

TEXAS RACING COMMISSION

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COMMITTEE ON RULES

Tuesday, March 27, 2012

1:30 p.m.

Texas Animal Health Commission
2105 Kramer Lane
Austin, Texas 78758

Agenda

The Committee will accept comments in response to the publication of the following rule proposals in the *Texas Register*:

Proposal to Amend Rule 307.67, Appeal to the Commission

Proposal to Amend Rule 307.69, Action by Commission

Proposal to Amend Rule 311.3, Information for Background Investigation

Proposal to Amend Rule 311.103, Kennel Owners

Proposal to Amend Rule 313.103, Eligibility Requirements

The Committee will also discuss whether additional rule changes are required to accomplish the goals of the existing proposal to amend Rule 313.103, Eligibility Requirements. The additional changes may affect, but are not limited to, the following rules:

Rule 313.101, Entry Procedure

Rule 313.104, Registration Certificates

Rule 313.306, Transfer of Claimed Horse

New Rule 303.97, Dually Registered Horses

The Committee will continue its effort to develop rule changes to implement the requirements of HB 2271, 82nd Regular Legislative Session. In particular, the Committee will discuss approaches and potential rules to implement Sections 7, 10, 11 and 28 of HB 2271. These sections relate to bonds, Commission review of active racetrack licenses, the designation of active and inactive racetrack licenses, the renewal of inactive racetrack licenses and associated fees, and disciplinary action.

The additional changes may affect, but are not limited to, the following rules:

New Rule 309.51, Designation of Active and Inactive Racetrack Licenses

New Rule 309.52, Review and Renewal of Inactive Racetrack Licenses

The Committee will discuss the following requests for rule changes:

Proposal to Amend Rule 313.409, Jockey Mount Fees (Requested by the Jockeys' Guild)

Proposal to Amend Rule 313.103, Eligibility Requirements (Requested by the Texas Quarter Horse Association)

Proposals to Amend Rule 321.1, Definitions and General Provisions, and Establish New Rule 321.22, Handicapper Tournament (Requested by Gulf Greyhound Park)

Commission staff will provide an update on potential changes to Chapter 315 regarding inspections of greyhound breeding farms and greyhound training facilities.

The Committee will discuss and accept public input relating to the following rule reviews, which are being conducted pursuant to Texas Government Code, § 2001.039.

Chapter 301, Definitions

Chapter 311, Other Licenses

Chapter 319, Veterinary Practices and Drug Testing

Chapter 321, Subchapter B, Totalisator Requirements and Operating Environment

The public will be given an opportunity to address the Committee and identify any potential subjects that it would like placed on the agenda for discussion at a future committee meeting.

Texas Racing Commission
Title 16, Part VIII,
Chapter 307. Proceedings Before the Commission
Subchapter C. Proceedings by Stewards and Racing Judges

1 307.67. Appeal to the Commission

2 (a) (No change.)

3 (b) Filing Procedure.

4 (1) An appeal must be in writing in a form prescribed by
5 the executive secretary. An appeal from a ruling of the
6 stewards or racing judges must be filed not later than 5:00 p.m.
7 of the third calendar day after the day the person is informed
8 of the ruling by the stewards or racing judges. An appeal from
9 the modification of a penalty by the executive secretary must be
10 filed not later than 5:00 p.m. of the fifth calendar day after
11 the day the person is informed of the penalty modification. The
12 appeal must be filed at the main Commission offices in Austin or
13 with the stewards or racing judges at a Texas pari-mutuel
14 racetrack where a live race meet is being conducted. The appeal
15 must be accompanied by a cash bond in the amount of \$150, to
16 defray the costs of the court reporter and transcripts required
17 for the appeal. The bond must be in the form of a cashier's
18 check or money order.

19 (2) (No change.)

20 (c) - (f) (No change.)

Texas Racing Commission
Title 16, Part VIII,
Chapter 307. Proceedings Before the Commission
Subchapter C. Proceedings by Stewards and Racing Judges

1 Section 307.69. Review by Executive Secretary ~~Action by~~
2 Commission

3 ~~On its own motion or on request by the executive secretary, the~~
4 ~~Commission may reverse a decision of the stewards or racing~~
5 ~~judges, modify a penalty imposed by the stewards or racing~~
6 ~~judges, or reinstate a person's license and rescind the penalty.~~

7 (a) Within fourteen days after a board of stewards or judges
8 issues a written ruling under Section 307.63 of this title
9 (relating to Rulings), the executive secretary may review the
10 ruling and modify the penalty. A penalty modified by the
11 executive secretary may include a fine not to exceed \$10,000, a
12 suspension not to exceed two years, or both a fine and a
13 suspension.

14 (b) The decision to modify a penalty must be on a form that
15 includes:

16 (1) the full name, license type, and license number of the
17 person who is the subject of the penalty modification;

18 (2) the original ruling number and the date the ruling was
19 issued by the stewards or judges;

20 (3) the date the modified penalty was issued by the
21 executive secretary;

22 (4) the modified penalty imposed;

23 (5) a statement of the reason for modifying the penalty;

24 and

25 (6) a statement informing the person of the person's right
26 to appeal the ruling, with the modified penalty, to the
27 Commission.

Texas Racing Commission
Title 16, Part VIII,
Chapter 307. Proceedings Before the Commission
Subchapter C. Proceedings by Stewards and Racing Judges

1 (c) In determining whether to modify a penalty, the executive
2 secretary may consider, but is not limited to, the following
3 reasons:

4 (1) to further the uniform and consistent treatment of
5 similarly situated individuals; and

6 (2) to remedy rulings where the penalties available to the
7 stewards or judges are insufficient to adequately address the
8 violation.

9 (d) The decision to modify a penalty must be signed by the
10 executive secretary.

11 (e) The executive secretary shall provide written notice to each
12 person who is subject to a penalty modification decision under
13 this section by:

14 (1) sending by certified mail, return receipt requested, a
15 copy of the decision to the person's last known address, as
16 found in the Commission's licensing files; or

17 (2) personal service by any Commission employee.

18 (f) An appeal of a ruling whose penalty has been modified under
19 this section must be filed in accordance with Section 307.67 of
20 this title (relating to Appeals to the Commission.)

Texas Racing Commission
Title 16, Part VIII,
Chapter 311. Other Licenses
Subchapter A. Licensing Provisions
Division 1. Occupational Licenses

1 **Sec. 311.3. Information for Background Investigation.**

2 (a) Fingerprint Requirements and Procedure.

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

4 (4) A person who desires to renew an occupational license
5 must:

6 (A) have submitted a set of fingerprints pursuant to this
7 section within the three years prior to renewal; or

8 (B) provide a new set of fingerprints for classification
9 by the Federal Bureau of Investigation; or

10 (C) if the applicant's original fingerprints are
11 classified and on file with the Department of Public Safety, the
12 applicant must pay a processing fee of \$34.25 to resubmit the
13 original fingerprints in lieu of submitting another set of
14 fingerprints under paragraph (6) of this subsection.

15 (5) (No change.)

16 (b) (No change.)

Texas Racing Commission
Title 16, Part VIII
Chapter 311. Other Licenses
Subchapter B. Specific Licenses

1 **Section 311.103. Kennel Owners**

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

3 (e) Restrictions on Placement in Kennels. A person who owns an
4 interest in a kennel booked at one Texas racetrack may not:

5 (1) own an interest in another kennel booked at that

6 racetrack; ~~or~~

7 (2) be residentially domiciled with a person who owns an
8 interest in another kennel booked at that racetrack; or

9 (3) own an interest in a greyhound that is racing out of
10 another kennel booked at that racetrack.

11 (f) (No change.)

Texas Racing Commission
Title 16, Part VIII,
Chapter 313. Officials and Rules of Horse Racing
Subchapter B. Entries, Scratches, and Allowances
Division 1. Entries

1 **Sec. 313.103. Eligibility Requirements**

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

3 (1) be properly registered with the appropriate national
4 breed registry;

5 (2) be eligible to enter the race under the conditions of
6 the race; and

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

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

11 (B) have two published workouts, one within 90 days
12 and one within 45 days of the race entered.

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

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

19 (d) A horse may not be entered in more than one race scheduled
20 for one race day, unless at least one of the races is a stakes
21 race.

22 (e) A horse may not start in a stakes race unless:

23 (1) the nominating, sustaining, entry, and starting fees
24 have been paid in full by cash, cashier's check, certified
25 check, or money order on or before the time specified in the
26 conditions of the race; or

Texas Racing Commission
Title 16, Part VIII,
Chapter 313. Officials and Rules of Horse Racing
Subchapter B. Entries, Scratches, and Allowances
Division 1. Entries

27 (2) the amount of the applicable fees are on account with
28 the horsemen's bookkeeper at the time the fees are due as
29 specified by the conditions of the race.

30 (f) Except as otherwise provided by this section for first-time
31 starters, to be eligible to start in a race, a horse must have
32 either started in a race or had a published workout in the 45-
33 day period preceding a race.

34 (g) To be entered in a race around a turn for the first time, a
35 quarter horse must:

36 (1) have a published workout around a turn at a minimum
37 distance of 660 yards in the 45-day period preceding the race;
38 and

39 (2) be approved by the clocker, the outrider and, if the
40 horse is worked from the gate, the starter.

41 (h) To be eligible to start in a race, a horse must be properly
42 tattooed and the horse's registration certificate showing the
43 tattoo number of the horse must be on file with the racing
44 secretary before scratch time for the race, unless the stewards
45 authorize the certificate to be filed at a later time.

46 ~~(i) A horse may not participate as a member of more than one~~
47 ~~breed at the same race meeting, even though the horse may be~~
48 ~~registered in more than one breed registry.~~

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

03/14/2012

Date of Request: _____

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

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

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

Contact Information:

| | | | |
|------------------|--------------|-------------|--------------|
| Name: | Ricky Walker | Phone(s): | 512-833-6699 |
| E-mail address: | | Fax number: | |
| Mailing address: | | | |

Check appropriate box(s)

| | |
|-------------------------------------|--|
| <input type="checkbox"/> | Personal Submission <i>OR</i> |
| <input checked="" type="checkbox"/> | Submission on behalf of <u>Texas Racing Commission</u> (Name of Organization) |

| | | | |
|-------------------------------------|---|---------------------|------------------|
| <input checked="" type="checkbox"/> | If known, Proposed Change to Chapter: | Chapter: <u>313</u> | Rule: <u>101</u> |
| <input type="checkbox"/> | If known, Proposed Addition to Chapter: | Chapter: <u>313</u> | Rule: <u>103</u> |
| <input type="checkbox"/> | If known, Other Rules Affected by Proposal: | Chapter: <u>313</u> | Rule: <u>104</u> |
| | | Chapter: <u>313</u> | Rule: <u>306</u> |
| | NEW RULE | Chapter: <u>303</u> | Rule: <u>97</u> |
| | | Chapter: _____ | Rule: _____ |

A. Brief Description of the Issue

With the Commission's proposal to amend 313.103(i) by deleting the rule relating to dually registered horses, staff held a meeting with stakeholders on March 14, 2012, to address several related issues. Stakeholders included the racing secretaries of Retama Park and Lone Star Park, Paint Horse representatives, one Quarter Horse representative, and a representative of the Texas Horsemen's Partnership (THP).

