



TEXAS RACING COMMISSION

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Wednesday, November 9, 2022
10 a.m. Alysheba West
Lone Star Park at Grand Prairie
1000 Lone Star Pkwy.
Grand Prairie, TX 75050

RULES REVIEW COMMITTEE AGENDA

I. CALL TO ORDER

II. INVITED TESTIMONY

III. PROCEEDINGS ON RULES

A. Public Comments on New Chapter 302

B. Discussion on New Chapter 304 (old Chapters 309 and 311):

1. Subchapter A: Racetrack Licenses
 - i. Division 1 – General Provisions
 - ii. Division 2 – Active and Inactive Racetrack Licenses
 - iii. Division 3 - Operations
2. Subchapter B: Occupational Licenses
 - i. Division 1 – Licensing Applications and Provisions
 - ii. Division 2 – Criminal History and License Eligibility
 - iii. Division 3 – Examinations and Continuing Education
 - iv. Division 4 – License Fees
 - v. Division 5 – Specific Occupational Licenses
 - vi. Division 6 – Responsibilities of Occupational Licensees
3. Subchapter C: Alcohol and Drug Testing
 - i. Division 1 – Drug Testing
 - ii. Division 2 – Alcohol

C. Outline on New Chapter 306 (Health & Safety)

1. Subchapter A: Racetracks Generally
2. Subchapter B: Racehorse Inspections and Monitoring
3. Subchapter C: Racetrack Monitoring and Maintenance
4. Subchapter D: Emergency Preparedness
5. Subchapter E: Safety Training and Continuing Education
6. Subchapter F: Jockey Health

7. Subchapter G: Specific requirements Racetrack Safety & Health
8. Subchapter H: Racehorse Treatment History and Records
9. Subchapter I: Claiming races
10. Subchapter J: Prohibited Practices and Requirements for Health & Safety of Horses
11. Subchapter K: Requirements for Health & Safety of Jockeys
12. Subchapter L: Operation of Racetracks
13. Subchapter M: Facilities and Equipment

IV. PUBLIC COMMENT

V. NEXT COMMISSION MEETING

January 2023 with time and location TBD

VI. ADJOURN



TEXAS RULES OF RACING
WORKING DRAFT
CHAPTER 302: GENERAL PROVISIONS

Table of Contents

SUBCHAPTER A: AUTHORITY	1
SUBCHAPTER B: DEFINITIONS	1
SUBCHAPTER C: COMMISSION RESPONSIBILITIES	8
Division 1: General Provisions	8
Division 2: Race Days and Oversight	9
Division 3: Rulemaking	12
SUBCHAPTER D: EXECUTIVE DIRECTOR, AGENCY, AND COMPTROLLER RESPONSIBILITIES	13
Division 1: Executive Director and Agency Responsibilities	13
Division 2: Comptroller Right of Entry, Records and Rules	16
SUBCHAPTER E: PROCUREMENTS	16
Division 1: General Provisions	17
Division 2: Negotiation of Certain Contract Disputes	19
Division 3: Mediation of Certain Contract Disputes	22
Division 4: Contract Monitoring	25

TITLE 16 ECONOMIC REGULATION
PART 8 TEXAS RACING COMMISSION
CHAPTER 302 GENERAL PROVISIONS
SUBCHAPTER A AUTHORITY

Rule 302.1 Authority

1. The Commission shall propose, adopt, amend, and repeal rules as authorized or required by law, including under the Act and under Chapter 2001, Government Code. These rules are promulgated under the authority of the Texas Racing Act, TEX. OCC. CODE, Chapters 2021 and 2023-2035, and the TEX. GOV'T CODE, Chapters 2156, 2161, 2260 and 2261.
 2. The Texas Racing Commission is charged with implementing, administering, and enforcing the Act. It is the intent of the Commission that the rules be interpreted in the best interests of the public and the state. Through these rules, the Commission intends to provide for the strict regulation of horse and greyhound racing and the control of pari-mutuel wagering in connection with that racing.
 3. The law, rules, and orders of the Board supersede the conditions of a race or race meeting and govern thoroughbred, quarter horse, arabian, and paint racing. The stewards may enforce rules or conditions set forth by breed registry organizations if such rules or conditions are not inconsistent with the rules of the Board. The breed registry organizations are the Jockey Club for thoroughbred racing, the American Quarter Horse Association for quarter horse racing, the Arabian Horse Registry of America for arabian racing, and the American Paint Horse Association for paint racing. **Added 9/23/22**
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TITLE 16 ECONOMIC REGULATION
PART 8 TEXAS RACING COMMISSION
CHAPTER 302 GENERAL PROVISIONS
SUBCHAPTER B DEFINITIONS

This is a rules review working document. It contains all definitions throughout the Texas Rules of Racing. If a definition is from a Chapter of the Rules other than Chapter 301, it is so noted. Yellow highlights are provided to draw attention to ARCI rules that may be a better definition for a particular racing word.

302.100 SEE OTHER WORKING DOCUMENTS

302.100(a) – Words and terms defined in the Act shall have the same meaning when used in this part unless otherwise defined below. The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Accredited Texas--bred Thoroughbred-a horse registered with the Jockey Club, accredited with the breed registry and foaled in Texas, out of a mare accredited with the breed registry that is permanently domiciled in Texas.
- (2) Act--The Texas Racing Act, Subtitle A-1, Title 13, Texas Occupations Code.
- (3) Age of a horse--determined as beginning on the first day of January in the year in which the horse is foaled.

(4) Also Eligible means:

- a. a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but that become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or**

b. the next preferred non-qualifier for the finals or consolation from a set of elimination trials that will become eligible in the event a finalist is scratched by the Stewards for a Rule violation or is otherwise eligible if written race conditions permit. Added 9/23/22

