

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## TITLE 16. ECONOMIC REGULATION

### PART 8. TEXAS RACING COMMISSION

#### CHAPTER 301. DEFINITIONS

##### 16 TAC §301.1

The Texas Racing Commission proposes an amendment to 16 TAC §301.1, concerning Definitions. The proposed amendment adds a definition for "historical racing". This change is proposed in conjunction with proposed new rules to authorize and regulate historical racing under new Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*. The amendment also corrects a technical error in the section by relocating the definition of "tote board" to its proper place in alphabetical order. Since this section lists the definitions in alphabetical order, the amendment renumbers several existing definitions in order to accommodate the changes.

Chuck Trout, Executive Director, has determined that for each year of the first five years that the amended rule, as well as the other rules authorizing and regulating historical racing, is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the amended rules. The probable economic costs required to comply with the rule amendment will be borne by the licensed racetrack associations that choose to conduct historical racing.

Mr. Trout has also determined that for each year of the first five years that the amended rule, as well as the other rules authorizing and regulating historical racing, is in effect the anticipated public benefit will be to provide additional revenues for purses for live races conducted in this state, which in turn will promote economic development, job growth and job retention in a variety of racing-related industries, including the licensed racetrack associations that choose to conduct historical racing.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by providing additional revenue for purses for live races conducted in this state, which in turn will

promote economic development in a variety of racing-related industries.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

##### §301.1. Definitions.

(a) (No change.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(47) - (79) (No change.)

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

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

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

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

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

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

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

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

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

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

(90) [(89)] Winner--

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

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

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

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Mark Fenner

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Texas Racing Commission

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## CHAPTER 303. GENERAL PROVISIONS

## SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

### 16 TAC §303.31, §303.42

The Texas Racing Commission proposes amendments to 16 TAC §303.31, concerning the regulation of racing, and §303.42, concerning the approval of charity race days. These changes are proposed in conjunction with proposed new rules to authorize and regulate historical racing under new Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

The proposed amendment to §303.31 removes the phrase "live and simulcast" from the rule because the Commission's authority to regulate pari-mutuel wagering on horse and greyhound racing extends beyond live and simulcast racing and includes the authority to regulate pari-mutuel wagering on historical racing.

The proposed amendments to §303.42 modify the process by which charity race dates are approved such that horse racetracks conducting historical racing shall conduct at least three charity days per year instead of two charity days. In addition, the amendments provide that horse racetracks that are conducting historical racing will contribute at least 1.5% of the historical racing handle on a charity race day to a charity benefiting equine veterinary research and will contribute at least 0.5% of the historical racing handle to a charity benefiting youth participation in equine sports and activities. Similarly, the amendments provide that greyhound racetracks conducting historical racing will contribute at least two percent of the pari-mutuel handle from historical racing on charity racing days to a charity that provides for the medical care and rehabilitation of injured greyhounds. The changes to §303.42(d)(1) are made to ensure that the charities benefiting from live and simulcast racing under the present rule are not harmed by the amendments.

Chuck Trout, Executive Director, has determined that for each year of the first five years that the amended rules, as well as the other rules authorizing and regulating historical racing, are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the amended rules. The probable economic costs required to comply with the rules will be borne by the licensed racetrack associations that choose to conduct historical racing.

Mr. Trout has also determined that for each year of the first five years that the amended rules, as well as the other rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to provide additional revenues for purses for live races conducted in this state, which in turn will promote economic development, job growth and job retention in a variety of racing-related industries, including the licensed racetrack associations that choose to conduct historical racing.

The amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendments will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by providing additional financial support for the charities that benefit these industries.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment to §303.31 is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering. The amendment to §303.42 is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §§8.02 and 10.01, which require the Commission to adopt rules relating to the conduct of race days.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

#### §303.31. Regulation of Racing

The commission shall regulate each [~~live and simulcast~~] race meeting conducted in this state and supervise the operation of racetracks and the persons other than patrons who participate in a race meeting.

#### §303.42. Approval of Charity Race Days.

(a) An association shall conduct charity days as required by the Act. A greyhound association shall conduct at least five charity race days each year. A Class 1 or Class 2 horse racetrack that is not conducting historical racing shall conduct at least two and not more than five charity race days each year. A Class 1 or Class 2 horse racetrack that is conducting historical racing shall conduct at least three and not more than five charity race days each year.

