

TEXAS RACING COMMISSION

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COMMITTEE ON RULES

Wednesday, June 6, 2012
1:30 p.m.
William P. Hobby Jr. Building
Tower III, Room 100
333 Guadalupe Street
Austin, Texas 78701

Agenda

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

Proposal of New Rule 309.51, Designation of Active and Inactive Racetrack Licenses

Proposal of New Rule 309.52, Review and Renewal of Inactive Racetrack Licenses

Proposal to Amend Rule 313.409, Jockey Mount Fees

Proposal to Amend Rule 313.103, Eligibility Requirements

Proposal to Amend Rule 313.101, Entry Procedure

Proposal to Amend Rule 313.104, Registration Certificates

Proposal to Amend Rule 313.306, Transfer of Claimed Horse

Proposal of 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 Committee will discuss the following requests for rule changes:

Proposal to Amend Rule 311.3, Information for Background Investigation
(Requested by Staff)

Proposal to Amend Rule 313.304, Claim Irrevocable (Requested by Staff)

The Committee will discuss concluding 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

The Committee will discuss opening the following chapter for rule review pursuant to Texas Government Code, § 2001.039.

Chapter 309, Racetrack Licenses and Operations

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.

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 racetrack license not
7 later than September 1, 2012.

8 (b) Definitions.

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

13 (2) "Active-Other" means the license holder has
14 applied for and received pending live race dates under
15 §303.41, Allocation of Race Dates, and taken the following
16 actions to demonstrate good faith efforts to conduct live
17 racing:

18 (A) is presently conducting pre-opening
19 simulcasting;

20 (B) has demonstrated that the conduct of
21 simulcast and live racing at its racetrack facility is
22 imminent by completing the following:

23 (i) purchasing the real property of the
24 designated racetrack site;

25 (ii) securing Commission approval of the
26 racing facility's construction plans;

27 (iii) securing all permits and utilities
28 necessary for the construction of the racing
29 facilities;

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1 (iv) providing to the Commission executed
2 contracts for the construction of the racing
3 facilities; and

4 (v) providing to the Commission a
5 construction and operations management schedule
6 demonstrating that simulcasting will begin within
7 four months of the designation and that the
8 facilities will be ready to conduct live racing
9 by the beginning of the approved live race dates;
10 or

11 (C) voluntarily providing a bond under subsection
12 (e) of this section to ensure that the license holder
13 conducts pre-opening simulcasting and completes the
14 pending allocated live race dates.

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

18 (c) Subsequent Designation. After the initial racetrack
19 designation is made under subsection (a) of this section,
20 the Commission may change the designation of the racetrack
21 license at any time if the facts that supported the current
22 designation change.

23 (d) Racetrack Reviews.

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

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

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Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

1 (e) Bonds.

2 (1) To be designated as Active-Other under
3 subparagraph (b) (2) (C) of this section, a license holder
4 shall submit a bond by September 1 of the State Fiscal Year
5 for which it is offered.

6 (2) The amount of the bond for the State Fiscal Year
7 beginning September 1, 2012, and each year thereafter is
8 \$400,000.

9 (3) Return or Forfeiture of Bond.

10 (A) If the racetrack conducts pre-opening
11 simulcasting during the first fiscal year of the bond,
12 the bond shall be retained for an additional fiscal
13 year or until the racetrack completes its live race
14 dates. Upon successful completion of all of the
15 racetrack's live race dates allocated for the first
16 two fiscal years of the bond, the Commission shall
17 return the bond to the license holder.

18 (B) If the racetrack does not conduct pre-opening
19 simulcasting during the initial fiscal year of the
20 bonding period, the bond shall be forfeited on August
21 31 of the same fiscal year.

22 (C) If the racetrack conducts pre-opening
23 simulcasting during the first fiscal year but fails to
24 conduct all of its allocated live race dates during
25 the first two fiscal years of the bond, the bond shall
26 be forfeited on August 31 of the second fiscal year.

27 (D) A bond is automatically forfeited on the date
28 provided in this subsection unless the Commission
29 takes action in an open meeting to return the bond or
30 extend the date of automatic forfeiture.

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Subdivision 2. Active and Inactive Racetrack Licenses

1 (E) For purposes of this paragraph, live race
2 dates do not include those race dates that have been
3 excused by the executive secretary under §303.41(h) of
4 Chapter 303, General Provisions.

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

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

17 (f) Failure to Conduct Granted Live Race Dates.
18 Except as excused by the executive secretary under
19 §303.41(h) of Chapter 303, General Provisions, if an
20 Active-Operating or an Active-Other racetrack fails to
21 conduct any live race dates granted to it by the
22 Commission, the Commission shall review and may change the
23 license's designation at a regularly scheduled meeting to
24 be held within the following four months. This subsection
25 does not apply to an Active-Other racetrack that has
26 provided a bond under subsection (e) of this section.