The meeting focused on issues relating to the registration papers of dually registered horses and, if the race is a mixed race, which breed organization will pay the Breeders' Awards.

B. Discussion of the Issue and Problem

Issues can arise when a dually registered horse is entered and the racing office is not aware the animal is dually registered or when both sets of registration papers are not on file. This is important for two main reasons:

1. If the dually registered horse is entered in a claiming race, there are no rules to ensure the claimant receives both sets of papers.
2. There is no way to chart the horse's winnings on both sets of papers if both sets of papers are not required to be on file in the racing office.

Another issue that has been identified is when a dually registered horse competes in a mixed race and qualifies for a breeder award. The question arises as to what breed registry is responsible for the award payout, or is both responsible.

C. Possible Solutions and Impact

Revising rules 313.103(h), 313.104(f) and 313.306(c) would ensure that both sets of papers are on file in the racing office and the claimant is able to receive both sets of papers in a claiming race.

Additionally, by requiring that both sets of papers be on file in the racing office, the racing secretary could identify a dually registered horse and maintain the performance record on both sets of papers.

Staff recommends revising rule 313.101 by adding a rule that states: upon entry of a mixed breed race, the person entering a dually registered horse into a mixed breed race shall declare which breed the horse intends to run as for purposes of Breeder Awards eligibility.

Staff recommends a new rule in Chapter 303. Rule 303.97 will address stakeholders' concerns relating to Accredited Texas Breeder awards being paid by both breed registries. The proposed rule states that a dually registered horse cannot receive an award from more than one recognized breed registry for the same race.

D. Support or Opposition

Staff has discussed these proposals with industry representatives and has not learned of any opposition.

E. Proposals

Rule §313.101, Entry Procedure

- (a) The racing secretary is responsible for receiving entries for all races.
- (b) Except as otherwise provided by this section, an entry must be in writing on a form provided by the association.
- (c) An entry must be made in writing, by telephone, or by facsimile to the racing secretary, but must be confirmed in writing should the stewards or racing secretary so request.
- (d) If a horse is being entered for the first time at a race meeting, the horse must be identified on the entry by stating its name, color, sex, age, and the name of its sire and dam, as registered with the appropriate breed registry.
- (e) A horse which, during the 12-month period preceding the date of a race, has started in a race where past performance lines are available, but which are not on file with the Daily Racing Form or the American Quarter Horse Association Equibase, may not be entered at a racetrack licensed in this state unless the owner of the horse has furnished performance records to the racing secretary at the time of entry.
- (f) A person entering a dually registered Accredited Texas Bred horse in a mixed breed conditioned race shall declare during entry which breed the horse intends to run as for purposes of Breeder Awards eligibility.

Rule §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 45 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 one race scheduled for one race day, unless at least one of the races is a stakes race.
- (e) A horse may not start in a stakes race unless:
 - (1) the nominating, sustaining, entry, and starting fees have been paid in full by cash,

cashier's check, certified check, or money order on or before the time specified in the conditions of the race; or

(2) the amount of the applicable fees are on account with the horsemen's bookkeeper at the time the fees are due as specified by the conditions of the race.

(f) Except as otherwise provided by this section for first-time starters, to be eligible to start in a race, a horse must have either started in a race or had a published workout in the 45-day period preceding a race.

(g) To be entered in a race around a turn for the first time, a quarter horse must:

(1) have a published workout around a turn at a minimum distance of 660 yards in the 45-day period preceding the race; and

(2) be approved by the clocker, the outrider and, if the horse is worked from the gate, the starter.

(h) To be eligible to start in a race, a horse must be properly tattooed and the horse's registration certificate, or certificates if dually registered, showing the tattoo number of the horse must be on file with the racing secretary before scratch time for the race, unless the stewards authorize the certificate or certificates to be filed at a later time.

~~(i) A horse may not participate as a member of more than one breed at the same race meeting, even though the horse may be registered in more than one breed registry.~~

Rule §313.104. Registration Certificates

(a) A certificate of registration or eligibility certificate filed with an association to establish eligibility of a horse to be entered in a race must accurately reflect the correct and true ownership of the horse. The stewards may authorize the entry of a horse with a pending transfer.

(b) The name of the owner printed on the program must conform to the ownership declared on the certificate of registration or eligibility certificate, unless a stable name has been registered for the owner.

(c) An individual may not alter or forge a certificate of registration, certificate of eligibility, or other document relating to ownership or registration.

(d) The racing secretary shall ensure that registration certificates are secured in a manner that prevents access by unauthorized individuals.

(e) Not later than 24 hours after a trainer brings a horse on to association grounds, the trainer shall register the horse with the racing secretary.

(f) If a horse is dually registered and entered in a claiming race, both certificates of registration must be in the racing secretary's office.

Rule §313.306. Transfer of Claimed Horse

(a) A horse that has been claimed in a claiming race shall be taken after the race to the area designated by the association for delivery to the claimant, unless the horse is designated for testing.

(b) A person may not refuse to deliver a claimed horse.

(c) The registration certificate of a claimed horse, and both certificates of a dually registered claimed horse, shall transfer to the successful claimant.

(d)(e) The engagements of a claimed horse automatically transfer to the new owner. A claimed horse is ineligible for entry in a future race unless the entry is made on behalf of the new owner.

(e) (d) A horse may not be delivered to a successful claimant without written authorization from a steward or a designee of the stewards.

Rule §303.97. Dually Registered Horses

Dually registered horses that are eligible for Accredited Texas Bred Incentive program awards are not eligible for awards from more than one recognized breed registry per race.

Chapter 309. Racetrack Licenses and Operations

Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

1 Sec. 309.51. DESIGNATION OF ACTIVE AND INACTIVE RACETRACK
2 LICENSES

3 (a) Initial Designation. The Commission shall designate a
4 racetrack license as either active or inactive as those
5 terms are defined in subsection (b). The Commission shall
6 make the initial designation for each track by September 1,
7 2012.

8 (b) Definitions.

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

13 (2) "Active-Other" means the license holder has made
14 the following specific good faith efforts to conduct live
15 racing:

16 (A) applied for and received live race dates
17 under §309.41, Allocation of Race Dates, that remain
18 pending; and

19 (i) conducted pre-opening simulcasting; or

20 (ii) provided a bond under subsection (e) of
21 this section to ensure that the license holder
22 conducts pre-opening simulcasting and completes
23 the pending allocated live race dates.

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

27 (c) Subsequent Designation. After the initial racetrack
28 designation is made under subsection (a) of this section,
29 the Commission may change the designation of the racetrack

Chapter 309. Racetrack Licenses and Operations

Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

1 license at any time if the facts that supported the current
2 designation change.

3 (d) Racetrack Reviews.

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

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

9 (e) Bonds.

10 (1) To be designated as Active-Other under clause
11 309.51(b)(2)(A)(ii) of this section, a license holder shall
12 submit a bond by September 1 of the fiscal year for which
13 it is offered.

14 (2) The amount of the bond for the State Fiscal Year
15 beginning September 1, 2012, and each year thereafter is
16 \$400,000.

17 (3) Return or Forfeiture of Bond.

18 (A) If the racetrack conducts pre-opening
19 simulcasting during the first fiscal year of the bond,
20 the bond shall be retained for an additional fiscal
21 year or until the racetrack completes its first live
22 race meet. Upon completion of the racetrack's first
23 live race meet within the first two fiscal years of
24 the bond, the Commission shall return the bond to the
25 license holder.

26 (B) If the racetrack does not conduct pre-opening
27 simulcasting during the initial fiscal year of the
28 bonding period, the bond shall be forfeited on August
29 31 of the same fiscal year.

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Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

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

6 (4) The bond of a horse racetrack that is forfeited
7 under this section shall accrue to the Escrowed Purse
8 Account under §321.509 of Chapter 321 and shall be
9 distributed in accordance with that section. The bond of a
10 greyhound racetrack that is forfeited under this section
11 shall accrue to the state greyhound breed registry and be
12 distributed through the Accredited Texas Bred Program.

13 (5) If an Active-Other racetrack forfeits a bond under
14 this section, the Commission shall review and may change
15 the license's designation as Active-Other at a regularly
16 scheduled meeting to be held within the following four
17 months of the bond forfeiture.

18 (f) Failure to Conduct Granted Live Race Dates.
19 Except as authorized by the Executive Secretary under
20 §309.41(h), if an Active-Operating or an Active-Other
21 racetrack fails to conduct any live race dates granted to
22 it by the Commission, the Commission shall review and may
23 change the license's designation at a regularly scheduled
24 meeting to be held within the following four months of the
25 bond forfeiture.

26
27
28

Chapter 309. Racetrack Licenses and Operations
Subchapter A. Racetrack Licenses
Subdivision 2. Active and Inactive Racetrack Licenses

1 Sec. 309.52. REVIEW AND RENEWAL OF INACTIVE RACETRACK
2 LICENSES.

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

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

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

8 (3) designate the license as Inactive; or

9 (4) refer the inactive racetrack license to the State
10 Office of Administrative Hearings for an evidentiary
11 hearing and Proposal for Decision as to whether the
12 Commission should refuse to renew the license.

13 (b) Application for Review.

14 (1) Each inactive racetrack license holder must submit
15 an application for renewal on a form prescribed by the
16 executive secretary.

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

19 (3) The applicant must swear before a notary public to
20 the truth and validity of the information in the
21 application and its supplemental documents. If the
22 applicant is not an individual, the chief executive officer
23 of the applicant must swear before a notary public to the
24 truth and validity of the information in the application
25 and its supplemental documents.

26 (4) The applicant must state the name, address, and
27 telephone number of an individual designated by the
28 applicant to be the primary contact person for the
29 Commission during the review and renewal process.