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

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

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

(d) Charities.

(1) At least one percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a [of the charity days must be conducted for a] charity that directly benefits the persons who work in the stable or kennel area of the racetrack, and at least one percent shall be contributed to[. At least one of the charity days must be conducted for] a charity that primarily benefits research into the health or safety of race animals.

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

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

The Texas Racing Commission proposes amendments to 16 TAC §309.8, concerning racetrack license fees; §309.297, concerning purse accounts; §309.299, concerning the horsemen's representative; and §309.361, concerning the greyhound purse account and kennel account. These changes are proposed in conjunction with proposed new rules to authorize and regulate historical racing under new Chapter 321, Subchapter F, concerning Regulation of Historical Racing, which is published elsewhere in this issue of the *Texas Register*.

The amendment to §309.8 is proposed to remove the phrase "live and simulcast" and insert the phrases "and pari-mutuel wagering" and "historical racing". The changes are made to specify that the Commission's authority to regulate pari-mutuel wagering on horse and greyhound racing extends beyond live and simulcast racing and includes the authority to regulate pari-mutuel wagering on historical racing.

The amendment to §309.297 is proposed to reflect that all horse purse monies generated from wagering on racing at horse racetracks are trust funds held by the association as custodial trustee for the benefit of horsemen, regardless of whether generated from wagering on live, simulcast, or historical racing.

The amendment to §309.299 is proposed to reflect that the horsemen's representative is recognized and authorized to represent horse owners and trainers on matters relating to the conduct of racing at Texas racetracks, including matters related to live, simulcast, and historical racing.

The amendment to §309.361 is proposed to reflect that all greyhound purse monies generated from wagering on racing at greyhound racetracks are trust funds held by the association as custodial trustee for the benefit of kennel owners and greyhound owners, regardless of whether generated from wagering on live, simulcast, or historical racing. In addition the amendment reflects that the Texas Greyhound Association is authorized to negotiate with each association regarding the association's racing program, including issues related to historical racing.

Chuck Trout, Executive Director, has determined that for each year of the first five years that the amended rules, as well as the other rules authorizing and regulating historical racing, are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the

amended rules. The probable economic costs required to comply with the rules will be borne by the licensed racetrack associations that choose to conduct historical racing.

Mr. Trout has also determined that for each year of the first five years that the amended rules, as well as the other rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to provide additional revenues for purses for live races conducted in this state, which in turn will promote economic development, job growth and job retention in a variety of racing-related industries, including the licensed racetrack associations that choose to conduct historical racing.

The amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

The amendments will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by providing additional revenue for purses for live races conducted in this state, which in turn will promote economic development in a variety of racing-related industries.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080; telephone (512) 833-6699; or fax (512) 833-6907.

### SUBCHAPTER A. RACETRACK LICENSES DIVISION 1. GENERAL PROVISIONS

#### 16 TAC §309.8

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§309.8. *Racetrack License Fees.*

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

(b) Annual License Fee.

(1) (No change.)

(2) An association that is conducting live racing, historical racing or simulcasting shall pay its annual license fee by remitting to the Commission 1/12th of the fee on the first business day of each month. For the State Fiscal Year that begins on September 1, 2011, the monthly remittance shall begin in the month of January.

(3) An association that is not conducting live racing, historical racing or simulcasting shall pay its annual license fee on September

1 of each fiscal year. For the State Fiscal Year that begins on September 1, 2011, the annual license fees shall be paid in two separate payments. The first payment will be of \$100,000 and is due on September 1, 2011. The second payment will be of the remaining unpaid balance and shall be paid on January 1, 2012.

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER C. HORSE RACETRACKS DIVISION 4. OPERATIONS

### 16 TAC §309.297, §309.299

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §6.08, which provides that legal title to purse accounts at a horse racing association is vested in the horsemen's organization; and §1.03(77), which establishes that the horsemen's organization is recognized by the commission to represent horse owners and trainers in negotiating and contracting with associations on subjects relating to racing.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§309.297. *Purse Accounts.*

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

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

§309.299. *Horsemen's Representative.*

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

(b) (No change.)

(c) Authority and Responsibilities.

(1) An organization recognized under this section shall negotiate with each association regarding the association's [live] racing

program, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, issues related to historical racing, and the importing of simulcast signals during live race meetings.

