



**TEXAS RACING COMMISSION**  
**1801 N. Congress Avenue, Suite 7.600**  
**Austin, TX 78701**  
**(512) 833-6699**  
**Fax (512) 833-6907**

Thursday, January 25, 2024  
10:00 a.m. - 1:00 p.m.  
7575 Sam Houston Parkway  
Suite 338, San Jacinto  
Houston, Texas 77064

## **RULES COMMITTEE AGENDA**

### **I. CALL TO ORDER**

### **II. PUBLIC COMMENT**

### **III. PROCEEDINGS ON RULES**

- A. Discussion on industry proposed rule amendments.
- B. Discussion on agency proposed rule amendments.

- 1. 16 TEX. ADMIN. CODE §303.201, Licensing Persons with Criminal Backgrounds
- 2. 16 TEX. ADMIN. CODE §303.202, Guidelines
- 3. 16 TEX. ADMIN. CODE §307.67, Appeal to the Commission
- 4. 16 TEX. ADMIN. CODE §311.4, Occupational License Restrictions.
- 5. 16 TEX. ADMIN. CODE §319.362, Drug Testing

### **V. ADJOURN**

## AGENDA ITEM III. A.

Discussion on industry proposed rule amendments.

Proposal by Scott Sherwood

Proposals by Bryan Pettigrew

Proposals by Steve Ross

**From:** [Squarespace](#)  
**To:** [info](#)  
**Subject:** Form Submission - Texas Rules of Racing Comment Form  
**Date:** Monday, January 15, 2024 7:54:51 PM

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Sent via form submission from [TEXAS RACING COMMISSION \(TXRC\)](#)

**Name:** Scott Sherwood

**Email:** ssherwood@tqha.com

**Phone:** (512) 458-5202

**Select:** CHAPTER 313. OFFICIALS AND RULES OF HORSERACING

**Message:** Currently horsemen are having to hair test a horse that they claim in order to make sure such horse is clean from having beta-agonists in their system. Since these beta-agonists can stay in a horses system for months a trainer has to make sure the horse that they claim is clean so that when they start the horse themselves they don't take a chance on getting a positive test from the illegal actions of the previous trainer. I'm not sure how many of these private tests have come back positive but I do know of quite a few.

The new rule I have had horsemen ask me about would be to have the ability to "check a box" on the claim form and have the TxRC perform an official hair test on any horse that is claimed, at the expense of the person claiming the horse, so that if the test comes back positive then at least the trainer that ran the horse would be subject to the penalties associated with a positive hair test in the same manner trainers are for a positive hair test that a trainer gets from a hair test that the TxRC directs the test barn to take in their normal testing procedures. In no way would this test void a claim. The trainer claiming a horse that ends up getting a positive hair test would be notified of this positive so that they could decide how to proceed with the horse as in take the horse out of training, privately test them after a certain amount of time to see if they are clean, etc...etc....

All of this would have to work with the cooperation of and in conjunction with the Texas Horsemen's Partnership as they would be responsible to deduct the testing fee from the succesful claimant's THP Bookkeeper account as well as forward the funds to the track hosting the race to go toward paying their testing invoices.

**Checkbox:** YES

[Manage Submissions](#)

Does this submission look like spam? [Report it here.](#)

**From:** [Pettigrew, Bryan](#)  
**To:** [Amy Cook](#); [Aaron Grigsby](#)  
**Subject:** Rules Review from SHRP  
**Date:** Thursday, January 18, 2024 1:31:47 PM  
**Attachments:** [TRC Rules Review 303.309.311.xlsx](#)

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Hi Amy and Aaron,

I apologize for the delay, but Dwight forwarded me the attached list that he submitted in March 2023. He then retired and never heard back on any of these items. If you would prefer we submit these on the TXRC website, let me know.

Steve will be sending some separate suggestions.