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) renew 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) Notice of Review

14 The executive secretary shall provide written notice to an
15 inactive license holder that the license holder must file
16 an application for renewal. Such notice must be provided
17 by certified or registered mail no later than June 1 of
18 each year the license remains in effect and is designated
19 as inactive. The first such notice shall be sent by the
20 executive secretary by June 1, 2013. The notice must
21 specify the procedure for filing an application for renewal
22 and the information to be included in the application. The
23 application for renewal shall be filed on or before July 1
24 following the receipt of the notice. The first application
25 for renewal shall be filed by July 1, 2013, with additional
26 applications filed annually on July 1 thereafter. The
27 executive secretary may extend the deadline for filing the
28 renewal application. The timely filing of an application
29 for renewal extends the license until the Commission renews
30 or refuses to renew the license. If an inactive racetrack

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Subdivision 2. Active and Inactive Racetrack Licenses

1 license holder does not file a timely application for
2 renewal, the Commission may either renew the license or
3 refer the license to the State Office of Administrative
4 Hearings for an evidentiary hearing and Proposal for
5 Decision as to whether the Commission should refuse to
6 renew the license.

7 (c) Application for Renewal.

8 (1) Each inactive racetrack license holder must submit
9 an application for renewal on a form prescribed by the
10 executive secretary.

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

13 (3) The applicant must swear before a notary public to
14 the truth and validity of the information in the
15 application and its supplemental documents. If the
16 applicant is not an individual, the chief executive officer
17 of the applicant must swear before a notary public to the
18 truth and validity of the information in the application
19 and its supplemental documents.

20 (4) The applicant must state the name, address, and
21 telephone number of an individual designated by the
22 applicant to be the primary contact person for the
23 Commission during the review and renewal process.

24 (d) Renewal Criteria. In determining whether to renew an
25 inactive racetrack license, the Commission shall consider:

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

27 (A) financial stability;

28 (B) ability to conduct live racing;

29 (C) ability to construct and maintain a racetrack
30 facility;

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1 (D) other good faith efforts to conduct live racing;
2 and

3 (2) other necessary factors considered in the issuance
4 of the original license.

5 (3) For purposes of this section, the Commission will
6 consider, but is not limited to, the following actions as
7 evidence that a license holder is making good faith efforts
8 to conduct live racing:

9 (A) securing sufficient financial commitments to
10 fund construction of the racetrack facility;

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

13 (C) entering into contracts for the construction of
14 the simulcasting and racetrack facilities;

15 (D) securing Commission approval of construction
16 plans;

17 (E) securing permits from regulatory authorities
18 concerning pre-construction matters such as utilities
19 and road improvements; and

20 (F) beginning and sustaining construction of the
21 simulcasting and live racing facilities.

22 (e) Nonrenewal. The Commission may refuse to renew an
23 inactive racetrack license if, after notice and a hearing,
24 the Commission determines that:

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

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

29 (f) For purposes of this section, the Commission will
30 consider, but is not limited to, the following factors as

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1 evidence that renewal of a license is not in the best
2 interests of the racing industry or the public:

3 (1) the presence of any ground for denial, revocation,
4 or suspension of a license under §6.06 or §6.0603 of the
5 Act;

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

8 (3) failure by an inactive racetrack license holder to
9 comply with any condition or order placed on the license by
10 the Commission;

11 (4) failure to maintain the ownership or leasehold
12 interest in the real property constituting the designated
13 location; or

14 (5) any factor identified in subsection (a) of §6.04
15 of the Act.

16 (g) The presence of any particular factor or factors under
17 this section does not require the Commission to renew or
18 refuse to renew an inactive racetrack license.

19 (h) Bonds. The Commission may require an inactive racetrack
20 license holder to provide a bond under §6.032 of the Act to
21 ensure completion of any or all of the factors listed in
22 subsection (d) of this section. The amount and terms of
23 the bond shall be determined by the Commission in
24 accordance with §309.6 of this Chapter.

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Subchapter A. Racetrack Licenses

Subdivision 2. Active and Inactive Racetrack Licenses

1 (i) Review Fees.

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

24 (2) The initial review fee for an inactive racetrack
25 license is \$5,000. If the Commission refers an application
26 to the State Office of Administrative Hearings under
27 subsection (a) of this section, the applicant for renewal
28 shall submit an additional \$50,000 review fee within 30
29 days of the referral.

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May 2, 2012

Via Hand Delivery

Texas Racing Commission
c/o Carolyn Weiss, Assistant to the Executive Director
8505 Cross Park Drive, Suite 110
Austin, Texas 78754

Re: Comments Relating to Proposed "Active/Inactive" Rule
Proposed 16 TAC §309.51 and Proposed 16 TAC §309.52

Commissioners:

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COMMISSION

We appreciate the opportunity to submit these comments relating to proposed new 16 TAC §309.51 and 16 TAC §309.52 on behalf of LRP Group, Ltd. (Laredo Downs), Valle de los Tesoros, Ltd. (Tesoros Race Park), and Gulf Coast Racing, LLC. We understand the time constraints placed upon the Racing Commission by the Legislature and believe, to a great degree, the proposed rules present a reasonable approach to fulfilling the Legislature's mandates. In one respect, however, the proposed rules are contrary to the Texas Racing Act, as amended by H.B. 2271, and, as such, their adoption would be an ultra vires and invalid act of the Commission. This basic flaw in the proposed rules is found in proposed 16 TAC §309.51(b)(2), the definition of "Active-Other". In addition, we believe this fundamental flaw in the proposed rules has led to the assertion that the Commission has the authority to require a bond for the reasons delineated in proposed §309.52(h). The comments, below, discuss the fundamental problem with proposed 16 TAC §309.51(b)(2) followed by brief comments relating to the similar problem with proposed 16 TAC §309.52(h).