(2) - (6) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER D. GREYHOUND RACETRACKS DIVISION 2. OPERATIONS

### 16 TAC §309.361

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; and §10.05, which recognizes the Texas Greyhound Association as the officially designated state greyhound breed registry.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§309.361. *Greyhound Purse Account and Kennel Account.*

(a) Greyhound Purse Account.

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

(2) (No change.)

(b) (No change.)

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

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER A. RACETRACK LICENSES DIVISION 1. GENERAL PROVISIONS

### 16 TAC §309.13

The Texas Racing Commission proposes new 16 TAC §309.13, concerning temporary licenses to conduct racing. The proposed new rule outlines the conditions and process for issuing a temporary license to conduct racing at a location other than the racing association's designated location.

The new rule sets out the requirements that must be met before the Commission may issue a temporary license. The rule sets out the elements that an association's request for a temporary license must contain. The rule provides that a temporary license expires two years after the date of issuance or upon completion of the permanent facility, whichever occurs first. The rule provides that, before the expiration of a temporary license, the Commission may grant a two year extension of the temporary license. Finally, the rule provides that the Commission may condition the issuance of a temporary license upon the association's submission of a bond.

Chuck Trout, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the new rule.

Mr. Trout has also determined that for each year of the first five years that the rule is in effect the anticipated public benefit will be that the simulcasting conducted at a temporary location will provide additional revenues for purses for live races conducted in this state, which in turn will promote economic development, job growth and job retention in a variety of racing-related industries.

The rule will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed rule.

The rule will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by providing additional revenue for purses for live races conducted in this state, which in turn will promote economic development in a variety of racing-related industries.

All comments or questions regarding the proposed rule may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The new rule is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commis-

sion to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §6.15, which authorizes the Commission to issue a temporary license to conduct races at a location in the same county as the designated location.

The proposed new rule implements Texas Revised Civil Statutes Annotated, Article 179e.

#### §309.13. Temporary License to Conduct Racing.

(a) Issuance of Temporary License. Upon written application by an association, the Commission may issue the association a temporary license to conduct racing at a location other than the designated location if:

(1) the association currently holds a valid racing license from the Commission;

(2) the association has not completed construction of its facilities at its designated location;

(3) the temporary location is located within the same county as the designated location;

(4) the conduct of racing at the temporary location complies with all zoning laws;

(5) the association owes no outstanding debts to the Commission for fees or bonds;

(6) the Commission has granted future live race dates to the association; and

(7) the Commission finds that issuing the temporary license is in the public interest.

(b) Form of Written Application. An association's written application for a temporary license shall include:

(1) a description of the association's existing facilities at its designated location;

(2) a description and site map of the proposed temporary location;

(3) plans or schematic drawings of the proposed temporary facilities, including parking and any proposed improvements;

(4) a management and business plan describing the association's strategy for funding and completing construction of its permanent facility within two years;

(5) financial statements reflecting the assets and liabilities of the association;

(6) a map and inventory reflecting the current residential, commercial, industrial, religious and government uses for all property within one-half mile of the proposed temporary location;

(7) resumes and required background disclosure forms for all key management personnel; and

(8) any other information required by the Commission.

(c) Expiration of Temporary License. Except as provided in subsection (d) of this section, a temporary license expires two years after the date of issuance of the temporary license to the association or on the completion of the permanent facility, whichever occurs first.

(d) Extension of Temporary License. Before the expiration of a temporary license, the Commission may grant an association a two-year extension of the temporary license. To request an extension, the association must submit a request in writing that includes a detailed management and business plan describing the association's strategy for

funding and completing construction of its permanent facility within the period of the extension. Any such request filed prior to January 1, 2015, must be submitted no later than thirty (30) days before the expiration of the temporary license. Any such request filed on or after January 1, 2015, must be filed no later than one hundred eighty (180) days prior to the expiration of the temporary license. The timely filing of a request shall extend the temporary license until the Commission acts to either extend or refuse to extend the temporary license. If the Commission approves an extension of the temporary license, the association shall make a progress report to the Commission after one year of the extension.