- (4) Application documents—are documents submitted by an applicant for a license in support of the application.
- (5) Application period--a period designated by the Commission for the submission of application documents for a racetrack license.
- (6) AQHA--American Quarter Horse Association.
- (7) Association - a horse-racetrack association **or business entity holding a license from the Racing Commission to conduct racing with pari-mutuel wagering. Added 9/23/22**
- (8) Association grounds--all real property approved by the Commission for use by an association in the to conduct of a race meeting **including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities, parking lots and any other areas under the jurisdiction of the Racing Commission.**
- (9) ATB broodmare--a mare accredited by the TQHA as breeding stock for participation in the Texas Bred Incentive Program for quarter horses.
- (10) ATB horse--a horse accredited by the TQHA as a Texas-bred quarter horse.
- (11) ATB stallion--a stallion accredited by the TQHA as breeding stock for participation in the Texas Bred Incentive Program for quarter horses.
- (12) Authorized agent--a person appointed in writing by the owner or trainer of a horse to represent the owner or trainer at a racetrack.
- (13) Backstretch--the straightaway on the side of a track that is opposite to the finish line.
- (14) Betting interest--a single race animal or a group of race animals coupled pursuant to the Rules which the totalisator system designates as an interest on which a patron may wager.
- (15) Bled – means that blood from one or both nostrils of a horse has been observed after exercise or the visualization of blood in the airways directly observed and validated by a regulatory veterinarian via endoscopic examination.
- (16) Branding--the act of a totalisator system imprinting a mutuel ticket with information that identifies the ticket as canceled or cashed and automatically making the appropriate notation in the system's memories.
- (17) Bred--a mare is considered to have been bred by a stallion if the physical act of breeding has occurred and the mare is listed on the stallion's Report of Mares Bred filed with the Jockey Club for a particular breeding season and is not subsequently bred during that breeding season to a stallion not accredited by the breed registry. A mare does not have to become pregnant or produce a live foal to be considered bred, so long as these criteria are met.**
- (18) Breed Registry--the Texas Thoroughbred Association, the official breed registry for Thoroughbred horses as designated in the Act. The Texas Quarter Horse Association, the official breed registry for Quarter horses as designated in the Act. The Texas Arabian Breeders' Association, the official breed registry for Arabian horses as

designated in the Act. The Texas Paint Horse Breeders' Association, the official breed registry for the Paint horses as designated in the Act.

(19) Breeder--A person who is, at the time of conception, the owner of record of an ATB broodmare that foals an ATB horse.

(20) Canceled ticket--a mutuel ticket that represents a wager that has been canceled and withdrawn from the pari-mutuel pool.

(21) Cashed ticket--a mutuel ticket that is paid for a winning wager.

(22) Chief veterinarian--the chief veterinarian employed by the Commission.

(23) Claim means in the context of a Claiming Race the purchase of a horse for a designated amount.

(24) Common pool--a pool in which the wagers received at a receiving location are combined with the wagers received at a sending racetrack.

(25) Concussion means an injury to the brain that results in temporary loss of normal brain function.

(26) Condition of a race--a characteristic element of the race, such as the distance, qualifications of animal to enter, purse or stakes, or other special features.

(27) Coupled entry--two or more horses entered in a race that, because of common ties of ownership may be joined to be a single betting interest in that race.

(28) Cushion--the top level of a dirt racetrack.

(29) Dead heat--a race in which the noses of two or more race animals reach the finish line at the same time.

(30) Entry--a horse, or horses in the case of a coupled entry, made eligible to run in a race.

(31) EVENT

(32) Exclusion – the act of preventing a person from entering or remaining on the grounds of any association and/or simulcast facility under the jurisdiction of the Commission.

(33) Exotic pool--a mutuel pool that involves wagers on more than one entered horse or on entries in more than one race.

(34) False start—when horse(s) exits prematurely through the front of the gates prior to the starter officially dispatching the field regardless of cause including, but not limited to, the failure of the starting gate or box doors to open simultaneously. This does not include a horse which exits through the front of the gates and is subsequently reloaded.

(35) Foul--an action by a horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

(36) Growing medium--the substance immediately below the grass on a turf track.

(37) Handle-- is the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

(38) Horse--an equine of any breed, including a stallion, gelding, mare, colt, filly, or ridgling.

(39) 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 of Racing.

(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.

SEE ARCI DEFINITION OF MATCH RACE - A race between two or more contestants under conditions agreed to by their 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.

(40) 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.

(41) Inquiry - an investigation by the Stewards of potential interference in a race prior to declaring the result of said race official. Added 9/23/22

(42) Locked in the gate--a horse 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.

(43) Minus pool-- occurs when the payout is in excess of the net pool.

(44) Multi-leg wager--a wagering pool that involves more than one race.

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

(46) No race--a race that is declared no contest after being run due to a malfunction of the starting gate or box or any other applicable reason as determined by the Stewards.

(47) Nomination – means the naming of a horse to a certain race or series of races generally accompanied by the payment of a prescribed fee.

(48) Nominator – means the person or entity in whose name a horse is nominated for a race or series of races.

(49) Objection means:

(a) a written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time of the first race on the day in which the questioned horse is scheduled to run; or

(b) a verbal claim of foul in a race lodged by the horse's jockey, trainer, owner or the owner's authorized agent before the race is declared official. Added 9/23/22

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

(51) Off time--the moment when, on signal from the starter, the horses break from the starting gate or box and run the race.

(52) Official Order of Finish - the order of finish of the horses in a race as declared official by the Stewards. Added 9/23/22

(53) Paddock—the enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

(54) Patron is a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

(55) Pecuniary interest--includes a beneficial ownership interest in an association but does not include bona fide indebtedness or a debt instrument of an association.

(56) Performance--the schedule of horse races run consecutively as one program.

(57) Photofinish--the system of recording pictures or images of the finish of a race to assist in determining the order of finish.

(58) Place--to finish second in a race.

(59) Post position--the position assigned to a horse in the starting gate from which a horse will leave the starting gate.

(60) Post time--the scheduled time set for the arrival at the starting gate by the horses in a race.

(61) Protest - a written objection charging that a horse is ineligible to race, alleging improper entry procedures or citing any act of an owner, trainer, jockey or official prohibited by Rules, which if true, excludes that horse/jockey from racing. Added 9/23/22

(62) Purse--the total dollar amount for which a race is contested.

(63) Race date--a date on which an association is authorized by the Commission or Executive Director to conduct races.

(64) Race day--a day in which a numerical majority of scheduled races is conducted and is a part of the association's allocated race days. **See Racing Act (19) "Horse Racing Day" means the 24-hour period ending at 12 midnight.**

(65) Race meeting--the specified period and dates each year during which an association is authorized to conduct racing and/or pari-mutuel wagering by approval of the Commission. **See Racing Act (18) "Horse Racing Meeting" means the conducting of horse races on a day or during a period of consecutive or nonconsecutive days. See Also 309.1**

(66) Racetrack facility--the buildings, structures and fixtures located on association grounds used by an association to conduct horse racing.

(67) Racetrack official--an individual licensed by the Commission to officiate at a race meeting.

(68) Reasonable belief--a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

(69) Refunded ticket--a pari-mutuel ticket that has been refunded for the value of a wager that is no longer valid.

(70) Restricted Area - an enclosed portion of the Association grounds to which access is limited to licensees whose occupation or participation requires access. Added 9/23/22

(71) Rules of Racing--the rules adopted by the Texas Racing Commission found in Title 16, Part VIII of the Texas Administrative Code.

(72) Schooling race--a practice race conducted under actual racing conditions but for which wagering is not permitted.