Chapter 309. Racetrack Licenses and Operations

Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

1 (c) Renewal Criteria. In determining whether to renew an
2 inactive racetrack license, the Commission shall consider:

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

4 (A) financial stability;

5 (B) ability to conduct live racing;

6 (C) ability to construct and maintain a racetrack
7 facility;

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

9 and

10 (2) other necessary factors considered in the issuance
11 of the original license.

12 (3) For purposes of this section, the Commission will
13 consider, but is not limited to, the following factors as
14 evidence that a license holder is making good faith efforts
15 to conduct live racing:

16 (A) securing financial support to construct the
17 racetrack facility;

18 (B) purchasing the real property of the designated
19 location for which the racetrack license was granted;

20 (C) entering into contracts for the construction of
21 the simulcasting and racetrack facilities;

22 (D) securing Commission approval of construction
23 plans;

24 (E) securing permits from regulatory authorities
25 concerning pre-construction matters such as utilities
26 and road improvements; and

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

Chapter 309. Racetrack Licenses and Operations

Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

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

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

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

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

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

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

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

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

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

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

28 (g) Bonds. The Commission may require an inactive racetrack
29 license holder to provide a bond under §6.032 of the Act to

Chapter 309. Racetrack Licenses and Operations

Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

1 ensure completion of any or all of the factors listed in
2 subsection (c) of this section. The amount of the bond
3 shall be determined by the Commission.

4 (h) Review Fees.

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

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

Chapter 309. Racetrack Licenses and Operations

Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

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

DRAFT

TEXAS RACING ACT – RELEVANT SECTIONS

Sec. 6.0601. Designation Of Active And Inactive Racetrack Licenses

- (a) The commission shall designate each racetrack license as an active license or an inactive license. The commission may change the designation of a racetrack license as appropriate.
- (b) The commission shall designate a racetrack license as an active license if the license holder:
 - (1) holds live racing events at the racetrack; or
 - (2) makes good faith efforts to conduct live racing.
- (c) The commission by rule shall provide guidance on what actions constitute, for purposes of this Act, good faith efforts to conduct live racing.
- (d) Before the first anniversary of the date a new racetrack license is issued, the commission shall conduct an evaluation of the license to determine whether the license is an active or inactive license.
- (e) An active license is effective until the license is designated as an inactive license or is surrendered, suspended, or revoked under this Act.

Sec. 6.0602. Renewal of Inactive Racetrack License; Fees

- (a) The commission by rule shall establish an annual renewal process for inactive licenses and may require the license holder to provide any information required for an original license application under this Act. An inactive license holder must complete the annual renewal process established under this section until the commission:
 - (1) designates the license as an active license; or
 - (2) refuses to renew the license.
- (b) In determining whether to renew an inactive license, the commission shall consider:
 - (1) the inactive license holder's:
 - (A) financial stability;
 - (B) ability to conduct live racing;
 - (C) ability to construct and maintain a racetrack facility; and
 - (D) other good faith efforts to conduct live racing; and
 - (2) other necessary factors considered in the issuance of the original license.
- (c) The commission may refuse to renew an inactive license if, after notice and a hearing, the commission determines that:
 - (1) renewal of the license is not in the best interests of the racing industry or the public; or
 - (2) the license holder has failed to make a good faith effort to conduct live racing.
- (d) The commission shall consult with members of the racing industry and other key stakeholders in developing the license renewal process under this section.
- (e) The commission shall set and collect renewal fees in amounts reasonable and necessary to cover the costs of administering and enforcing this section.

(f) The commission by rule shall establish criteria to make the determinations under Subsections (c)(1) and (2).

Sec. 6.032. Bond.

(a) The commission at any time may require a holder of a racetrack license or an applicant for a racetrack license to post security in an amount reasonably necessary, as provided by commission rule, to adequately ensure the license holder's or applicant's compliance with substantive requirements of this Act and commission rules.

(b) Cash, cashier's checks, surety bonds, irrevocable bank letters of credit, United States Treasury bonds that are readily convertible to cash, or irrevocable assignments of federally insured deposits in banks, savings and loan institutions, and credit unions are acceptable as security for purposes of this section. The security must be:

- (1) conditioned on compliance with this Act and commission rules adopted under this Act; and
- (2) returned after the conditions of the security are met.

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CARDWELL, HART & BENNETT, L.L.P.
ATTORNEYS AT LAW

807 BRAZOS
SUITE 1001
AUSTIN, TEXAS 78701-2553

TELEPHONE: (512) 322-0011
FAX: (512) 322-0808

March 20, 2012

Via Electronic Mail

Mark Fenner
General Counsel
Texas Racing Commission
8505 Cross Park Dr. #110
Austin, Texas 78754

Re: Draft Rules on Active/Inactive Racetrack Licenses

Dear Mark:

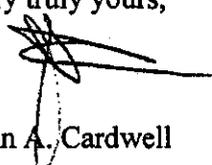
After reviewing the draft rules on Active/Inactive Racetrack Licenses, we have a suggested change to the language of a draft rule and a question.

Our suggested change is to draft Sec. 309.52(c)(2) on page 6 at line 11. We ask the Commission to consider adding the phrase "under § 6.04 of the Act" to the rule. As amended, subsection (c)(2) would read: "(2) other necessary factors considered in the issuance of the original license under § 6.04 of the Act."

Our question concerns when the proposed renewal process for racetracks designated as "inactive" would begin. Our understanding is that no later than September 1, 2012, each racetrack license will be designated as "Active-Operating", "Active-Other" or "Inactive. Sec. 309.52(a) provides that the Commission "shall annually review each inactive racetrack license." Our question is when would the first "annual review" of an inactive license be conducted? In other words, if a racetrack license is designated as "inactive" on September 1, 2012, then when would the application renewal process begin? By September 1, 2013 or earlier? We suggest that the Commission consider amending the draft rules to provide the answer to this question.

Thank you.

Very truly yours,


John A. Cardwell

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March 20, 2012

Robert Schmidt
Chairman
Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, TX 78754

Re: Comments on Draft Rule to Implement HB 2271- "Good Faith Efforts" for Active License Designation

Dear Chairman Schmidt:

We appreciate the opportunity to participate in the meeting last week regarding the rule to implement HB 2271, and offer these preliminary comments on the draft rule on behalf of Sam Houston Race Park, Laredo Race Park, and Valley Race Park. We submit that the proposed rule does not comport with HB 2271 because it does not include a "good faith effort" standard for designation as an active license. Instead, the rule imposes an absolute bar to any racetrack being considered "active" unless it obtains live race dates, regardless of the license holder's good faith efforts. The rule also requires certain racetracks that have been designated as "active" to post a bond that could be forfeited even if there has been no violation of the Racing Act or Commission Rules.

We believe that the absolute rule prohibiting any track that has not yet received live race dates from being considered to have made "good faith efforts" is inconsistent with HB 2271. Rather than imposing a single strict requirement that must be met in order to be considered an "active" license, the draft rule should be revised to provide examples of "efforts" that the Commission will consider to determine whether a license holder is pursuing live racing "in good faith."

We also believe that the proposed rule's provisions allowing forfeiture of a bond in the absence of any violation of the Racing Act or Commission Rules is inconsistent with the provisions of HB 2271 limiting forfeiture to those two circumstances. In the following paragraphs, we aim to elaborate on our concerns described above and make suggestions for future drafts of the proposed rule.

I. CONCERNS WITH DRAFT RULE

A. *The Proposed Rule Does Not Contain a "Good Faith Effort" Standard for Becoming an Active License as Required by HB 2271*

Section 6.0601(b)(2) of the Texas Racing Act, as amended by HB 2271, requires the Commission to designate a racetrack license as active if the license holder "(1) holds live racing events at the racetrack; or (2) makes good faith efforts to conduct live racing." The draft rule does not contain a "good faith effort" standard for becoming an active license. Instead, the draft rule provides that license holders must, at a minimum, apply for and receive live racing dates in order to be considered an "active" license. In addition, license holders that did not conduct live racing in the

prior fiscal year must do one of the following: (a) conduct pre-opening simulcasting, or (b) post a \$400,000 bond that will be forfeited if live racing or pre-opening simulcasting are not conducted.

While the proposed rule would allow some license holders that have not conducted live racing to temporarily qualify as "active" licenses, the requirements for obtaining this designation are not "good faith efforts" as required by the statute. Instead, the proposed rule has a single absolute criterion that must be met: receiving live race dates. Had the Legislature intended to create the rigid standard proposed by the draft rule, it could easily have imposed this requirement in the statute. Instead, it required the Racing Commission to make a subjective determination of what constitutes "good faith efforts" to conduct live racing.

To determine whether a license holder is pursuing live racing "in good faith," the Racing Commission must necessarily examine the license holder's subjective *intent* based on its *efforts*. This standard not compatible with draft rule's absolute bar on designating any license as active if it has not received live racing dates. Black's Law Dictionary defines "good faith" as:

A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation¹

Merriam Webster defines an "effort" as "a serious attempt."² Given these definitions, determining whether a license holder is making a "good faith effort" to conduct live racing requires examining whether serious attempts were made to conduct live racing, based on the license holder's intentions and the specific circumstances. This intent cannot be gleaned from a single, strict requirement that bars any fact-specific examination of the license-holders "good faith efforts."

Other administrative agencies that have imposed a "good faith effort" standard have provided criteria that involve evaluating an entity's subjective intent based on its "efforts" under the circumstances. For example, the Texas Department of Housing and Community Affairs (TDHCA) is required to make a "good faith effort" to assist historically underutilized businesses (HUBs) receive certain percentages of all contracts awarded by the TDHCA.³ To determine whether "good faith efforts" have been made toward this goal, TDHCA rules provide a list of efforts that are deemed a "good faith effort" even if the HUB procurement goals are not actually met. These "efforts" include items such as: "where feasible, assess bond and insurance requirements and design requirements that reasonably permit more than one business to perform the work," and "seek HUB subcontracting in contracts that are less than \$100,000 whenever possible."⁴ Consistent with an appropriate "good faith effort" standard, these criteria are "efforts" that indicate subjective intent, and are also qualified by whether the efforts are "feasible" and "possible" based on the circumstances. This shows that an appropriate "good faith effort" standard requires a *fact-specific* inquiry to determine whether an entity subjectively exercised good faith in pursuing a certain goal under specific facts. The draft rule implementing HB 2271 does not contain a standard of this nature for becoming an "active" license. The Legislature intended for the Racing Commission to conduct a fact-specific review to determine whether the license holder's efforts to conduct live racing demonstrate "good faith."