Definition of "Active-Other" (Proposed 16 TAC 309.51(b)(2))

Section 6.0601(b) of the Texas Racing Act, as amended, Article 179(e), Vernons Civil Statutes (the "Act"), provides as follows:

- (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.*

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Section 6.0601(c) of the Act further provides:

(c) The commission by rule shall provide guidance on what actions constitute, for purposes of this Act, good faith efforts to conduct live racing.

The proposed rule is fundamentally flawed in that any racetrack where the license holder is not currently conducting live racing is automatically considered "Inactive" unless strict and specific actions are taken and results are achieved as delineated in the proposed definition of "Active-Other". To be considered "Active-Other," the racetrack only has three inflexible options, none of which allows for consideration of good faith efforts but, instead, indicate achievement of inflexible milestones toward live racing. Nowhere in the proposed rule is the Commission given the discretion to consider good faith efforts toward those milestones nor is guidance given as to what type of efforts the Commission would consider in the exercise of that discretion.

Sections 6.0601 of the Act, quoted above, clearly states 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). In addition, it 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.¹

Interpreting §6.0601(b)(2) of the Act involves nothing more than determining what type of activity/activities could constitute a "good faith effort". The meaning of "good faith" is not complex. It basically means doing something honestly and without fraud or deceit. The definition of "effort" is no more complex. It simply means expending energy or working in an attempt to achieve a specific goal. While achieving a specific milestone or the ultimate final result may very well be the desired result of good faith efforts and are usually indicative of good faith efforts, good faith efforts by their very nature do not always achieve the milestone or ultimate result. Nevertheless, honest attempts at achievement can constitute good faith efforts.

Similarly, the definition of "guidance" is not ambiguous. It merely means providing information or advice to assist someone in reaching a goal. Merely requiring someone to achieve the interim or final goal provides absolutely no guidance relating to what would constitute adequate efforts to reach the goal. By way of analogy, if the Commission were directed to provide guidance to a jockey on how to make good faith efforts to win horse races, it surely would not merely require that the jockey have already placed in some races and demonstrate that

¹ We are aware that the Texas Thoroughbred Association has suggested that a sole requirement of actually conducting live racing in the prior year should be the sole criteria for determining whether a racetrack is "Active". While this approach may indeed meet their stated goal of simplicity, it completely ignores §6.0601(b)(2) of the Act, relating to good faith efforts to conduct live racing, and, as such, is not an option legally open to the Commission.
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he or she will actually begin winning races within a short time. This would provide absolutely no guidance to the jockey on what sort of activities that jockey should undertake and does nothing to suggest or recognize efforts. Where the meaning of words or phrases in a statute is clear and unambiguous, the Commission can not ignore that meaning and substitute something different.

It was apparent to all at the outset that developing rules to implement the active/inactive determination would be challenging. To address this challenge, the Commission created the Ad Hoc Committee to Implement HB 2271. With respect to most aspects of this challenging issue, the Committee developed sound and workable proposed policies and procedures. As part of their consideration, the Committee held periodic meetings with interested persons over several months where it received extensive written and oral comments suggesting activities undertaken by a racetrack which the Commission could include in its guidance as potential examples of "good faith efforts to conduct live racing". The draft rule which has now been proposed, however, limits consideration of such factors relating to good faith efforts only to "inactive" license renewal proceedings. Good faith efforts and the associated factors are completely ignored, however, with respect to the "Active-Other" designation despite the clear statutory mandate. While we agree that the degree or nature of good faith efforts may vary depending on whether the issue being considered is an active/inactive designation or the renewal of an inactive license, the statutory mandate and the attendant overall concept of undertaking "good faith efforts to conduct live racing" nevertheless is identical.

For these reasons, we request that the Commission revise proposed rule §309.051(b)(2) to include a discretionary finding by the Commission that a racetrack has undertaken good faith efforts to conduct live racing and, based on that finding, indicate that such a racetrack will be designated as "Active-Other". All mandatory actions and/or accomplishments should be deleted or made factors for the Commission to consider. For example, proposed §309.051(b)(2) begins by providing that, in order to designated as "Active-Other", a license holder must have "applied for and received pending live race dates" **and** taken certain specific "actions to demonstrate good faith efforts to conduct live racing". This requirement is on its face contrary to Section 6.0601(b) of the Act which provides that good faith efforts alone support a designation of a racetrack as Active. The Commission simply can not by fiat add a live race date requirement to Section 6.0601(b) of the Act where the statute contains no such requirement.

In order to further comply with the mandates of the Act, the revised rule should provide examples of relevant activities which would be considered when making the discretionary finding. Based on such a rule, the Commission would have the ability to evaluate, on a case-by-case basis, the actions taken by a racetrack in light of the regulatory guidance of the rule, and determine if a particular effort or group of efforts is sufficient to warrant a designation of "Active-Other". For the Commission's convenience, below is a revised version of proposed

MOLTZ MORTON O'TOOLE
LLP

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§ 309.051(b)(2) which we believe meets the requirements of the Act, as amended, while still retaining many of the criteria of the proposal:²

(2) "Active-Other" means the licensee does not meet the requirements to be designated as "Active-Operating" but has made good faith efforts to conduct live racing.