Bryan

Throughout Rules	For consistency, change the term Executive Secretary to Executive Director
303.35 Access to Commission Programs	Certain critical Commission Programs, particularly owner/trainer tests, are not available in Spanish. This is especially an issue during a Quarter Horse meet.
309.9(b)(7) Detrimental Practices	Unclear what constitutes a detrimental practice. Should this be a defined term?
309.118 Regulatory Office Space and Equipment (k) access to telecommunications room	SHRP would prefer to delete the TRC's 24 hour access to the telecommunications room. It's not as if TRC staff would be able to fix any problem/disruption
309.118 Regulatory Office Space and Equipment (m) reserved parking	It has been suggested reserved parking spots for TRC weren't necessary. Should the rule be deleted?
309.118 Regulatory Office Space and Equipment (h) reserved parking	Related to the line above, are reserved parking spots still needed for DPS?
309.154 Stable or Kennel Area (d) written records	While we do keep written records of all individuals admitted, it has not been the practice to submit these daily logs to the investigator. We do keep them on file and are available if needed.
309.155 Visitor Pass (a) numbered passes	Our visitor passes are not individually numbered. Otherwise we follow this rule, and would prefer to delete the "numbered pass" requirement
309.160 Vendors (c) exclusivity	We propose that on-site exclusivity be granted to a contracted Tack Shop on property for Racing Supplies. This exclusivity would not apply to Feed, Bedding, Shavings, Hay, F&B for Human Consumption or Medical Supplies sold by Vets. If such exclusivity is not granted to contracted Tack Shops, they will likely cease to exist.
309.163 Fingerprinting	Unclear whether this is still applicable based on recent changes to fingerprinting practices
309.206 Rails (c)	Clarify definition of "withstand"
309.281 Jockeys (b)(3)	Change to "a snack bar or vending machines"
311.101 Horse Owners (b)(3)	Please review whether this rule is being followed as written

**From:** [Steve Ross](#)  
**To:** [Amy Cook](#); [Simulcast-HIEA-ATB Request](#); [Anne Alley](#)  
**Cc:** [Pettigrew, Bryan](#); [Christopher McElean](#); [Quinn, Joe](#); [Burroughs, Oscar](#); [mike.acton@pennentertainment.com](mailto:mike.acton@pennentertainment.com); [Carl Layne](#); [Darla Walcoff](#); [Simon, Felix](#); [don.ahrens@pennentertainment.com](mailto:don.ahrens@pennentertainment.com); [hbpa@aol.com](mailto:hbpa@aol.com); [Marsha Rountree](#); [maryr@texasthoroughbred.com](mailto:maryr@texasthoroughbred.com); [Rob Werstler](#); [ssherwood@tqha.com](mailto:ssherwood@tqha.com)  
**Subject:** Rules for Discussion  
**Date:** Monday, January 22, 2024 7:47:02 AM  
**Attachments:** [Comments on Rules 2024-01-22.pdf](#)

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Attached are some rules I think are eligible for discussion and possible modification.

Sorry for the late submission.

Thanks.

Steve

**Sec. 309.164. Accounting Practices.**

(a) An association shall maintain an accounting system under the supervision of a certified public accountant.

Is a CPA necessary?

**Sec. 309.291. Racing Hours.**

Except on approval of the executive secretary, an association may conduct horse racing only between the hours of 8 a.m. and 12 midnight.  
(Added eff. 10/21/99)

Maybe make it 1:00 am so special permission is not required if running late for some reason.  
Or change to “an association may schedule horse racing only between the hours of 8 a.m. and 12 midnight.

**Sec. 313.303. Effective Time of Claim.**

(a) A person who has a valid claim to a horse becomes the owner of the horse when the horse steps on to the racetrack for the race. This subsection applies regardless of whether the horse reaches the starting gate and regardless of subsequent injury to the horse during or after the race.

(b) On the day claimed, a claimed horse runs in the interest of and for the account of the owner from whom the horse was claimed. (Added eff. 8/30/89; (a) amended eff. 10/11/90; (b) added eff. 10/11/90; (a) amended eff. 5/1/92; (a) amended eff. 4/4/05)

**Sec. 313.304. Claim Irrevocable.**

(a) Except as otherwise provided by this section, a claim that is filed in accordance with this subchapter is irrevocable.

(b) If the stewards declare a claiming race a “no race”, all claims for that race are invalid.  
(Added eff. 8/30/89; (b) amended eff. 7/1/92)

There has been discussion about voiding a claim if horse is injured or dies on the track. This is the rule in some other states, for example, California.

