimens tested by a second lab, there was only one Commission-approved lab that could test for the substance, and that lab was unacceptable to Appellant. The Administrative Law Judge (ALJ) concludes that the applicable rules do not prevent the Commission from considering the positive test results in these circumstances, and there was no evidence that the Stewards' ruling was clearly erroneous. Therefore, the Stewards' rulings should be upheld.

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.

This case is an appeal from a Stewards' hearing held on February 20, 2015. At the hearing, the Stewards jointly heard three cases involving the same counsel, similar facts, and the same legal issue; Appellant's case involved four horses. On February 26, 2015, the Stewards entered Ruling Nos. LSP3049, LSP3050, LSP3051, and LSP3052, each finding Appellant had

violated the Commission's rules at 16 Texas Administrative Code §§ 319.3, 319.302, and 311.104. As sanction, in each ruling the Stewards fined Appellant \$500, suspended his license for fifteen days (with the suspensions to be served in succession), and redistributed the race's purse. Appellant timely appealed the rulings, and the case was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing. The other two cases, involving different trainers, were also appealed to SOAH and docketed separately.

At SOAH, the case was assigned to ALJ Sarah Starnes and joined for hearing with the two other appeals.¹ In all three cases, the Appellants were represented by Oklahoma attorney John Mac Hayes, who was admitted *pro hac vice*, and Commission staff (Staff) was represented by Deputy General Counsel Devon V. Bijansky. The parties requested and agreed to waive an in-person hearing and to instead have the cases decided on an agreed evidentiary record. They submitted the stipulated record from the Stewards' hearing, comprised of the hearing recording, exhibits admitted in the hearing, and stipulated facts. The record closed on August 26, 2015, after the parties' legal arguments were submitted in written briefs.

II. FACTUAL BACKGROUND²

Appellant is licensed by the Commission as an owner-trainer with license number 142505, and has been a licensed horse trainer for approximately thirty years.

On October 18, 2014, four racehorses trained by Appellant won or placed in races at Lone Star Park in Grand Prairie, Texas, and provided blood samples following their races:

- JJ Country Cash won the fourth race and provided blood sample #LS051259;
- Can't Be Caught won the fifth race and provided blood sample #LS051261;

¹ The related cases are docketed as SOAH Case No. 476-15-4140 and SOAH Case No. 476-15-4142. Separate Proposals for Decision are being issued in those cases.

² These facts are derived from the parties' Stipulated Facts, submitted as part of the record from the Stewards' hearing, and the testimony given at the Stewards' hearing by Appellant and by Commission investigator Melvin Bell.

- Mai Dashing Hero placed second in the fifth race and provided blood sample #LS051262; and
- Texas Silk won the sixth race and provided blood sample #LS051263.

Test barn staff divided each blood sample into two specimens. The first sample for each horse was sent to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing. On or about November 8, 2014, Commission investigator Melvin Bell notified Appellant that TVMDL determined that the blood samples for all four horses had tested positive for budesonide, a substance that is prohibited for use in racehorses.

The Commission maintains a list of approved “split sample laboratories” that trainers may use for secondary testing following a positive test result from the Commission’s primary lab.³ When Appellant’s horses tested positive for budesonide, there were only four labs on the Commission’s list. Mr. Bell testified that he called each lab, and three of them reported that they were not capable of testing for budesonide. On the Commission’s list of approved split-sample labs, only one—the University of Florida Racing Laboratory (University of Florida)—was equipped and willing to test for budesonide.

Appellant testified that, given his choice of the four labs on the Commission’s list of approved split-sample labs, he would never have selected the University of Florida and that the University of Florida lab was unacceptable to him. Appellant would have preferred to send his sample to Industrial Laboratories, a Colorado lab on the Commission’s list, because he has raced horses in that jurisdiction and has confidence in that lab. However, after Mr. Bell advised him that the University of Florida was the only Commission-approved lab that could accept the samples for budesonide testing, Appellant gave written permission to Mr. Bell to send the split specimens to University of Florida for secondary testing.⁴ On or about December 11, 2014, the University of Florida confirmed the presence of budesonide in the blood samples provided by

³ Stipulated Record at 10403.

⁴ The parties have stipulated that proper chain of custody and the integrity of each specimen were maintained at all times. Stipulated Record at 10008.

JJ Country Cash, Can't Be Caught, Mai Dashing Hero, and Texas Silk following the races on October 18, 2014.

III. APPLICABLE LAW

Horseracing in Texas is governed by the Texas Racing Act (the Act) and the rules promulgated by the Commission pursuant to the Act.⁵ The Commission's rules provide that a horse participating in a race "may not carry in its body a prohibited drug, chemical, or other substance,"⁶ and require a trainer to "guard each animal in his or her custody before the animal races in the manner and for the time necessary to prevent the administration of a prohibited drug, chemical, or other substance."⁷ The Commission's rules also regard trainers as the "absolute insurer" for any horse entered into a race and require them to ensure that each horse in the care and custody of the trainer is "free from all prohibited drugs, chemicals, or other substances."⁸

After a race, a specimen must be collected from the horse that finished first, and may be collected from the horse that finished second, in a test barn at the racetrack.⁹ If the specimen is of sufficient quantity to be split, it is divided into two parts. One part of the specimen is delivered to a laboratory for testing, and the second part, or "split specimen," is stored pending possible further testing.¹⁰ This case turns on the interpretation of the Commission's rule governing testing of split specimens, found in 16 Texas Administrative Code § 319.362, which provides, in relevant part:

(c) An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the retained serum or urine, whichever provided the positive result, be submitted for testing to a Commission approved and listed laboratory that is acceptable to the owner or trainer. The owner or trainer must

⁵ Texas Racing Act, Tex. Rev. Civ. Stat. art. 179e; Texas Admin. Code title 16, part 8.

⁶ 16 Tex. Admin. Code § 319.3(a).

⁷ 16 Tex. Admin. Code § 319.302.

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

⁹ 16 Tex. Admin. Code § 319.361(b).

¹⁰ 16 Tex. Admin. Code §§ 319.334, .338, .362(a)-(b).

notify the executive secretary of the request not later than 48 hours after notice of the positive result. Failure to request the split within the prescribed time period will be deemed a waiver of the right to the split specimen.

(d) If the retained part of a specimen is sent for testing, the commission staff shall arrange for the transportation of the specimen in a manner that ensures the integrity of the specimen. The person requesting the tests shall pay all costs of transporting and conducting tests on the specimen. To ensure the integrity of the specimen, the split specimen must be shipped to the selected laboratory no later than 10 days after the day the trainer is notified of the positive test. Subject to this deadline, the owner or trainer of the horse from whom the specimen was obtained is entitled to be present or have a representative present at the time the split specimen is sent for testing.

(e) If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of the applicable provisions of the chapter.

(f) If the test on the split specimen portion does not substantially confirm the findings of the original laboratory, the stewards may not take disciplinary action regarding the original test results.

(g) If an act of God, power failure, accident, labor strike, or any other event, beyond the control of the Commission, prevents the split from being tested, the findings of the original laboratory are prima facie evidence of the condition of the horse at the time of the race.

A positive finding of a prohibited substance in a test specimen, “subject to the rules of the [C]ommission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.”¹¹

The Commission has adopted the Equine Medication Classification Policy and Penalty Guidelines (Guidelines), which classify substances based on factors including a substance’s pharmacology, its ability to influence the outcome of a race, and whether it has a legitimate therapeutic purpose for use in race horses.¹² The Guidelines include several classifications of prohibited substances, with Class 1 applying to substances with the highest potential to affect race performance and no generally accepted medical use for racehorses, and Class 4

¹¹ 16 Tex. Admin. Code § 319.3(e).

¹² Equine Medication Classification Policy and Penalty Guidelines (Guidelines), *available at* http://www.txrc.texas.gov/agency/structure/Equine_Medication_Classification.pdf.

encompassing substances that have some therapeutic uses and only a limited ability to influence performances. There is no dispute that budesonide, the substance at issue in this appeal, is listed as a Class 4 substance in the Guidelines.

If racing stewards find that a test specimen from a race animal contained a prohibited drug, chemical, or substance, the stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, or suspend the trainer's license for up to five years.¹³ For Class 4 substances, the Guidelines suggest a suspension of 15-60 days, a fine of up to \$1000, and possible loss of prize purse.

A person aggrieved by a ruling of the stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.¹⁴ In an appeal, the Appellant has the burden of proving that the stewards' rulings were clearly erroneous.¹⁵

IV. ANALYSIS

Appellant does not dispute that both TVMDL and University of Florida found budesonide in the blood samples taken from JJ Country Cash, Can't Be Caught, Mai Dashing Hero, and Texas Silk following the races on October 18, 2014. However, Appellant contends that the test results cannot be considered by the Commission because he was not afforded the opportunity to have the split samples tested at a lab that was acceptable to him. Appellant contends that if there are no split-sample labs that are both approved by the Commission and acceptable to the trainer, then no disciplinary action can be taken. The Commission's rule on split-sample testing does not support Appellant's position.

After a horse tests positive for a prohibited substance, Rule 319.362 gives a trainer the right to submit the split sample for testing by "a Commission approved and listed laboratory that

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

¹⁴ 16 Tex. Admin. Code § 307.67.

¹⁵ 16 Tex. Admin. Code § 307.67(c).

is acceptable to the owner or trainer.”¹⁶ Nothing in the rule requires, as Appellant contends, that the owner or trainer be offered a selection of several Commission-approved laboratories to choose from. It says only that testing must be allowed by “a Commission approved and listed laboratory . . . ,” and the Commission met that requirement by offering Appellant the opportunity to have his horses’ split samples sent to University of Florida for secondary testing.

Appellant indicated his approval of the University of Florida lab when he signed “Split Sample Request” forms asking that each horse’s split sample be sent there for testing.¹⁷ It is undisputed that testing at that lab confirmed the original lab’s results. Therefore, pursuant to Rule 319.362(e), the test results from the two labs are “a prima facie violation” of the Commission’s rules on prohibited substances.¹⁸

Appellant now asserts that he “never actually ‘approved’ [University of] Florida in a true procedural sense” and was effectively “intimidated and coerced” into accepting that lab after the Commission’s investigator advised him it was the only lab on the Commission’s approved list that was capable of testing for budesonide.¹⁹ The ALJ finds that Appellant waived the right to deem the University of Florida “unacceptable” when he signed the requests to have his horses’ split samples tested there. However, even if the University of Florida test results are disregarded because the lab was not “acceptable to the owner or trainer,” it does not follow that the Commission is then prohibited from taking disciplinary action against Appellant. Rule 319.362 contemplates situations like this, where split-sample testing cannot occur. Specifically, the rule states that if an event “beyond the control of the Commission” prevents the split sample from being tested, then the original lab’s positive test result is taken as “prima facie evidence of the condition of the horse at the time of the race.”²⁰ The Commission has no control over whether labs are capable of testing for budesonide, or whether Appellant will withhold approval of any lab that is capable of testing for the substance. Therefore, when split-sample testing cannot

¹⁶ 16 Tex. Admin. Code § 319.362(c).

¹⁷ Stipulated Record at 10245, 10280, 10318, 10358.

¹⁸ 16 Tex. Admin. Code § 319.362(e).

¹⁹ Brief of Appellants at 16.

²⁰ 16 Tex. Admin. Code § 319.362(g).

occur because the trainer withholds acceptance of the Commission-approved lab that could perform the testing, the original lab's positive test is, standing alone, prima facie evidence of a violation.

Finally, in urging that his due process rights are infringed if a violation is found without confirmatory split-sample testing, Appellant overstates the weight given to the positive test results from the first and second labs. Had split-sample testing contradicted the original lab's results, then Rule 319.362 would have prohibited the Commission from taking any disciplinary action against the trainer.²¹ However, positive test results are not similarly case-dispositive. Rule 319.362 states that positive test results from both the original lab and the split-sample lab will establish a "prima facie violation," or, if no split-sample testing can be performed, then the original lab's result can be "prima facie evidence" of a violation.²² "Prima facie" means "[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted."²³ At the Stewards' hearing, Appellant had the opportunity to rebut the presumption that the positive tests for budesonide proved violations. However, he offered no evidence that the test results from TVMDL or University of Florida were somehow inaccurate or unreliable, nor any other evidence that might support a determination that no violations had occurred. Therefore, the Stewards' decisions were supported by the evidence presented, and Appellant has not met his burden of establishing that the decisions were clearly erroneous.

V. FINDINGS OF FACT

1. Dee Allen Keener (Appellant) is licensed by the Texas Racing Commission (Commission) as an owner-trainer with license number 142505.
2. On October 18, 2014, JJ Country Cash, a racehorse trained by Appellant, participated in and won the fourth race at Lone Star Park in Grand Prairie, Texas.
3. After racing, JJ Country Cash provided blood sample #LS051259, which test barn staff divided into two specimens.

²¹ 16 Tex. Admin. Code § 319.362(f).

²² 16 Tex. Admin. Code § 319.362(e), (g).

²³ *Prima Facie*, Black's Law Dictionary (10th ed. 2014) (emphasis added).