B. The Bonding Requirement for "Active-Other" Licenses Conflicts with HB 2271

The proposed requirement that a license holder post a bond to ensure that either simulcasting or live racing is conducted under Section 309.51(a)(2)(A)(ii) of the draft rule also conflicts with Section 6.032 of the Racing Act, as amended by HB 2271. Section 6.032 provides that a bond may be required to "adequately ensure the license holder's or applicant's compliance with

¹ Black's Law Dictionary 762 (7th ed. 2009).

² <http://www.merriam-webster.com/dictionary/effort> (last visited on March 19, 2012).

³ 10 Tex. Admin. Code § 1.6

⁴ 10 Tex. Admin. Code § 1.6(c)(3)(C), (I).

substantive requirements of [the Texas Racing] Act and commission rules." In contrast, the draft rule would require license holders that have not conducted live racing to post a bond "to ensure that the license holder conducts pre-opening simulcasting and completes the pending allocated live race dates." This is not a permissible purpose for a bonding requirement under HB 2271 and Section 6.032. Instead, a bond can only be required to ensure compliance with the Racing Act and Commission rules. Therefore, requiring a bond in order to ensure that either simulcasting or live racing is conducting violates HB 2271 and is not a valid path for becoming an "active" license.

II. SUGGESTED REVISIONS TO DRAFT RULE

Sam Houston Race Park, Laredo Race Park, and Valley Race Park submit that the rule should be revised to provide guidance as to the type of "efforts" the Commission will consider to determine whether a license holder is pursuing live racing in good faith. We have previously submitted a list of suggestions for these criteria, including the following:

- Maintaining land rights for the licensed location.
- Obtaining and maintaining any appropriate zoning designation for the licensed property.
- Negotiations with regulatory or local authorities at the license location or potential alternative locations concerning preconstruction matters such as land rights, zoning, utilities and road improvements.
- Submitting an application for a change of location, if appropriate.
- Regular and timely payments to the Texas Racing Commission that support the horse racing industry (i.e., annual fees).
- Participation and attendance at TRC working group meetings.
- Pursuing regulatory changes that would improve the economic viability of live racing at the location.
- Submitting an application for change of ownership
- Demonstrating experienced team of employees and officers capable of developing the project.
- Availability and access to financial capital necessary to complete the project.

These criteria indicate that a license holder is exercising good faith by ensuring that it has the means, experience, and resources to conduct live racing, and that the license holder is taking demonstrable, affirmative steps toward being able to conduct live racing. These criteria appropriately capture the subjective "good faith efforts" standard provided by the Legislature.

The text of HB 2271 also supports the conclusion that these are the type of criteria the Legislature envisioned in establishing a "good faith efforts" standard. In Section 6.0602(b)(1), the Legislature lists several factors to be considered in deciding whether to renew an inactive license, including: (A) financial stability, (B), ability to conduct live racing, (C), ability to construct and maintain a racetrack facility, and (D) *other* good faith efforts to conduct live racing. We read subsection (D)'s reference to "other good faith efforts" to indicate that factors (A) through (C) are specific examples of "good faith efforts" that must be considered, in addition to "other" types under subsection (D). This indicates that the factors under (A) through (C) are the *types* of factors the Legislature intended to be considered in determining whether good faith efforts are being made to conduct live racing. Therefore, these types of efforts and qualifications, but at a higher level, should also determine whether a license should be considered as "active." The suggestions we have made above and previously for appropriate "good faith efforts" criteria are consistent with this interpretation of HB 2271.

We appreciate the opportunity to submit these comments on the draft rule and look forward to continued discussion on an appropriate "good faith efforts" standard for becoming an active license that will comply with the language and intent of HB 2271.

Very truly yours,



Andrea B. Young
President

cc: Mark Fenner, General Counsel
Chuck Trout, Executive Director
Commissioner Ronald F. Ederer
Commissioner Scott Haywood
Commissioner Gloria Hicks
Commissioner Michael F. Martin, DVM
Commissioner John T. Steen, III
Commissioner Vicki Smith Weinberg
Susan Combs, Comptroller of Public Accounts
Allan Polunsky, Public Safety Commission

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Facsimile (512) 439-2165

March 22, 2012

Ad Hoc Committee on Rules to Implement HB 2271
c/o Mr. Mark Fenner
General Counsel
Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, Texas 78754

Via Telecopy

Re: Comments to Potential Rulemaking: "Good Faith Efforts"

Dear Mark:

We appreciated the opportunity to participate in the meeting of the Ad Hoc Committee on Rules to Implement HB 2271 held on March 13, 2012. During that meeting, we discussed draft rule changes which were ostensibly drafted to implement Sections 7, 10, 11 and 28 of HB 2271. After much discussion of the draft rule changes, you invited the attendees to provide written comments. These comments are provided on behalf of LRP Group, Ltd., Valle de los Tesoros, Ltd., and Gulf Coast Racing, LLC.

We have a fundamental concern with the definition of "Active-Other" found in the draft Texas Racing Rules § 309.51(a)(2) related to the designation of a racetrack as either "Active" or "Inactive." Under this draft approach, any racetrack where the license holder is not currently conducting live racing is automatically considered "Inactive" unless the strict criteria for an "Active-Other" classification can be met. To be considered "Active-Other," the license holder must have been allocated live race dates and either (1) conduct pre-opening simulcasting or (2) post a \$400,000.00 bond which will be refunded only if pre-opening simulcasting is conducted within one year and live racing is conducted within two years. This approach runs afoul of HB 2271, as discussed below.

I. Designation as "Active" or "Inactive"

In § 6.0601 of the Texas Racing Act, the Legislature clearly stated that the Commission "shall" designate a racetrack license as an "Active" license if the license holder makes "good faith efforts" to conduct live racing (emphasis added). Section 6.0601 of the Act further provides that the Commission "shall" adopt a rule providing guidance on what actions constitute "good faith efforts" (emphasis added). These statutory provisions are mandatory directives to the Commission. The language is clear and unambiguous. A racetrack must be classified as

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MOLTZ MORTON O'TOOLE
LLP

Mr. Mark Fenner

March 22, 2011

Page 2

"Active" if it has made "good faith efforts" toward live racing. The Commission is further directed to establish guidelines on what constitutes "good faith efforts to conduct live racing".

The Commission created the Ad Hoc Committee to Implement HB 2271 because it recognized the challenges in implementing the new statutory process. For several months, the Committee has held periodic meetings with interested persons to discuss what would constitute "good faith efforts". At the request of the Committee, stakeholders (including LRP Group, VDLT, and Gulf Coast Racing) have provided extensive written and oral comments suggesting factors the Commission should consider as "good faith efforts toward live racing". (See e.g., correspondence from this office dated August 17, 2011). Suggested factors include actively pursuing a change of racetrack location for an existing license; seeking approval to begin simulcast operations at a temporary facility in the county of the license; extensive capital investment such as the purchase of land; negotiations with regulatory authorities for pre-construction matters; construction efforts; conducting simulcasting; having allocated race dates; and many others. It was our understanding that the focus of the Committee for the last seven months has been to fulfill the Legislature's intent by creating a non-exclusive list of factors to guide the regulated community on what the Commission would consider when determining if there have been "good faith efforts" toward live racing. The draft proposal takes two of the suggested factors (simulcasting and allocated race dates), decides they are *mandatory requirements*, and ignores all other suggested factors. This approach not only conscripts Legislative intent, it inexplicably dismisses all of the months of hard work and all of the input of the Committee members and regulated entities with respect to initially designating a track as Active or Inactive.

For whatever reason, the draft rule would limit consideration of the multiple factors relating to good faith efforts only to renewal proceedings. That is, the factors would be considered when determining if there have been "*other* good faith efforts to conduct live racing" (emphasis added), as that phrase is used in Section 6.0602(b)(1)(D) of the Act, relating to renewal of an inactive license. Good faith efforts and the associated factors are completely ignored, however, with respect to "good faith efforts to conduct live racing", as that phrase is used in Section 6.0601(b)(2) of the Act, relating to designation of active tracks. The stated reason for suggesting that consideration of "good faith efforts to conduct live racing" be essentially ignored with respect to the designation of a racetrack as active was that the use of the word "other" in Section 6.0602(b)(1)(D) somehow resulted in "good faith efforts" under Section 6.0602(b)(1)(D) meaning something entirely different than "good faith efforts" under Section 6.0601(b)(2). This crafted distinction between the legislature's use of the exact same phrase in two adjacent section of the Act was then apparently expanded to the extent that, for purposes of designation of a racetrack as active, "good faith efforts" is proposed to be defined in a way that is even contrary to any plain use of that phrase. There is nothing in the language of draft rule Section 309.51(b)(2), the definition of "Active-other", that in any way relates to "efforts". We disagree that the Commission is empowered with the discretion to interpret HB 2271 in such a way that totally ignores the clear, plain, and common sense language of the Act.

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Mr. Mark Fenner
March 22, 2011
Page 3

With respect to the suggested dichotomy in the definitions of "good faith efforts" merely due to the presence of the word "other", we agree that many actions could constitute "good faith efforts".¹ One racetrack may undertake certain actions that constitute "good faith efforts" while another racetrack may undertake *other* actions that, while entirely different, may also constitute "good faith efforts". It is also conceivable that one degree of efforts may be sufficient to be considered "active" while another degree of efforts may not. It was our understanding that the multiple prior meetings of the Committee were held to allow stakeholders an opportunity to provide input into crafting guidance as to which efforts would be considered for what purpose. Instead, the draft rule completely redefines "good faith efforts", for purposes of the designation as "Active-other", to the extent that term now has nothing to do with efforts.

As a result, the approach presented at the Committee meeting does absolutely nothing to fulfill the Legislative mandate to recognize the existence of, and provide guidance concerning, what factors constitute "good faith efforts" toward live racing for purposes of classifying a racetrack as "Active." The proposal says either become operational (i.e., simulcast) or pay a large sum of money as a bond, or you will be classified as Inactive. This is not guidance on what factors may be considered to determine if "good faith efforts" are being made - it is a litmus test whereby a racetrack must either be operational or pay an exorbitant bond in order to remain "Active." A rule that says "accomplish this" to be Active is not equivalent to a rule that provides guidance on what constitutes "good faith efforts" toward live racing. The draft rule would circumvent the Legislature's clear language which allows a license holder to undertake affirmative good faith action(s) toward live racing and thus maintain an "Active" status.