(e) Bond. The Commission may condition the issuance of a temporary license under subsection (a) of this section or the extension of a temporary license under subsection (b) of this section upon the association's submission of a bond under §309.51(e) of this chapter (relating to Designation of Active and Inactive Racetrack Licenses).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

### SUBCHAPTER D. DRUG TESTING

#### DIVISION 3. PROVISIONS FOR HORSES

##### 16 TAC §319.364

The Texas Racing Commission proposes an amendment to 16 TAC §319.364, concerning testing for androgenic-anabolic steroids. The amendment would remove the specific steroid threshold levels from the rule and allow the executive director to instead set the levels under the broad authority provided by 16 TAC §319.3. This approach is more flexible and allows the Commission to more quickly adopt the national standards for therapeutic medications as established by the Association of Racing Commissioners International (ARCI). In addition, the amendment would make minor changes to the language of the rule to bring it into conformity with the language of ARCI's model rule.

Chuck Trout, Executive Director, has determined that for each year of the first five years that the amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Trout has also determined that for each year of the first five years that the amendment is in effect the anticipated public benefit will be that the Commission's standards for androgenic-anabolic steroids will be consistent with the national standards established by ARCI.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic

impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by promoting confidence that the Commission's drug testing program is consistent with national standards.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and §3.16, which requires the Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race, including rules relating to the use of a prohibited substance.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

##### §319.364. *Testing for Androgenic-Anabolic Steroids (AAS).*

(a) No androgenic-anabolic steroids shall be permitted in test samples collected from racing horses except as permitted on the written list of therapeutic drugs maintained under §319.3 of this chapter (relating to Medication Restricted). [for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances boldenone and testosterone at concentrations less than the indicated thresholds.]

{(b) Concentrations of these androgenic-anabolic steroids shall not exceed the following urine threshold concentrations for total (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates)-}

{(1) 16β-hydroxystanozolol (metabolite of stanozolol (Winstrol))—1 ng/ml in urine for all horses regardless of sex;}

{(2) Boldenone (Equipoise® is the undecylenate ester of boldenone) in male horses other than geldings—15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses.}

{(3) Nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester)}

{(A) In geldings—1 ng/ml in urine}

{(B) In fillies and mares—1 ng/ml in urine}

{(4) Testosterone}

{(A) In geldings—20 ng/ml in urine}

{(B) In fillies and mares—55 ng/ml in urine}

(b) [(e)] Any other anabolic steroids are prohibited in racing horses.

(c) The sex of the horse must be identified to the laboratory on all pre-race and post-race samples designated for AAS testing.

{(d) Post-race urine samples must have the sex of the horse identified to the laboratory.}

(d) [(e)] If an anabolic steroid has been administered to a horse in order to assist in its recovery from illness or injury, that horse may be placed on the Veterinarian's List in order to monitor the concentration of the drug or metabolite in urine or blood. [Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine.] After the concentration has fallen below the designated threshold for the administered androgenic-anabolic steroids, the horse is eligible to be removed from the list.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 321. PARI-MUTUEL WAGERING

The Texas Racing Commission proposes amendments to 16 TAC §321.5, concerning the pari-mutuel auditor; §321.12, concerning time synchronization; §321.13, concerning the pari-mutuel track report; §321.23, concerning wagering explanations; §321.25, concerning wagering information, and §321.27, concerning the posting of race results. The Texas Racing Commission also proposes the creation of new Subchapter F, Regulation of Historical Racing, which will include new §321.701, concerning the purpose of historical racing; §321.703, concerning historical racing; §321.705, concerning requests to conduct historical racing; §321.707, concerning the requirements for operating a historical racing totalisator system; §321.709, concerning types of pari-mutuel wagers for historical racing; §321.711, concerning historical racing pool and seed pools; §321.713, concerning deductions from pari-mutuel pools; §321.715, concerning contract retention and pari-mutuel wagering record retention; §321.717, effect of conflict, and §321.719, severability.

The proposed amendment to §321.5 adds the duty to verify the wagering pool totals of historical racing pools to the responsibilities of the pari-mutuel auditor.

The proposed amendment to §321.12 clarifies that the rule's time synchronization requirements are only applicable to live and simulcast races.

The proposed amendment to §321.13 clarifies that an association's pari-mutuel summary report includes information regarding each day of historical racing.

The proposed amendment to §321.23 requires that historical racing terminals must provide an explanation of the rules of the various types of wagers offered through the terminal, must provide information about the expiration date of vouchers issued by the terminal, and must print the expiration date of a voucher on the voucher.