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

(a) The pari-mutuel auditor is a representative of the Commission at a racetrack.

(b) The pari-mutuel auditor shall verify the wagering pool totals for each live and simulcast performance. 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) horse purses;
- (2) greyhound purses;
- (3) the State;
- (4) the Texas Bred Incentive Programs;
- (5) the association; and
- (6) the winning wagerers.

(c) The pari-mutuel auditor shall also assist the executive secretary, the stewards or racing judges, and the Comptroller in investigating alleged violations of the Act, the Rules, or the Comptroller's rules relating to the totalisator system and pari-mutuel operations. (Added eff. 4/1/01; (b) amended eff. 9/28/14, (b) amended eff. 3/13/16)

**We haven't had an auditor at the track in several years.**

**Sec. 321.23. Wagering Explanations.**

(a) An association shall include the following information in the official live programs and simulcast programs and post in places easily viewed by patrons and licensees on association grounds:

- (1) a general explanation of pari-mutuel wagering;
- (2) an explanation of each type of pari-mutuel wagering pool offered; and
- (3) the expiration date of mutuel tickets and vouchers.

(b) Wagering explanations must be reviewed and approved by the executive secretary before publication. (Added eff. 4/1/01; (a) amended eff. 3/28/11; (b), (c) amended eff. 9/28/14; (b), (c) deleted eff. 3/13/16)

**I would like this not to be required in every simulcast program. Retama Park produces individual track programs, and due to the fact the program has to be a multiple of four pages, sometimes three additional filler pages must be included. Adds unnecessary expense. This is also an issue if the program is produced by a third party, such as Daily Racing Form, where the same product is sold in several states. Add something like "will make available".**



**Sec. 321.459. Manual Merge.**

(a) If the guest racetrack's totalisator system fails to adequately transmit wagering data to the host racetrack, the host racetrack shall manually merge the pools if a manual merge will not endanger the pools at the host racetrack and the host racetrack permits a manual merge.

(b) To merge the pools manually, the guest

**Remove Manual Merge as a possibility. It will never happen.**

**Sec. 321.461. Failure To Merge.**

(a) Except as otherwise provided by this section, if it becomes impossible to successfully merge a guest racetrack's wagers in the common pool via data circuit or manual merge, the mutuel manager shall:

(1) refund the pools not successfully

**If failure to merge, wagers shall be refunded. We are not bookies. This is extremely rare these days.**

**Sec. 321.507. Priority Of Signals.**

(a) **Class 1 and Class 2 Racetracks.** A Class 1 or Class 2 racetrack may offer pari-mutuel wagering on a race simulcast from another jurisdiction, subject to the approval of the executive secretary, provided the Class 1 or Class 2 racetrack also offers all available simulcast races originating in Texas on that day.

(b) **Class 3 and Class 4 Racetracks.** A Class 3 or Class 4 racetrack may conduct pari-mutuel wagering on a race simulcast from another jurisdiction, subject to the approval of the executive secretary, provided the Class 3 or Class 4 racetrack:

2

(1) also offers all available simulcast races originating in Texas on that day;

(2) is owned or managed by an entity that has at least three years experience operating a pari-mutuel racetrack in Texas;

(3) demonstrates to the Commission's satisfaction that the simulcasting is necessary to provide sufficient purses to support the Texas live racing industry; and

(4) demonstrates to the Commission's satisfaction that the live racing program offered at the racetrack provides significant support to the Texas horse breeding industry; and

(5) demonstrates to the Commission any effect simulcasting may have on each Class 1, Class 2, or greyhound racetrack located within 100 miles of the Class 3 or Class 4 racetrack.

(Added eff. 4/1/01; (b) amended eff. 7/17/01)

Gillespie is 75 miles from Retama Park

**Is this happening now? What effect does Gillespie have on Retama Park?**

**Sec. 313.103. Eligibility Requirements.**

(a) To be entered in a race, a horse must:

- (1) be properly registered with the appropriate national breed registry;
- (2) be eligible to enter the race under the conditions of the race; and

(3) if the horse is to start for the first time:

(A) be approved by a licensed starter for proficiency in the starting gate within 90 days of the race entered; and

(B) have two published workouts, one within 90 days and one within 60 days of the race entered.