During the Committee meeting, there was disagreement among the attendees as to the specifics of how to implement Section 6.0601. It was even suggested that the Legislature intended for the Commission to classify as many racetracks as possible as "Inactive" and, ostensibly based on that legislative intent, the Commission can adopt whatever definitions it sees fit, regardless of the words the Legislature used. While we (and others) strongly assert that such an interpretation is clearly **not** what the Legislature intended, we nevertheless will not engage in a lengthy discussion of when legislative intent is to be analyzed and when it is not necessary to delve into legislative intent due to the clear words used in the statute. We, as well as other stakeholders, could prepare lengthy briefs on the proper determination and use of Legislative intent. But there is no need to engage in such discussions, because they are all a matter of the *degree* of the Commission's duties. All reasonable stakeholders should agree that the clear, unambiguous language of the enacted statute can not be simply ignored. Here, the statute requires the Commission to recognize that there are actions that constitute a "good faith effort" toward live racing in the context of an active track, and the Commission is charged with guiding the regulated community as to what these "good faith efforts" may include.

¹ In fact, the plain reading of § 6.0602 is that financial stability, ability to conduct live racing, and ability to construct and maintain a racetrack facility are themselves examples of "good-faith efforts." Subpart (b)(1)(D) recognizes there are also "other" good faith efforts.
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Mr. Mark Fenner
March 22, 2011
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We recognize that the Legislature has created a difficult task for the Commission. Adopting a rule of non-exclusive guidance describing what the Commission may consider in subjectively determining "good faith efforts" toward live racing is a significant undertaking. Nevertheless, the challenges of the task do not justify the Committee's throwing up its hands in defeat, ignoring the mandate of the Legislature, and creating an all-or-nothing litmus test for the initial designation of a racetrack. That seems to be exactly what the draft rule is advocating.

With respect to how the draft rule could be modified to carry out the mandate of HB 2271, we will not reiterate all of the specific factors which have been discussed at prior Committee meetings. However, we suggest draft Section 309.51(b) generally be amended as follows:

(b) Definitions.

(1) (no change)

(2) "Active-other" means the license holder meets either of the following: has made the following specific good—faith efforts to conduct live racing:

(A) (no change); or

(B) has made good faith efforts to conduct live racing

(3) (no change)

(4) "Good faith efforts to conduct live racing" means the licensee has been determined by the Commission to have undertaken sufficient actions to indicate that the licensee intends to begin live racing within a reasonable time. The nature and degree of actions required for such a determination may vary depending on whether the Commission is determining whether the license will be designated active-other or inactive. In making this determination, the Commission will consider:

(A) the submittal of an Application to Change Location for an existing license;

(B) the submittal of an Application for a Temporary Facility to begin simulcast operations;

(C) conducting pre-opening simulcasting;

(D) the purchase of land for the facility; and

(E) active negotiations with regulatory authorities concerning pre-construction matters, including but not limited to authorities over zoning, utilities, and road improvements.²

² Proposed (A) – (E) are items previously suggested to the Commission by LRP Group, VDLT, and Gulf Coast Racing. We are not suggesting that the considerations set out in our proposed (A) – (E) represents an exhaustive list of what the Commission should consider in determining whether a licensee has undertaken sufficient actions to constitute "good faith efforts" toward live racing. Other stakeholders have made additional suggestions the Commission may want to include in this non-exhaustive list.
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Mr. Mark Fenner
March 22, 2011
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2. Renewal Criteria

In proposed § 309.52(c), the Committee provides a non-exhaustive list of factors the Commission may consider in renewing an "Inactive" racetrack license. While we may not agree entirely with this list of factors, having a non-exhaustive list of factors would appear to comply with the Legislature's intent. However, we believe that draft rule 309.52(c)(3), relating to the factors considered with regard to "good faith efforts to conduct live racing", should be deleted. Instead, the definition of "good faith efforts to conduct live racing", as proposed previously herein, could be used in conjunction with Section 309.52(c)(1)(D) for consideration of such factors. Again, while the weight and other considerations relating to the factors could be different between an "Active-other" and an "inactive" determination, the amended Racing Act mandates that good faith efforts be considered with respect to each.

In addition to the above, we believe the rules should incorporate a notification scheme similar to that used by other Texas agencies in the case of renewal proceedings. (See, for example, 30 TAC Chapter 116, Subchapter D, relating to renewal of Texas Commission on Environmental Quality permits). At a minimum, the rule should require the Commission to notify the licensee that renewal is necessary and the date by which the application should be filed. In addition, the rule should provide that as long as timely application is made, the license remains in effect unless and until renewal is denied by the Commission after notice and hearing. An example of such a rule is as follows:

The executive director shall provide written notice to the inactive license holder that the inactive license must be renewed. Such notice must be provided by certified or registered United States mail no later than October 1 of each year the inactive license remains in effect. The first such notice shall be sent by the Executive Director by October 1, 2013. The notice must specify the procedure for filing an application for review and the information to be included in the application. The application for renewal shall be filed on or before January 1 following the receipt of the notice. The first application for renewal shall be filed by January 1, 2014 with applications filed annually on January 1 thereafter. The Executive Director may extend the deadline for filing the renewal application. The timely filing of a renewal application extends the license until it is renewed or denied by the Commission, after notice and hearing.³

Also, it is quite significant that while HB 2271 mandates a permit renewal process for inactive licenses, it provides that renewal can only be denied after notice and hearing. HB 2271 neither gives racetrack licenses specified terms nor makes any mention of automatic license

³ The purpose of this example is to provide the licensee 90 days to prepare and file the application and to specify a date certain for notice and filing. The actual dates specified (i.e. Notice by October 1 and application by January 1) were chosen to fit into the overall anticipated schedule commencing with initial designations by September 1, 2012 but could be different.
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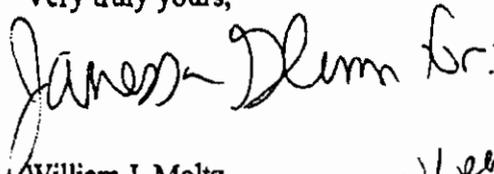
MOLTZ MORTON O'TOOLE
LLP

Mr. Mark Fenner
March 22, 2011
Page 6

expiration. The rules should specify, therefore, that if no timely renewal application is filed, the Commission may either renew the license or refer the matter to SOAH for consideration of denial.

Again, we appreciate the opportunity provide these comments.

Very truly yours,



William J. Moltz *w/permission*
Counsel for Valle de los Tesoros, Ltd.,
LRP Group, Ltd, and Gulf Coast Racing, LLC

WJM/pjp

cc: Chuck Trout, Executive Director
Robert Schmidt, Chairman
Commissioner Ronald F. Ederer
Commissioner Scott Haywood
Commissioner Gloria Hicks
Commissioner Michael F. Martin, DVM
Commissioner John T. Steen, III
Commissioner Vicki Smith Weinberg
Susan Combs, Comptroller of Public Accounts
Allan Polunsky, Public Safety Commission

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: March 12, 2012

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

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

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

Contact Information:

| | | | |
|------------------|--|-------------|--------------|
| Name: | Jockeys' Guild/ John Beech & Mindy Coleman | Phone(s): | 859-523-5625 |
| E-mail address: | mcoleman@jockeysguild.com | Fax number: | 859-219-9892 |
| Mailing address: | 103 Wind Haven Drive, #200, Nicholasville, KY 40356 | | |

Check appropriate box(s)

Personal Submission *OR*

Submission on behalf of Jockeys' Guild, Inc.
(Name of Organization)

If known, Proposed Change to Chapter: Chapter: 313.409 Rule: (c)

If known, Proposed Addition to Chapter: Chapter: 313.409 Rule: (e)

If known, Other Rules Affected by Proposal: Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

A. Brief Description of the Issue

The Jockey Mount Fee scale as provided for in RULE §313.409 is outdated and inadequate for the jockeys. The Jockeys' Guild is also proposing language that would clarify as to what is an appropriate fee when a jockey has been replaced by another rider after he or she has been named on a horse.

B. Discussion of the Issue and Problem

Provide background on the issue to build context. Address the following:

- *What specific problems or concerns are involved in this issue?*
- *Who does the issue affect?*
- *What existing model rules relate to this issue?*
- *Provide relevant quantitative or statistical information if possible.*

Jockey Mount fees are listed as an ARCI Model Rule which is to serve as a recommendation for the state commissions to adopt. However, the scale that was adopted in 2009 by the ARCI has not been adopted by the Texas Racing Commission. As in many states, the Jockeys' Guild reached an agreement with the horsemen's association, only to discover that it would not be acceptable by the Texas Racing Commission. The current schedule is outdated and has only been increased once since 1989. Jockey mount fees for losing mounts have effectively been cut in half by the failure to adjust them for the cost of living for so many years. In addition, the mount fee schedule format was introduced before there was exotic wagering that included places lower than third.

There also needs to be clarification as to what an appropriate Jockey Mount Fee to be paid to a jockey when he/she is removed from his/her mount. While this has been done in the past in Texas, it would be appropriate to have it clearly defined in the Rules. Requiring a double jockey fee to be paid to a jockey who is removed by an owner or trainer without proper cause or notice is only fair when a rider has committed to the mount over others and days prior. The full double jockey fee will provide an additional incentive for owners and trainers to honor their commitments and will properly compensate a jockey who is removed.

The primary groups affected by this rule change would be the owners who pay the jockey fees and the jockeys who receive them. Another group that is affected is the betting public. A change in the rule to add incentives for positions included in certain bets will give a better perception to gamblers that their interests are protected by incentives for jockeys who finish in those positions.

ARCI adopted a model rule in December of 2009 that would provide for a range of pay scale depending on the size of the purse and the size of the daily average handle of the track. This scale ranges from \$40 (for purses \$0-\$2,499) to \$115 (for purses \$100,000 and greater). The ARCI model rule also include a 4th place fee to be paid. It was also recommended at the time of the adoption that using a base year of 2010, commissions should adjust this table based on an average of the following indexes: US Social Security Administration's Cost of Living Adjustment (COLA), US Department of Labor's CPA inflation calculator ([HTTP://BLS.GOV](http://BLS.GOV)), and Consumer Price Index (CPI), local percent change in pari-mutuel handle. As a guideline, taking into account local circumstances, tracks paying purses in excess of \$250,000 per day should move to the higher range in each category and tracks paying below \$125,000 per day in purses should be considered at the lower of the range.

ARCI adopted *ARCI-008-030 Jockeys H. Jockey Fee Earned* in October of 2010 pertaining to the "Double Jock Mounts". While this rule is very similar to the current rule in Texas and there have been circumstances in Texas where the Stewards have deemed that the owner pay the amount earned by the horse to both the jockey who rode in the race and the one that was replaced, there needs to be clarification as to the amount of the fee.