(73) Scratch--to withdraw an entered horse from a race after the closing of entries.

(74) Scratch time--the deadline for withdrawal of entries from a scheduled performance.

(75) Show--to finish third in a race.

(76) Simulcast – the live audio and video transmission of a race and pari-mutuel information for the purpose of pari-mutuel wagering at locations other than the licensed association where the race is run. See the Racing Act (46) "means the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, the purpose of wagering conducted on the race at the receiving location."

(77) Specimen--a bodily substance, such as hair, blood, urine, saliva, or other bodily tissues taken for analysis from a horse, or individual in a manner prescribed by the Commission.

(78) Stable Name - a name used other than the actual legal name of an owner or lessee and registered with the Racing Commission. Added 9/23/22

(79) Stakes payments--the fees paid by subscribers in the form of nomination, entry, or starting fees to be eligible to participate.

(80) Stallion owner – a person who is, at the time of conception, the owner of record of an ATB stallion that sired an ATB horse.

(81) Starter--a horse entered in a race when the doors of the starting gate open in front of the horse at the time the official starter dispatches the horses.

(82) Straight pool--a mutuel pool that involves wagers on a horse to win, place, or show.

(83) Subscription--money paid to nominate, enter, or start a horse in a stakes race.

(84) TABA – means the Texas Arabian Breeders’ Association.

(85) Tack room--a room in the stable area of a horse racetrack in which equipment for training and racing the horses is stored.

(86) Ticketless Electronic Wagering (E-wagering)--a form of pari-mutuel wagering in which wagers are placed and cashed through an electronic ticketless account system operated through a licensed totalisator vendor in accordance with §2021.002 of this Act. Wagers are automatically debited and credited to the account holder.

(87) TIM--ticket-issuing machine.

(88) TIM-to-Tote network--a wagering network consisting of a single central processing unit and the TIMs at any number of remote sites.

(89) Totalisator--a machine or system for registering and computing the wagering and payoffs in pari-mutuel wagering.

(90) Totalisator system--a computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.

(91) Totalisator operator--the individual assigned to operate the totalisator system at a racetrack facility.

(92) 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.

(93) Tote room--the room in which the totalisator equipment is maintained.

(94) Tote-to-tote network--a wagering network in which each wagering location has a central processing unit.

(95) TPHBA – means the Texas Paint Horse Breeders’ Association

(96) TQHA— means the Texas Quarter Horse Association.

(97) Trial race - means a part of a series of races in which horses participate for the purpose of determining eligibility for a subsequent race.

(98) TTA – means the Texas Thoroughbred Association.

(99) Unaffiliated trainer – means a trainer or an assistant trainer who is not related by blood, marriage, or domestic partnership, or who is not or was never employed by the trainer from whose care such horse(s) were transferred.

(100) Wager – a sum of money or other valuable item risked on the outcome of an uncertain event such as a horse or greyhound race. Added 9/23/22

(101) Weigh in--the process by which a jockey is weighed after a race.

(102) Weigh out--the process by which a jockey is weighed before a race.

(103) Win--to finish first in a race.

(104) Winner: 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.

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 302	GENERAL PROVISIONS
SUBCHAPTER C	COMMISSION RESPONSIBILITIES
DIVISION 1	GENERAL PROVISIONS

Rule 302.200 Commission Responsibilities

(a) The Commission shall have primary responsibility for policy-making activities including but not limited to:

- (1) issue racetrack licenses under Tex. Occ. Code Chapter 2025;**
- (2) issue training facility licenses;**
- (3) setting fees;**
- (4) adopting rules;**
- (5) imposing sanctions and penalties; and**
- (6) issuing final orders in contested cases.**

(b)The Commission shall have the sole responsibility for the adoption of rules proposed by the agency or the Commission.

(c) The Commission shall employ an executive director who shall employ other employees necessary to implement, administer, and enforce the Act.

(d) A Commission member may not act in the name of the Commission on any matter without the approval of a majority of the Commission.

(e) The Commission shall provide reasonable accommodations, as required by the Americans with Disabilities Act of 1990, Public Law 101-336 and any subsequent amendments, for the public to participate in the programs regulated by the agency.

(f) Upon request, the Commission shall provide reasonable access to persons who do not speak English to the programs regulated by the agency.

(g) The Commission may establish a branch office in any county in which the Commission determines a branch office is necessary.

Rule 302.201 – Commission Meetings – Procedures

(a) Every regular, special, or called meeting of the Commission shall be open to the public as provided by the Government Code, Chapter 551 ("the Open Meetings Act").

(b) Meetings will be conducted according to the current edition of *Robert's Rules of Order Newly Revised* in all instances to which they are applicable as long as they are not inconsistent with the constitution, the statutes and the rules of the Commission. Any *Robert's Rules of Order Newly Revised* may be modified as deemed necessary by the presiding officer for the proper conduct of the meeting subject to an objection by a Commission member.

(c) The Chair or any four members of the Commission may call a special meeting of the Commission.

(d) The presiding officer may limit the number and length of comments provided on any item on the agenda subject to an objection from a Commission member.

(e) In January of even-numbered years, the Commission shall elect one of the members to serve as Vice-Chair for a term of two years. In the event of a vacancy in the office of Vice-Chair, the vacancy shall be filled for the unexpired term on majority vote of the Commission at the next regular meeting.

(f) In the absence of the Chair and Vice-Chair from a meeting of the Commission, the remaining members shall elect a pro tem presiding officer who shall serve until the conclusion of the meeting or until the arrival of the Chair or Vice-Chair.

(g) If a vacancy occurs on the Commission, the Chairman shall call a special meeting to request the governor to appoint a new member to fill the vacancy. If the vacancy occurs in the office of the Chairman, the Vice Chairman shall call the special meeting.

(h) The executive director shall prepare the agenda for each Commission meeting, subject to the approval of the Chair of the Commission. At the request of any two Commissioners, the executive director shall place an item on the agenda. If only one Commissioner requests that an item be placed on the agenda, the Chair shall review the request and, after consulting with the Vice-Chair, determine whether to place the item on the agenda.

(i) A licensee of the Commission or a member of the public may request that an item be placed on the agenda by filing a written request with the executive director not later than 21 days before the date of the meeting. The party making the request must include all information, data, or other supporting materials relating to the request. After receiving a request under this subsection, the Chair shall review the request and, after consulting with the Vice-Chair, determine whether to place the item on the agenda.

(j) The Commission shall provide the public with a reasonable opportunity to appear before the Commission and to speak on any issue under the Commission's jurisdiction. Persons wishing to speak at a Commission meeting may sign in at the beginning of the meeting and may speak during the public comment portion of the meeting.