4. On October 18, 2014, Can't Be Caught, a racehorse trained by Appellant, participated in and won the fifth race at Lone Star Park in Grand Prairie, Texas.
5. After racing, Can't Be Caught provided blood sample #LS051261, which test barn staff divided into two specimens.
6. On October 18, 2014, Mai Dashing Hero, a racehorse trained by Appellant, participated in and placed second in the fifth race at Lone Star Park in Grand Prairie, Texas.
7. After racing, Mai Dashing Hero provided blood sample #LS051262, which test barn staff divided into two specimens.
8. On October 18, 2014, Texas Silk, a racehorse trained by Appellant, participated in and won the sixth race at Lone Star Park in Grand Prairie, Texas.
9. After racing, Texas provided blood sample #LS051263, which test barn staff divided into two specimens.
10. One of the blood specimens for each horse was sent to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing.
11. TVMDL found that the blood specimens provided by JJ Country Cash, Can't Be Caught, Mai Dashing Hero, and Texas Silk tested positive for budesonide.
12. On or about November 8, 2014, Commission investigator Melvin Bell notified Appellant of the positive finding for budesonide.
13. The Commission maintains a list of approved "split sample laboratories" that trainers may use for secondary testing following a positive test result from the Commission's primary lab. At the time Appellant's horses tested positive for budesonide, there were four laboratories on the Commission's list.
14. The Commission has no control over whether labs are capable of testing for budesonide, or whether owners or trainers will withhold approval of any lab that is capable of testing for the substance.
15. Three of the four laboratories on the Commission's list of approved split-sample laboratories were unable to test for budesonide. Only one laboratory on the list—the University of Florida Racing Laboratory (University of Florida)—was willing and able to test for budesonide.
16. Mr. Bell notified Appellant that the University of Florida was the only laboratory approved by the Commission that was equipped to test for budesonide.
17. Given his choice of all four labs on the Commission's list of approved split-sample laboratories, Appellant would never have selected the University of Florida. He would have preferred to use one of the other labs.

18. Upon being notified that the University of Florida was the only laboratory approved by the Commission that was equipped to test for budesonide, Appellant gave Mr. Bell written permission to send the split specimens for all four horses to the University of Florida for secondary testing.
19. Appellant's request for secondary testing was timely pursuant to the Commission's rules on split-sample testing.
20. On or about December 11, 2014, the University of Florida confirmed the presence of budesonide in the blood samples provided by JJ Country Cash, Can't Be Caught, Mai Dashing Hero, and Texas Silk following the races on October 18, 2014.
21. Proper chain of custody and the integrity of each specimen were maintained at all times.
22. On February 20, 2015, the Sam Houston Race Park Board of Stewards (Stewards) conducted a hearing.
23. On February 21, 2015, the Stewards issued Ruling Nos. LSP3049, LSP3050, LSP3051, and LSP3052, each finding that Appellant violated 16 Texas Administrative Code §§ 319.3, 319.302, and 311.104. As a sanction, in each ruling the Stewards fined Appellant \$500, suspended his license for fifteen days (with the suspensions to be served in succession), and redistributed the race's purse.
24. Appellant filed a timely appeal of the Stewards' decisions, and the appeal was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing.
25. At SOAH, Appellant was represented by Oklahoma attorney John Mac Hayes, who was admitted *pro hac vice*, and Commission staff (Staff) was represented by Deputy General Counsel Devon V. Bijansky. The parties requested and agreed to waive an in-person hearing and to instead have the cases decided on an agreed evidentiary record. They submitted the stipulated record from the Stewards' hearing, and the record closed on August 26, 2015, after the parties' legal arguments were submitted in written briefs.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act (Act). Tex. Rev. Civ. Stat. art.179e §§ 3.16, 7.04.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 16 Tex. Admin. Code § 307.31(c).
3. The Commission's Stewards have authority to conduct hearings and impose penalties. Act § 3.07(b); 16 Tex. Admin. Code § 307.61.

4. A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing. 16 Tex. Admin. Code § 307.67.
5. Appellant has the burden of proof in this matter to show the Stewards' ruling was clearly erroneous. 16 Tex. Admin. Code § 307.67(c).
6. A horse participating in a race may not carry in its body a prohibited drug, chemical, or other substance. 16 Tex. Admin. Code § 319.3(a).
7. A trainer must guard the horse he trains against administration of prohibited substances before the race and is subject to penalties if his horse races with a prohibited substance in its body. 16 Tex. Admin. Code §§ 319.302.
8. As trainer of JJ Country Cash, Can't Be Caught, Mai Dashing Hero, and Texas Silk, Appellant was the absolute insurer that the horses would be free of prohibited substances when they raced. Tex. Rev. Civ. Stat art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
9. If a split sample is submitted for testing to a Commission-approved and listed laboratory that is acceptable to the owner or trainer, and the test on the split specimen confirms the findings of the original lab, it is a prima facie violation of the Commission's rules on racing with prohibited substances. 16 Tex. Admin. Code §§ 319.3(e), 319.362(c), (e).
10. If an event beyond the control of the Commission prevents a split sample from being tested, then the original lab's positive test result is taken as prima facie evidence of the condition of the horse at the time of the race. 16 Tex. Admin. Code §§ 319.3(e), 319.362(g).
11. If racing stewards find that a test specimen from a race animal contained a prohibited drug, chemical, or substance, the stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, and/or suspend the trainer's license for up to five years. 16 Tex. Admin. Code §§ 307.64(a), 319.304(a).
12. Stewards' Ruling No. LSP3049 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Can't Be Caught with budesonide in his system.
13. Stewards' Ruling No. LSP3050 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Mai Dashing Hero with budesonide in his system.
14. Stewards' Ruling No. LSP3051 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Texas Silk with budesonide in his system.

15. Stewards' Ruling No. LSP3052 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing JJ Country Cash with budesonide in his system.
16. The Commission's Equine Medication Classification Policy and Penalty Guidelines (Guidelines) classify budesonide as a Class 4 prohibited substance. 16 Tex. Admin. Code § 319.304(b).
17. Under the Guidelines, the penalty for the first instance of a Class 4 drug positive is suspension of one's license for 15-60 days, a fine of up to \$1000.00, and possible loss of the prize purse.
18. The Commission should adopt the Stewards' Ruling Nos. LSP3049, LSP3050, LSP3051, and LSP3052 that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302.
19. The Commission should adopt the Stewards' Rulings fining Appellant \$500 for each ruling, imposing successive fifteen-day suspensions of his license, disqualifying his horses, and redistributing the race purses.

SIGNED October 6, 2015.


SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



2015 OCT -7 PM 2:00

RECEIVED
ADMINISTRATIVE HEARINGS
COMMISSION

Cathleen Parsley
Chief Administrative Law Judge

October 6, 2015

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

INTER-AGENCY

RE: Docket No. 476-15-4142; John Stinebaugh v. Texas Racing Commission

Dear Mr. Trout:

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

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

Sincerely,

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

Sarah Starnes
Administrative Law Judge

SS/Ls

Enclosures include 2 CDs of Certified Evidentiary Record

cc: Devon Bijansky, Staff Attorney, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 - **INTER-AGENCY**

John Mac Hayes, John Mac Hayes Law Firm, 1220 North Walker, Oklahoma City, OK 73103 -

REGULAR MAIL

300 W. 15th Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)

www.soah.state.tx.us

130 of 203

SOAH DOCKET NO. 476-15-4142

**JOHN STINEBAUGH,
Appellant**

v.

**TEXAS RACING COMMISSION,
Respondent**

§ **BEFORE THE STATE OFFICE**
§
§
§ **OF**
§
§
§ **ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

John Stinebaugh (Appellant) appealed Sam Houston Race Park Stewards (Stewards) Ruling No. LSP3041 to the Texas Racing Commission (Commission). The Stewards' ruling determined that a racehorse Appellant trained, Show Boat of Honor, tested positive for a prohibited substance. The Stewards fined Appellant \$500, suspended his license for fifteen days, and redistributed the race purse. Appellant asserted that the Commission could not consider the positive test result because, when he requested to have the split specimen tested by a second lab, there was only one Commission-approved lab that could test for the substance, and that lab was unacceptable to Appellant. The Administrative Law Judge (ALJ) concludes that the applicable rules do not prevent the Commission from considering the positive test results in these circumstances, and there was no evidence that the Stewards' ruling was clearly erroneous. Therefore, the Stewards' ruling should be upheld.

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.

This case is an appeal from a Stewards' hearing held on February 20, 2015. At the hearing, the Stewards jointly heard three cases involving the same counsel, similar facts, and the same legal issue. On February 21, 2015, the Stewards entered Ruling No. LSP3041 in this case, finding Appellant had violated the Commission's rules at 16 Texas Administrative Code §§ 319.3, 319.302, and 311.104. As sanction, the Stewards fined Appellant \$500, suspended his

license for fifteen days, and redistributed the race's purse. Appellant timely appealed the ruling, and the case was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing. The other two cases, involving different trainers, were also appealed to SOAH and docketed separately.

At SOAH, the case was assigned to ALJ Sarah Starnes and joined for hearing with the two other appeals.¹ In all three cases, the Appellants were represented by Oklahoma attorney John Mac Hayes, who was admitted *pro hac vice*, and Commission staff (Staff) was represented by Deputy General Counsel Devon V. Bijansky. The parties requested and agreed to waive an in-person hearing and to instead have the cases decided on an agreed evidentiary record. They submitted the stipulated record from the Stewards' hearing, comprised of the hearing recording, exhibits admitted in the hearing, and stipulated facts. The record closed on August 26, 2015, after the parties' legal arguments were submitted in written briefs.

II. FACTUAL BACKGROUND²

Appellant is licensed by the Commission as an owner-trainer with license number 50185, and has been a licensed horse trainer since 1994.

On October 10, 2014, Show Boat of Honor, a racehorse trained by Appellant, won the second race at Lone Star Park in Grand Prairie, Texas. After the race, Show Boat of Honor provided blood sample #LS051178, which test barn staff divided into two specimens. The first sample was sent to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing. On or about November 5, 2014, Commission investigator Melvin Bell notified Appellant that TVMDL determined that Show Boat of Honor's blood sample had tested positive for budesonide, a substance that is prohibited for use in racehorses.

¹ The related cases are docketed as SOAH Case No. 476-15-4140 and SOAH Case No. 476-15-4141. Separate Proposals for Decision are being issued in those cases.

² These facts are derived from the parties' Stipulated Facts, submitted as part of the record from the Stewards' hearing, and the testimony given at the Stewards' hearing by Appellant and by Commission investigator Melvin Bell.

The Commission maintains a list of approved “split sample laboratories” that trainers may use for secondary testing following a positive test result from the Commission’s primary lab.³ At the time of Show Boat of Honor’s positive test for budesonide, there were only four labs on the Commission’s list. Mr. Bell testified that he called each lab, and three of them reported that they were not capable of testing for budesonide. On the Commission’s list of approved split-sample labs, only one—the University of Florida Racing Laboratory (University of Florida)—was equipped and willing to test for budesonide.

Appellant testified that, given his choice of the four labs on the Commission’s list of approved split-sample labs, he would never have selected the University of Florida. He explained that he lacked confidence in the lab because he had heard of another trainer who had a certified check go missing there. Appellant has raced horses in jurisdictions that use the other labs on the Commission’s list and said he would have accepted one or more of those labs, but the University of Florida was unacceptable to him. However, after Mr. Bell advised him that the University of Florida was the only Commission-approved lab that could accept Show Boat of Honor’s split sample for budesonide testing, Appellant gave written permission to Mr. Bell to send the split specimen to University of Florida for secondary testing.⁴ On or about November 21, 2014, the University of Florida confirmed the presence of budesonide in the blood sample provided by Show Boat of Honor following the race on October 10, 2014.

III. APPLICABLE LAW

Horseracing in Texas is governed by the Texas Racing Act (the Act) and the rules promulgated by the Commission pursuant to the Act.⁵ The Commission’s rules provide that a horse participating in a race “may not carry in its body a prohibited drug, chemical, or other substance,”⁶ and require a trainer to “guard each animal in his or her custody before the animal

³ Stipulated Record at 10403.

⁴ The parties have stipulated that proper chain of custody and the integrity of each specimen were maintained at all times. Stipulated Record at 10009.

⁵ Texas Racing Act, Tex. Rev. Civ. Stat. art. 179e; Texas Admin. Code title 16, part 8.

⁶ 16 Tex. Admin. Code § 319.3(a).

aces in the manner and for the time necessary to prevent the administration of a prohibited drug, chemical, or other substance.”⁷ The Commission’s rules also regard trainers as the “absolute insurer” for any horse entered into a race and require them to ensure that each horse in the care and custody of the trainer is “free from all prohibited drugs, chemicals, or other substances.”⁸

After a race, a specimen must be collected from the horse that finished first (and may be collected from other horses) in a test barn at the racetrack.⁹ If the specimen is of sufficient quantity to be split, it is divided into two parts. One part of the specimen is delivered to a laboratory for testing, and the second part, or “split specimen,” is stored pending possible further testing.¹⁰ This case turns on the interpretation of the Commission’s rule governing testing of split specimens, found in 16 Texas Administrative Code § 319.362, which provides, in relevant part:

(c) An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the retained serum or urine, whichever provided the positive result, be submitted for testing to a Commission approved and listed laboratory that is acceptable to the owner or trainer. The owner or trainer must notify the executive secretary of the request not later than 48 hours after notice of the positive result. Failure to request the split within the prescribed time period will be deemed a waiver of the right to the split specimen.

(d) If the retained part of a specimen is sent for testing, the commission staff shall arrange for the transportation of the specimen in a manner that ensures the integrity of the specimen. The person requesting the tests shall pay all costs of transporting and conducting tests on the specimen. To ensure the integrity of the specimen, the split specimen must be shipped to the selected laboratory no later than 10 days after the day the trainer is notified of the positive test. Subject to this deadline, the owner or trainer of the horse from whom the specimen was obtained is entitled to be present or have a representative present at the time the split specimen is sent for testing.

(e) If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of the applicable provisions of the chapter.

⁷ 16 Tex. Admin. Code § 319.302.

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

⁹ 16 Tex. Admin. Code § 319.361(b).

¹⁰ 16 Tex. Admin. Code §§ 319.334, .338, .362(a)-(b).

(f) If the test on the split specimen portion does not substantially confirm the findings of the original laboratory, the stewards may not take disciplinary action regarding the original test results.

(g) If an act of God, power failure, accident, labor strike, or any other event, beyond the control of the Commission, prevents the split from being tested, the findings of the original laboratory are prima facie evidence of the condition of the horse at the time of the race.