The Jockeys' Guild understands the pressures facing the horse racing industry today and sympathizes with the owners. However, the hard truth is that jockey mount fees have not kept up with the cost of living and leaves jockeys today riding for losing mount fees that are inadequate and insufficient to cover the cost of proper equipment and general living expenses. Seventy percent of the jockeys today do not earn enough money to cover costs of things they should be investing in such as health insurance, temporary disability insurance, and retirement savings. Each jockey can expect to miss six weeks of riding during the upcoming year due to injury and needs to earn enough on a weekly basis to cover insurance costs and time off for recovery. Jockeys in some racing jurisdictions earn less than \$20 for each mount they ride and are foregoing expenditures for safety equipment and supplies that potentially puts their life further at risk, as if they needed anything more.

The fact that there has only been one \$5 increase in mount fees in 25 years is hard to imagine when expenses for everything else associated with racing, i.e. daily rates for training, shoeing, vet care, exercise and pony people, have doubled and in some cases tripled. Because the ARCI Model Rules lists standard mount fees, the jockeys riding in Texas remain riding for a scale that is outdated and insufficient to cover necessary expenses and adequately provide for themselves and their families.

C. Possible Solutions and Impact

Provide possible recommendations to solve the problem. Include details on each proposed solution such as:

- *What solution does this proposal provide?*
- *How will the solution fix the problem?*
- *How will the change affect any entities or stakeholders?*
- *How will you or your organization be affected by the proposed change?*
- *What are the benefits of the proposed change?*
- *What are the possible drawbacks of the proposed change?*
- *Identify possible fiscal impact of the recommended change.*

The Jockeys' Guild proposes an amendment to the current regulation pertaining to Jockey Mount fees that brings jockey mount fees more in line to today's economics as opposed to what they were in the late 80's, which is the last time that the fees were increased except for a \$5 increase in 2000. This proposed amendment will increase jockey mount fees to a more realistic level and allow jockeys to earn fees that will more appropriately pay them for the job they do and the risks they take. It will also not add an unjustified burden on the owners, including those who are racing at tracks with smaller purses as the Guild has taken this into consideration when agreeing to the scale with the Texas Horsemen's Partnership, LLC and then when it submitted this proposal to the Texas Commission.

Please also note that the Guild also proposes that a separate fee be established for the fourth place finisher. An increasing number of bets are placed on superfectas in which the difference between finishing 4th and 5th can mean a very substantial difference to

bettors. While all jockeys make every effort to finish each race as highly placed as possible, it makes sense to adjust the mount fees rule to incentivize each rider to earn the 4th place finish. It is important to consider that all jockeys are necessary in a given race, not just the top three finishers. Even the most successful jockeys finish out of the money in half of their races. Maintaining essentially the same scale of mount fees that was established in the 1980's is unfair.

The proposed changes will certainly benefit the jockeys, but may also benefit other industry participants. Increased jockey fees will help jockeys cover expenditures that will increase safety such as new helmets, vests, stirrups, and riding crops. Many jockeys today are not making enough money through losing mount fees to cover the costs of new and improved safety equipment and are foregoing the improvements and allowing their standard equipment such as stirrups, girths, and goggles to become worn to the point they are unsafe. Increasing fees should provide jockeys the necessary income to cover the costs of these expenditures. This could keep the injury rates to jockeys down and possibly result in lower insurance premiums to racetracks. Increasing fees for losing mounts will also provide additional incentives to jockeys to ride in races they otherwise might skip because of the risk and chance of earning very little money. This should provide for higher quality and safer racing. More experienced jockeys with better equipment may again affect the injury rates at tracks and result in lower premiums. More experienced jockeys could also result in lower injury rates to horses and a more positive outlook on racing.

While the Guild recognizes that the economics of racing are in difficult times and that the horsemen are concerned with the economic status, the majority of the states and horsemen's organizations have increased the losing mount fees even in this difficult time. The race tracks where increases have been negotiated by the Guild include Aqueduct, Belmont, Saratoga, Finger Lakes, Arlington, Hawthorne, Fairmount Park, Calder, Delaware Park, Gulfstream Park, Indiana Downs, Hoosier Park, Prairie Meadows, Tampa Bay, Turf Paradise, Yavapai Downs, Charles Town, Atlantic City, Monmouth, Fair Grounds, Evangeline Downs, Delta Downs, Louisiana Downs, Oaklawn Park, Portland Meadows, Mountaineer Park, Remington, Fair Meadows at Tulsa, Will Rogers Downs, Ruidoso Downs, Sunland Park, SunRay Park, The Downs at Albuquerque, Zia Park, Churchill Downs, Keeneland, Turfway Park, Ellis Park, Kentucky Downs, Emerald Downs, Arapahoe and through legislation in California. Losing mount fees have also been increased at Penn National, Philadelphia Park and Presque Isle Downs. Please note that we recognize that the some of the above listed tracks obviously are bigger tracks and have greater purses. However, at the vast majority of the above tracks, the increased rates already in existence are in excess of the bottom line rates in the Guild is advancing in this proposal for Texas. Please note that the increases are listed by race tracks as opposed to states as not all increase have been as a result of a rule amendment by the Commissions. In jurisdictions where Commissions do not have the authority to establish the pay scale, the Jockeys' Guild and the horsemen's associations have reached an agreement.

D. Support or Opposition

Please identify any affected stakeholder groups that expressed support or opposition. (These stakeholders may include the racetracks, breed registries, owners, kennel owners, trainers, jockeys, veterinarians, or others.)

- *For those stakeholder groups that have expressed an opinion, please list the points on which they agree or disagree, and the arguments they have expressed.*
- *Are there any affected stakeholder groups that have not been consulted on this proposal?*

- Please submit any formal letters of support or opposition by stakeholder groups.

Jockeys' Guild does not foresee any opposition to this revision as it pertains to the increased scale as an agreement has already been reached with Texas Horsemen's Partnership LLC.

There could be opposition to the implementation of the "Double Jock Mount" rule as proposed herein by the trainers and the owners as they would be the one's responsible for paying the double jockey fees when they replace a jockey after he or she has been named on a horse. However, it is believed to be already implemented by the Stewards and this would simply make it clear to all parties involved.

E. Proposal

Provide rule language you are proposing. If you are proposing that current rule language be eliminated, please strikeout the language to be deleted. Please show new language with underlined text.

TITLE 16 ECONOMIC REGULATION
PART 8 TEXAS RACING COMMISSION
CHAPTER 313 OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER D RUNNING OF THE RACE
DIVISION 1 JOCKEYS
RULE §313.409 Jockey Mount Fees

(a) If a jockey and owner or trainer reach an agreement regarding the fee to be paid to a jockey, the parties to the agreement shall ensure that a written agreement, signed by the parties, is delivered to the horsemen's bookkeeper before post time of the race in which the jockey is to ride. The agreement must state the agreed upon fee for a winning mount, a second place mount, a third place mount, and a losing mount.

(b) After a race, the horsemen's bookkeeper shall debit the owner's account for the amount of the appropriate jockey mount fee as specified in the written agreement. If there is no written agreement, the horsemen's bookkeeper shall debit the owner's account for the appropriate jockey mount fee specified in subsection (c) of this section.

(c) In the absence of a written agreement, the following jockey mount fees apply:

| Purse | Winning Mount | Second Mount | Third Mount | Losing Moun |
|------------------------------|---------------|--------------|-------------|-------------|
| \$500 & under | \$33 | \$33 | \$33 | \$33 |
| \$600-699 | \$36 | \$33 | \$33 | \$33 |
| \$700-999 | 10% Win Purse | \$33 | \$33 | \$33 |
| \$1,000-1,499 | 10% Win Purse | \$33 | \$33 | \$33 |
| \$1,500-1,999 | 10% Win Purse | \$35 | \$33 | \$33 |
| \$2,000-3,499 | 10% Win Purse | \$45 | \$40 | \$38 |

| | | | | |
|----------------------------|--------------------------|---------------------------|--------------------------|------------------|
| \$3,500-4,999 | 10% Win Purse | \$55 | \$45 | \$40 |
| \$5,000-9,999 | 10% Win Purse | \$65 | \$50 | \$45 |
| \$10,000-14,999 | 10% Win Purse | 5% Place Purse | 5% Show Purse | \$50 |
| \$15,000-24,999 | 10% Win Purse | 5% Place Purse | 5% Show Purse | \$55 |
| \$25,000-49,999 | 10% Win Purse | 5% Place Purse | 5% Show Purse | \$65 |
| \$50,000-99,999 | 10% Win Purse | 5% Place Purse | 5% Show Purse | \$80 |
| \$100.00 and up | 10% Win Purse | 5% Place Purse | 5% Show Purse | \$105 |

| <u>Purse</u> | <u>Win</u> | <u>Place</u> | <u>Show</u> | <u>Fourth</u> | <u>Losing</u> |
|---------------------------|------------|--------------|-------------|---------------|---------------|
| <u>Up to \$4,999</u> | <u>10%</u> | <u>\$70</u> | <u>\$60</u> | <u>\$58</u> | <u>\$50</u> |
| <u>\$5,000 to \$9,999</u> | <u>10%</u> | <u>\$80</u> | <u>\$65</u> | <u>\$63</u> | <u>\$55</u> |
| <u>\$10,000-\$14,999</u> | <u>10%</u> | <u>5%</u> | <u>\$75</u> | <u>\$68</u> | <u>\$60</u> |
| <u>\$15,000-\$24,999</u> | <u>10%</u> | <u>5%</u> | <u>5%</u> | <u>\$75</u> | <u>\$70</u> |
| <u>\$25,000-\$49,999</u> | <u>10%</u> | <u>5%</u> | <u>5%</u> | <u>\$80</u> | <u>\$75</u> |
| <u>\$50,000-\$99,999</u> | <u>10%</u> | <u>5%</u> | <u>5%</u> | <u>5%</u> | <u>\$90</u> |
| <u>\$100,000 and up</u> | <u>10%</u> | <u>5%</u> | <u>5%</u> | <u>5%</u> | <u>\$110</u> |

(d) A jockey mount fee is considered earned by a jockey when the jockey is weighed out by the clerk of scales, except:

- (1) when a jockey elects to take himself or herself off a mount; and
- (2) when the stewards replace the jockey with a substitute jockey for reasons other than the jockey suffering an injury during the time between weighing-out and the start of the race.

(e) If the jockey does not weigh out because the owner or trainer replaces the jockey with another jockey, the owner or trainer shall pay the appropriate fee to each jockey engaged for the race unless otherwise authorized by the stewards. The fee to be paid is equal to that earned by the jockey who rode the horse.