The proposed amendment to §321.25 requires that wagering information for historical racing must be audited by an independent

third party approved by the executive secretary before the information is displayed or wagers are taken on the associated race.

The proposed amendment to §321.27 removes the words "live and simulcast" from the rule so that an association's plan for providing race results to the public will also include a plan for providing the results of a historical race.

Proposed new §321.701 provides the purpose statement for authorizing and regulating historical racing.

Proposed new §321.703 provides that associations that have been granted live race dates may begin conducting historical racing, describes how amounts for purses and breeder incentives shall be determined, sets out requirements for alternative dispute resolution, describes how breakage shall be allocated, requires associations to submit the form of historical racing contracts to the executive secretary for review and approval, and requires associations to submit copies of executed historical racing contracts to the Commission.

Proposed new §321.705 requires associations to submit a written request to the Commission for approval to conduct historical racing, to offer new types of wagers, or to change the appearance or presentation of previously approved wagers, and sets out the requirements that each request must meet. The rule sets out the factors that the Commission will consider in determining whether to approve a request to conduct historical racing. The rule provides that the Commission will not approve any wager that would violate the prohibitions found in Article III, Section 47 of the Texas Constitution. The rule sets out the procedures an association and the executive secretary will follow before updating the software of a historical racing totalisator system or installing new historical racing equipment that was not previously approved. The rule provides that the Commission will not limit an association's ability to conduct historical racing based on the brand of historical racing equipment, so long as the totalisator system meets the requirements of the Commission's rules.

Proposed new §321.707 sets out the requirement for operating a historical racing totalisator system, including requirements for the selection of a race, the selection and presentation of past performance information, and the subsequent presentation of the race results, and provisions relating to a complete breakdown of a historical racing terminal.

Proposed new §321.709 describes the types of pari-mutuel wagers for historical racing that may be approved by the Commission.

Proposed new §321.711 provides that associations may not conduct historical racing in a manner that allows patrons to wager against the association. The rule also provides that seed pools shall be maintained so that amount available at any given time is sufficient to ensure that the patron will be paid the minimum payout for a winning wager. The association may provide funding for the initial seed pool for each type of wager, and the funding for the initial seed pool is non-refundable.

Proposed new §321.713 provides that an association may deduct a portion of each historical racing pool as its commission, and provides that the allocations from the association's commission as described in §321.703(b) and (d) apply to that portion of the commission that remains after deduction of all licensing fees, royalties, expenses, and any other costs.

Proposed new §321.715 provides that historical racing contracts are subject to inspection by the executive secretary. The rule provides that an association must maintain copies of each his-

torical racing contract for at least one year after the end of the term of the contract. The rule also provides that each association shall maintain complete records of all wagering on historical races for at least two years.

Proposed new §321.717 provides that if provisions of this subchapter conflict with Chapter 321, Subchapter A or other Commission rules, that this subchapter controls with respect to historical racing.

Proposed new §321.719 is a severability provision providing that if any part of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other parts or application of the rules that can be given effect without the invalid part or application.

Chuck Trout, Executive Director, has determined that for each year of the first five years that the amended and new rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules. The probable economic costs required to comply with the rules will be borne by the licensed racetrack associations that choose to conduct historical racing.

Mr. Trout has also determined that for each year of the first five years that the amended and new rules are in effect the anticipated public benefit will be to provide additional revenues for purses for live races conducted in this state, which in turn will promote economic development, job growth and job retention in a variety of racing-related industries, including the licensed racetrack associations that choose to conduct historical racing.

The amended and new rules will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amended and new rules.

The amended and new rules will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by providing additional revenue for purses for live races conducted in this state, which in turn will promote economic development in a variety of racing-related industries.

All comments or questions regarding the proposed amended and new rules may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

## SUBCHAPTER A. MUTUEL OPERATIONS DIVISION 1. GENERAL PROVISIONS

### 16 TAC §§321.5, 321.12, 321.13

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

### §321.5. *Pari-mutuel Auditor.*

(a) (No change.)

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

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

(c) (No change.)

### §321.12. *Time Synchronization.*

(a) Display and verification of the accurate off time and start of a live or simulcast race is critical. To ensure accurate verification of off time with the close of betting on all live and simulcast races, the association shall ensure:

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

(b) (No change.)

### §321.13. *Pari-mutuel Track Report.*

(a) Daily Pari-Mutuel Summary Report.