(A) For purposes of this section, the Commission will consider, but is not limited to, the following actions as evidence that a license holder is making or has made good faith efforts to conduct live racing:

(i) has applied for and/or received pending live race dates under §303.41, Allocation of Race Dates;

(ii) is presently conducting pre-opening simulcasting;

(iii) has purchased or otherwise acquired necessary rights to the real property of the designated track site;

(iv) is in the process of or has secured Commission approval of the racing facility's construction plans;

(v) is in the process of or has secured all permits and utilities necessary for the construction of the racing facilities;

(vi) has provided to the Commission executed contracts for the construction of facilities at the site;

(vii) has provided to the Commission a construction and operations management schedule demonstrating that simulcasting will begin within a reasonable time;

(viii) has an application pending before the Commission which requires action by the Commission prior to continuing activities necessary to begin live racing; and

² Proposed §309.51(e) would also need to be revised to change the reference to "subparagraph (b)(2)(C) of this section" to "subparagraph (b)(2)(B) of this section" to be consistent with the renumbering of the subsection relating to the voluntary bond.
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(ix) other factors which, in the Commission's discretion, indicate that the licensee is making good faith efforts to conduct live racing.

(B) If a licensee voluntarily provides a bond under subsection (e) of this section, the Commission shall designate the racetrack as Active-Other and that designation may not be changed until the racetrack qualifies for a designation of Active-Operating or the bond is forfeited pursuant to subsection (e) of this section.

As you will note, the above revised §309.51(b)(2) retains, to a great degree, the criteria of the provision as proposed. However, it presents these criteria as *guidelines* regarding the type of *efforts* a licensee could take to be designated as Active-Other. This approach is what the clear language of the Act, as amended, requires. Ultimately, whether to designate a racetrack as Active-Other would be in the discretion of the Commission based on good faith efforts to conduct live racing, as clearly required by § 6.0601(b) of the Act, instead of being mechanically mandated based on a list of specified results.

Bond Authority (Proposed §309.52(h))

Proposed §309.52(h) provides that the “Commission may require an inactive license holder to provide a bond under §6.032 of the Act to ensure completion of any or all of the factors listed in subsection (d) of this section”. Subsection (d), in turn, is a nonexclusive listing of the various discretionary criteria the Commission will consider when renewing an inactive license. As explicitly stated in the proposed rule, §6.032 of the Act would ostensibly be the statutory authority for any such required bond. That Section of the Act provides, in pertinent part, as follows:

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. (§6.032(a), Texas Racing Act).

The “Renewal Criteria” specified in proposed §309.52(d) are simply not substantive requirements of the Act with which a licensee can comply. By its very terms, the criteria listed within proposed §309.52(d) are nonexclusive factors which “the Commission shall consider” when exercising its discretion. Many of the criteria listed within §309.52(d) relate to a licensee’s “good faith efforts to conduct live racing”. As discussed above, “good faith efforts” are simply and clearly not synonymous with milestones and achievements. Section 6.032 of the Act does not give the Commission authority to require a bond to ensure that efforts equate to results.

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Proposed §309.52(h) is beyond the authority of the Commission and, therefore, would be invalid if adopted.

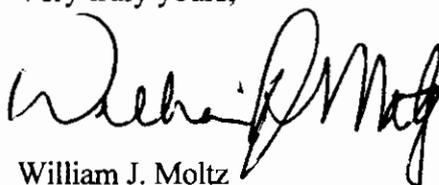
To the extent the Commission wants to delineate within its rules its authority to require a bond, it should revise proposed §309.52(h) to track, verbatim, the language of §6.032 of the Act.

Conclusion

The rules as proposed by the Commission to implement the requirements of H.B. 2271 generally present a workable and reasonable framework to accomplish the statutorily mandated goals. However, they are improper to the extent they ignore the statutorily mandated consideration of "good faith efforts to conduct live racing" and replace that consideration with requirements that a licensee achieve mandated goals and/or milestones. This fatal flaw in the proposals is further exacerbated by the provision that ostensibly would allow the Commission to require a bond to ensure that the goals and/or milestones are achieved. The proposed rules should be modified to correct these flaws.

Again, we appreciate the opportunity to present these comments and look forward to working with the Commission to implement the Act, as amended.

Very truly yours,



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



2012 MAY 11 AM 10:39

RECEIVED
TEXAS RACING
COMMISSION

May 10, 2012

Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, Texas 78754

Re: *Proposed 16 TAC 309.51 and Proposed 16 TAC 309.52—Rulemaking on Active and Inactive Racetrack Licenses*

Dear Commissioners:

Sam Houston Race Park (SHRP), Valley Race Park (VRP) and Laredo Race Park (LRP) appreciate the opportunity to provide these comments on the proposed rule to implement the provision of HB 2271 requiring the Commission to designate racetrack licenses as "active" or "inactive." We previously submitted comments on the draft rule provided at the March meeting at Lone Star Race Park. We have also actively participated in meetings of the Ad Hoc Committee on Rules throughout the discussion and drafting process.