(f) A horse may not start in a race unless the horse's owner has on deposit with the horsemen's bookkeeper sufficient funds to pay the losing jockey mount fee prescribed by this section or by a written agreement filed under subsection (a) of this section.

(g) If the fee due to a jockey in a stakes race is \$5,000 or more, the horsemen's bookkeeper may hold such fee in escrow until post-race testing is completed and action by the Commission releases the purse for that race, at which time the appropriate payment of the escrowed fee shall be made.

Source Note: The provisions of this §313.409 adopted to be effective August 30, 1989, 14 TexReg 4125; amended to be effective October 11, 1990, 15 TexReg 5705; amended to be effective January 1, 1994, 18 TexReg 9101; amended to be effective November 1, 1994, 19 TexReg 8110; amended to be effective June 1, 2000, 25 TexReg 4737; amended to be effective October 30, 2000, 25 TexReg 10736; amended to be effective July 22, 2002, 27 TexReg 6295

New ARCI Model Rule

Jockey Mount Fees

| PURSE | WINNING MOUNT | SECOND MOUNT | THIRD MOUNT | FOURTH MOUNT | OTHER MOUNTS |
|-----------------------------|----------------------|---------------------|---------------------|---------------------|----------------------|
| 0 to \$2,499 | 10% | \$55 | \$50 | \$45 | \$40 |
| \$2,500 to \$4,999 | 10% | \$60 - \$75 | \$55 - \$70 | \$50 - \$65 | \$45 - \$60 |
| \$5,000 to \$9,999 | 10% | \$65 - \$85 | \$60-\$80 | \$55 - \$75 | \$50 - \$65 |
| \$10,000 to \$24,999 | 10% | 5% | \$90 - \$100 | \$70 - \$90 | \$65 - \$80 |
| \$25,000 to \$49,999 | 10% | 5% | 5% | \$80 - \$100 | \$75 - \$95 |
| \$50,000 to \$99,999 | 10% | 5% | 5% | 5% | \$80 - \$100 |
| \$100,000 and up | 10% | 5% | 5% | 5% | \$105 - \$115 |

Louisiana Rule

| Purse | Win | Second | Third | Unplaced |
|-------------------|------------|---------------|--------------|-----------------|
| \$400 & under | \$27 | \$19 | \$17 | \$16 |
| \$500 | \$30 | \$20 | \$17 | \$16 |
| \$600 | \$36 | \$22 | \$17 | \$16 |
| \$700-900 | 10% | \$25 | \$22 | \$20 |
| \$999-\$1,499 | 10% | \$30 | \$25 | \$22 |
| \$1,500-\$1,999 | 10% | \$35 | \$30 | \$28 |
| \$2,000- \$3,499 | 10% | \$45 | \$35 | \$33 |
| \$3,500- \$4,999 | 10% | \$70 | \$60 | \$50 |
| \$5,000-\$9,999 | 10% | \$80 | \$65 | \$60 |
| \$10,000-\$14,999 | 10% | 5% | \$70 | \$65 |
| \$15,000-\$24,999 | 10% | 5% | 5% | \$75 |
| \$25,000-\$49,999 | 10% | 5% | 5% | \$90 |
| \$50,000-\$99,999 | 10% | 5% | 5% | \$90 |
| \$100,000 AND UP | 10% | 5% | 5% | \$115 |

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New Mexico

Jockey Fee Schedule: Effective April 8, 2011

| <u>Purse</u> | <u>Winning Mount</u> | <u>Second Place Mount</u> | <u>Third Place Mount</u> | <u>Fourth Place Mount</u> | <u>Losing Mount</u> |
|--------------------------------|-------------------------|---------------------------|--------------------------|---------------------------|---------------------|
| <u>Up to- \$4,999</u> | <u>10% of Win Purse</u> | <u>\$70</u> | <u>\$60</u> | <u>\$58</u> | <u>\$50</u> |
| <u>\$5,000– \$9,999</u> | <u>10% of Win Purse</u> | <u>\$80</u> | <u>\$65</u> | <u>\$63</u> | <u>\$55</u> |
| <u>\$10,000 – \$14,999</u> | <u>10% of Win Purse</u> | <u>5% of Place Purse</u> | <u>\$75</u> | <u>\$68</u> | <u>\$60</u> |
| <u>\$15,000 - \$24,999</u> | <u>10% of Win Purse</u> | <u>5% of Place Purse</u> | <u>5% of Show Purse</u> | <u>\$75</u> | <u>\$70</u> |
| <u>\$25,000 - \$49,999</u> | <u>10% of Win Purse</u> | <u>5% of Place Purse</u> | <u>5% of Show Purse</u> | <u>\$80</u> | <u>\$75</u> |
| <u>\$50,000 - \$99,999</u> | <u>10% of Win Purse</u> | <u>5% of Place Purse</u> | <u>5% of Show Purse</u> | <u>5% of 4th Purse</u> | <u>\$80</u> |
| <u>\$100,000 and Up</u> | <u>10% of Win Purse</u> | <u>5% of Place Purse</u> | <u>5% of Show Purse</u> | <u>5% of 4th Purse</u> | <u>\$110</u> |

Oklahoma

Jockey mount fees in the absence of a contract or special agreement shall be the greater of the appropriate percentage (%) of the purse as indicated on the chart below or \$75.00.

| PURSE | WINNING MOUNT | SECOND MOUNT | THIRD MOUNT | OTHER MOUNTS |
|-----------------------------|----------------------|---------------------|--------------------|---------------------|
| up to \$39,000 | 10% | 5% | 5% | \$75 |
| \$40,000 to \$74,999 | 10% | 5% | 5% | \$80 |
| \$75,000 to \$99,999 | 10% | 5% | 5% | \$85 |
| \$100,000 and up | 10% | 5% | 5% | \$110 |

Oaklawn Park

| PURSE | WINNING MOUNT | SECOND MOUNT | THIRD MOUNT | OTHER MOUNTS |
|-----------------------------|----------------------|---------------------|--------------------|---------------------|
| up to \$14,999 | 10% | 5% | \$75 | \$70 |
| \$15,000 to \$24,999 | 10% | 5% | 5% | \$70 |
| \$25,000 to \$49,999 | 10% | 5% | 5% | \$75 |
| \$50,000 to \$99,999 | 10% | 5% | 5% | \$90 |
| \$100,000 and up | 10% | 5% | 5% | \$110 |

MODEL RULE

ARCI-008-030 JOCKEYS

G. Jockey Mount Fees

The organizations representing the majority of horse owners and jockeys should reach and present an agreement to the commission 30 days prior to the start of a race meet. In the absence of a contract or special agreement, and taking into consideration local conditions and total purses paid at their racing facility, the commission shall use the following as a guideline for establishing jockey mount fees.

| PURSE | WINNING MOUNT | SECOND MOUNT | THIRD MOUNT | FOURTH MOUNT | OTHER MOUNTS |
|----------------------|------------------|-------------------|------------------|--------------------------|---------------|
| \$2,500 to \$4,999 | 10% of Win Purse | \$60 - \$75 | \$55 - \$70 | \$50 - \$65 | \$45 - \$60 |
| \$5,000 to \$9,999 | 10% of Win Purse | \$65 - \$85 | \$60 - \$80 | \$55 - \$75 | \$50 - \$65 |
| \$10,000 to \$24,999 | 10% of Win Purse | 5% of Place Purse | \$90 - \$100 | \$70 - \$90 | \$65 - \$80 |
| \$25,000 to \$49,999 | 10% of Win Purse | 5% of Place Purse | 5% of Show Purse | \$80 - \$100 | \$75 - \$95 |
| \$50,000 to \$99,999 | 10% of Win Purse | 5% of Place Purse | 5% of Show Purse | 5% of Fourth Place Purse | \$80 - \$100 |
| \$100,000 and up | 10% of Win Purse | 5% of Place Purse | 5% of Show Purse | 5% of Fourth Place Purse | \$105 - \$115 |

Using a base year of 2010 commissions should adjust this table based on an average of the following indexes: US Social Security Administration's Cost of Living Adjustment (COLA), US Department of Labor's CPA inflation calculator ([HTTP://BLS.GOV](http://BLS.GOV)), and Consumer Price Index (CPI), local percent change in pari-mutuel handle. As a guideline, taking into account local circumstances, tracks paying purses in excess of \$250,000 per day should move to the higher range in each category and tracks paying below \$125,000 per day in purses should be considered at the lower of the range.

H. Jockey Fee Earned

A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. In the event an owner or trainer elects to remove a jockey from his or her mount after naming a rider at the time of the draw, the stewards may require a double jockey fee to be paid. The fee to be paid is equal to that earned by the jockey who rode the horse. The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the stewards. All jockey protests must be filed prior to the race.

Adopted in Version 1.4 ARCI 8/27/02 NAPRA 10/2/02
Version 4.3 to 4.4 ARCI Board 12/10/08: Amended jockey eligibility language
Version 4.7 to 4.8 ARCI Board 10/22/10 Added H. Jockey Fee Earned language

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 3/15/2012

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

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

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

Contact Information:

| | | | |
|------------------|--------------|-------------|--|
| Name: | Rob Werstler | Phone(s): | |
| E-mail address: | | Fax number: | |
| Mailing address: | | | |

Check appropriate box(s)

Personal Submission *OR*

Submission on behalf of _____
(Name of Organization)

| | | | |
|--------------------------|---|-------------------------|-------------------------------|
| <input type="checkbox"/> | If known, Proposed Change to Chapter: | Chapter: <u>313.103</u> | Rule: <u>(a)(3)(B)</u> |
| <input type="checkbox"/> | If known, Proposed Addition to Chapter: | Chapter: _____ | Rule: _____ |
| <input type="checkbox"/> | If known, Other Rules Affected by Proposal: | Chapter: <u>313.103</u> | Rule: <u>(f) & (g)(1)</u> |
| | | Chapter: _____ | Rule: _____ |
| | | Chapter: _____ | Rule: _____ |
| | | Chapter: _____ | Rule: _____ |

A. Brief Description of the Issue

(Type or paste text.) Given the fact some Texas training facilities have not re-newed their licenses to offer official workouts, horsemen are finding it very difficult and cost prohibitive to obtain official workouts for their horses. Also, with Texas racetracks scaling back on the number of race days, there are larger gaps between race meets. With the way the rule is currently written, each horse must have an official workout within 45 days of a race. This means many horses must obtain an official workout at the beginning of a meet instead of entering a race. This affects owners, trainers and racetracks who have a difficult time filling races.