A positive finding of a prohibited substance in a test specimen, “subject to the rules of the [C]ommission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.”¹¹

The Commission has adopted the Equine Medication Classification Policy and Penalty Guidelines (Guidelines), which classify substances based on factors including a substance’s pharmacology, its ability to influence the outcome of a race, and whether it has a legitimate therapeutic purpose for use in race horses.¹² The Guidelines include several classifications of prohibited substances, with Class 1 applying to substances with the highest potential to affect race performance and no generally accepted medical use for racehorses, and Class 4 encompassing substances that have some therapeutic uses and only a limited ability to influence performances. There is no dispute that budesonide, the substance at issue in this appeal, is listed as a Class 4 substance in the Guidelines.

If racing stewards find that a test specimen from a race animal contained a prohibited drug, chemical, or substance, the stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal’s trainer, or suspend the trainer’s license for up to five years.¹³ For Class 4 substances, the Guidelines suggest a suspension of 15-60 days, a fine of up to \$1000, and possible loss of prize purse.

¹¹ 16 Tex. Admin. Code § 319.3(e).

¹² Equine Medication Classification Policy and Penalty Guidelines (Guidelines), *available at* http://www.txrc.texas.gov/agency/structure/Equine_Medication_Classification.pdf.

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

A person aggrieved by a ruling of the stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.¹⁴ In an appeal, the Appellant has the burden of proving that the stewards' ruling was clearly erroneous.¹⁵

IV. ANALYSIS

Appellant does not dispute that both TVMDL and University of Florida found budesonide in the blood samples taken from Show Boat of Honor following his race win on October 10, 2014. However, Appellant contends that the test results cannot be considered by the Commission because he was not afforded the opportunity to have the split sample tested at a lab that was acceptable to him. Appellant contends that if there are no split-sample labs that are both approved by the Commission and acceptable to the trainer, then no disciplinary action can be taken. The Commission's rule on split-sample testing does not support Appellant's position.

After a horse tests positive for a prohibited substance, Rule 319.362 gives a trainer the right to submit the split sample for testing by "a Commission approved and listed laboratory that is acceptable to the owner or trainer."¹⁶ Nothing in the rule requires, as Appellant contends, that the owner or trainer be offered a selection of several Commission-approved laboratories to choose from. It says only that testing must be allowed by "a Commission approved and listed laboratory . . .," and the Commission met that requirement by offering Appellant the opportunity to have his horse's split sample sent to University of Florida for secondary testing.

Appellant indicated his approval of the University of Florida lab when he signed a "Split Sample Request" form asking that Show Boat of Honor's split sample be sent there for testing.¹⁷ It is undisputed that testing at that lab confirmed the original lab's result. Therefore, pursuant to

¹⁴ 16 Tex. Admin. Code § 307.67.

¹⁵ 16 Tex. Admin. Code § 307.67(c).

¹⁶ 16 Tex. Admin. Code § 319.362(c).

¹⁷ Stipulated Record at 10394.

Rule 319.362(e), the test results from the two labs are “a prima facie violation” of the Commission’s rules on prohibited substances.¹⁸

Appellant now asserts that he “never actually ‘approved’ [University of] Florida in a true procedural sense” and was effectively “intimidated and coerced” into accepting that lab after the Commission’s investigator advised him it was the only lab on the Commission’s approved list that was capable of testing for budesonide.¹⁹ The ALJ finds that Appellant waived the right to deem the University of Florida “unacceptable” when he signed the request to have his horse’s split sample tested there. However, even if the University of Florida test result is disregarded because the lab was not “acceptable to the owner or trainer,” it does not follow that the Commission is then prohibited from taking disciplinary action against Appellant. Rule 319.362 contemplates situations like this one, where split-sample testing cannot occur. Specifically, the rule states that if an event “beyond the control of the Commission” prevents the split sample from being tested, then the original lab’s positive test result is taken as “prima facie evidence of the condition of the horse at the time of the race.”²⁰ The Commission has no control over whether labs are capable of testing for budesonide, or whether Appellant will withhold approval of any lab that is capable of testing for the substance. Therefore, when split-sample testing cannot occur because the trainer withholds acceptance of the Commission-approved lab that could perform the testing, the original lab’s positive test is, standing alone, prima facie evidence of a violation.

Finally, in urging that his due process rights are infringed if a violation is found without confirmatory split-sample testing, Appellant overstates the weight given to the positive test results from the first and second labs. Had split-sample testing contradicted the original lab’s result, then Rule 319.362 would have prohibited the Commission from taking any disciplinary action against the trainer.²¹ However, positive test results are not similarly case-dispositive. Rule 319.362 states that positive test results from both the original lab and the split-sample lab

¹⁸ 16 Tex. Admin. Code § 319.362(e).

¹⁹ Brief of Appellants at 16.

²⁰ 16 Tex. Admin. Code § 319.362(g).

²¹ 16 Tex. Admin. Code § 319.362(f).

will establish a “prima facie violation,” or, if no split-sample testing can be performed, then the original lab’s result can be “prima facie evidence” of a violation.²² “Prima facie” means “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.”²³ At the Stewards’ hearing, Appellant had the opportunity to rebut the presumption that the positive tests for budesonide proved a violation. However, he offered no evidence that the test results from TVMDL or University of Florida were somehow inaccurate or unreliable, nor any other evidence that might support a determination that no violation had occurred. Therefore, the Stewards’ decision was supported by the evidence presented, and Appellant has not met his burden of establishing that the decision was clearly erroneous.

V. FINDINGS OF FACT

1. John Stinebaugh (Appellant) is licensed by the Texas Racing Commission (Commission) as an owner-trainer with license number 50185.
2. On October 10, 2014, Show Boat of Honor, a racehorse trained by Appellant, participated in and won the second race at Lone Star Park in Grand Prairie, Texas.
3. After racing, Show Boat of Honor provided blood sample #LS051178, which test barn staff divided into two specimens.
4. One of the blood specimens was sent to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing.
5. TVMDL found that the blood specimen provided by Show Boat of Honor tested positive for budesonide.
6. On or about November 5, 2014, Commission investigator Melvin Bell notified Appellant of the positive finding for budesonide.
7. The Commission maintains a list of approved “split sample laboratories” that trainers may use for secondary testing following a positive test result from the Commission’s primary lab. At the time of Show Boat of Honor’s positive test for budesonide, there were four laboratories on the Commission’s list.
8. The Commission has no control over whether labs are capable of testing for budesonide, or whether owners or trainers will withhold approval of any lab that is capable of testing for the substance.

²² 16 Tex. Admin. Code § 319.362(e), (g).

²³ *Prima Facie*, Black’s Law Dictionary (10th ed. 2014) (emphasis added).

9. Three of the four laboratories on the Commission's list of approved split-sample laboratories were unable to test for budesonide. Only one laboratory on the list—the University of Florida Racing Laboratory (University of Florida)—was willing and able to test for budesonide.
10. Mr. Bell notified Appellant that the University of Florida was the only laboratory approved by the Commission that was equipped to test for budesonide.
11. Given his choice of all four labs on the Commission's list of approved split-sample laboratories, Appellant would never have selected the University of Florida. He would have preferred to use one of the other labs.
12. Upon being notified that the University of Florida was the only laboratory approved by the Commission that was equipped to test for budesonide, Appellant gave Mr. Bell written permission to send the split specimen to the University of Florida for secondary testing.
13. Appellant's request for secondary testing was timely pursuant to the Commission's rules on split-sample testing.
14. On or about November 21, 2014, the University of Florida confirmed the presence of budesonide in the blood sample provided by Show Boat of Honor following the race on October 10, 2014.
15. Proper chain of custody and the integrity of each specimen were maintained at all times.
16. On February 20, 2015, the Sam Houston Race Park Board of Stewards (Stewards) conducted a hearing.
17. On February 21, 2015, the Stewards issued Ruling No. LSP3041, finding that Appellant violated 16 Texas Administrative Code §§ 319.3, 319.302, and 311.104. As sanction, the Stewards fined Appellant \$500.00, suspended his license for fifteen days, and redistributed the race's purse.
18. Appellant filed a timely appeal of the Stewards' decision, and the appeal was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing.
19. At SOAH, Appellant was represented by Oklahoma attorney John Mac Hayes, who was admitted *pro hac vice*, and Commission staff (Staff) was represented by Deputy General Counsel Devon V. Bijansky. The parties requested and agreed to waive an in-person hearing and to instead have the cases decided on an agreed evidentiary record. They submitted the stipulated record from the Stewards' hearing, and the record closed on August 26, 2015, after the parties' legal arguments were submitted in written briefs.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act (Act). Tex. Rev. Civ. Stat. art.179e §§ 3.16, 7.04.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 16 Tex. Admin. Code § 307.31(c).
3. The Commission's Stewards have authority to conduct hearings and impose penalties. Act § 3.07(b); 16 Tex. Admin. Code § 307.61.
4. A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing. 16 Tex. Admin. Code § 307.67.
5. Appellant has the burden of proof in this matter to show the Stewards' ruling was clearly erroneous. 16 Tex. Admin. Code § 307.67(c).
6. A horse participating in a race may not carry in its body a prohibited drug, chemical, or other substance. 16 Tex. Admin. Code § 319.3(a).
7. A trainer must guard the horse he trains against administration of prohibited substances before the race and is subject to penalties if his horse races with a prohibited substance in its body. 16 Tex. Admin. Code §§ 319.302.
8. As Show Boat of Honor's trainer, Appellant was the absolute insurer that the horse would be free of prohibited substances when he raced. Tex. Rev. Civ. Stat art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
9. If a split sample is submitted for testing to a Commission-approved and listed laboratory that is acceptable to the owner or trainer, and the test on the split specimen confirms the findings of the original lab, it is a prima facie violation of the Commission's rules on racing with prohibited substances. 16 Tex. Admin. Code §§ 319.3(e), 319.362(c), (e).
10. If an event beyond the control of the Commission prevents a split sample from being tested, then the original lab's positive test result is taken as prima facie evidence of the condition of the horse at the time of the race. 16 Tex. Admin. Code §§ 319.3(e), 319.362(g).
11. If racing stewards find that a test specimen from a race animal contained a prohibited drug, chemical, or substance, the stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, and/or suspend the trainer's license for up to five years. 16 Tex. Admin. Code §§ 307.64(a), 319.304(a).

12. Stewards' Ruling No. LSP3041 was not clearly erroneous in finding that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302 by racing Show Boat of Honor with budesonide in his system.
13. The Commission's Equine Medication Classification Policy and Penalty Guidelines (Guidelines) classify budesonide as a Class 4 prohibited substance. 16 Tex. Admin. Code § 319.304(b).
14. Under the Guidelines, the penalty for the first instance of a Class 4 drug positive is suspension of one's license for 15-60 days, a fine of up to \$1000.00, and possible loss of the prize purse.
15. The Commission should adopt the Stewards' Ruling No. LSP3041 that Appellant violated 16 Tex. Admin. Code §§ 311.104, 319.3, and 319.302.
16. The Commission should adopt the Stewards' ruling fining Appellant \$500, suspending his license for fifteen days, and redistributing the race purse.

SIGNED October 6, 2015.



SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**BEFORE THE TEXAS RACING COMMISSION
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

JUDD KEARL;)	
DEE KEENER; and)	
JOHN STINEBAUGH,)	
)	
Appellants;)	SOAH Docket Numbers:
)	476-15-4140
vs.)	476-15-4141
)	476-15-4142
)	
TEXAS RACING COMMISSION,)	
)	
Appellee.)	

APPELLANTS’ EXCEPTIONS to PROPOSED DECISION

Appellant Horse Trainers [“Licensee(s)”] submit these Exceptions. The Exceptions are common to each Licensee. References to page numbers of the Proposal for Decision are to the Judd Kearn Order. The contested legal finding is identical in the three separate Proposals, therefore only one Proposal is cited.

EXCEPTION ONE

“Nothing in the rule requires...that the owner or trainer be offered a selection of several Commission-approved laboratories to choose from.” [pg. 8 Proposal for Decision, paragraph continued from pg. 7]

It is respectfully urged this legal finding is infirm, as it gives two absolutely necessary factors in the decision no weight:

- (a) the “selected lab” rule language; and

(b) Mr. Bell’s unambiguous testimony concerning how this very rule has been interpreted and carried out in the past.

Subsection (d)’s reference to “selected lab” is not ambiguous in light of Subsection (c)’s command the second lab be “acceptable” to the Trainer. Isolated reliance on Sub. (c) effectively nullifies the literal collective interpretation of Sub. (c) and Sub. (d), taken together. “Selected lab,” when referred to in context with Sub. (c), cannot reasonably mean anything other than:

“The lab found acceptable by the Trainer must have been selected by the Trainer.”

The idea of “approving” naturally carries with it the right to “select” from the various “Commission approved labs.” To “approve” one must affirmatively decide. To decide there must be multiple options; otherwise a selection cannot occur. Four labs (more than one) on the approved list bolsters the idea of a right to selection – otherwise the approved list would have only one approved lab. Combine Mr. Bell’s testimony about how on all prior occasions during his career the Trainer always has been afforded a selection of labs; how this situation was unique; and how Mr. Bell agrees process of the Trainer independently selecting his/her own neutral secondary lab assures fairness in the process. Taken together these Record items infer a right to select is conferred by the collective legislative intent of (c) and (d).