The published rule is a significant improvement over the draft that was circulated in March, and incorporates some of the suggestions we previously submitted. We appreciate the Commission's effort to be responsive to the concerns that we and other participants have raised about the appropriate standards for qualifying as an "active" license. However, the published rule still does not satisfy HB 2271 in one critical aspect: a license holder that is clearly making "good faith efforts" to conduct live racing could still fail to qualify as an active licensee if the license holder did not meet certain requirements or achieve certain results provided in the published rule. This outcome is inconsistent with HB 2271 and needs to be corrected.

HB 2271 states that the Commission "shall designate a racetrack license as an active license if the license holder ... makes good faith efforts to conduct live racing." This means that if a license holder is exercising good faith efforts to conduct live racing, the Commission *must* designate that license as active. If a license-holder did not conduct live racing in the prior fiscal year, the published rule would allow the license to be considered active if the license holder has pending live race dates, and either (a) is conducting pre-opening simulcasting, (b) posts a bond to guarantee that live racing or simulcasting will commence within a certain time period, or (c) meets each of a series of "milestones" provided under proposed Sec. 309.51(b)(2)(B). Because the published rule makes an "Active-Other" designation contingent upon meeting certain requirements or accomplishing certain results, a license holder that is making good faith "efforts" to conduct live racing may still not receive an active designation under this framework. This conflicts with the requirements of HB 2271.

The underlying problem with the proposed rule is that obtaining an "Active-Other" designation is based solely on satisfying certain requirements or achieving certain *results*, with no consideration of a license-holder's *efforts*. Achieving a specific set of results may prove that good faith efforts were made to conduct live racing, but it is not true that failing to achieve those results proves that good faith efforts were *not* made. For example, a license holder that is actually conducting live racing has clearly made good faith efforts to conduct live racing. However, those efforts alone are not enough to guarantee that live racing will actually occur. There may be other conditions, apart from the license-holder's efforts, that

SAM HOUSTON RACE PARK LTD.

7575 North Sam Houston Parkway West, Houston, TX, 77064 • 281.807.8700 • shrp.com

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prevent the license holder's from actually conducting live racing despite his efforts. Likewise, good faith efforts may be a prerequisite to achieving the milestones provided in proposed Sec. 309.51(b)(2)(B), but those efforts alone do not ensure that the list of results will be accomplished. Further, there may be other types of "good faith efforts" the Commission should consider that are not captured by the specific set of results included in the proposed rule. Respectfully, it is the license holder's "efforts," and not results, that the Commission was directed to consider under HB 2271. Determining whether good faith efforts were made by looking solely at whether a specific set of results were achieved leaves open the possibility that a license-holder could clearly be making good faith efforts to conduct live racing and still be designated "inactive." This does not comply with HB 2271.

To satisfy HB 2271, the Commission must provide "guidance" as to the types of efforts it will consider in making an "active" designation, rather than establishing "results" that must be achieved. We submit that the list of milestones provided in Sec. 309.51(b)(2)(B) would be a good starting point for guidance as to the types of "efforts" the Commission would consider to determine whether a licensee qualifies as "Active-Other." However, these milestones would need to be considered individually, rather than cumulatively, and the rule would also need to be revised to allow the Commission to consider other types of "good faith efforts" that are not specifically listed. To that end, we propose the following changes to Sec. 309.51(b)(2) for the Commission's consideration:

Sec. 309.51. Designation of Active and Inactive Racetrack Licenses

(2) "Active-Other" means the license holder has ~~applied for and received pending live race dates under § 303.41, Allocation of Race Dates, and taken the following actions to demonstrate that it is making good faith efforts to conduct live racing. The following is a list of the types of activities the Commission will consider to determine whether "good faith efforts" are being exercised for purposes of designating a license as "Active-Other":~~

- (A) ~~is presently conducting pre-opening simulcasting;~~
- (B) ~~has demonstrated that the conduct of simulcast and live racing at its racetrack facility is imminent by completing the following:~~(i) purchasing or otherwise acquired necessary rights to the real property of the designated racetrack site;
- (ii) securing Commission approval of the racing facility's construction plans;
- (iii) securing or negotiating with local authorities in an effort to secure all the permits and utilities necessary for the construction of the racing facilities;
- (iv) ~~providing to the Commission negotiating or executed~~ing contracts for the construction of the racing facilities; and
- (F) obtaining and maintaining appropriate zoning for the racetrack location;
- (v) G) providing to the Commission a construction and operations management schedule demonstrating that simulcasting will begin within four months of the designation and that the facilities will be ready to conduct live racing by the beginning of the approved live race dates;
- (G) H) submitting an Application for a Change in Location; voluntarily providing a bond under subsection (e) of this section to ensure that the license holder conducts pre-opening simulcasting and completes the pending allocated live race dates.¹
- (I) demonstrating ongoing ability to access the capital needed to complete the racetrack facility;

- (J) demonstrating an experienced team of employees and offers capable of developing and operating the racetrack;
- (K) making regular and timely payment to the Commission to support the horse racing industry;
- (L) conducting studies on the economic viability of racing at the licensed location and taking steps to improve that viability; or
- (M) other factors which, in the Commission's discretion, indicate that the licensee is making "good faith efforts" to conduct live racing.