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

(4) The report must contain, by each live and simulcast performance, and for each day historical racing is conducted, the following:

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

(E) all purses earned, broken out by source, such as live, historical racing, simulcast, cross species, and export;

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

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## DIVISION 2. WAGERING INFORMATION AND RESULTS

### 16 TAC §§321.23, 321.25, 321.27

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the

Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§321.23. *Wagering Explanations.*

(a) (No change.)

(b) Historical racing terminals operated by an association must provide:

(1) an explanation of the rules of the various types of wagers offered through that terminal; and

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

(c) [(b)] Wagering explanations must be reviewed and approved by the executive secretary before publication.

§321.25. *Wagering Information.*

(a) - (c) (No change.)

(d) Wagering information for historical racing must be audited by an independent third party approved by the executive secretary before the information is displayed or wagers taken on the associated race.

§321.27. *Posting of Race Results.*

An association shall submit to the executive secretary for approval a plan for providing [~~live and simulcast~~] race results to the wagering public. The plan must include:

- (1) methods by which the results will be provided;
- (2) types of results to be provided; and
- (3) the retention period of the race results.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER F. REGULATION OF HISTORICAL RACING

**16 TAC §§321.701, 321.703, 321.705, 321.707, 321.709, 321.711, 321.713, 321.715, 321.717, 321.719**

The new rules are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The new rules implement Texas Revised Civil Statutes Annotated, Article 179e.

§321.701. *Purpose.*

The Commission finds that pari-mutuel wagering on historical horse and greyhound races falls within its statutory grant of authority to regulate pari-mutuel wagering in connection with horse and greyhound racing. The mode and manner of pari-mutuel wagering on horse and greyhound races continues to evolve as the result of new technologies and innovations. Historical racing is distinct from live or simulcast racing. The Commission finds that its rulemaking authority can and should be used to respond to the changing technological, commercial, and societal needs, conditions, and patterns of the horse and greyhound racing industry. The primary advantage of historical racing 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 historical racing in a manner that will encourage live racing and enhance the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industries.

§321.703. *Historical Racing.*

(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 historical racing, subject to meeting the requirements of this subchapter and any other applicable Commission rules. Historical racing may only be conducted at times when wagering on live or simulcast racing is offered.

(b) Deductions from Association's Commission.

(1) A horse racing association may not begin conducting historical racing until it executes:

(A) a valid contract with the horsemen's representative authorized under §309.299 of this title (relating to Horsemen's Representative) that establishes the portion of the association's commission that will be set aside for purses; and

(B) a valid contract with the official breed registries that establishes the portion of the association's commission that will be set aside for breeder incentives.

(2) The contracts required by this subsection shall not specify how deductions for purses and breeder incentives will be allocated among the various breeds.

(3) If a contract executed under paragraph (1)(A) or (B) of this subsection is terminated, expires, or otherwise lapses, and is not immediately replaced by a new contract, an association conducting historical racing shall continue paying purse contributions and breeder incentives at the levels provided for in the expired, terminated or lapsed contract until a new contract is executed. The new contract shall address the treatment of the payments made during the period in which a contract was not in place.

(c) Allocation of Deductions.

(1) Each horse racing association shall transfer the amount set aside for purses from historical racing into the purse accounts maintained by breed by the horsemen's representative under the Act, §6.08(b)(3). The allocation of purse amounts among the breeds shall be determined by a separate written agreement between the horsemen's organization and the association. A copy of the executed written agreement must be submitted to the executive secretary. If at any time an agreement under this subsection is not in place, the association

shall notify the executive secretary in writing and shall subsequently hold the amount set aside for purses from historical racing in escrow until an agreement is submitted.

(2) Each horse racing association shall transfer the amount set aside for breeder incentives from historical racing into accounts maintained by the breed registries. The allocation of breeder incentives among the breed registries shall be determined by a separate written agreement among the official state breed registries. A copy of the executed written agreement shall be submitted to the executive secretary and to the association. If at any time an agreement under this subsection is not in place, the association shall hold the amount set aside for breeder incentives from historical racing in escrow until an agreement is submitted.