EXCEPTION TWO

“Waived the right to deem Florida ‘unacceptable’ when he signed the request to have [Horse’s] sample tested there.” [pg. 9, first full Paragraph]

It is respectfully urged the severe, tenuous, undue duress placed on the Licensee when being asked whether he “approved” of Florida as his secondary lab negates any notion the signature constitutes a waiver. That the Licensee *would fear immediate suspension of his License to work* if he did not sign is imminently reasonable given Appellants knowledge of the Rules. Coercion and intimidation were the result of the factual circumstances, not necessarily intentional conduct on Mr. Bell’s behalf. Stated simply, the reasonably justified fear of *immediately and summarily losing your License to work* -- if you don’t sign this document -- demonstrates this “waiver” could not have been voluntary. All the other evidence indicates Licensee did not want Florida. The circumstances then existing placed the Licensee in an unfair and unequal bargaining position where a conscious, voluntary decision to “waive” could not occur.

The options were:

- (1) Stand Ground, refuse to sign “approval,” and be automatically in violation – and as a result be automatically suspended; or
- (2) Agree to Sign, and when you do, you waive your statutory right to the secondary lab being one which is “acceptable” to you per the Rule’s command.

The options actually provided here amounted to a Hobson’s Choice where there was only one real option afforded the Licensee: “Take it or leave it.”

EXCEPTION THREE

Even if Florida results are disregarded due to the lab being not acceptable to the Trainer, “where split sample testing cannot occur for reasons beyond the

Commission’s control, Rule 319.362 provides that the original lab’s positive test constitutes prima facie evidence.”

Force majeure has long been applied only in extraordinary circumstances such as natural disasters. The same should apply here. Very respectfully, reliance here is improper because the concept of:

“State could not provide more than one secondary lab to approve by selection because its own approved labs could not test for a common Class Four therapeutic”

--- does not lawfully equate to:

“Act of God, power failure, accident, labor strike.”

Those force majeure situations, where the rule’s proof standard is lowered so substantially, should be reserved only for uncontrollable, catastrophic events. The obvious contention is TX-RC not having more than one approved lab does not rise to the level of Act of God, etc. The substantially reduced standard effectively takes away a Licensee’s rule conferred rights *by making the State’s proof standard much easier*. A perfect example of the how much the proof standard is lowered rings out when Sub. (f) is considered. In the event of force majeure, the Trainer is stripped of the possibility that a second lab may not have “substantially confirmed” the Primary Lab. Thus, an avenue for defense is taken away; unexpected catastrophic occurrences result in the Trainer’s rights being very substantially reduced. Respectfully this should not be one of those instances.

S/s John Mac Hayes

John Mac Hayes, OBA No. 15512
JOHN MAC HAYES LAW FIRM
1220 North Walker
Oklahoma City, OK 73103
Telephone: (405) 235-5200
Facsimile: (405) 235-6611
Email: johnmachayeslaw@aol.com

Blake C. Erskine, Jr., TX Bar No. 00786383
ERSKINE & BLACKBURN, L.L.P.
6618 Sitio Del Rio Blvd., Bldg. C-101
Austin, TX 78730
Telephone: (512) 684-8900
Facsimile: (512) 684-8920
Email: berskine@erskine-blackburn.com

CERTIFICATE OF SERVICE

I certify I have served a copy of these Exceptions on all attorneys of record in the case via e-mail and filed the instrument via the SOAH internet filing system.

S/s John Mac Hayes

State Office of Administrative Hearings



2015 NOV -2 9:32

TEXAS RACING COMMISSION

Cathleen Parsley
Chief Administrative Law Judge

November 2, 2015

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. 476-15-4140; Judd Kearn v. Texas Racing Commission
Docket No. 476-15-4141; Dee Keener v. Texas Racing Commission
Docket No. 476-15-4142; John Stinebaugh v. Texas Racing Commission**

Dear Mr. Trout:

On October 6, 2015, I issued Proposals for Decision (PFD) in the three related appeals referenced above. Pursuant to the procedural rules of the State Office of Administrative Hearings, the last day to file exceptions to the PFDs was October 26, 2015.¹ Appellants Judd Kearn, Dee Keener, and John Stinebaugh filed exceptions to the PFDs on October 27, 2015.

Though Appellants exceptions were untimely, the ALJ has nonetheless reviewed and considered them. The exceptions essentially re-urge arguments that were addressed in Appellants' briefs and have been considered and addressed in the PFDs. Therefore, I am recommending no changes to the PFD based on the exceptions, and the PFDs are ready for your consideration.

Sincerely,

Sarah Starnes
Administrative Law Judge

SS/Ls

cc: Devon Bijansky, Staff Attorney, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 - VIA FACSIMILE: (512)833-6907
John Mac Hayes, John Mac Hayes Law Firm, 1220 North Walker, Oklahoma City, OK 73103 - VIA FACSIMILE: (405)235-6611

¹ 1 Tex. Admin. Code § 155.507(c)(1), (2).

BEFORE THE TEXAS RACING COMMISSION

JUDD KEARL;)	
DEE KEENER; and)	
JOHN STINEBAUGH,)	
)	
Appellants;)	SOAH Docket Numbers:
)	476-15-4140
vs.)	476-15-4141
)	476-15-4142
)	
TEXAS RACING COMMISSION,)	
)	
Appellee.)	

APPELLANTS’ MOTION REQUESTING ORAL ARGUMENT
BEFORE THE FULL COMMISSION

Pursuant to Section 307.35, Appellant Horse Trainers submit this Motion Requesting Oral Argument on appeal related legal issues. The Motion is ripe for consideration. No action has been taken on the Hearing Officer’s Proposal for Decision.

The matter has been fully briefed. Very briefly, the legal dispute involves interpretation of the Rule requiring confirmation of any Primary Lab positive report, as a prerequisite for adverse action against a Licensee in reliance on the Primary Lab report’s findings [Section 319.362(c) and (e)]. All industry participants can mutually agree medication rules must be enforced fairly, according to a rule’s intent, for the benefit of the State, Horsemen, the Betting Public and the sport generally. Appellants fully recognize the discretionary nature of oral argument. It is respectfully urged an issue of vital importance across the entire racing industry is presented here, one which deserves

this Commission's consideration and open deliberation. These procedural items would be effectively achieved through limited oral argument time.

Stated simply, Appellants contend the subject Rule's language vests in a Licensee the specific right to "approve" or "select" a Referee Lab of their personal choice for secondary testing. Evidence shows Texas Horsemen have historically been afforded this right of selection until today's case. Undoubtedly the case rests on a technicality, pure and simple. On appeal Appellants very openly seek relief from sanction in reliance upon a legal "technicality." In other words, it is not disputed Appellants are trying to "get out of trouble" by defending on the grounds State did not prove its case according to the Rule's specific, unambiguous mandate. It is humbly urged however that the Rule's entire operational scheme is itself rested upon a series of "technicalities" legislated for the purpose of creating fairness in the process for Horsemen. Voluntary selection of a Referee Lab ensures fairness. Why? Because the Horseman must live with the result, be it favorable or unfavorable. Related legal issues include:

- (1) Whether the alleged "written approval" of the single Lab option offered was obtained in an environment free from duress, intimidation, or coercion. If the Horseman feared immediate suspension if he did not "consent" to the one Referee Lab offered, then arguably actual "consent" was not given; and
- (2) Whether the lack of multiple selection options on the Approved Lab List offered constitutes an Act of God or other extraordinary catastrophe

warranting the setting aside of long standing procedural rules historically interpreted in the manner urged by Appellants.

For these reasons oral argument time is warranted. Just as medication use must be regulated, so must the process of providing fairness to Horsemen subjected to a Primary Lab positive report.

S/s John Mac Hayes

John Mac Hayes, OBA No. 15512
JOHN MAC HAYES LAW FIRM
1220 North Walker
Oklahoma City, OK 73103
Telephone: (405) 235-5200
Facsimile: (405) 235-6611
Email: johnmachayeslaw@aol.com

Blake C. Erskine, Jr., TX Bar No. 00786383
ERSKINE & BLACKBURN, L.L.P.
6618 Sitio Del Rio Blvd., Bldg. C-101
Austin, TX 78730
Telephone: (512) 684-8900
Facsimile: (512) 684-8920
Email: berskine@erskine-blackburn.com

CERTIFICATE OF SERVICE

I certify I have served a copy of this Motion for Oral Argument on all attorneys of record in the case via e-mail and filed the instrument via the SOAH internet filing system.

S/s John Mac Hayes

IN RE: THE APPEAL OF JUDD KEARL §
FROM STEWARDS' RULINGS § BEFORE THE
LSP 3039, LSP 3040, LSP 3042, §
LSP 3043, LSP 3044, LSP 3045, § TEXAS RACING COMMISSION
LSP 3046, AND LSP 3047 §

ORDER OF THE COMMISSION

On December 15, 2015, the Texas Racing Commission ("Commission") considered in open meeting the appeal of Judd Kearl ("Appellant"), owner-trainer license number 91094, from Stewards' Rulings LSP 3039, LSP 3040, LSP 3042, LSP 3043, LSP 3044, LSP 3045, LSP 3046, and LSP 3047 ("the rulings"). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about February 21, 2015, the Sam Houston Race Park Board of Stewards issued eight rulings, each finding Appellant in violation of 16 TAC Sections 311.104, Trainer/Absolute Insurer; 319.3, Drug Positive or Permitted Medication Violation; and 319.302, Reasonable Oversight of Animal, due to a finding of budesonide in a horse trained by Appellant following a race at Lone Star Park, as follows:

- 1) LSP 3039, regarding the horse "Easee Jubilee," which finished second in the second race on October 4, 2014.
- 2) LSP 3040, regarding the horse "Zoom Royalty," which finished first in the fifth race on October 9, 2014.
- 3) LSP 3042, regarding the horse "Runaway Ante," which finished second in the eighth race on October 9, 2014.

- 4) LSP 3043, regarding the horse "Lethal Corona," which finished second in the fifth race on October 10, 2014.
 - 5) LSP 3044, regarding the horse "Eye Agree," which finished second in the eighth race on October 10, 2014.
 - 6) LSP 3045, regarding the horse "Saint Victoria," which finished first in the fifth race on October 17, 2014.
 - 7) LSP 3046, regarding the horse "Tempting Toro," which finished first in the eighth race on October 17, 2014.
 - 8) LSP 3047, regarding the horse "Last Man Standin'," which finished second in the first race on October 18, 2014.
- (b) Appellant was fined \$4,000 (\$500 per ruling) and suspended for 120 days (15 days per ruling); the horses were disqualified and declared unplaced and the purses redistributed.
- (c) On or about February 27, 2015, Appellant filed an appeal of the rulings with the Commission and requested a stay of the suspension while the appeal was pending.
- (d) On or about March 11, 2014, the Commission's Executive Director denied Appellant's request for a stay of the suspension, which took effect on March 20, 2015, and ended on July 17, 2015.
- (e) In or about August 2015, an administrative law judge at the State Office of Administrative Hearings (SOAH) considered the case on the record and briefs filed by the parties.
- (f) On or about October 6, 2015, the administrative law judge issued a proposal for decision in which she recommended that the Commission adopt the Stewards' rulings in

full, including the suspension of Appellant's racing license for 120 days (15 days per ruling), the imposition of a \$4,000 fine (\$500 per ruling), and the disqualification of the horses and redistribution of the purses.

IT IS HEREBY ORDERED that Stewards' Rulings LSP 3039, LSP 3040, LSP 3042, LSP 3043, LSP 3044, LSP 3045, LSP 3046, and LSP 3047 are upheld in full.

This order takes effect on the date it is entered. 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 December, 2015.

Rolando Pablos, Chair

Ronald F. Ederer, Vice Chair

Gary P. Aber, DVM

Gloria Hicks

A. Cynthia Leon

Margaret Martin

Victoria North

Robert Schmidt, M.D.

John T. Steen III

IN RE: THE APPEAL

OF DEE KEENER

FROM STEWARDS' RULINGS

LSP 3049, LSP 3050, LSP 3051,

AND LSP 3052

§
§
§
§
§
§
§
§

BEFORE THE

TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On December 15, 2015, the Texas Racing Commission ("Commission") considered in open meeting the appeal of Dee Keener ("Appellant"), owner-trainer license number 142505, from Stewards' Rulings LSP 3049, LSP 3050, LSP 3051, AND LSP 3052 ("the rulings"). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about February 21, 2015, the Sam Houston Race Park Board of Stewards issued four rulings, each finding Appellant in violation of 16 TAC Sections 311.104, Trainer/Absolute Insurer; 319.3, Drug Positive or Permitted Medication Violation; and 319.302, Reasonable Oversight of Animal, due to a finding of budesonide in a horse trained by Appellant following a race at Lone Star Park, as follows:

- 1) LSP 3049, regarding the horse "Cant Be Caught," which finished first in the fifth race on October 18, 2014.
- 2) LSP 3050, regarding the horse "Mai Dashing Hero," which finished second in the fifth race on October 18, 2014.
- 3) LSP 3051, regarding the horse "Texas Silk," which finished first in the sixth race on October 18, 2014.

- 4) LSP 3052, regarding the horse "JJ Country Cash," which finished first in the fourth race on October 18, 2014.
- (b) Appellant was fined \$2,000 (\$500 per ruling) and suspended for 60 days (15 days per ruling); the horses were disqualified and declared unplaced and the purses redistributed.
- (c) On or about February 27, 2015, Appellant filed an appeal of the rulings with the Commission and requested a stay of the suspension while the appeal was pending.
- (d) On or about March 11, 2014, the Commission's Executive Director denied Appellant's request for a stay of the suspension, which took effect on March 20, 2015, and ended on May 18, 2015.
- (e) In or about August 2015, an administrative law judge at the State Office of Administrative Hearings (SOAH) considered the case on the record and briefs filed by the parties.
- (f) On or about October 6, 2015, the administrative law judge issued a proposal for decision in which she recommended that the Commission adopt the Stewards' rulings in full, including the suspension of Appellant's racing license for 60 days (15 days per ruling), the imposition of a \$2,000 fine (\$500 per ruling), and the disqualification of the horses and redistribution of the purses.