These proposed changes would provide the Commission with the ability to examine a licenseholder's actual "efforts" to determine whether the license should be designated as "Active-Other," rather than exclusively examining results that may or may not reflect the license holder's efforts.

We appreciate the opportunity to submit these comments and look forward to working with the Commissioners and other participants to develop a rule that meets the requirements of HB 2271. We also welcome any questions or further discussion on the changes we have proposed to the published rule.

Sincerely,


Andrea B. Young
President

cc: Chuck Trout, Texas Racing Commission
Mark Fenner, Texas Racing Commission
Drew Shubeck, Lone Star Park
Bryan Brown, Retama Park
Sally Briggs, Gulf Greyhound
William Moltz, Valle de los Tesoros/LRP Group
Howard Phillips, Manor Downs
Marsha Rountree, Texas Horsemen's Partnership
Rob Werstler, TQHA
David Hooper, TTA



TEXAS
THOROUGHBRED
ASSOCIATION

2012 MAY 22 PM 1:14

RECEIVED
TEXAS RACING
COMMISSION

May 25, 2012

Texas Racing Commission
P.O. Box 12080
Austin, TX 78711-2080

Dear Commissioners:

The Texas Thoroughbred Association supports the Texas Racing Commission's proposed rulemaking on Active and Inactive Racetrack Licenses as published in the Texas Register dated April 27, pursuant to a unanimous vote of the TTA Board of Directors on May 22.

TTA, along with other recognized industry organizations and organization licensees, has received a copy of a May 10 letter from Sam Houston Race Park with several proposed amendments to the published rules. TTA does not agree with the proposed amendments for the following reasons:

The proposed amendments to Sec. 309.51(2)(D) and (E) are nothing more than delay tactics rather than efforts to move to conducting live racing, which we've seen since licenses were awarded several years ago. There have been several references to "negotiating with local authorities in an effort to secure the permits" and "negotiating contracts" serving as the testimony of representatives of some licensed but unbuilt tracks when providing progress reports to the Commission during public hearings.

The proposed amendment to Sec. 309.51(2)(H) is unnecessary as there is already a provision in the rules for applying for a change of location, which led to a request to change location by the owners of Laredo Downs filed in the spring of 2011. Including a new provision under the section governing Active and Inactive Racetrack Licenses will provide the owners of other unbuilt Class 2 tracks another way to use a delay tactic.

The proposed amendment to Sec. 309.51(2)(I) is not necessary. Financial information was reviewed by the Commission before approval of the issuance of a license and the Commission has rule provisions in place to assure the maintenance of sustainable financial viability.

The proposed amendment to Sec. 309.51(2)(K) is also unnecessary as the Commission has the authority to act if a track licensee fails to remit required payments.

The proposed amendment to Sec. 309(2)(L) is nothing more than a stall tactic as studies could be requested for one track or another ad nauseam to delay moving towards the start of live racing.

The one suggested amendment that TTA would support is Sec.309(2)(M) which would give the Commission broad "discretion" in determining a track licensee's "good faith efforts."

Thank you for your consideration of TTA's position on this subject.

Respectfully yours,

David E. Hooper
Executive Director

cc: Chuck Trout, Texas Racing Commission
Drew Shubeck, Lone Star Park
Bryan Brown, Retama Park
Greg LaMantia, Valle de los Tesoros/LRP Group
Drew Alexander, Saddle Brook Park
Marsha Rountree, Texas Horsemen's Partnership

Mark Fenner, Texas Racing Commission
Andrea Young, Sam Houston Race Park
Sally Briggs, Gulf Greyhound
Howard Phillips, Manor Downs
Robert Werstler, TQHA
Ed Wilson, TABA



2012 MAY 29 PM 12:07

RECEIVED
TEXAS RACING
COMMISSION

May 04, 2012

Mr. Mark Fenner
General Counsel
Texas Racing Commission
8505 Cross Park Drive
Suite 110
Austin, TX 78754

Dear Mr. Fenner:

We have reviewed rules 309.51 and 309.52 and very much appreciate the time and effort by the Commission in formulating and drafting the rules. The comments we have with regard to 309.51 are as follows:

Section 309.51

- 309.51 (e)(3)(E). In the fourth line of this section add the words "or canceled due to Acts of God or other events beyond the control of the racetrack" to the end of the sentence.
- 309.51 (f). Add the words "or canceled due to Acts of God or other events beyond the control of the racetrack" after the word "Provisions" in the third line of that section.

Please let me know if you have any questions with regard to these comments.

Many thanks,

Bryan P. Brown
CEO

cc: Chuck Trout
Tommy Azopardi
Sally Briggs
David Hooper
Greg LaMantia
Howard Philips
Marsha Rountree
Drew Shubeck
Rob Werstler
Andrea Young

2012 MAY 29 PM 3:14

GLOBAL GAMING LSP, LLC

1000 LONE STAR PARKWAY
GRAND PRAIRIE, TEXAS 75050-7941

RECEIVED
TEXAS RACING
COMMISSION

May 22, 2012

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

Re: Proposed Rules on Active/Inactive Racetrack Licenses

Dear Commissioners:

Lone Star Park believes that the proposed rules governing active and inactive racetrack licenses, as published in the April 27, 2012 issue of the *Texas Register*, are statutorily-authorized, reasonable, and in harmony with the Legislature's objectives and the language of H.B. 2271.