(b) A horse that has been barred in any racing jurisdiction is ineligible to start or be entered in a race without the approval of the stewards.

(c) To be eligible to enter a Texas-Bred race, the horse must be an accredited Texas-bred horse and be registered with the appropriate breed registry.

(d) A horse may not be entered in more than

**Workouts may not take place on successive days.**

**Workouts may not take place the day before a race or on the day of a race.**

**There could be an instance where a trainer needs two workouts to get into a race and tries to get them both in a short time period before the race.**

**Sec. 309.164. Accounting Practices.**

(a) An association shall maintain an accounting system under the supervision of a certified public accountant.

Is a CPA necessary?

**Sec. 309.291. Racing Hours.**

Except on approval of the executive secretary, an association may conduct horse racing only between the hours of 8 a.m. and 12 midnight.  
(Added eff. 10/21/99)

Maybe make it 1:00 am so special permission is not required if running late for some reason.  
Or change to “an association may schedule horse racing only between the hours of 8 a.m. and 12 midnight.

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(a) A person who has a valid claim to a horse becomes the owner of the horse when the horse steps on to the racetrack for the race. This subsection applies regardless of whether the horse reaches the starting gate and regardless of subsequent injury to the horse during or after the race.

(b) On the day claimed, a claimed horse runs in the interest of and for the account of the owner from whom the horse was claimed. (Added eff. 8/30/89; (a) amended eff. 10/11/90; (b) added eff. 10/11/90; (a) amended eff. 5/1/92; (a) amended eff. 4/4/05)

**Sec. 313.304. Claim Irrevocable.**

(a) Except as otherwise provided by this section, a claim that is filed in accordance with this subchapter is irrevocable.

(b) If the stewards declare a claiming race a “no race”, all claims for that race are invalid.  
(Added eff. 8/30/89; (b) amended eff. 7/1/92)

There has been discussion about voiding a claim if horse is injured or dies on the track. This is the rule in some other states, for example, California.

## AGENDA ITEM III. B.

Discussion on agency proposed rule amendments.

1. 16 TEX. ADMIN. CODE §303.201, Licensing Persons with Criminal Backgrounds
2. 16 TEX. ADMIN. CODE §303.202, Guidelines
3. 16 TEX. ADMIN. CODE §307.67, Appeal to the Commission
4. 16 TEX. ADMIN. CODE §311.4, Occupational License Restrictions.
5. 16 TEX. ADMIN. CODE §313.5, License Fees.

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment TAC § 303.201**  
**Licensing Persons with Criminal Backgrounds**  
**As of January 22, 2024**

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 303	GENERAL PROVISIONS
SUBCHAPTER F	LICENSING PERSONS WITH CRIMINAL BACKGROUNDS
RULE	§303.201. General Authority

**PREAMBLE:**

The Texas Racing Commission (TXRC) proposes rule amendments and a repeal of selected language in Texas Administrative Code, Title 16, Part 8, Chapter 311, Subchapter F, Occupational Licenses, § 303.201, General Authority, concerning factors that relate to the person’s present fitness to perform the duties and responsibilities. The purpose of this rule amendment is to align the Texas Rules of Racing with legislative changes made to the Texas Racing Act during the 88th Legislative Session.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at 512-833-6699. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

**AGENCY ANALYSIS**

**A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.**

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

**B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

**C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment TAC § 303.201**  
**Licensing Persons with Criminal Backgrounds**  
**As of January 22, 2024**

**D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.**

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

**E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).**

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

**F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).**

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to further align the administration of the occupational licensing program with recent statutory changes to the Texas Occupations Code that incorporate Chapter 53 in the agency licensing program.

**G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).**

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

**H. LEGAL REVIEW REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(3).**

Amy F. Cook, Executive Director certifies that a legal review has been completed and the proposal is within agency's legal authority to adopt under its enabling statute.

The proposed rule amendments affect Texas Administrative Code, Title 16, Part 8, Chapter 303, Subchapter F, General Provisions, Licensing Persons with Criminal Background § 303.201. General Authority.