IT IS HEREBY ORDERED that Stewards' Rulings LSP 3049, LSP 3050, LSP 3051, AND LSP 3052 are upheld in full.

This order takes effect on the date it is entered. 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 December, 2015.

Rolando Pablos, Chair

Ronald F. Ederer, Vice Chair

Gary P. Aber, DVM

Gloria Hicks

A. Cynthia Leon

Margaret Martin

Victoria North

Robert Schmidt, M.D.

John T. Steen III

IN RE: THE APPEAL OF	§	
	§	BEFORE THE
JOHN STINEBAUGH FROM	§	
	§	TEXAS RACING COMMISSION
STEWARDS' RULING LSP 3041	§	

ORDER OF THE COMMISSION

On December 15, 2015, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of John Stinebaugh (“Appellant”), owner-trainer license number 50185, from Stewards’ Ruling LSP 3041 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

- (a) On or about February 21, 2015, the Sam Houston Race Park Board of Stewards issued Ruling LSP 3041, finding Appellant in violation of 16 TAC Sections 311.104, Trainer/Absolute Insurer; 319.3, Drug Positive or Permitted Medication Violation; and 319.302, Reasonable Oversight of Animal, due to a finding of budesonide in the horse “Show Boat of Honor,” trained by Appellant, which finished first in the second race on October 10, 2014.
- (b) Appellant was fined \$500 and suspended for 15 days; the horse was disqualified and declared unplaced and the purse redistributed.
- (c) On or about February 27, 2015, Appellant filed an appeal of the rulings with the Commission and requested a stay of the suspension while the appeal was pending.
- (d) On or about March 11, 2014, the Commission’s Executive Director denied Appellant’s request for a stay of the suspension, which took effect on March 20, 2015, and ended on April 3, 2015.

(e) In or about August 2015, an administrative law judge at the State Office of Administrative Hearings (SOAH) considered the case on the record and briefs filed by the parties.

(f) On or about October 6, 2015, the administrative law judge issued a proposal for decision in which she recommended that the Commission adopt the Stewards' ruling in full, including the suspension of Appellant's racing license for 15 days, the imposition of a \$500 fine, and the disqualification of the horse and redistribution of the purse.

IT IS HEREBY ORDERED that Stewards' Ruling LSP 3041 is upheld in full.

This order takes effect on the date it is entered. 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 December, 2015.

Rolando Pablos, Chair

Ronald F. Ederer, Vice Chair

Gary P. Aber, DVM

Gloria Hicks

A. Cynthia Leon

Margaret Martin

Victoria North

Robert Schmidt, M.D.

John T. Steen III

V. PROCEEDINGS ON RULEMAKING

A. Rule Proposals.

- 1) Proposal to Amend Rule 307.62,
Disciplinary Action
- 2) Proposal to Amend Rule 309.126,
Videotape Equipment
- 3) Proposal to Amend Rule 309.127,
Maintenance of Negatives and
Videotapes
- 4) Proposal to Amend Rule 311.2,
Application Procedure
- 5) Proposal to Amend Rule 313.310,
Restrictions on Claims

B. Adoption of Amendments and Adoption of Repeals of Rules Related to Historical Racing as published in the June 26, 2015, edition of the *Texas Register*.

C. Withdrawal of Proposed Amendments and Withdrawal of Proposed Repeals of Rules Related to Historical Racing as published in the June 26, 2015, edition of the *Texas Register*.

D. Proposals to Amend and Repeal Rules Related to Historical Racing. If approved by the Commission, these proposals will be published in the *Texas Register* for public comment.

E. Closing of Rule Reviews

F. Opening of Rule Reviews

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 9 Nov. 2015

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

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

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

Contact Information:

Name:	Legal Staff	Phone(s):	512-833-6699
E-mail address:	info@txrc.texas.gov	Fax number:	512-833-6907
Mailing address:	8505 Cross Park Drive, Suite 110, Austin, Texas 78754		

Check appropriate box(es):

Personal Submission *OR*

Submission on Behalf of Texas Racing Commission
(Name of Organization)

Proposed Change to (if known): Chapter: 307 Rule: 62

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

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

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Statutory Authority for Proposed Change: TRA 3.02, 3.16

A. Brief Description of the Issue

Rule 307.62(i) authorizes boards of stewards to summarily suspend a license under certain circumstances, provided that the licensee is given the opportunity to be heard within three calendar days after the date the license is summarily suspended. However, because of the race schedule, stewards are not always able to schedule a hearing within three days of the summary suspension date.

B. Discussion of the Issue and Problem

Rule 307.62(i) is based on ARCI Model Rule 003-010, Proceedings by Stewards/Judges, which requires a hearing to take place shortly after a board of stewards summarily suspends a license but does not articulate a specific timeframe for scheduling a summary suspension hearing. The model rule allows jurisdictions to choose the optimal number of days for that jurisdiction.

Because racing at each track does not take place every day, the stewards are often not on site to hold summary suspension hearings within three days of an initial summary suspension. At some tracks there are up to five days between race days, and depending on when a summary suspension is imposed, it may not be possible to schedule a hearing on the suspension for seven days.

C. Possible Solutions and Impact

Extending the three-day period to schedule summary suspension hearings to seven days will ensure that any summary suspension can be followed up with a summary suspension hearing in accordance with the rule.

D. Support or Opposition

The proposal was discussed at the Rules Committee meeting on December 1, 2015. There was no opposition to this change, and the Committee authorized staff to bring it to the full Commission for consideration at its meeting on December 15, 2015.

E. Proposal

See next page.

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

1 **Sec. 307.62. Disciplinary Action**

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

3 (i) Summary Suspension. If the stewards or racing judges
4 determine that a licensee's actions constitute an immediate
5 danger to the public health, safety, or welfare, the stewards or
6 racing judges may enter a ruling summarily suspending the
7 license, without a prior hearing. A summary suspension takes
8 effect immediately on issuance of the ruling. If the stewards
9 or racing judges suspend a license under this subsection, the
10 licensee is entitled to a hearing on the suspension not later
11 than seven [~~three~~] calendar days after the day the license is
12 suspended. The licensee may waive his or her right to a hearing
13 on the summary suspension within the seven [~~three~~]-day period.

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 9 Nov. 2015

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

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

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

Contact Information:

Name:	Legal Staff	Phone(s):	512-833-6699
E-mail address:	info@txrc.texas.gov	Fax number:	512-833-6907
Mailing address:	8505 Cross Park Drive, Suite 110, Austin, Texas 78754		

Check appropriate box(es):

Personal Submission *OR*

Submission on Behalf of Texas Racing Commission
(Name of Organization)

Proposed Change to (if known): Chapter: 309 Rule: 126-127

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

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

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Statutory Authority for Proposed Change: TRA §§ 3.02, 6.06

A. Brief Description of the Issue

Rules 309.126-127 address requirements that associations create and maintain audio-visual records of races. Currently, the rules refer to “videotape” recordings and equipment, as well as photographic “negatives.” Given digital recording technology, these terms are now outdated.

B. Discussion of the Issue and Problem

Rules 309.126 and 309.127, adopted before digital recording became widespread, address requirements that associations create and maintain audio-visual records of races. Currently, the rules require associations to have “videotape” recording equipment, to make “videotape” recordings of races, and to maintain those recordings and photographic “negatives” for Commission use. However, associations today generally use digital recording equipment, so the rule should be updated to reflect current technology.

C. Possible Solutions and Impact

Replacing the word “videotape” with “video recording” and allowing the association to provide either a print or a digital image of a negative would update the rules to reflect modern audio-visual recording technologies.

D. Support or Opposition

The proposal was discussed at the Rules Committee meeting on December 1, 2015. There was no opposition to this change, and the Committee authorized staff to bring it to the full Commission for consideration at its meeting on December 15, 2015.

E. Proposal

See next page.

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

1 **309.126 Video Recording [~~Videotape~~] Equipment**

2 (a) An association shall provide a video recording [~~videotape~~]
3 system to record each race in color from start to finish.

4 (b) The video recording [~~videotape~~] of a horse race must provide
5 a clear panoramic and head-on view of the position and action of
6 the horses and jockeys at a range sufficient for motions to be
7 easily discerned by the stewards. The video recording
8 [~~videotape~~] of a greyhound race must provide a clear view of the
9 position and action of the greyhounds at a range sufficient for
10 motions to be easily discerned by the racing judges.

11 (c)-(d) (No change.)

12 (e) The location and height of video towers and the operation of
13 the video recording [~~videotape~~] system must be approved by the
14 executive secretary before its first use in a race.

15 (f) An association shall provide a viewing room in which, on
16 approval of the stewards or racing judges, an owner, trainer,
17 jockey, or other interested individual may view a video
18 [~~videotape~~] recording of a race.

19 (g) The association shall maintain an auxiliary video recording
20 [~~videotape~~] system in case of an emergency.

21 (h) (No change.)

1

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

1 309.127 Maintenance of Still Images [~~Negatives~~] and Video
2 Recordings [~~Videotapes~~]

3 (a) An association shall preserve either the negative of each
4 photograph of the finish of a race or the image of each
5 electronic photofinish of a race, whichever device is used, and
6 the video recording [~~videotape~~] of a race for at least one year
7 after the last day of the race meeting during which the
8 photograph, electronic photofinish image or video recording
9 [~~videotape~~] was made.

10 (b) On request by the Commission, the association shall provide
11 a digital image or print from a negative, or copy of the image
12 from the electronic photofinish device or a copy of a video
13 recording [~~videotape~~] to the Commission.

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 11/6/15

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

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

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

Contact Information:

Name:	Staff – Legal	Phone(s):	(512) 833-6699
E-mail address:	info@txrc.texas.gov	Fax number:	(512) 833-6907
Mailing address:			

Check appropriate box(es):

Personal Submission *OR*

Submission on Behalf of Texas Racing Commission
(Name of Organization)

Proposed Change to (if known): Chapter: 311 Rule: 311.2

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

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

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Statutory Authority for Proposed Change: 84th Legislative Session, Senate Bill 807 and 1307

A. Brief Description of the Issue

Recent legislation by the 84th Legislative Session (SB 807 and SB 1307) amend the current laws relating to occupational license application fees and examination fees for certain military service members, military veterans, and military spouses.

B. Discussion of the Issue and Problem

The legislature found that state occupational licensing requirements and fees are barriers to employment for service members, veterans, and military spouses. In response, the Occupation Code now requires state agencies to waive educational requirements where a service member's or veteran's training already qualifies them to hold a particular license. In addition, the Occupational Code requires state agencies to waive initial licensing and examination fees for service members and veterans who hold a substantially equivalent certification from the military and for service members, their spouses, and veterans who hold a similar license in another jurisdiction with similar licensing requirements.

By waiving the educational and initial licensing and examination fees for qualified individuals, state agencies can remove these barriers and ease the transition to employment.

C. Possible Solutions and Impact

Rule 311.2, Application Procedure, will be amended so that a military member, veteran, or military spouse can apply to have education and/or examination requirements and fees waived. An application addendum will be developed as appropriate.

D. Support or Opposition

The proposal was discussed at the Rules Committee meeting on December 1, 2015. There was no opposition to this change, and the Committee authorized staff to bring it to the full Commission for consideration at its meeting on December 15, 2015.

E. Proposal

See next page.

CHAPTER 311. OTHER LICENSES

SUBCHAPTER A. OCCUPATIONAL LICENSES.

1 **Sec. 311.2 Application Procedure**

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

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

5 (1) The terms "military service member," "military spouse,"
6 and "military veteran" shall have the same meaning as those
7 terms are defined in Texas Occupations Code, Chapter 55.

8 (2) Credit for Military Service. Military service members
9 and military veterans, as defined in Texas Occupations Code,
10 Chapter 55, will receive credit toward any experience
11 requirements for a license as appropriate for the particular
12 license type and the specific experience of the military service
13 member or veteran.

14 (3) Credit for holding a current license issued by another
15 jurisdiction. Military service members, military spouses, and
16 military veterans who hold a current license issued by another
17 jurisdiction that has licensing requirements that are
18 substantially equivalent to the license in this state will
19 receive credit toward any experience requirements for a license
20 as appropriate for the particular license type.

21 (4) Supporting documentation must be submitted with the
22 license application.

23 (5) The executive director may waive any prerequisite to
24 obtaining a license for an applicant who is a military service
25 member, military veteran, or military spouse, after reviewing
26 the applicant's credentials.

27 (6) Expedited license procedure. As soon as practicable
28 after a military service member, military veteran, or military
29 spouse files an application for a license, the commission will
30 process the application and issue the license to an applicant
31 who qualifies under this section.

1 (7) License application and examination fees will be waived
2 for the initial application of an applicant who qualifies under
3 this subsection.

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 9 Nov. 2015

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

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

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

Contact Information:

Name:	Legal Staff	Phone(s):	(512) 833-6699
E-mail address:	info@txrc.texas.gov	Fax number:	(512) 833-6907
Mailing address:	P.O. Box 12080, Austin, TX 78711-2080		

Check appropriate box(es):

Personal Submission *OR*

Submission on Behalf of Texas Racing Commission
(Name of Organization)

Proposed Change to (if known): Chapter: 313 Rule: 110

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

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

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Statutory Authority for Proposed Change: TRA § 3.02

A. Brief Description of the Issue

Rule 313.110, Restrictions on Claims, prohibits a "protection claim" and subjects a person making such a claim to disciplinary action, but fails to define the term. In addition, ARCI's model rules do not define or use the term.

B. Discussion of the Issue and Problem

The stewards recently encountered a situation in which a trainer claimed a horse on behalf of one owner from another of the trainer's owners. The stewards voided the claim as a protection claim, which the trainer attempted to protest since he was no longer training in fact for the original owner. However, the stewards' decision stood and the trainer was left dissatisfied because the rule did not clearly identify his situation as the type that would be identified as a protection claim.