The Legislature has given the Commission the power to make rules that carry out legislative purposes and objectives. In H.B. 2271, the Legislature did not define "good faith efforts to conduct live racing." Rather, the Legislature has given the Commission the power to use its expertise and regulatory experience to decide what that phrase means. Consequently, in classifying licensees as "Active," "Active-Other," and "Inactive," the Commission has the latitude to decide what actions constitute "good faith efforts to achieve live racing" and what actions do not.

Also, in interpreting a statutory amendment, a prime consideration is "the evil" to be remedied. Tex. Gov't Code § 312.005. The "evil" at which H.B. 2271 is aimed is the existence of racetrack licenses that have never conducted live race meetings despite being given years in which to do so. In this context, the proposed requirement that to qualify as an "Active-Other" license, the holder of a "paper" license must have taken results-oriented positive steps that make live racing imminent is reasonable and consistent with the Legislature's objectives. This is especially so when one recalls that (1) each license holder was required to identify, among other things, the "exact location" of their proposed racetrack, the "facilities" for patrons, occupational licensees, and race animals, and the "kind of racing to be conducted and the dates requested" when its license was originally issued; and (2) to issue the license, the Commission had to find that "the conduct of race meetings at the proposed track and location" was "in the public interest" and complied "with all zoning laws." Art. 179e, §§ 6.03(a), 6.04(a).

The Texas Racing Commission
Page 2
May 22, 2012

Under these circumstances, it is difficult to believe that the Legislature would want the Commission to adopt rules that simply preserve the *status quo*. In classifying a racetrack license as "Active-Other," the Commission has the discretion to reject as "good faith efforts" acts or intentions that do not make live racing imminent. Allowing the kind of conduct that has never achieved the goal of live racing to qualify as "good faith efforts" would undermine the Legislature's objective.

Lone Star Park also believes that the bonding provisions of the proposed rules are reasonable. The Texas Racing Act allows the Commission to require a bond to "ensure the license holder's or applicant's compliance with substantive requirements of this Act and commission rules." Art. 179e, § 6.032(a). The Legislature recognizes that the Commission's rules can be substantive as well as procedural. The Commission's proposed rules on active and inactive licenses contain substantive components for which a performance bond may be reasonably required.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ricky C. Knox". The signature is fluid and cursive, written over a horizontal line.

Ricky Knox
Chairman, Global Gaming LSP, LLC



Lexington Financial Center
250 West Main Street, Suite 1600
Lexington, Kentucky 40507-1746
859 233 2012
Fax: 859.259.0649

Lisa E. Underwood
859-288-7665
lunderwood@wyattfirm.com

2012 MAY 29 PM 4: 22

May 29, 2012

RECEIVED
TEXAS RACING
COMMISSION

VIA FACSIMILE to 512-833-6907

Texas Racing Commission
c/o Carolyn Weiss, Assistant to the Executive Director
P. O. Box 12080
Austin, TX 78711-2080

RE: Comments relating to Proposed "Active/Inactive Rules" – Proposed 16 TAC
Section 309.51 and Proposed 16 TAC Section 309.52

Commissioners:

I am writing to provide comments on proposed new 16 TAC Section 309.51 and 16 TAC Section 309.52 on behalf of Saddle Brook Park. By way of introduction, I served as Executive Director of the Kentucky Horse Racing Commission for a little more than five (5) years and recently returned to private practice. During my term as Executive Director, I had the pleasure of working with several members of the staff of the Texas Racing Commission.

We appreciate the opportunity to provide comments during your rule-making process. We understand there have been several meetings and opportunities to comment prior to this time and apologize for this being our first formal communication. Our client, Drew Alexander, has had significant health issues and has not been able to dedicate the time and attention to this important matter that has been required. His brother, Lynn Alexander, who is also a minority owner of Saddle Brook Park, is interested in helping Drew and has asked that we participate. We plan to be actively engaged going forward.

First we want to start by stating we agree conceptually with many of the comments submitted previously by other license holders regarding the proposed rule going beyond what is authorized under Texas Racing Act (the "Act") Section 6.0601 (HB 2271). The statute clearly states as follows:

(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. (emphasis added)

25

Texas Racing Commission
May 29, 2012
Page 2

(c) the commission by rule shall provide guidance on what actions constitute, for purposes of this Act, good faith efforts to conduct live racing.