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 302	GENERAL PROVISIONS
SUBCHAPTER C	COMMISSION RESPONSIBILITIES
DIVISION 2	RACE DAYS AND OVERSIGHT

Rule 302.250 Allocation of Race Days

(a) The Commission shall allocate live race dates, including charity days, to each association for such time periods and at such racing locations as the Commission determines in accordance with the Act and this section.

(b) Upon its own motion or upon the request of any association, the Commission may designate an application period during which the Commission shall accept applications for race dates.

(c) Upon designation by the Commission of an application period under this section, the executive director shall publicize that application period to the affected horse racing associations at least 30 days before the closing date of the period.

(d) The application must be on a form prescribed by the agency. After the request is filed, the executive director may require the association to submit additional information if the executive director determines the additional information is necessary to effectively evaluate the request.

(e) In allocating race dates under this section, the Commission may consider the following factors and the degree to which the association's proposed race meeting will serve to nurture, promote, develop, or improve the horse industry in Texas:

(1) the association's current ability to pay all fees and other amounts owed to the agency, to the state, and to local governments;

(2) the association's willingness and ability to comply and past performance in complying with the Rules and the Act;

(3) the current condition of the association's racetrack and facilities for patrons, race animals, and occupational licensees;

(4) the anticipated effect of the proposed race meeting on the continuity of racing during the year;

(5) the live race dates requested by other associations licensed to conduct races for the same species of animal;

(6) the anticipated overall economic effect to the state from the race meeting;

(7) the anticipated effect of the race meeting on ~~the greyhound or~~ horse breeding industry in Texas;

(8) the anticipated effect of scheduled race meetings in neighboring race states on the proposed race meeting; and

(9) the anticipated availability of race animals for the race meetings.

(f) The Commission shall approve the actual days awarded, and the total number of performances. The Commission may require a minimum number of races in a race meet.

(g) The Commission may not grant overlapping live race dates for the same breed of horse at racetracks unless the overlapping is agreed to in writing by the affected racetracks.

(h) An association shall conduct pari-mutuel racing on each race date granted under this section, and in accordance with the race date calendar approved by the Commission, unless the association receives the prior approval of the executive director.

(i) Change in Race Date Allocation.

(1) The executive director may permit an association to request additional live race dates after its request under this section has been acted on by the Commission if the executive director determines that:

(A) the request includes evidence that granting the additional live race dates will enhance the breeding and training industries for horses;

(B) the association's failure to request the live race dates initially was not due to the association's neglect; and

(C) if the request duplicates a request by the association that has already been denied by the Commission, changed circumstances exist that necessitate additional consideration by the Commission.

(2) An association may request a change to the live race dates granted by the Commission provided the association obtains the approval of all associations that are affected by the proposed change. This subsection applies to any proposed change to the number or format of live race dates.

(3) The executive director may approve an association's request to add, delete, or modify live race dates, provided that the request:

(A) does not add any live race dates that are more than fourteen calendar days preceding the start of the Commission-approved race meet or more than fourteen days following the end of the Commission-approved race meet;

(B) is supported in writing by each breed organization affected by the change;

(C) is supported in writing by each association that is affected by the change; and

(D) in the case of a horse racing association, is supported in writing by the horsemen's organization.

(4) In determining whether to approve a request under this subsection, the executive director may consider the effect that approving the request would have on the workload and budget status of the Commission.

(5) For purposes of this subsection, an allocation of live race performances may be changed in the same manner as a change in the allocation of live race dates.

(j) An association shall conduct charity days as required by the Act. A Class 1 or Class 2 horse racetrack shall conduct at least two and not more than five charity race days each year.

(k) 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) the name of the charity;

(2) the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5% or more;

(3) a brief description of the activities or purposes of the charity; and

(4) a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.

(l) An association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the association's racetrack on live races and imported simulcast races on the charity race day.

(m) One of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days shall be open to any charity that meets the requirements of subsection (k)(1) - (4) above.

Rule 302.251 Oversight of Use of Funds Generated by Pari-Mutuel Racing

(a) Subject to subsection (b), the Commission may suspend or withhold funds from an organization:

(1) that it determines has failed to comply with the requirements or performance measures adopted under Tex. Occ Code §2028.001; or

(2) for which material questions on the use of funds by the organization are raised following an independent audit or other report to the Commission.

(b) The Commission shall not withhold funds from an organization pursuant to subsection (a) unless:

(1) the agency has notified the organization of all outstanding requirements, performance measures, and material questions on the use of funds by the organization and has provided at least 30 days for the organization to address the issue(s); and

(2) the issues remain unresolved after the deadline indicated in the letter.

The seal of the Commission is a circle with the words “Texas Racing Commission” arranged on the inner edge of the circle. In the center of the circle is a five-pointed star, a live oak branch, and an olive branch, common to other official Texas state seals.

The commission may require a document required to be filed with the commission to be certified under penalty of perjury. (Added eff. 11/15/88) **Added October 7, 2022**

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 302	GENERAL PROVISIONS
SUBCHAPTER C	COMMISSION RESPONSIBILITIES
DIVISION 3	RULEMAKING

Rule 302.270 Purpose

As authorized by the Act, §§2023.001(b) and 2023.002(b) and other laws,

Rule 302.271 Rulemaking

The Commission and the agency will follow the rulemaking procedures established in the Administrative Procedures Act (Texas Government Code, Chapter 2001) except when §302.271 of this subchapter is applicable.

Rule 302.272 Negotiated Rulemaking

(a) It is the Commission's policy to engage in negotiated rulemaking procedures under Texas Government Code, Chapter 2008, when appropriate. When the Commission finds that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking may be proposed.

(b) When negotiated rulemaking is proposed, the Commission will appoint a convener to assist in determining whether it is advisable to proceed. The convener shall perform the duties and responsibilities contained in Texas Government Code, Chapter 2008.

(c) If the convener recommends proceeding with negotiated rulemaking and the Commission adopts the recommendation, the agency shall initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

Rule 302.273 Petition for Adoption of Rules

(a) Any interested person may request adoption of a rule(s) by submitting a letter of request to the agency with a draft of the rule(s) attached. At a minimum the request should contain:

- (1) items to be deleted bracketed or lined through;

- (2) items added underlined; and
- (3) the rationale for the requested rule change.

(b) For purposes of this section, the term "interested person" shall have the meaning given in Government Code, §2001.021.

(c) The agency shall respond to a letter of request for adoption of a rule in accordance with Government Code, §2001.

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 302	GENERAL PROVISIONS
SUBCHAPTER D	EXECUTIVE DIRECTOR, AGENCY, AND COMPTROLLER RESPONSIBILITIES
DIVISION 1	EXECUTIVE DIRECTOR AND AGENCY RESPONSIBILITIES

Rule 302.301 Commission Organization

(a) The Commission shall employ an executive director who shall employ other employees necessary to implement, administer, and enforce the Act.