C. Possible Solutions and Impact

The proposal would amend Rule 313.110 to eliminate the term "protection claim" and to ensure that all of the factors identified in Model Rule ARCI-009-025, Prohibitions, are also included in the Texas rule.

ARCI-009-025, Prohibitions, provides:

- (1) A person shall not claim a horse in which the person has a financial or beneficial interest as an owner or trainer.
- (2) A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.
- (3) A person shall not enter into an agreement for the purpose of preventing another person from obtaining a horse in a claiming race.
- (4) A person shall not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.
- (5) A person shall not claim more than one horse in a race. No authorized agent shall submit more than one claim for the same horse in a race, even if the authorized agent represents several owners.

D. Support or Opposition

The proposal was discussed at the Rules Committee meeting on December 1, 2015. There was no opposition to this change, and the Committee authorized staff to bring it to the full Commission for consideration at its meeting on December 15, 2015.

E. Proposal

See next page.

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER C. CLAIMING RACES

Sec. 313.310. Restrictions on Claims

- (a) A horse that is claimed may not remain in the care or custody of the owner or trainer from whom the horse was claimed.
- (b) A person may not claim more than one horse in a race nor submit more than one claim for a race. An authorized agent may not submit more than one claim in a race, regardless of the number of persons the agent represents. A trainer may not be listed as the trainer for a claimant on more than one claim in the same race.
- (c) A person may not offer or agree to claim or refrain from claiming a horse. A person may not prevent or attempt to prevent another person from claiming a horse.
- (d) A person may not prevent or attempt to prevent a horse from racing in a claiming race for the purpose of avoiding a claim.
- (e) A person shall not claim a horse in which the person has a financial or beneficial interest as an owner or trainer. [~~A protection claim is prohibited and a person making such a claim is subject to disciplinary action by the stewards.~~]
- (f) A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.
- (g) A person shall not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 06/01/2015
Updated 8/18/2015
Updated 12/8/2015

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

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

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

Contact Information:

Name:	Staff – Legal	Phone(s):	512-833-6699
E-mail address:	mark.fenner@txrc.texas.gov	Fax number:	512-833-6907
Mailing address:			

Check appropriate box(es):

Personal Submission *OR*
 Submission on Behalf of Texas Racing Commission
(Name of Organization)

Proposed Change to (if known): Chapter: 301 Rule: 1
 Proposed Addition to (if known): Chapter: 303 Rule: 31, 42

Other Rules Affected by Proposal (if any): Chapter: 309 Rule: 361
 Chapter: 321 Rule: 5, 12, 13, 23, 25,27

Repeal of: Chapter: 321 Rule: 701, 703, 705, 707, 709, 711, 713, 715, 717, 719
 :

Statutory Authority for Proposed Change: §§ 3.02, 3.021, 8.02, 11.01

A. Brief Description of the Issue

The 261st District Court of Travis County has ruled that the rules relating to historical racing exceeded the Commission's authority. The Commission has not appealed the decision, therefore it cannot take any action under those rules.

B. Discussion of the Issue and Problem

The continued existence of the invalidated rules creates confusion among some as to the Commission's intent going forward. Further, a number of necessary rules were amended in order to address historical racing, so any reference to historical racing in those rules calls their legitimacy into question.

C. Possible Solutions and Impact

The following rules pre-existed the historical racing effort. They are necessary, so they should be amended and retained.

- § 301.1, Definitions
- § 303.31, Regulation of Racing
- § 303.42, Approval of Charity Race Days
- § 309.297, Purse Accounts
- § 309.299, Horsemen's Representative
- § 309.361, Greyhound Purse Account and Kennel Account
- § 321.5, Pari-Mutuel Auditor
- § 321.12, Time Synchronization
- § 321.13, Pari-Mutuel Track Report
- § 321.23, Wagering Explanations
- § 321.25, Wagering Information
- § 321.27, Posting of Race Results

The rules within Chapter 321, Subchapter F, Regulation of Historical Racing, may be repealed in their entirety.

D. Support or Opposition

At its meeting on June 9, 2015, the Commission voted to publish the proposed amendments and repeals for public comment, and they subsequently appeared in the June 26, 2015 edition of the *Texas Register*.

Staff received nearly 1,300 public comments in response to the publication, all but four of which were in opposition to the repeal of the historical racing rules. Most comments were in the form of form letters, emails, and petition signatures. In addition, there were comments from legislators, organizations, and racetracks.

Staff received five comments from state legislators, one of which explicitly supported historical racing. The remaining four letters from legislators did not explicitly support historical racing, but they opposed making any connection between the agency's funding and its decision on the proposed repeal.

Staff received five letters opposing repeal from industry organizations: the Texas Greyhound Association; the Texas Thoroughbred Association; the Texas Horsemen's Partnership; the Jockeys' Guild; and a legal brief on behalf of the Texas Thoroughbred HBPA. Staff also received letters in opposition to repeal from Sam Houston Race Park and Gulf Greyhound Park.

Staff received three letters supporting the repeal of historical racing from three non-industry organizations: the Kickapoo Traditional Tribe of Texas; a representative of 300 organizations licensed to conduct charitable bingo; and Grey2K USA.

Staff prepared a separate compilation of these comments and provided it to the Commissioners. This compilation was also be made available on the agency's website.

Recent History

At its meeting on August 25, 2015, the Commission considered the repeal of the historical racing rules. Several members of the racing industry spoke in opposition to the repeal. One representative of the American Legion, Department of Texas, spoke in favor of the repeal. These comments are available in the meeting transcript, which is published on the agency's website.

Following discussion by the Commission, Commissioner Martin moved to withdraw the proposal to repeal the historical rules, which was seconded by Commissioner Aber. This motion failed on a vote of four in favor of the motion, three in opposition, and one abstention. (Commission Rule 303.5 provides that a motion before the Commission is carried by an affirmative vote of the majority of the commissioners present at the meeting. Since eight commissioners were present, a motion required five affirmative votes in order to carry.) Commissioner Leon then moved to repeal the rules, which was seconded by Chairman Schmidt. This motion failed on a vote of three in favor, four in opposition, and one abstention. At this conclusion of this vote, the meeting was adjourned.

F. Proposals

See next pages.

TITLE 16. ECONOMIC REGULATION
PART 8. TEXAS RACING COMMISSION
CHAPTER 301. DEFINITIONS

1 **Sec. 301.1. Definitions.**

2 (a) (No change.)

3 (b) The following words and terms, when used in this part, shall
4 have the following meanings, unless the context clearly
5 indicates otherwise:

6 (1) - (31) (No change.)

7 ~~(32) Historical racing to present for pari-mutuel~~
8 ~~wagering, through a totalisator system that meets the~~
9 ~~requirements of Chapter 321, Subchapter F of this title~~
10 ~~(relating to Regulation of Historical Racing), a previously run~~
11 ~~horse or greyhound race that was:~~

12 ~~(A) authorized by the commission or by another racing~~
13 ~~jurisdiction;~~

14 ~~(B) concluded with official results and without~~
15 ~~scratches, disqualifications or dead-heat finishes; and~~

16 ~~(C) recorded by video, film, electronic, or similar~~
17 ~~means of preservation.~~

18 (32) [~~(33)~~] Horse--an equine of any breed, including a
19 stallion, gelding, mare, colt, filly, or ridgling.

20 (33) [~~(34)~~] Horse Race--a running contest between horses
21 for entry fees, purse, prize, or other reward, including the
22 following:

23 (A) Claiming race--a race in which a horse may be
24 claimed in accordance with the Rules.

25 (B) Derby race--a race in which the first condition of
26 eligibility is to be three years old.

27 (C) Futurity race--a race in which the first condition
28 of eligibility is to be two years old.

TITLE 16. ECONOMIC REGULATION
PART 8. TEXAS RACING COMMISSION
CHAPTER 301. DEFINITIONS

1 (D) Guaranteed race--a race for which the association
2 guarantees by its conditions a specified purse, which is
3 the limit of its liability.

4 (E) Handicap race--a race in which the weights to be
5 carried by the entered horses are adjusted by the racing
6 secretary for the purpose of equalizing their respective
7 chances of winning.

8 (F) Match race--a race between only two horses that
9 are owned by different owners.

10 (G) Maturity race--a race in which the first condition
11 of eligibility is to be four years of age or older.

12 (H) Optional claiming race--a claiming race in which
13 there is an option to have horses entered to be claimed for
14 a stated price or not eligible to be claimed.

15 (I) Progeny race--a race restricted to the offspring
16 of a specific stallion or stallions.

17 (J) Purse or overnight race--a race for which owners
18 of horses entered are not required by its conditions to
19 contribute money toward its purse.

20 (K) Stakes race--a race to which nominators of the
21 entries contribute to a purse.

22 (L) Starter race--an overnight race under allowance or
23 handicap conditions, restricted to horses which have
24 previously started for a designated claiming price or less,
25 as stated in the conditions of the race.

26 (M) Walkover race--a stakes race in which only one
27 horse starts or all the starters are owned by the same
28 interest.

TITLE 16. ECONOMIC REGULATION
PART 8. TEXAS RACING COMMISSION
CHAPTER 301. DEFINITIONS

1 (N) Weight for age race--a race in which weights are
2 assigned in keeping with the scale of weights in these
3 rules.

4 (34) [~~(35)~~] In today horse--a horse that is in the body of
5 a race program which is entered into a race on the next
6 consecutive race day.

7 (35) [~~(36)~~] Kennel area--an area on association grounds for
8 the boarding or training of greyhounds.

9 (36) [~~(37)~~] Lead out--an individual who handles a greyhound
10 from the lockout kennel to the starting box.

11 (37) [~~(38)~~] Locked in the gate--a horse or greyhound that
12 is prevented from leaving the starting gate or box due to the
13 failure of the front door of the gate or box to open
14 simultaneously with the other doors.

15 (38) [~~(39)~~] Lure--a mechanical apparatus at a greyhound
16 racetrack consisting of a stationary rail installed around the
17 track, a motorized mechanism that travels on the rail, and a
18 pole that is attached to the mechanism and extends over the
19 track, and to which a decoy is attached.

20 (39) [~~(40)~~] Maiden--a horse or greyhound that has never won
21 a race at a recognized race meeting authorized by the Commission
22 or by another racing jurisdiction.

23 (40) [~~(41)~~] Minus pool--a pool in which there are
24 insufficient net proceeds to pay the minimum price to holders of
25 the winning tickets.

26 (41) [~~(42)~~] Mutuel field--a group of horses joined as a
27 single betting interest in a race due to the limited numbering
28 capacity of the totalisator.

TITLE 16. ECONOMIC REGULATION
PART 8. TEXAS RACING COMMISSION
CHAPTER 301. DEFINITIONS

1 (42) [~~(43)~~] No race--a race that is canceled after being
2 run due to a malfunction of the starting gate or box or any
3 other applicable reason as determined by the Rules.

4 (43) [~~(44)~~] Nominator--the person in whose name a horse or
5 greyhound is entered for a race.

6 (44) [~~(45)~~] Occupational licensee--an individual to whom
7 the Commission has issued a license to participate in racing
8 with pari-mutuel wagering.

9 (45) [~~(46)~~] Odds--a number indicating the amount of profit
10 per dollar wagered to be paid to holders of winning pari-mutuel
11 tickets.

12 (46) [~~(47)~~] Off time--the moment when, on signal from the
13 starter, the horses or greyhounds break from the starting gate
14 or box and run the race.

15 (47) [~~(48)~~] Paddock--the area in which horses or greyhounds
16 gather immediately before a race.

17 (48) [~~(49)~~] Patron--an individual present on association
18 grounds during a race meeting who is eligible to wager on the
19 racing.

20 (49) [~~(50)~~] Pecuniary interest--includes a beneficial
21 ownership interest in an association, but does not include bona
22 fide indebtedness or a debt instrument of an association.

23 (50) [~~(51)~~] Performance--the schedule of horse or greyhound
24 races run consecutively as one program. A greyhound performance
25 consists of fifteen or fewer races unless approved by the
26 executive secretary.

27 (51) [~~(52)~~] Photofinish--the system of recording pictures
28 or images of the finish of a race to assist in determining the
29 order of finish.

TITLE 16. ECONOMIC REGULATION
PART 8. TEXAS RACING COMMISSION
CHAPTER 301. DEFINITIONS

1 (52) [~~(53)~~] Place--to finish second in a race.

2 (53) [~~(54)~~] Post position--the position assigned to a horse
3 or greyhound in the starting gate or box.

4 (54) [~~(55)~~] Post time--the time set for the arrival at the
5 starting gate or boxes by the horses or greyhounds in a race.

6 (55) [~~(56)~~] Purse--the cash portion of the prize for a
7 race.

8 (56) [~~(57)~~] Race date--a date on which an association is
9 authorized by the Commission to conduct races.

10 (57) [~~(58)~~] Race day--a day in which a numerical majority
11 of scheduled races is conducted and is a part of the
12 association's allocated race days.

13 (58) [~~(59)~~] Race meeting--the specified period and dates
14 each year during which an association is authorized to conduct
15 racing and/or pari-mutuel wagering by approval of the
16 Commission.

17 (59) [~~(60)~~] Racetrack facility--the buildings, structures
18 and fixtures located on association grounds used by an
19 association to conduct horse or greyhound racing.

20 (60) [~~(61)~~] Racetrack official--an individual appointed or
21 approved by the Commission to officiate at a race meeting.

22 (61) [~~(62)~~] Racing judge--the executive racing official at
23 a greyhound track.

24 (62) [~~(63)~~] Reasonable belief--a belief that would be held
25 by an ordinary and prudent person in the same circumstances as
26 the actor.

27 (63) [~~(64)~~] Recognized race meeting--a race meeting held
28 under the sanction of a turf authority.