B. Discussion of the Issue and Problem

Provide background on the issue to build context. Address the following:

- *What specific problems or concerns are involved in this issue?*
- *Who does the issue affect?*
- *What existing model rules relate to this issue?*
- *Provide relevant quantitative or statistical information if possible.*

(Type or paste text.) This rule change will have a positive affect on Texas trainers who currently must travel long distances to obtain an official workout. Trainers would much rather run in a race than work their horses once they are race fit. It will have a positive affect on owners who will have a better chance for their horses to enter races. It will also have a positive affect on racetracks with larger fields and less scratches. The rules affected are 313.103 (a)(B), (f) and (g)(1).

C. Possible Solutions and Impact

Provide possible recommendations to solve the problem. Include details on each proposed solution such as:

- *What solution does this proposal provide?*
- *How will the solution fix the problem?*
- *How will the change affect any entities or stakeholders?*
- *How will you or your organization be affected by the proposed change?*
- *What are the benefits of the proposed change?*
- *What are the possible drawbacks of the proposed change?*
- *Identify possible fiscal impact of the recommended change.*

(Type or paste text.) I propose changing from a 45 day period between workouts to a 60 day period. Both Oklahoma and Louisiana have 60 day workout rules.

D. Support or Opposition

Please identify any affected stakeholder groups that expressed support or opposition. (These stakeholders may include the racetracks, breed registries, owners, kennel owners, trainers, jockeys, veterinarians, or others.)

- *For those stakeholder groups that have expressed an opinion, please list the points on which they agree or disagree, and the arguments they have expressed.*
- *Are there any affected stakeholder groups that have not been consulted on this proposal?*
- *Please submit any formal letters of support or opposition by stakeholder groups.*

(Type or paste text.) The Texas Thoroughbred Association and Texas Horsemen Partnership are also in support of this proposal.

E. Proposal

Provide rule language you are proposing. If you are proposing that current rule language be eliminated, please strikeout the language to be deleted. Please show new language with underlined text.

(Type or paste text.)

313.103(a)(B) have two published workouts, one within 90 days and one within ~~45-60~~ days of the race entered.

313.103(f) Except as otherwise provided by this section for first-time starters, to be eligible to start in a race, a horse must have either started in a race or had a published workout in the ~~45-day~~ 60-day period preceding the race.

313.103(g)(1) have a published workout around a turn at a minimum distance of 660 yards in the ~~45-day~~ 60-day period preceding the race.

Rule 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 ~~45~~ 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 one race scheduled for one race day, unless at least one of the races is a stakes race.

(e) A horse may not start in a stakes race unless:

(1) the nominating, sustaining, entry, and starting fees have been paid in full by cash, cashier's check, certified check, or money order on or before the time specified in the conditions of the race; or

(2) the amount of the applicable fees are on account with the horsemen's bookkeeper at the time the fees are due as specified by the conditions of the race.

(f) Except as otherwise provided by this section for first-time starters, to be eligible to start in a race, a horse must have either started in a race or had a published workout in the ~~45~~ 60-day period preceding a race.

(g) To be entered in a race around a turn for the first time, a quarter horse must:

(1) have a published workout around a turn at a minimum distance of 660 yards in the ~~45~~ 60-day period preceding the race; and

(2) be approved by the clocker, the outrider and, if the horse is worked from the gate, the starter.

(h) To be eligible to start in a race, a horse must be properly tattooed and the horse's registration certificate showing the tattoo number of the horse must be on file with the racing secretary before scratch time for the race, unless the stewards authorize the certificate to be filed at a later time.

(i) A horse may not participate as a member of more than one breed at the same race meeting, even though the horse may be registered in more than one breed registry.

MODEL RULE

ARCI-010-025 Workouts

A. Requirements

A horse shall not start unless it has participated in an official race or has an approved timed workout satisfactory to the stewards. The workout must have occurred at a pari-mutuel or Commission recognized facility within the previous 30 days. A horse which has not started for a period of 60 days or more shall be ineligible to race until it has completed a timed workout approved by the stewards prior to the day of the race in which the horse is entered. The association may impose more stringent workout requirements.

LOUISIANA

Section 6319 Publication of Past Performances

No horse shall be permitted to enter or start unless approved by the association. Further, the stewards shall require that published past performances, in races or workouts, be sufficient to enable the public to make a reasonable assessment of its racing capabilities. No horse shall be entered to race that has not had a published workout or a race within 60 days of the date of the entered race. Horses without sufficient workouts must be scratched by the stewards before any wagering begins on that day's race program. Late workouts shall be posted for public view in at least one conspicuous place in the public enclosure, and announced to the public via public address system.

ARKANSAS RACING COMMISSION

COMMISSION CLOCKER

2099. The Commission Clocker shall be appointed by the Racing Commission and paid by the franchise holder. The Commission Clocker and his assistants will be responsible for recording official workouts each day. Official workouts that are not reported in The Daily Racing Form shall be tabulated by the Commission Clocker and posted for public viewing in a conspicuous place.

2099.1 (a)

(1) A horse shall not be taken on the track for training or a workout except during hours designated by the Association.

(2) The trainer or rider shall identify the horse and distance to be worked to the Official Clocker or his assistant.

(3) A horse which has not started for a period of sixty (60) days or more prior to race day must have an official timed workout within the previous thirty (30) days prior to race day. The workout must have occurred at a pari-mutuel or recognized training facility.

(4) First time starters must have three (3) or more official workouts prior to race day.

(5) The Association may impose more stringent workout requirements.

NEW MEXICO RACING COMMISSION

15.2.5.11 WORKOUTS:

A. REQUIREMENTS:

(1) A non-starter must have had within sixty (60) days of entry at least two (2) workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to entry, one (1) of the two (2) workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

(2) Any horse which has started, but not within six (6) months, must have one (1) official workout from the starting gate or must have proof of standing the horse at least one (1) time within a sixty (60) day period. Any horse which has started, but not within sixty (60) days, must have at least one (1) workout within sixty (60) days prior to entry. Horses that have not started within six (6) months of entry must have at least two (2) approved workouts within the sixty (60) days.

(3) Gate approvals at a licensed facility must be made by a licensed starter on a commission approved form.

OKLAHOMA HORSE RACING COMMISSION

◆ **WORKOUT AND FIRST TIME STARTER REQUIREMENTS FOR ALL BREEDS RACING AT OHRC LICENSED TRACKS**
Only timed works published by Daily Racing Form and/or Equibase may be accepted with the approval of the OHRC Stewards

THOROUGHBRED WORKOUT REQUIREMENTS

A. Horses which have an official start but not within sixty (60) days of a race must have one (1) approved published work within 60 days of a race.

B. Horses which have an official start but not within one (1) year of a race must have two (2) approved published works within sixty (60) days of a race.

C. Prior to entry, first time starters must receive approval from an OHRC licensed starter. In addition, first time starters must have two (2) approved published works within sixty (60) days of a race, one (1) of which must be at least three (3) furlongs from the starting gate with company.

D. Any horse that works at an OHRC licensed racetrack must be identified to the Gap Attendant or Starter by name, type of workout and distance. Failure to report this information will result in referral to the Stewards.

E. Horses must have the original foal certificate or a photo copy of the original foal certificate on file at the facility where the timed work is conducted before a horse will receive a published work.

◆ **TURF COURSE:**

Turf races will be transferred to the main track should the management deem the turf course unsuitable for racing.

In the event a race must be transferred from the turf course to the main track, the following distances will be used:

| Turf | Main | Turf | Main |
|----------------|--------------|---------------|-----------------------|
| 5 Furlongs | 5 Furlongs | 1-1/8 Miles | 1-1/8 Miles |
| 7-1/2 Furlongs | One Mile | 1-3/8 Miles | 1-3/8 Miles |
| One Mile | One Mile | 1-1/2 Miles | 1-1/2 Miles |
| 1-1/16 Miles | 1-1/16 Miles | 1-13/16 Miles | 1 Mile 6-1/2 Furlongs |

◆ **TURF SHOES:**

Queen Plates, Queen Plates XT's, World Plates and Thoroughbred Race Plates with Toe Grabs completely ground flush.

No Level Grips, no Rims, no Stickers, no Turn-Downs and no Blocked Hills.

OKLAHOMA HORSE RACING COMMISSION

◆ WORKOUT AND FIRST TIME STARTER REQUIREMENTS FOR ALL BREEDS RACING AT OHRC LICENSED TRACKS

Only timed works published by Daily Racing Form and/or Equibase may be accepted with the approval of OHRC Stewards.

QUARTER HORSE, PAINT AND APPALOOSA WORKOUT REQUIREMENTS

A. Horses which have an official start but not within sixty (60) days of a race must have one (1) approved published work within 60 days of a race.

B. Horses which have an official start but not within one (1) year of a race must have two (2) approved published works within sixty (60) days of a race, one of which must be from the starting gate.

C. Prior to entry, horses wishing to race around the turn for the first time must work from the starting gate around the turn (with company) and receive approval from the starter and clocker within sixty (60) days of a race.

D. Prior to entry, first time starters must receive gate approval from an OHRC licensed starter. In addition, first time starters must have two (2) approved published works within sixty (60) days of a race, one of which must be in company, from the starting gate. Said horse must also be approved by the clocker as having obtained a minimum speed index of 30 on the straightaway.

E. First time starters which have been approved in a schooling race at an OHRC licensed racetrack within sixty (60) days of a race may forego the requirements in section (D).

F. Horses unable to start within sixty (60) days of their approved schooling race can update the schooling race (not to exceed thirty (30) days) with an approved work from the gate.

G. Any horse that works at an OHRC licensed racetrack must be identified to the Gap Attendant or Starter by name, type of workout and distance. Failure to report this information will result in referral to the Stewards.

H. Horses must have the original foal certificate or a copy of the foal certificate on file at the facility where the timed work is conducted before receiving an approved published work.

◆ CRITERIA FOR SCHOOLING RACES

1. Must be conducted at an OHRC licensed racetrack.
2. All riders must be OHRC-licensed jockeys or exercise riders to participate.
3. Entries shall be made in person or by telephone to Racing Secretary's office.
4. All horses approved for participation in a schooling race must be tattooed prior to or on the day of participation.
5. The Racing Secretary shall publish an overnight to reflect the name of horse, trainer, and if possible, rider.
6. The current Certificate of Registration for the horse must be on file in the Racing Secretary's Office, as well as an up to date photocopy of said Certificate reflecting the horse's tattoo number
7. The Starter, an Outrider, Clocker, a Steward or steward's designee and the Racing Secretary or Assistant to the Racing Secretary must be present to supervise Approved Schooling Races.

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