(b) The executive director shall have primary responsibility to manage the operations and administration of the agency as provided by Texas Racing Act contained in the TEX. OCC. CODE, Chapters 2021 and 2023-2035 and other applicable law, including but not limited to:

- (1) issuing occupational and training facility licenses;
- (2) resolving complaints;
- (3) conducting investigations and inspections;
- (4) imposing agreed order sanctions and administrative penalties; and
- (5) administering exams.

(c) The executive director may approve agreed orders in contested cases and shall have authority to issue other orders as provided by law or as delegated by the Commission.

(d) The executive director may propose rules for publication in the *Texas Register* as delegated by the Commission.

(e) The executive director may implement any emergency orders or proclamations issued by the Governor to suspend or amend existing statutes and rules. The executive director will notify the Commission of the agency's actions to comply with the Governor's emergency orders or proclamations.

(f) For any license that expires during a state of disaster declared by the governor under Texas Government Code, Chapter 418, or the following recovery period, the executive director may issue to the occupational license holder a temporary license under Texas Occupations Code §2025.260. The executive director may implement policies as necessary to administer this subsection.

(g) The executive director shall establish the organizational structure of the agency's employees, including the establishment of various divisions within the agency. The executive director shall prescribe the duties and compensation for all other agency employees, subject to the Commission's approval of the budget. The executive director shall adopt personnel policies and other internal operating policies and procedures. The

executive director shall develop the agency budgets to allocate expenditures within the agency based on the approved agency operating budget.

(h) The executive director shall prepare and file all agency reports required by law that are retrospective in nature, such as the annual financial report and periodic reports on performance measures.

(i) The executive director shall enforce the Act, the rules, and the orders of the Commission, including determining the method of enforcement, the amount of penalties, the issuance of preliminary reports for administrative penalties, and the development of enforcement guidelines for use by the stewards.

(j) The executive director shall review all applications for racetrack licenses and licenses to conduct race meetings and make a report to the Commission regarding the issuance of such licenses.

(k) Except as otherwise provided by a rule of the Commission, if the Commission places a duty on the executive director, by rule or otherwise, the executive director may delegate that duty to another employee of the agency.

Rule 302.302 – Commission and Executive Director – Imposing Sanctions and Penalties

(a) The Commission or executive director may sanction a license holder, applicant, or other person, if the person:

- (1) obtains or attempts to obtain a license by fraud or false representation;
- (2) falsifies any document submitted to the agency or Commission;
- (3) refuses to permit inspection or interferes with an inspection or investigation by an authorized representative of the Commission or agency;
- (4) permits the use or display of a license by a person not authorized by law to use that license;
- (5) has been convicted of, or placed on deferred adjudication for, an offense identified in Texas Occupations Code, §53.021(a); or
- (6) violates a law for the regulatory program administered by the agency, or a rule or order of the Commission or agency.

(b) The Commission or executive director may:

- (1) issue a written reprimand;
- (2) revoke, suspend, or deny the person's license;
- (3) place on probation a person whose license has been suspended or revoked;
- (4) issue a restricted license to the person in accordance with Texas Occupations Code, Chapter 2033, Subchapter D;
- (5) refuse to renew the person's license; or
- (6) impose administrative penalties against the person after considering the factors set forth in Texas Occupations Code, Chapters 2025 and 2033.

(c) If the suspension or revocation of a license is probated, the Commission or executive director may require the person to:

- (1) report regularly to the agency on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the Commission or executive director;
- (3) complete professional education until the person attains a degree of skill satisfactory to the Commission or executive director in those areas that are the basis for the probation; or
- (4) complete any other remedial actions agreed to by the parties.

(d) If a person has outstanding administrative penalties, the agency may place a hold on the person's license and the person may not renew the license until the administrative penalties are paid.

Rule 302.303 **Right of Entry**

(a) A member or authorized agent of the agency, a steward, a Commissioned officer of the Agency of Public Safety who is assigned to work on racing investigations, or a peace officer of the local jurisdiction in which the association maintains a place of business may enter an office, a racetrack, any area on association grounds, or any similar area or other place of business of an association at any time to enforce or administer the Act or Commission rules.

(b) An association or an officer, employee, or agent of an association may not refuse or deny a request to enter under this section and may not hinder a person who is conducting an investigation under or attempting to enforce or administer the Act or Commission rules.

Rule 302.304 **Subpoenas**

(a) A member of the Commission, the executive director, an administrative law judge, or other person authorized by the agency in performing duties under the Act may take testimony and may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence, and other documents that the agency considers advisable.

(b) Subpoenas must be issued under the signature of the Commission, the executive director, an administrative law judge, or other person authorized by the executive director and may be served by any person designated by the executive director.

(c) A member of the Commission, the executive director, an administrative law judge, or other person authorized by the executive director may administer an oath or affirmation to a witness appearing before the agency or a person authorized by the agency.

(d) If a subpoena issued on behalf of the Commission is disobeyed, the Commission or executive director may invoke the aid of the appropriate state court in requiring compliance with the subpoena.

(e) For an individual compelled to appear before the agency under this section, the agency shall pay travel expenses in accordance with the provisions in the Texas Civil Practice and Remedies Code §22.003. The agency reserves the right to bill the expenses to parties requiring the appearance of the individual.

Rule 302.305 **Access to Commission Programs**

(a) Persons who do not speak English or who have a physical, mental, or developmental disability will be provided reasonable access to the agency and to the agency's programs.

(b) All agency facilities, including facilities on association grounds, will comply with Texas [Government Code, Chapter 469, and 16 TAC, Chapter 68], concerning architectural barriers and the policy of the State of Texas to encourage and promote the rehabilitation of disabled individuals. Each association licensed by the Commission is required to ensure accessibility to its facilities for disabled persons [pursuant to Texas Government Code, Chapter 469, and 16 TAC, Chapter 68, and these Rules of Racing].

(c) All testing, whether oral, in sign language, or in a foreign language, will be arranged when an examination is required for licensure. A hearing before the Board of Stewards/Judges or the State Office of Administrative Hearings will be arranged as needed if a question of fitness for a particular license should arise.

(d) Complaints against a person or entity regulated by the agency will be accepted in all forms under all circumstances and the agency will provide an interpreter with an investigator should a language problem

arise. The agency welcomes public input at Commission meetings. On prior reasonable notice to the agency, an interpreter will be provided to assist individuals in making presentations to the Commission.