(a) In accordance with state law, the executive director or designee ~~[commission]~~ may revoke, suspend, or deny a license ~~[or the stewards or racing judges may suspend or deny a license to a person]~~ because of the person's conviction of a felony or misdemeanor if the offense directly relates to the person's present fitness to perform the duties and responsibilities associated with the license.

(b) In determining whether ~~[or not]~~ an offense directly relates to a person's present fitness to perform the duties and responsibilities associated with the license, the executive director or designee ~~[commission]~~ shall consider the relationship between the offense and the occupational ~~[particular]~~ license applied for and the following factors:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment TAC § 303.201**  
**Licensing Persons with Criminal Backgrounds**  
**As of January 22, 2024**

- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) other evidence presented by the person of the person's present fitness, including letters of recommendation from:
  - (A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
  - (B) the sheriff or chief of police in the community where the person resides; or
  - (C) any other persons in contact with the convicted person.
- (c) The executive director ~~[secretary]~~ shall ~~[may]~~ develop and publish guidelines relating to the administration of the of occupational licensing program. ~~[regarding the factors listed in subsection (b) of this section and how the factors relate to the offenses listed in §303.202 of this title (relating to General Provisions.)]~~
- (d) On learning of the felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision of a licensee, the executive director or designee ~~[commission]~~ shall determine whether a license may be subject to suspension or revocation. ~~[revoke the licensee's license.]~~



**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment § 303.201 Licensing Persons with Criminal Backgrounds**  
**As of January 22, 2024**

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 303	GENERAL PROVISIONS
SUBCHAPTER F	LICENSING PERSONS WITH CRIMINAL BACKGROUNDS
RULE §303.202	GUIDELINES

**PREAMBLE:**

The Texas Racing Commission (TXRC) proposes rule amendments and a repeal of selected language in Texas Administrative Code, Title 16, Part 8, Chapter 303.202, Subchapter F, Licensing Persons with Criminal Background, Rule § 303.202, Guidelines, concerning the occupational licensing guidelines. The purpose of these rule amendment is to clarify the responsibilities of the executive director and align the administration of the occupational licensing program with current state law. The proposed rule changes will allow the agency to conform with the provisions of Texas Occupations Code § 2025.251-262.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at 512-833-6699. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

**AGENCY ANALYSIS**

**A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.**

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

**B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

**C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment § 303.201 Licensing Persons with Criminal Backgrounds**  
**As of January 22, 2024**

**D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.**

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

**E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).**

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

**F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).**

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to reduce the overall costs of the licensing process by clarifying the factors considered for issuance of an occupational license.

**G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).**

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

**H. LEGAL REVIEW REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(3).**

Amy F. Cook, Executive Director certifies that a legal review has been completed and the proposal is within agency's legal authority to adopt under its enabling statute.

The proposed rule amendments affect Texas Administrative Code, Title 16, Part 8, Chapter 303, Subchapter F, Licensing Persons with Criminal Backgrounds § 303.202. Guidelines.

(a) In accordance with state law, the commission has delegated the administration of the occupational licensing program to the executive director who shall develop guidelines ~~[developed guidelines]~~ relating to the suspension, revocation, or denial of occupational licenses based on criminal background.

~~The offenses that the commission has determined are directly related to the occupational licenses issued by the commission are:~~

- ~~—(1) an offense for which fraud, dishonesty, or deceit is an essential element;~~
- ~~—(2) an offense relating to racing, pari-mutuel wagering, gambling, or prostitution;~~
- ~~—(3) a felony offense of assault, such as those described by Penal Code, Chapter 22;~~

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment § 303.201 Licensing Persons with Criminal Backgrounds**  
**As of January 22, 2024**

- ~~-(4) a criminal homicide offense, such as those described by Penal Code, Chapter 19;~~
- ~~-(5) a burglary offense, such as those described by Penal Code, Chapter 30;~~
- ~~-(6) a robbery offense, such as those described by Penal Code, Chapter 29;~~
- ~~-(7) cruelty to animals;~~
- ~~-(8) a theft offense, such as those described by Penal Code, Chapter 31;~~
- ~~-(9) an offense relating to the possession, manufacture, or delivery of a controlled substance, a dangerous drug, or an abusable glue or aerosol paint;~~
- ~~-(10) arson; and~~
- ~~-(11) a felony offense of driving while intoxicated.~~