(d) A greyhound racing association may not conduct historical racing unless it has a valid contract in place with the Texas Greyhound Association governing the portion of the association's commission that will be set aside for purses and breeder incentives. If a contract executed under this paragraph is terminated, expires, or otherwise lapses, and is not immediately replaced by a new contract, an association conducting historical racing shall continue paying purse contributions and breeder incentives at the levels provided for in the expired, terminated or lapsed contract until a new contract is executed. The new contract shall address the treatment of the payments made during the period in which a contract was not in place.

(e) To minimize the risk of business interruptions, the contracts required by subsections (b) and (d) of this section shall specify a process by which the parties will resolve disputes about the terms of any successor contracts.

(f) Breakage from historical racing shall be allocated pursuant to this subsection. The use and distribution of the amounts transferred under this subsection are subject to audit by the Commission.

(1) Two percent of the breakage derived from historical racing by a horse racing association shall be allocated to the equine research account under Subchapter F, Chapter 88, Education Code. Pursuant to §6.08(h) of the Act, the remaining 98 percent of the breakage derived from historical racing constitutes "total breakage" and shall be transferred by the association into accounts maintained by the breed registries. The allocation among the breed registries of breakage derived from historical racing shall be determined within the written agreement described in subsection (c)(2) of this section. The appropriate state horse breed registry shall pay out 80 percent of the total breakage as follows:

(A) 40 percent is allocated to the owners of the accredited Texas-bred horses that finish first, second or third;

(B) 40 percent is allocated to the breeders of the accredited Texas-bred horses that finish first, second or third; and

(C) 20 percent is allocated to the owner of the stallion standing in this state at the time of conception whose Texas-bred get finish first, second or third.

(2) Fifty percent of the breakage derived from historical racing by a greyhound racing association shall be transferred by the association into accounts maintained by the Texas Greyhound Association. Of that portion of the breakage, one-half is to be used in stakes races. The breakage received by the Texas Greyhound Association under this paragraph is subject to the grant program requirements §303.101(b) of this title (relating to Greyhound Breed Registry).

(g) An association seeking to conduct historical racing shall submit the form of the contracts required by subsection (b) or (d) of this section to the executive secretary for review and approval. The

association shall provide a copy of the executed contracts required by subsection (b) or (d) of this section to the Commission.

§321.705. Request to Conduct Historical Racing.

(a) In addition to the requirements of §321.15 of this title (relating to License to Provide Totalisator Services) and §321.101 of this title (relating to Totalisator Requirements and Operating Environment), an association must submit a written request to the Commission to receive approval to conduct historical racing, to offer new types of wagers, or to change the presentation or appearance of previously-approved wager types.

(1) The request must identify the types of wagers that will be offered, the presentation and appearance of the wagers, the types and numbers of historical racing terminals that the association will operate, the area(s) within the association's enclosure where the terminals will be placed, and the date that operations will begin. The request may identify the number of historical racing terminals to be installed as a range, rather than a specific number.

(2) The request must be accompanied by a certification and the associated report from an independent testing laboratory verifying that the historical racing totalisator system has been tested to ensure its integrity and proper working order, and that the system and the proposed wagers meets jurisdictional rules for historical racing.

(3) The Commission may require the association to submit additional information if the Commission determines that such information is necessary to effectively evaluate the request.

(b) In considering whether or not to approve a request to conduct historical racing, the Commission shall consider, but is not limited to, the following factors:

(1) whether the historical racing totalisator system and the proposed wagers comply with the applicable requirements for pari-mutuel wagering in connection with horse and greyhound racing as set forth in these rules and the Texas Racing Act;

(2) the regulatory compliance and conduct of the association, the financial stability of the association and the effect that allowing pari-mutuel wagering on historical races will have on the economic viability of the association;

(3) the impact of historical racing on purses and breeder incentives; and

(4) the public interest that will be served by historical racing.

(c) The Commission shall not approve any wager that would violate the prohibitions in Article III, Section 47 of the Texas Constitution.

(d) An association conducting historical racing shall submit a request for approval to the executive secretary before:

(1) updating the software for the historical racing totalisator system; or

(2) installing new equipment to be operated as part of the historical racing totalisator system that was not included in the original request under subsection (a) of this section.