TITLE 16. ECONOMIC REGULATION
PART 8. TEXAS RACING COMMISSION
CHAPTER 301. DEFINITIONS

- 1 (64) [~~65~~] Refunded ticket--a pari-mutuel ticket that has
2 been refunded for the value of a wager that is no longer valid.
- 3 (65) [~~66~~] Rule off--to bar an individual from the
4 enclosure of an association and to deny all racing privileges to
5 the individual.
- 6 (66) [~~67~~] Rules--the rules adopted by the Texas Racing
7 Commission found in Title 16, Part VIII of the Texas
8 Administrative Code.
- 9 (67) [~~68~~] Schooling race--a practice race conducted under
10 actual racing conditions but for which wagering is not
11 permitted.
- 12 (68) [~~69~~] Scratch--to withdraw an entered horse or
13 greyhound from a race after the closing of entries.
- 14 (69) [~~70~~] Scratch time--the closing time set by an
15 association for written requests to withdraw from a race.
- 16 (70) [~~71~~] Show--to finish third in a race.
- 17 (71) [~~72~~] Specimen--a bodily substance, such as blood,
18 urine, or saliva, taken for analysis from a horse, greyhound, or
19 individual in a manner prescribed by the Commission.
- 20 (72) [~~73~~] Stakes payments--the fees paid by subscribers
21 in the form of nomination, entry, or starting fees to be
22 eligible to participate.
- 23 (73) [~~74~~] Stallion owner--a person who is owner of
24 record, at the time of conception, of the stallion that sired
25 the accredited Texas-bred horse.
- 26 (74) [~~75~~] Starter--a horse or greyhound entered in a race
27 when the doors of the starting gate or box open in front of the
28 horse or greyhound at the time the official starter dispatches
29 the horses or greyhounds.

TITLE 16. ECONOMIC REGULATION
PART 8. TEXAS RACING COMMISSION
CHAPTER 301. DEFINITIONS

1 (75) [~~76~~] Straight pool--a mutuel pool that involves
2 wagers on a horse or greyhound to win, place, or show.

3 (76) [~~77~~] Subscription--money paid to nominate, enter, or
4 start a horse or greyhound in a stakes race.

5 (77) [~~78~~] Tack room--a room in the stable area of a horse
6 racetrack in which equipment for training and racing the horses
7 is stored.

8 (78) [~~79~~] Totalisator--a machine or system for
9 registering and computing the wagering and payoffs in pari-
10 mutuel wagering.

11 (79) [~~80~~] Tote board--a facility at a racetrack that is
12 easily visible to the public on which odds, payoffs,
13 advertising, or other pertinent information is posted.

14 (80) [~~81~~] Tote room--the room in which the totalisator
15 equipment is maintained.

16 (81) [~~82~~] Tout--an individual licensed to furnish
17 selections on a race in return for a set fee.

18 (82) [~~83~~] Trial--a race designed primarily to determine
19 qualifiers for finals of a stakes race.

20 (83) [~~84~~] Uplink--an earth station broadcasting facility,
21 whether mobile or fixed, which is used to transmit audio-visual
22 signals and/or data emanating from a sending racetrack, and
23 includes the electronic transfer of received signals from the
24 receiving antenna to TV monitors within the receiving location.

25 (84) [~~85~~] Weigh in--the process by which a jockey is
26 weighed after a race or by which a greyhound is weighed before
27 being placed in the lockout kennel.

28 (85) [~~86~~] Weighing in weight--the weight of a greyhound
29 on weighing in to the lockout kennel.

TITLE 16. ECONOMIC REGULATION
PART 8. TEXAS RACING COMMISSION
CHAPTER 301. DEFINITIONS

1 (86) [~~87~~] Weigh out--the process by which a jockey or
2 greyhound is weighed before a race.

3 (87) [~~88~~] Weighing out weight--the weight of a greyhound
4 on weighing out of the lockout kennel immediately before post
5 time for the race in which the greyhound is entered.

6 (88) [~~88~~] Win--to finish first in a race.

7 (89) [~~90~~] Winner--

8 (A) for horse racing, the horse whose nose reaches the
9 finish line first, while carrying the weight of the jockey
10 or is placed first through disqualification by the
11 stewards; and

12 (B) for greyhound racing, the greyhound whose muzzle,
13 or if the muzzle is lost or hanging, whose nose reaches the
14 finish line first or is placed first through
15 disqualification by the judges.

16 (90) [~~91~~] Active license--a racetrack license designated
17 by the commission as active.

18 (91) [~~92~~] Inactive license--a racetrack license
19 designated by the commission as inactive.

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

1 **Sec. 303.31. Regulation of Racing**

2 The commission shall regulate each live and simulcast race
3 meeting conducted in this state and supervise the operation of
4 racetracks and the persons other than patrons who participate in
5 a race meeting.

6
7 **Sec. 303.42. Approval of Charity Race Days.**

8 (a) An association shall conduct charity days as required by the
9 Act. A greyhound association shall conduct at least five charity
10 race days each year. A Class 1 or Class 2 horse racetrack [~~that~~
11 ~~is not conducting historical racing~~] shall conduct at least two
12 and not more than five charity race days each year. [~~A Class 1~~
13 ~~or Class 2 horse racetrack that is conducting historical racing~~
14 ~~shall conduct at least three and not more than five charity race~~
15 ~~days each year.~~]

16 (b) An association shall apply to the commission not later than
17 July 1 of each year for charity race dates to be conducted in
18 the next calendar year. [~~During each application period in which~~
19 ~~an association applies for live race dates, the association~~
20 ~~shall also apply for charity race dates as necessary to comply~~
21 ~~with subsection (a) of this section.~~] The application must be in
22 writing and contain:

23 (1) - (4) (No change.)

24 (c) An association shall pay to the charity at least 2.0% of the
25 total pari-mutuel handle generated at the association's
26 racetrack on live races and imported simulcast races on the
27 charity race day.

28 (d) [~~Charities.~~]

29 [~~(1)~~] At least one of the charity days must be conducted
30 for a [~~percent of the pari-mutuel handle from live racing and~~

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

1 ~~simuleasting on charity racing days shall be contributed to a]~~
2 charity that directly benefits the persons who work in the
3 stable or kennel area of the racetrack. At least one of the
4 charity days must be conducted for [, and at least one percent
5 shall be contributed to] a charity that primarily benefits
6 research into the health or safety of race animals.

7 [~~(2) For a horse racing association conducting historical~~
8 ~~racing, at least 1.5% of the pari-mutuel handle from historical~~
9 ~~racing on charity racing days shall be contributed to a charity~~
10 ~~that directly funds veterinary research beneficial to promoting~~
11 ~~the health and soundness of horses; and at least one-half of one~~
12 ~~percent of the pari-mutuel handle from historical racing on~~
13 ~~charity racing days shall be contributed to a charity that~~
14 ~~facilitates youth participation in equestrian sports and~~
15 ~~activities.]~~

16 [~~(3) For a greyhound association conducting historical~~
17 ~~racing, at least two percent of the pari-mutuel handle from~~
18 ~~historical racing on charity racing days shall be contributed to~~
19 ~~a charity that provides for the medical care and rehabilitation~~
20 ~~of injured greyhounds.]~~

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACKS LICENSES

DIVISION 1. GENERAL PROVISIONS

NOTE: This rule is only relevant as a rule proposal in Agenda Item VII.D., having already been adopted with amendments by the Commission at its August 25, 2015, meeting. It is not eligible for action under Agenda Items VII.B. or VII.C.

1 **Sec. 309.8. Racetrack License Fees.**

2 (a) Purpose of Fees. An association shall pay a license fee to
3 the Commission to pay the Commission's costs to administer and
4 enforce the Act, and to regulate, oversee, and license live and
5 simulcast racing [~~and pari-mutuel wagering~~] at racetracks.

6 (b) Annual License Fee.

7 (1) (No change.)

8 (2) An association that is conducting live racing[~~7~~
9 ~~historical racing~~] or simulcasting shall pay its annual license
10 fee by remitting to the Commission 1/12th of the fee on the
11 first business day of each month.

12 (3) An association that is not conducting live racing[~~7~~
13 ~~historical racing~~] or simulcasting shall pay its annual license
14 fee in four equal installments on September 1, December 1, March
15 1, and June 1 of each fiscal year.

16 (c) (No change.)

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER C. HORSE RACETRACKS

DIVISION 4. OPERATIONS

1 **Sec. 309.297. Purse Accounts.**

2 (a) All money required to be set aside for purses, whether from
3 wagering on live races or on simulcast wagering, are trust funds
4 held by an association as custodial trustee for the benefit of
5 horsemen. No more than three business days after the end of each
6 week's wagering, the association shall deposit the amount set
7 aside for purses into purse accounts maintained as trust
8 accounts for the benefit of horsemen by breed by the horsemen's
9 organization in one or more federally or privately insured
10 depositories.

11 (b) - (f) (No change.)

12

13 **Sec. 309.299. Horsemen's Representative.**

14 (a) Findings. The Commission finds a need for horse owners and
15 trainers to negotiate and covenant with associations as to the
16 conditions of live race meetings, the distribution of purses not
17 governed by statute, simulcast transmission and reception, and
18 other matters relating to the welfare of the owners and trainers
19 participating in live racing at an association. To ensure the
20 uninterrupted, orderly conduct of racing in this state, the
21 Commission shall recognize one organization to represent horse
22 owners and trainers on matters relating to the conduct of live
23 racing and simulcasting at Texas racetracks.

24 (b) (No change.)

25 (c) Authority and Responsibilities.

26 (1) An organization recognized under this section shall
27 negotiate with each association regarding the association's live
28 racing program, including but not limited to the allocation of
29 purse money to various live races, the exporting of simulcast

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER C. HORSE RACETRACKS

DIVISION 4. OPERATIONS

- 1 signals, [~~issues related to historical racing,~~] and the
- 2 importing of simulcast signals during live race meetings.
- 3 (2) - (6) (No change.)

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER D. GREYHOUND RACETRACKS

DIVISION 2. OPERATIONS

1 **Sec. 309.361. Greyhound Purse Account and Kennel Account.**

2 (a) Greyhound Purse Account.

3 (1) All money required to be set aside for purses, whether
4 from wagering on live races or simulcast races, are trust funds
5 held by an association as custodial trustee for the benefit of
6 kennel owners and greyhound owners. No more than three business
7 days after the end of each week's wagering, the association
8 shall deposit the amount set aside for purses into a greyhound
9 purse account maintained in a federally or privately insured
10 depository.

11 (2) (No change.)

12 (b) (No change.)

13 (c) The Texas Greyhound Association ("TGA") shall negotiate with
14 each association regarding the association's live racing
15 program, including but not limited to the allocation of purse
16 money to various live races, the exporting of simulcast signals,
17 [~~issues related to historical racing,~~] and the importing of
18 simulcast signals during live race meetings.

19 (d) - (f) (No change.)

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER A. MUTUEL OPERATIONS

DIVISION 1. GENERAL PROVISIONS

1 **Sec. 321.5. Pari-mutuel Auditor.**

2 (a) (No change.)

3 (b) The pari-mutuel auditor shall verify the wagering pool
4 totals for each live and simulcast performance [~~and any~~
5 ~~historical racing pools~~]. The pari-mutuel auditor's verification
6 of the pool totals is the basis for computing the amount of
7 money to be set aside from each pool for the following:

8 (1) - (6) (No change.)

9 (c) (No change.)

10

11 **Sec. 321.12. Time Synchronization.**

12 (a) Display and verification of the accurate off time and start
13 of a [~~live or simuleast~~] race is critical. To ensure accurate
14 verification of off time with the close of betting on all [~~live~~
15 ~~and simuleast~~] races, the association shall ensure:

16 (1) - (3) (No change.)

17 (b) (No change.)

18

19 **Sec. 321.13. Pari-mutuel Track Report.**

20 (a) Daily Pari-Mutuel Summary Report.

21 (1) - (3) (No change.)

22 (4) The report must contain, by each live and simulcast
23 performance[~~, and for each day historical racing is conducted~~],
24 the following:

25 (A) - (D) (No change.)

26 (E) all purses earned, broken out by source, such as
27 live, [~~historical racing,~~] simulcast, cross species, and
28 export;

29 (F) - (H) (No change.)

30 (b) (No change.)

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER A. MUTUEL OPERATIONS

DIVISION 2. WAGERING INFORMATION AND RESULTS

1 **Sec. 321.23. Wagering Explanations.**

2 (a) (No change.)

3 [~~(b) Historical racing terminals operated by an association must~~
4 ~~provide:~~]

5 [~~(1) an explanation of the rules of the various types of~~
6 ~~wagers offered through that terminal; and]~~

7 [~~(2) information about the expiration date of vouchers~~
8 ~~issued by the terminal, which must be printed on the vouchers.]~~

9 (b) [~~(c)~~] Wagering explanations must be reviewed and approved by
10 the executive secretary before publication.

11

12 **Sec. 321.25. Wagering Information.**

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

14 [~~(d) Wagering information for historical racing must be audited~~
15 ~~by an independent third party approved by the executive~~
16 ~~secretary before the information is displayed or wagers taken on~~
17 ~~the associated race.]~~

18

19 **Sec. 321.27. Posting of Race Results.**

20 An association shall submit to the executive secretary for
21 approval a plan for providing live and simulcast race results to
22 the wagering public. The plan must include:

23 (1) methods by which the results will be provided;

24 (2) types of results to be provided; and

25 (3) the retention period of the race results.