~~(b) The commission has considered the following factors in determining whether or not a particular offense directly relates to a particular occupational license:~~

- ~~-(1) the nature and seriousness of the crime;~~
- ~~-(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;~~
- ~~-(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and~~
- ~~-(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.~~

~~{(c) Based on the factors described in subsection (b) of this section, the commission has determined that the offenses described in subsection (a) of this section are directly related to the following occupational licenses. (An "X" on the chart means the offense directly relates to the license.)}~~

[Attached Graphic](#)



	<i>Kennel Owner/ Trainer</i>	<i>Law Enforcement</i>	<i>Leadout</i>	<i>Maintenance</i>	<i>Medical Staff</i>	<i>Miscellaneous</i>	<i>Mutuel - Other</i>	<i>Mutuel Clerk</i>	<i>Official</i>	<i>Owner</i>	<i>Owner/Trainer</i>	<i>Pony Person</i>	<i>Racing Industry Representative</i>	<i>Security Officer</i>
Offense for which fraud, dishonesty, or deceit is an essential element	X	X	X			X	X	X	X	X		X	X	
Offense under law of Texas or another state relating to racing, pari-mutuel wagering, gambling, or prostitution	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Felony Assault	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Criminal Homicide	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Burglary	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Robbery	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cruelty to Animals	X	X	X			X			X	X	X	X	X	X
Theft	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Possession, delivery, or manufacture of a controlled substance, dangerous drug, or abusable glue	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Arson	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Felony Driving While Intoxicated	X	X		X	X	X			X	X	X	X		X

	<i>Stable Foreman</i>	<i>Tattooer</i>	<i>Test Technician</i>	<i>Tooth Floater</i>	<i>Trainer</i>	<i>Training Facility Employee</i>	<i>Training Facility Gen Mgr / CEO</i>	<i>Valet</i>	<i>Vendor/ Concessionaire</i>	<i>Vendor/Concess. Employee</i>	<i>Veterinarian</i>	<i>Veterinarian's Asst.</i>	<i>Watchman</i>
Offense for which fraud, dishonesty, or deceit is an essential element	X	X	X		X	X	X	X	X	X	X	X	X
Offense under law of Texas or another state relating to racing, pari-mutuel wagering, gambling, or prostitution	X	X	X	X	X	X	X	X	X	X	X	X	X
Felony Assault	X	X	X	X	X	X	X	X	X	X	X	X	X
Criminal Homicide	X	X	X	X	X	X	X	X	X	X	X	X	X
Burglary	X	X	X	X	X	X	X	X	X	X	X	X	X
Robbery	X	X	X	X	X	X	X	X	X	X	X	X	X
Cruelty to Animals	X	X	X	X	X	X	X			X	X	X	X
Theft	X	X	X	X	X	X	X	X	X	X	X	X	X
Possession, delivery, or manufacture of a controlled substance, dangerous drug, or abusable glue	X	X	X	X	X	X	X	X	X	X	X	X	X
Arson	X	X	X	X	X	X	X	X	X	X	X	X	X
Felony Driving While Intoxicated	X	X	X	X	X	X	X			X	X	X	X

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment - TAC § 307.67, Appeal to the Commission**  
**As of January 22, 2024**

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 307	OTHER LICENSES
SUBCHAPTER C	LICENSING PROVISIONS
RULE §307.67	License Categories and Fees

**PREAMBLE:**

The Texas Racing Commission (TXRC) proposes rule amendments and a repeal of selected language in Texas Administrative Code, Title 16, Part 8, Chapter 307, Subchapter C, Proceedings by Stewards, and Racing Judges, § 307.67, Appeal to the Commission, concerning the fine required by a licensee when appealing a ruling to the Commission.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at 512-833-6699. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

**AGENCY ANALYSIS**

**A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.**

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

**B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

**C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment - TAC § 307.67, Appeal to the Commission**  
**As of January 22, 2024**

**D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.**

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

**E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).**

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

**F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).**

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to reduce the overall costs of the licensing process for licensees by repealing the requirement that a licensee pay \$150 cash bond to cover costs of the appeal.