Rule 302.306 Cooperation with Peace Officers and other Enforcement Agencies

Agency employees and its licensees shall cooperate with all district attorneys, county attorneys, the Agency of Public Safety, the attorney general, and all peace officers who are enforcing a criminal law related to racing, the Texas Racing Act, or the Texas Rules of Racing.

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 302	GENERAL PROVISIONS
SUBCHAPTER D	EXECUTIVE DIRECTOR, AGENCY AND COMPTROLLER RESPONSIBILITIES
DIVISION 2	COMPTROLLER RIGHT OF ENTRY, RECORDS AND RULES

Rule 302.320 Comptroller Right of Entry

(a) The comptroller or a person authorized by the comptroller may enter an office, racetrack, or other place of business of an association at any time to inspect the association's records required to be maintained by a rule of the Commission.

(b) To assist the comptroller in gaining access to a place under this section, the executive director may issue a subpoena under **§302.304** of this title.

Rule 302.321 Comptroller Records

(a) An association or other person required by a rule of the Commission to maintain records regarding the operation of a racetrack shall allow the comptroller or a person authorized by the comptroller to inspect the records.

(b) Failure to allow the comptroller or a person authorized by the comptroller to inspect a record in accordance with this section is grounds for disciplinary action by the agency.

Rule 302.322 Comptroller Rules

If the comptroller adopts rules for the enforcement of the comptroller's powers and duties under the Racing Act, a licensee's failure to comply with a rule of the comptroller is considered a violation of the Texas Rules of Racing and is grounds for disciplinary action by the agency.

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 302	GENERAL PROVISIONS
SUBCHAPTER E	PROCUREMENTS
Division 1	GENERAL PROVISIONS

Rule 302.401 Commission Vehicles

(a) A motor vehicle owned by the Commission is state property and may be used for official agency business only.

(b) A agency employee is eligible to use a Commission motor vehicle if the employee possesses a valid Texas driver's license and has a satisfactory driving record, as determined by the executive director.

(c) An employee operating a Commission motor vehicle must comply with all applicable state traffic laws and the agency's traffic safety policies. A violation of one of those laws or policies is grounds for disciplinary action.

Rule 302.402 Historically Underutilized Business

Pursuant to Texas Government Code, Chapter 2161, §2161.003, the Commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B.

Rule 302.403 Bid Opening and Tabulation

The Commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC §20.35. The adoption of this rule is required by Texas Government Code, §2156.005(d).

Rule 302.404 Protest Procedures Old rule 303.17

(a) A protesting party who wishes to submit a grievance regarding the solicitation, evaluation, or award of a contract may formally protest to the Chief Financial Officer. Such protests must be in writing and received by the Chief Financial Officer within 10 business days after the protesting party knows, or should have known, of the occurrence of the action which is protested. Filed protests must conform to the requirements of this subsection and subsection (c) and shall be resolved in accordance with the procedure set forth in subsection(d) - (j). Copies of the protest must be mailed, hand-delivered or sent by facsimile transmission to the Chief Financial Officer and other interested parties.

(b) In the event of a timely protest under this section, the agency shall not proceed further with the solicitation or with the award of the contract unless the executive director, after consultation with the Chief Financial Officer and the General Counsel, makes a written determination that the award of the contract without delay is necessary to protect the best interests of the agency and the State.

(c) Formal protest must be sworn and contain:

- (1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
- (2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1);
- (3) a precise statement of the relevant facts;
- (4) identification of the issue or issues the protesting party argues must be resolved;
- (5) argument and authorities the protesting party offers in support of the protest; and
- (6) a statement that copies of the protest have been mailed, hand-delivered or sent by facsimile transmission to the agency and all other identifiable interested parties.

- (d) The Chief Financial Officer shall have the authority, prior to an appeal to the executive director to settle and resolve the dispute concerning the solicitation or award of a contract. The Chief Financial Officer may solicit written responses to the protest from interested parties.
- (e) If the protest is not resolved by mutual agreement, the Chief Financial Officer may proceed, after consultation with the General Counsel, with the issuance of a written determination on the protest as follows:
- (1) The Chief Financial Officer may determine that no violation of rules or statutes has occurred and shall so inform the protesting party, the executive director, and any other interested parties by letter that includes the reasons for the determination.
 - (2) If the Chief Financial Officer determines that a violation of the rules or statutes may have occurred in a case where a contract has not been awarded, the Chief Financial Officer shall so inform the protesting party, the executive director and other interested parties by letter that includes the reasons for the determination and the appropriate remedial action.
 - (3) If the Chief Financial Officer determines that a violation of the rules or statutes may have occurred in a case where a contract has been awarded, the Chief Financial Officer shall so inform the protesting party, the executive director and other interested parties by letter that includes the reasons for the determination, which may include a declaration that the contract is void.
- (f) The protesting party may appeal a determination of a protest by the Chief Financial Officer to the executive director. An appeal of the Chief Financial Officer's determination must be in writing and must be received in the agency's office no later than 10 business days after the date of the Chief Financial Officer's determination. The appeal shall be limited to a review of the Chief Financial Officer's determination. Copies of the appeal must be mailed or delivered by the protesting party to the Chief Financial Officer and other interested parties and must contain a certified statement that such copies have been provided.
- (g) The executive director may confer with the General Counsel in a review of the matter appealed. The executive director has the discretion to consider documentation timely submitted by agency staff and interested parties. The executive director also has the discretion to refer the matter to the Commission for consideration at a regularly scheduled open meeting or may go forward with issuing a written decision on the protest.
- (h) If a protest is appealed to the executive director under subsection (f) and thereafter is referred to the Commission by the executive director under subsection (g), specific requirements apply as follows:
- (1) The executive director shall deliver copies of the appeal and responses of interested parties, if any, to the Commission.
 - (2) The Commission may consider documents that agency staff or interested parties have submitted and may confer with the General Counsel in their review of the appeal.
 - (5) The Commission's determination of the appeal shall be made on the record and reflected in the minutes of the open meeting and shall be final.
- (i) A protest or appeal that is not filed timely will not be considered unless good cause for the delay is shown or unless the executive director determines that a protest or appeal raises issues significant to procurement practices or procedures.
- (j) A decision issued either by the Commission in open meeting, or in writing by the executive director, shall be the final administrative action of the agency.
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SUBCHAPTER E PROCUREMENTS
Division 2 NEGOTIATION OF CERTAIN CONTRACT DISPUTES

Rule 302.501 Applicability

(a) Words and terms, when used in this subchapter, shall have the meaning assigned by Texas Government Code, Chapter 2260, unless the context clearly indicates otherwise.

(b) This subchapter applies to claims for breach of contract asserted by a contractor against the agency under Texas Government Code, Chapter 2260.