CHAPTER 321. PARI-MUTUEL WAGERING

1 REPEAL OF THE FOLLOWING SUBCHAPTER AND RULES

2

3 SUBCHAPTER F. REGULATION OF HISTORICAL RACING

4 Sec. 321.701. Purpose

5 Sec. 321.703. Historical Racing

6 Sec. 321.705. Request to Conduct Historical Racing

7 Sec. 321.707. Requirements for Operating a Historical Racing

8 Totalisator System

9 Sec. 321.709. Types of Pari-Mutuel Wagers for Historical Racing

10 Sec. 321.711. Historical Racing Pools; Seed Pools

11 Sec. 321.713. Deductions from Pari-Mutuel Pools

12 Sec. 321.715. Contract Retention, Pari-Mutuel Wagering Record

13 Retention

14 Sec. 321.717. Effect of Conflict

15 Sec. 321.719. Severability

CURRENT RULE REVIEWS CHAPTERS 307 AND 323

Texas Government Code § 2001.039 requires state agencies to review all current rules to determine whether the reasons for initially adopting the rules continue to exist. The review must be conducted not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The state agency must readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.

On August 29, 2014, the Commission opened the reviews of Chapter 307, Proceedings Before the Commission, and Chapter 323, Disciplinary Action and Enforcement. Notice of the reviews was published in the September 26, 2014, edition of the *Texas Register* (39 *TexReg* 7785). The Commission received no comments on the rule review.

The Table of Contents for Chapters 307 and 323 are attached below.

Staff recommends that the Commission readopt the rules of Chapters 307 and 323.

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

TABLE OF CONTENTS

Subchapter A. General Provisions

- Sec. 307.1. Applicability
- Sec. 307.2. Definitions
- Sec. 307.3. Types of Proceedings
- Sec. 307.4. Decision-making Proceedings
- Sec. 307.5. Special Provisions regarding Racetrack License Applications
- Sec. 307.6. Probation
- Sec. 307.7. Ejection and Exclusion

Subchapter B. Contested Cases

- Sec. 307.31. Prehearing Procedures
- Sec. 307.32. Nonparty Participation
- Sec. 307.33. Hearing
- Sec. 307.34. Exceptions and Replies
- Sec. 307.35. Oral Argument
- Sec. 307.36. Consideration by Commission
- Sec. 307.37. Final Order
- Sec. 307.38. Rehearing
- Sec. 307.39. Judicial Review

Subchapter C. Proceedings By Stewards And Racing Judges

- Sec. 307.61. General Authority
- Sec. 307.62. Disciplinary Hearings
- Sec. 307.63. Ruling
- Sec. 307.64. Penalties
- Sec. 307.65. Reciprocity
- Sec. 307.66. Applicability of Rules and Rulings
- Sec. 307.67. Appeal to the Commission
- Sec. 307.68. Stay
- Sec. 307.69. Action by Commission

Subchapter D. Rulemaking

- Sec. 307.101. Purpose
- Sec. 307.102. Rulemaking Procedure
- Sec. 307.103. Petition for Adoption of Rules
- Sec. 307.104. Saving Provisions
- Sec. 307.105. Severability

CHAPTER 323. DISCIPLINARY ACTION AND ENFORCEMENT

TABLE OF CONTENTS

Subchapter A. General Provisions

- Sec. 323.1. Investigation and Disciplinary Action
- Sec. 323.2. Complaints
- Sec. 323.3. Notice to Violator
- Sec. 323.4. Action on Complaints
- Sec. 323.5. Complaints against Officials

Subchapter B. Civil Remedies

- Sec. 323.101. Administrative Penalties

Subchapter C. Criminal Enforcement

- Sec. 323.201. Reporting of Criminal Activity and Convictions
- Sec. 323.202. Notice to District Attorneys
- Sec. 323.203. Department of Public Safety Reports

PROPOSED RULE REVIEWS CHAPTERS 301, 303, 319 AND 321, SUBCHAPTERS A - E

Texas Government Code 2001.039 directs each state agency to review, and consider for readoption, each of its rules every four years. During the review, the Commission must assess whether the reasons for adopting the rules continue to exist.

To formally initiate the rule review process, the Commission must vote at a public meeting to publish notice in the *Texas Register* of the Commission's intention to review specific rules. After the time for public comment has passed, the Commission will take one of the following actions in regard to the rules in Chapters 301, 303, 319, and Subchapters A-E of 321: readoption, repeal, or readoption with revisions.

If the Commission readopts a rule (with no changes), notice of the readoption will appear in the *Texas Register* "Rules Review" section, but the text of the readopted rule will not be published.

Any proposed repeal of a rule or any proposed amendment to a rule will be published in the "Proposed Rules" section of the *Texas Register*, and will be the subject of an additional 30-day comment period.

The *Table of Contents* for these chapters are attached below.

CHAPTER 301 DEFINITIONS

TABLE OF CONTENTS

§301.1. Definitions

CHAPTER 303. GENERAL PROVISIONS

TABLE OF CONTENTS

Subchapter A. Organization of the Commission

- §303.1. Purpose.
- §303.2. Commission Responsibilities.
- §303.3. Offices.
- §303.4. Meetings.
- §303.5. Quorum.
- §303.6. Commission Officers.
- §303.7. Employees.
- §303.8. Executive Secretary.
- §303.9. Records.
- §303.10. Investigatory Files.
- §303.11. Vacancies in the Commission.
- §303.12. Use of Commission Motor Vehicles.
- §303.13. Seal of the Commission.
- §303.14. Unofficial Statements.
- §303.15. Acts in the Commission's Name.
- §303.16. Historically Underutilized Businesses.
- §303.17. Vendor Protests.

Subchapter B. Powers and Duties of the Commission

- §303.31. Regulation of Racing.
- §303.32. Power of Entry.
- §303.33. Subpoenas.
- §303.34. Certified Documents.
- §303.35. Access to Commission Programs.
- §303.38. Cooperation with Peace Officers and other Enforcement Entities.
- §303.41. Allocation of Race Dates.
- §303.42. Approval of Charity Race Days.
- §303.43. Allocation of Live Race Dates for Class 1 Racetracks.

Subchapter C. Powers and Duties of the Comptroller of Public Accounts

- §303.61. Power of Entry.
- §303.62. Records.
- §303.63. Comptroller Rules.

Subchapter D. Texas Bred Incentive Programs

Division 1 General Provisions

- §303.81. Texas Bred Incentive Programs.
- §303.82. Bond Required.
- §303.83. Audits, Financial Statements and Performance Measures.
- §303.84. Report to the Commission.
- §303.85. Background Investigations.
- §303.86. Participation in Texas Bred Programs.

Division 2. Programs for Horses

- §303.92. Thoroughbred Rules.
- §303.93. Quarter Horse Rules.
- §303.94. Arabian Horse Rules.
- §303.95. Races for Accredited Texas-Bred Horses.
- §303.96. Paint Horse Rules.
- §303.97. Dually Registered Horses.
- §303.99. Stakes and Other Prepayment Races-Breed Registries.

Division 3. Programs for Greyhounds

- §303.101. Greyhound Breed Registry.
- §303.102. Greyhound Rules.

Subchapter F. Licensing Persons with Criminal Backgrounds

- §303.201. General Authority.
- §303.202. Guidelines.
- §303.203. Evidence by Applicant.

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

TABLE OF CONTENTS

Subchapter A. General Provisions

- §319.1. Purpose and Definitions.
- §319.2. Treatment Restricted.
- §319.3. Medication Restricted.
- §319.4. Veterinarians.
- §319.5. Report of Treatment by Veterinarians.
- §319.6. Access to Pre-race and Test Areas Restricted.
- §319.7. Labeling Requirements.
- §319.8. Submission Required.
- §319.9. Witnesses Required.
- §319.10. Devices and Substances Prohibited.
- §319.11. Powers of Inspection, Examination, and Search and Seizure.
- §319.12. Cooperation Required.
- §319.13. Disposable Syringes.

- §319.14. Possession of Certain Substances.
- §319.15. Storage of Certain Medications.
- §319.16. Postmortem Examination.
- §319.17. Removal of a Race Animal.

Subchapter B. Treatment of Horses

- §319.101. Pre-Race Examination.
- §319.102. Veterinarian's List.
- §319.104. Blocking of Legs.
- §319.105. Bandages.
- §319.106. Nerved Horses.
- §319.107. Altering Sex of Horse.
- §319.108. Extracorporeal Shock Wave Therapy.
- §319.109. Destruction of Horses.
- §319.110. Health Certificate.
- §319.111. Bleeders and Furosemide Program.
- §319.112. Unlicensed Veterinary Practices.

Subchapter C. Treatment of Greyhounds

- §319.201. Pre-Race Examination.
- §319.202. Veterinarian's List.
- §319.203. Condition of Greyhounds and Inspection of Kennels.
- §319.204. Vaccination Requirements.

Subchapter D. Drug Testing

Division 1. General Provisions

- §319.301. Testing Authorized.
- §319.302. Reasonable Diligence Required.
- §319.303. Tampering with Specimen.
- §319.304. Penalties on Positive Test.

Division 2. Testing Procedures

- §319.331. Equipment for Testing.
- §319.332. Procedure for Obtaining Specimens.
- §319.333. Specimen Tags.
- §319.334. Delivery and Retention of Specimens.
- §319.335. Approval of Testing Costs.
- §319.336. Payment of Testing Costs.
- §319.337. Interference with Testing Prohibited.
- §319.338. Storage of Splits.

Division 3. Provisions for Horses

- §319.361. Testing of Horses.
- §319.362. Split Specimen.
- §319.363. Testing for Total Carbon Dioxide.
- §319.364. Testing for Androgenic-Anabolic Steroids.

Division 4. Provisions for Greyhounds

- §319.391. Testing of Greyhounds.

CHAPTER 321. PARI-MUTUEL WAGERING

TABLE OF CONTENTS

Subchapter A. Mutuel Operations

Division 1. General Provisions

- §321.1. Definitions and General Provisions.
- §321.2. Odds Manipulation.
- §321.3. Conduct of Wagering.
- §321.5. Pari-mutuel Auditor.
- §321.7. Cooperation with Officials.
- §321.9. System Failure.
- §321.11. Access to Magnetic Media.
- §321.12. Time Synchronization.
- §321.13. Pari-mutuel Track Report.
- §321.15. License to Provide Totalisator Services.
- §321.17. Activities by Minors Restricted.
- §321.19. Wagers by Employees of Commission.
- §321.21. Certain Wagers Prohibited.

Division 2. Wagering Information and Results

- §321.23. Wagering Explanations.
- §321.25. Wagering Information.
- §321.27. Posting of Race Results.

Division 3. Mutuel Tickets and Vouchers

- §321.29. Mutuel Tickets.
- §321.31. Vouchers.
- §321.33. Expiration Date.
- §321.34. Refusal to Cash.
- §321.35. Claim for Payment.
- §321.36. Unclaimed Outs and Vouchers.
- §321.37. Cashed Tickets and Vouchers.
- §321.39. Altering Cashed Tickets and Cashed Vouchers.
- §321.41. Cashing Outstanding Tickets.
- §321.42. Cashing Outstanding Vouchers.
- §321.43. Cancellation of Win Wagers.
- §321.45. Teller's Records.
- §321.46. Payment on No Ticket Issue.

Subchapter B. Totalisator Requirements and Operating Environment

- §321.101. Totalisator Requirements and Operating Environment.

Subchapter C. Regulation of Live Wagering

Division 1. General Provisions

- §321.201. Actions by Stewards or Racing Judges.
- §321.203. Errors in Posted Payoff.
- §321.205. Probable Odds.
- §321.207. Betting Interests.

- §321.209. Minimum Wager.
- §321.211. Carryover Pools.
- §321.213. Straight Wagers.
- §321.215. Multiple Wagers.
- §321.217. Stop Betting Command.

Division 2. Distribution of Pari-Mutuel Pools

- §321.301. Distribution of Pools.
- §321.302. Payoff on Minus Pool.
- §321.303. Straight Pools.
- §321.304. Win Pool.
- §321.305. Place Pool.
- §321.306. Show Pool.
- §321.307. Daily Double.
- §321.308. Quinella.
- §321.309. Exacta.
- §321.310. Trifecta.
- §321.311. Twin Trifecta.
- §321.312. Pick (n).
- §321.313. Select Three, Four, or Five.
- §321.314. Superfecta.
- §321.315. Tri-Superfecta.
- §321.316. Odd-Even.
- §321.317. Prevention of Start.
- §321.318. Special Wager.
- §321.320. Super Hi-Five.
- §321.321. Fortune Pick (n).
- §321.322. Triple Trifecta.

Subchapter D. Simulcast Wagering

Division 1. General Provisions

- §321.401. Purpose.
- §321.403. Simulcasting License.
- §321.405. Approval Of Exporting Simulcast Races.
- §321.407. Approval of Wagering on Simulcast Import Races.
- §321.409. Simulcasting Contract.
- §321.411. Public Address System.
- §321.413. Duties Of Guest Racetrack.
- §321.415. Duties Of Host Racetrack.
- §321.417. Emergency Procedures.
- §321.419. Simulcasting Officials.
- §321.421. Stop Betting Command.

Division 2. Common Pool Wagering

- §321.451. General Provisions.
- §321.453. Formation Of Common Pool.
- §321.455. Distribution Of Common Pool.
- §321.457. Breakage.
- §321.459. Manual Merge.
- §321.461. Failure To Merge.

Division 3. Simulcasting at Horse Racetracks

§321.501. Negotiation With Horsemen.

§321.503. Purses.

§321.505. Allocation Of Purses And Funds For Texas Bred Incentive Programs.

§321.507. Priority Of Signals.

§321.509. Escrowed Purse Account.

Subchapter E. Ticketless Electronic Wagering.

Division 1. Conduct of E-Wagering.

§321.601. Purpose.

§321.603. Authorization for E-Wagering.

§321.605. E-Wagering Plan.

§321.607. E-Wagering Account Restrictions.

§321.609. Testing E-Wagering.

Division 2. Operational Requirements.

§321.621. Ticketless Electronic Wagering Hardware.

§321.623. Cancellation of E-Wagers.

§321.625. Discrepancy/Dispute Resolution.

§321.627. Suspension or Termination of E-Wagering.