**G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).**

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

**H. LEGAL REVIEW REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(3).**

Amy F. Cook, Executive Director certifies that a legal review has been completed and the proposal is within agency's legal authority to adopt under its enabling statute.

The proposed rule amendments affect Texas Administrative Code, Title 16, Part 8, Chapter 303, Subchapter A, Licensing Provisions § 303.211.5 License Categories and Fees.

(a) Right to Appeal. A person aggrieved by a ruling of the stewards ~~[or racing judges]~~ may appeal to the Commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b) Filing Procedure.

(1) An appeal must be in writing in a form prescribed by the executive ~~director~~ ~~[secretary]~~. An appeal from a ruling of the stewards ~~[or racing judges]~~ must be filed not later than 5:00 p.m. of the third calendar day after the day the person is informed of the ruling by the stewards ~~[or racing judges]~~. An appeal from the modification of a penalty by the executive ~~director~~ ~~[secretary]~~ must be filed not later than 5:00 p.m. of the fifth calendar day after the person is informed of the penalty modification. The appeal must be filed at the main Commission offices in Austin or with the stewards or ~~[or racing judges]~~ at a Texas pari-mutuel racetrack where a live race meet is being conducted. ~~The appeal must be accompanied by a cash bond in the amount of~~

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment - TAC § 307.67, Appeal to the Commission**  
**As of January 22, 2024**

\$150, to defray the costs of the court reporter and transcripts required for the appeal. The bond must be in the form of a cashier's check or money order.

(2) Record of Stewards' [~~Judges~~] hearing. On notification by the executive director [~~secretary~~] that an appeal has been filed, the stewards [~~or racing judges~~] shall forward to the Commission the record of the proceeding being appealed. A person appealing a stewards' [~~or judges~~] ruling may request a copy of the record of the hearing, and the executive secretary may assess the cost of making to the copy to the requestor.

(c) Hearing Procedure. A hearing on an appeal from a ruling by the stewards [~~or racing judges~~] is a contested case and shall be conducted by SOAH in accordance with the Rules regarding contested cases. In an appeal, the appellant has the burden to prove that the stewards' [~~or racing judges~~] decision was clearly in error.

(d) Effect of Appeal on Fine Payment. If a person against whom a fine has been assessed appeals the ruling that assesses the fine, the person shall pay the fine in accordance with the Rules. The executive director shall place the fine amount into the agency suspense account until such time that the appeal is final. If the appeal is disposed of in favor of the appellant, the executive director [~~Commission~~] shall refund the amount of the fine.

(e) Effect of Appeal on Purse Payment. If a ruling that affects the outcome of a race is appealed, the portion of the purse that is involved in the appeal shall be withheld and not distributed. The stewards [~~or racing judges~~] may distribute the portion of the purse that is not involved in or affected by the outcome of the appeal.

(f) Effect of Appeal on Horse Eligibility. If an appeal involves the official order of finish in a horse race, all horses finishing first or declared to be the winner by the stewards carry all penalties of eligibility until the winner is determined through the final resolution of the appeal.



**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment TAC § 311.4 Occupational License Restrictions**  
**As of January 22, 2024**

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 311	OTHER LICENSES
SUBCHAPTER A	LICENSING PROVISIONS
DIVISION 1	OCCUPATIONAL LICENSES
RULE §311.4	Occupational License Restrictions

**PREAMBLE:**

The Texas Racing Commission (TXRC) proposes rule amendments and a repeal of selected language in Texas Administrative Code, Title 16, Part 8, Chapter 311, Subchapter A, Division 1, Occupational Licenses, § 311.4, Occupational License Restrictions. The purpose of these rule amendment is to align the Texas Rules of Racing with changes in the Texas Racing Act made during the 88th Legislative Session.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at 512-833-6699. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

**AGENCY ANALYSIS**

**A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.**

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

**B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

**C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

**D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.**

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment TAC § 311.4 Occupational License Restrictions**  
**As of January 22, 2024**

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

**E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).**

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

**F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).**

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to reduce the overall costs of the licensing process aligning the administration of the licensing program by the Executive Director with the current version of the Texas Racing Act.