(e) The executive secretary shall provide a written response to a request under subsection (d) of this section within ten (10) days. If the executive secretary does not approve the request after ten (10) days, the executive secretary shall provide a written response identifying any unresolved issues that are preventing approval. The executive secretary may request a new certification and report pursuant to subsection (a)(2) of this section to evaluate a change requested under subsection (d) of

this section. The executive secretary shall notify the association if a new report and certification will be required within ten (10) days of receiving the request under subsection (d) of this section. If a new report and certification are requested, the executive secretary shall provide a written response to a request under subsection (d) of this section within ten (10) days of receiving the new report and certification.

(f) The executive secretary may require an association to provide access to inspect and test a historical racing totalisator system for compliance with commission rules at any time.

(g) The Commission shall not limit an association's ability to conduct historical racing based on the brand of historical racing terminal, as long as the totalisator system meets the requirements of the subchapter and any other applicable commission rules.

§321.707. Requirements for Operating a Historical Racing Totalisator System.

(a) A historical racing totalisator system may be operated only within an association's enclosure.

(b) Once a patron deposits the wagered amount in the historical racing terminal, a race shall be chosen at random for presentation to the patron.

(c) Prior to the patron making wager selections, the terminal shall not display any information that would allow the patron to identify the race on which he or she is wagering, including the location of the race, the date on which the race was run, the names of the animals in the race, or the names of the jockeys that participated in the race.

(d) The terminal shall make available true and accurate past performance information on the race to the patron prior to making his or her wager selections. The information shall be current as of the day the race was run. The information may be displayed on the terminal in data or graphical form.

(e) After a patron finalizes his or her wager selections, the terminal shall show the race, or a portion thereof, and the official results and identity of the race.

(f) If there is a complete breakdown of a historical racing terminal, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown, as verified by the historical racing totalisator system.

§321.709. Types of Pari-mutuel Wagers for Historical Racing.

In addition to the types of pari-mutuel wagers authorized for live racing in subchapter C of this chapter, an association conducting historical racing may offer the types of pari-mutuel wagers for historical racing identified in the Association of Racing Commissioners International Model Rules, ARCI-004-155, as approved by the ARCI Board on July 31, 2013. Copies of ARCI-004-155 are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the Commission office at 8505 Cross Park Dr., #110, Austin, Texas 78754. The Commission may also approve additional types of pari-mutuel wagers for historical racing on a case-by-case basis.

§321.711. Historical Racing Pools; Seed Pools.

(a) Except as specified in subsection (c) of this section, all payouts to winning historical racing wagers shall be paid exclusively from the pools of historical racing wagers. An association shall not conduct historical racing in a manner that allows patrons to wager against the association, or in a manner such that the association's commission depends upon the outcome of any particular race or the success of any particular wager. Payment of a winning wager shall not exceed the amount available in the applicable pool and must be paid to the patron using cash or cash vouchers only.

(b) Seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum payout for a winning wager as specified by the historical racing terminal through which the wager is placed. An association may assign a percentage of each historical racing wager to fund seed pools.

(c) An association shall provide the funding for the initial seed pool for each type of wager. The funding for the initial seed pool shall be non-refundable.

§321.713. Deductions from Pari-mutuel Pools.

(a) Each association conducting historical racing may deduct a portion of each historical racing pool as its commission.

(b) The agreements required pursuant to §321.703(b) and (d) of this title (relating to Historical Racing) shall apply to the portion of the association's commission that remains after deduction of all licensing fees, royalties, expenses, and any other costs charged to the association by the Commission, by the providers of the equipment and technology used by the association, or by third parties who own rights to the races used by the historical racing totalisator system.

§321.715. Contract Retention; Pari-mutuel Wagering Record Retention.

(a) In addition to any other applicable approval requirements, all contracts executed by an association regarding historical racing are subject to inspection by the executive secretary. An association shall maintain each contract regarding historical racing for at least one year after the end of the term of the contract. An association must provide a copy of the contract to the executive secretary on request.

(b) Each association shall maintain complete records of all wagering on historical races, including the amounts wagered at each terminal in a historical racing totalisator system, for at least two (2) years.

§321.717. Effect of Conflict.

To the extent that a provision of this subchapter conflicts with Subchapter A of this chapter (relating to Mutuel Operations) or requirements contained elsewhere in the Commission's rules, this subchapter controls with respect to historical racing.

§321.719. Severability.

If any part of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other parts or applications of the rules that can be given effect without the invalid part or application, and to this end, the rule is severable.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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**TITLE 22. EXAMINING BOARDS**

**PART 5. STATE BOARD OF DENTAL EXAMINERS**