(c) This subchapter does not apply to contracts:

- (1) between the agency and the federal government or its agencies, another state, or another nation;
- (2) between the agency and another unit of state government;
- (3) between the agency and a local governmental body, or a political subdivision of another state;
- (4) between a subcontractor and a contractor;
- (5) within the exclusive jurisdiction of state or local regulatory bodies;
- (6) within the exclusive jurisdiction of federal courts or regulatory bodies; or
- (7) that are funded solely by federal grant funds.

Rule 302.502 Prerequisites to Suit

The procedures contained in this subchapter and Subchapter G are exclusive and required prerequisites to suit against the agency under the Texas Civil Practice and Remedies Code, Chapter 107, and the Texas Government Code, Chapter 2260.

Rule 302.503 Sovereign Immunity

This subchapter does not waive the agency's sovereign immunity to suit or liability.

Rule 302.504 Notice of Claim for Breach of Contract

(a) A contractor asserting a claim of breach of contract under Texas Government Code, Chapter 2260, shall file notice of the claim as provided by this section.

(b) The notice of claim shall:

- (1) be in writing and signed by the contractor or the contractor's authorized representative;
- (2) be delivered by hand, certified mail return receipt requested or certified mail with electronic return receipt, or other verifiable delivery service, to the agency officer designated in the contract to receive a notice of claim of breach of contract under Texas Government Code, Chapter 2260; if no person is designated in the contract, the notice shall be delivered to the agency; and
- (3) state in detail:
 - (A) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;
 - (B) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and
 - (C) the legal theory of recovery, i.e., breach of contract, including the relationship between the alleged breach and the damages claimed.

(c) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim.

Rule 302.505 Agency Counterclaim

(a) If the agency asserts a counterclaim under Texas Government Code, Chapter 2260, the agency shall file notice of the counterclaim as provided by this section.

(b) The notice of counterclaim shall:

- (1) be in writing;
- (2) be delivered by hand, certified mail return receipt requested or certified mail with electronic return receipt, or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and
- (3) state in detail:
 - (A) the nature of the counterclaim;
 - (B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and
 - (C) the legal theory supporting the counterclaim.

(c) The notice of counterclaim shall be delivered to the contractor no later than 60 days after the agency's receipt of the contractor's notice of claim.

(d) Nothing herein precludes the agency from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

Rule 302.506 Duty to Negotiate

The parties shall negotiate in accordance with the timetable set forth in §302.407 to attempt to resolve all claims and counterclaims filed under this subchapter. No party is obligated to settle with the other party as a result of the negotiation. The parties may agree to mediate a claim in accordance with Subchapter G.

Rule 302.507 Timetable

(a) Following receipt of a contractor's notice of claim, the agency or designated representative shall review the contractor's claim and the agency's counterclaim, if any, and initiate negotiations with the contractor to attempt to resolve the claim and counterclaim.

(b) Subject to subsection (c), the parties shall begin negotiations within a reasonable period of time, not to exceed 120 days after the date the agency receives the contractor's notice of claim.

(c) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadline set forth in subsection (b).

(d) Subject to subsection (e), the parties shall complete the negotiations that are required by this subchapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the agency receives the contractor's notice of claim.

(e) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the agency receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party.

(f) The contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) pursuant to §302.512 after the 270th day after the agency receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (e).

(g) The parties may agree to mediate the dispute at any time before the 120th day after the agency receives the contractor's notice of claim and before the expiration of any extension agreed to by the parties pursuant to subsection (e). The mediation shall be governed by Subchapter G.

(h) Nothing in this section is intended to prevent the parties from commencing negotiations earlier than the deadline established in subsection (b), or from continuing or resuming negotiations after the contractor requests a contested case hearing before the State Office of Administrative Hearings (SOAH).

Rule 302.508 **Conduct of Negotiations**

(a) A negotiation under this division may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties. The parties may conduct negotiations with the assistance of one or more neutral third parties. The parties may choose to mediate their dispute in accordance with Subchapter E, Division 2.

(b) To facilitate meaningful evaluation and negotiation of the claims and any counterclaims, the parties may exchange relevant documents that support their respective claims, defenses, counterclaims, or positions.

(c) The agency may also negotiate, mediate, or settle with a contractor concerning any assertion by a contractor which does not constitute either a notice of claim or a claim under this subchapter or Texas Government Code, Chapter 2260. Such actions by the agency do not constitute a waiver of sovereign immunity or of statutory or regulatory requirements for a notice of claim.

Rule 302.509 **Settlement Approval Procedures**

The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

Rule 302.510 **Settlement Agreement**

(a) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by the agency, or the agency's authorized representative, and a representative of the contractor who has authority to bind the contractor.

(c) A partial settlement does not waive a contractor's rights under Texas Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

Rule 302.511 **Cost of Negotiation**

Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorneys' fee, consultant's fees, and expert's fees.

Rule 302.512 **Contested Case Hearings for Contract Disputes**

(a) If a claim of breach of contract is not resolved in its entirety through negotiation or mediation in accordance with this subchapter or Subchapter E on or before the 270th day after the agency receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §302.507(e), the contractor may file a request with the agency for a contested case hearing before State Office of Administrative Hearings (SOAH).

(b) A request for a contested case hearing must state the legal and factual basis for the claim and must be delivered to the agency within 90 days after the 270th day or the expiration of any written extension agreed to pursuant to §302.507(e).

(c) The agency shall forward the contractor's request for contested case hearing to the SOAH within a reasonable period of time, not to exceed 30 days, after receipt of the request. Referral of a request for hearing to SOAH does not constitute waiver by the agency of statutory or regulatory requirements for the notice of claim, the claim, or the request for hearing.

(d) The parties may agree to submit the case to the SOAH before the 270th day after the notice of claim is received by the agency if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

(e) Contested case hearings shall be conducted in compliance with Texas Government Code, Chapter 2260, this subchapter, and the rules and procedures of the SOAH applicable to hearings on contract claims.

(f) Provisions of Chapter 60 of this title, regarding requests for and conduct of contested case hearings, do not apply to hearings conducted under this subchapter.

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 302	GENERAL PROVISIONS
SUBCHAPTER E	PROCUREMENTS
Division 3	MEDIATION OF CERTAIN CONTRACT DISPUTES

Rule 302.601 **Applicability**

(a) Words and terms, when used in this subchapter, shall have the meaning assigned by Texas Government Code, Chapter 2260, unless the context clearly indicates otherwise.

(b) This subchapter applies to claims for breach of contract asserted by a contractor against the agency under Texas Government Code, Chapter 2260.