**G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).**

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

**H. LEGAL REVIEW REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(3).**

Amy F. Cook, Executive Director certifies that a legal review has been completed and the proposal is within agency's legal authority to adopt under its enabling statute. The proposed rule amendments affect Texas Administrative Code, Title 16, Part 8, Chapter 311, Subchapter A, Division 1, Occupational Licenses, § 311.4. Occupational License Restrictions:

a) Non-Transferable.

~~-(1)-~~ Except as otherwise provided by this section, a license issued by the Executive Director [Commission] is personal to the licensee and is not transferable.

~~-(2)-~~ If the death of a licensee creates an undue hardship or results in a technical violation of the Act or a Rule, on application of a person who wishes to operate or work under the license, the Commission may issue a temporary license to the person for a period specified by the Commission not to exceed one year.

(b) Education. To be eligible to receive a license to participate in racing with pari-mutuel wagering, an individual who is under 18 years of age must present to the Commission proof that the individual:

- (1) has graduated from high school or received an equivalent degree; or
- (2) is currently enrolled in high school or equivalent classes.

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment - TAC § 319.362 Split Specimen**  
**As of January 22, 2024**

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 319	VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER D	DRUG TESTING
DIVISION 3	PROVISIONS FOR HORSES
RULE §319.362	Split Specimen

**PREAMBLE:**

The Texas Racing Commission (TXRC) proposes rule amendments and a repeal of selected language in Texas Administrative Code, Title 16, Part 8, Chapter 319.362, Subchapter D, Division 3, Split Specimen, § 319.362 concerning the procedures for storing and testing split samples for horses. The purpose of these rule amendment is to align the rules with the interagency agreement the agency has with the Texas Veterinary Medical Diagnostic Lab (TVMDL). The current interagency agreement updated the process of storing primary and split samples at the laboratory instead of the racetrack locations.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at 512-833-6699. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

**AGENCY ANALYSIS**

**A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.**

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

**B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

**C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.**

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

**D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.**

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment - TAC § 319.362 Split Specimen**  
**As of January 22, 2024**

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

**E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).**

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

**F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).**

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to reduce the overall costs of the drug testing for licensees who no longer must pay \$175.00-\$250.00 to ship split samples to the laboratory chosen to test the split.

**G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).**

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

**H. LEGAL REVIEW REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(3).**

Amy F. Cook, Executive Director certifies that a legal review has been completed and the proposal is within agency's legal authority to adopt under its enabling statute.

The proposed rule amendments affect Texas Administrative Code, Title 16, Part 8, Chapter 311, Subchapter D, Division 3, Drug Testing, § 319.362. Split Specimen:

(a) Before sending a specimen from a horse to a testing laboratory, the commission veterinarian shall determine whether the specimen is of sufficient quantity to be split. If there is sufficient quantity of the specimen, the commission veterinarian or ~~[the commission veterinarian's]~~ designee shall divide the specimen into two parts. If the specimen is of insufficient quantity to be split, the commission veterinarian may require the horse to be detained until an adequate amount of urine can be obtained. If the commission veterinarian ultimately determines the quantity of the specimen obtained is insufficient to be split, the commission veterinarian shall certify that fact in writing and submit the entire specimen to the laboratory for testing. In either case, both the primary and split specimens shall be shipped to the laboratory for testing and storage, and secured in laboratory storage until the executive director determines that the specimens are no longer needed for regulatory purposes.

(b) ~~[The commission veterinarian or commission veterinarian's designee shall retain custody of the portion of the specimen that is not sent to the laboratory. The veterinarian or designee shall store the retained part in a manner that ensures the integrity of the specimen.]~~

(c) An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the retained serum or urine, whichever provided the positive result, be submitted for testing to a

**DRAFT//PRE-DECISIONAL**  
**Proposed Rule Amendment - TAC § 319.362 Split Specimen**  
**As of January 22, 2024**

laboratory approved by the executive director [a Commission approved [and listed] laboratory] that is acceptable to the owner or trainer. The owner or trainer must notify the executive director [secretary] of the request not later than 48 hours after notice of the positive result. Failure to request the split or select a laboratory within the prescribed time period will be deemed a waiver of the right to the split specimen.

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

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

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

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