(c) This subchapter does not apply to contracts:

- (1) between the agency and the federal government or its agencies, another state, or another nation;
- (2) between the agency and another unit of state government;
- (3) between the agency and a local governmental body, or a political subdivision of another state;

- (4) between a subcontractor and a contractor;
- (5) within the exclusive jurisdiction of state or local regulatory bodies;
- (6) within the exclusive jurisdiction of federal courts or regulatory bodies; or
- (7) that are funded solely by federal grant funds.

Rule 302.602 Prerequisites to Suit

The procedures contained in this subchapter and Subchapter F are exclusive and required prerequisites to suit against the agency under the Texas Civil Practice and Remedies Code, Chapter 107, and the Texas Government Code, Chapter 2260.

Rule 302.603 Sovereign Immunity

This subchapter does not waive the agency's sovereign immunity to suit or liability.

Rule 302.604 Mediation

The parties may agree to mediate, through an impartial third party who is acceptable to both parties, a claim filed under Subchapter F. The parties may be assisted in the mediation by legal counsel or other individual.

Rule 302.605 Appointment of Mediator

- (a) For each claim referred for mediation, the ADR Administrator shall:
 - (1) preside over the mediation proceeding;
 - (2) assign a agency mediator;
 - (3) appoint a mediator from another state agency; or
 - (4) appoint a private mediator.
- (b) A private mediator may be hired provided that:
 - (1) the parties unanimously agree to use a private mediator;
 - (2) the parties unanimously agree to the selection of the person to serve as the private mediator; and
 - (3) the private mediator agrees to be subject to the direction of the ADR Administrator and to all time limits imposed by the ADR Administrator, statute, or regulation.
- (c) If a private mediator or a mediator from another state agency is used, the costs for the services of the mediator shall be apportioned equally among the parties, unless otherwise agreed upon by the parties, and shall be paid directly to the mediator.
- (d) Unless the parties agree otherwise in writing, each party shall be responsible for its own costs incurred in connection with the mediation, including without limitation, costs of document reproduction, attorney's fees, consultant fees and expert fees.
- (e) The ADR Administrator may assign a substitute or additional mediator to a proceeding as the ADR Administrator deems necessary.

Rule 302.606 Qualifications of Mediator

- (a) All mediators must have completed a minimum of 40 hours of Texas mediation training as prescribed under Texas Civil Practices and Remedies Code, Chapter 154.

(b) All mediators shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

Rule 302.607 **Disqualifications of Mediator**

(a) If the mediator is a State Office of Administrative Hearings ALJ, that person will not also sit as the ALJ for the case if the claim goes to hearing.

(b) If the mediator is an employee of the agency and the dispute does not settle, that mediator will not have any further contact or involvement concerning the claim.

Rule 302.608 **Qualified Immunity of Mediator**

The mediator shall have the qualified immunity prescribed by the Texas Civil Practice and Remedies Code §154.005, if applicable.

Rule 302.609 **Confidentiality of Mediation and Final Settlement Agreement**

(a) A mediation conducted under this division is confidential in accordance with Texas Government Code, §2009.054 and Texas Civil Practice and Remedies Code §154.053 and §154.073.

(b) The confidentiality of a final settlement agreement, to which the agency is a signatory that is reached as a result of the mediation is governed by the Public Information Act, Texas Government Code, Chapter 552.

Rule 302.610 **Settlement Approval Procedures**

The parties' settlement approval procedures shall be disclosed by the parties prior to the mediation. To the extent possible, the parties shall select representative who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

Rule 302.611 **Initial Settlement Agreement**

Any settlement agreement reached during mediation shall be signed by representatives of the contractor and the agency and shall describe any procedures that the parties must follow to obtain final and binding approval of the agreement.

Rule 302.612 **Final Settlement Agreement**

A final settlement agreement reached during or as a result of a mediation that resolves an entire claim or counterclaim, or any designated and severable portion of a claim or counterclaim, shall comply with §302.510.

Rule 302.613 **Referral to State Office of Administrative Hearings (SOAH)**

If mediation does not resolve the claim to the satisfaction of the contractor, the contractor may request that the claim be referred to the State Office of Administrative Hearings (SOAH) in accordance with §302.512.

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 302	GENERAL PROVISIONS
SUBCHAPTER E	PROCUREMENTS
Division 4	CONTRACT MONITORING

Rule 302.701 **Contract Monitoring Responsibilities**

(a) This section implements Government Code, §2261.202.

(b) Contract monitoring shall be conducted by staff of the financial services division, subject to the oversight of the Chief Financial Officer.

(c) Subject to the oversight of the Chief Financial Officer, internal auditors and staff of the financial services division shall perform any additional contract monitoring specifically directed by the audit committee of the Commission or warranted by the results of the agency's annual risk assessment.

Rule 302.702 **Enhanced Contract Monitoring**

(a) This section implements Government Code, §2261.253(c).

(b) For each contract entered into by the agency, the Chief Financial Officer, or his or her designee, will determine if enhanced monitoring of the contract or the contractor's performance is required.

(c) In determining whether a contract requires enhanced monitoring, the following factors may be considered, to the extent applicable:

- (1) The estimated dollar amount of the contract;
- (2) The total contract period, including renewal options;
- (3) The extent and number of persons impacted by the contract;
- (4) The impact to the agency and the state if contract deliverables are delayed, or if the contractor fails to deliver as required in the contract;
- (5) The complexity of funding sources for the contract;
- (6) The complexity of requirements and resources to be managed pursuant to the contract;
- (7) The extent of agency resources readily available to manage the contract;
- (8) The impact of the contract on the health and safety of the general public;
- (9) The impact on the agency's business processes;
- (10) The complexity of the methodology for calculating and making payments under the contract;
- (11) The extent of training required for end users as a result of the contract;
- (12) The vendor's experience delivering the contracted goods or services, and, if applicable, the vendor's performance under previous agency contracts; and
- (13) With regard to a technology contract, the level of software customization required and the impact on existing technology applications or infrastructure.

(d) The Chief Financial Officer, or his or her designee, shall maintain a record of all contracts requiring enhanced monitoring. Contracts identified for enhanced monitoring shall be reported to the Commission at least quarterly.

(e) The Chief Financial Officer shall notify the Commission immediately of any serious issue or risk that is identified with respect to a contract requiring enhanced monitoring.

303.81- 303.86 – Texas Bred Incentive Program will move to NEW Trust Administration Chapter 308

303.92-303.99 – Texas Bred Incentive Program will move to NEW Trust Administration Chapter 308

303.101-303.102 – Texas Bred Incentive Program (Greyhounds) will move to NEW Greyhound Chapter

303.201-303.203 – Move to NEW Licensing moved to Chapter 304

303.301-303.325 – HIEA – will move to NEW Trust Administration Chapter 308

307.8 ADR Section moved to Enforcement – Appellant Proceedings Chapter 310