The statute clearly contemplates that a license may be classified as an Active License if the license holder is demonstrating good faith efforts. There is no requirement that live racing be held within a certain period of time. The legislature asked the Commission to provide guidance regarding what actions would constitute good faith efforts. The legislature did not ask the Commission to provide specific milestones or results which must be met for the good faith requirement to be satisfied. The proposed rule requires certain results to be accomplished, rather than a showing of efforts as is required by the statute. We suggest a simple solution would be to characterize the list in the proposed rule as an example of the type of actions which could be taken into account in determining whether there have been good faith efforts. Those efforts should be assessed individually and should not be required to be met on a cumulative basis. There may be other activities taken by the licensee which should also be taken into account in determining whether the licensee is making good faith efforts which are not on the specific list. This concept is included at proposed rule § 309.52(d)(3) in connection with determining whether "good faith efforts" have been made in renewing an inactive license. Section 309.52(d)(3) provides: "For purposes of this section, the Commission will consider, but is not limited to, the following actions as evidence that a license holder is making good faith efforts to conduct live racing." We submit that if the Commission is given discretion to determine whether good faith efforts have been made in the inactive licensing context they should be given that same discretion in the Active-Other context.

The following is language we are submitting as a proposed alternative to the language in proposed 16 TAC Section 309.51(b)(2).

Section 309.51 Designation of Active and Inactive Racetrack Licenses

(2) "Active-Other" means the license holder has ~~applied for and received pending live race dates under §303.41 of this title (relating to Allocation of Race Dates), and demonstrated good faith efforts to conduct live racing.~~ For purposes of this section, the Commission will consider, but is not limited to, the following actions as evidence that the license holder is making "good faith efforts" to conduct live racing taken the following actions to demonstrate good faith efforts to conduct live racing:

- (A) is presently conducting or is in the process of being able to conduct pre-opening simulcasting at the permanent location or an approved temporary location; or
- (B) has demonstrated that the conduct of simulcast and live racing at its racetrack facility is imminent by completing or is in the process of completing any of the following:
 - (i) the purchase of purchasing the real property of at the designated racetrack site;

Texas Racing Commission
May 29, 2012
Page 3

- (ii) securing Commission approval of the racing facility's construction plans;
 - (iii) securing all permits and utilities necessary for the construction of the racing facilities;
 - (iv) negotiating, — executing and providing delivering to the Commission executed contracts a contract for the construction of the racing facilities; ~~and~~
 - (v) providing delivering to the Commission a construction and operations management schedule demonstrating that simulcasting will begin within four months a reasonable time of the designation and that the facilities will be ready to conduct live racing by the beginning of the approved live race dates;
 - (vi) providing to the Commission documentation demonstrating an experienced team of employees and officers capable of developing and operating the racetrack;
 - (vii) making regular and timely payment to the Commission to support the horse racing industry; and
 - (viii) other factors which, in the Commission's discretion, indicate that the licensee is making "good faith efforts" to conduct live racing.
- ~~(C) voluntarily providing a bond under subsection (c) of this section to ensure that the license holder conducts pre-opening simulcasting and completes the pending allocated live race dates.~~

The proposed rule at 16 TAC Section 309.51(e) provides that a \$400,000 bond would be forfeited if (1) simulcasting is not conducted during the initial fiscal year of the bonding period or (2) live racing is not conducted during the first two fiscal years. There is no requirement in Section 6.0601 or 6.0602 of the Act that either of these time deadlines be met. This penalty goes beyond what is contemplated by the statute. Section 6.032 of the Act does not give the Commission the permission to require a bond to ensure that actual results are achieved. Pursuant to Section 6.032, a bond may be required to ensure a license holder complies with the "substantive requirements of the Act and commission rules." We respectfully suggest that to the extent the proposed rule is not authorized under Section 6.0601 or 6.0602 or any other provision of the Act, any bond requirement would likewise be unauthorized under Section 6.032. We suggest that the bond requirement in 16 TAC Section 309.51 be deleted.

We reserve comment on certain aspects of proposed rule 16 TAC Section 309.52 because we have not seen the application for renewal.

We appreciate the opportunity to provide these comments and would appreciate the Commission seriously considering these remarks. We would welcome any questions or further discussion on these comments.



Texas Racing Commission
May 29, 2012
Page 4

Very truly yours,

Lisa E. Underwood
Counsel for Saddle Brook Park

LEU:dsk

cc: Chuck Trout, Texas Racing Commission
Mark Fenner, Texas Racing Commission

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Texas Racing Commission
 Title 16, Part VIII
 Chapter 313. Officials and Rules of Horse Racing
 Subchapter D. Running of the Race
 Division 1. Jockeys

1 **Sec. 313.409. Jockey Mount Fees**

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

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

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

Purse	Winning Mount	Second Mount	Third Mount	Losing Mount
\$599 & 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

Texas Racing Commission
Title 16, Part VIII
Chapter 313. Officials and Rules of Horse Racing
Subchapter D. Running of the Race
Division 1. Jockeys

\$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

- 5 (d) (No change.)
- 6 (e) If the jockey does not weigh out because the owner or
7 trainer replaces the jockey with another jockey, the owner or
8 trainer shall pay the appropriate fee to each jockey engaged for
9 the race unless otherwise authorized by the stewards. The fee
10 to be paid is equal to that earned by the jockey who rode the
11 horse.
- 12 (f) - (g) (No change.)

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

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; and

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

12 (b) - (e) (No change.)

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

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

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

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

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

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

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

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

1 **Sec. 313.101. Entry Procedure**

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

3 (e) A horse which, during the 12-month period preceding the date
4 of a race, has started in a race where past performance lines
5 are available, but which are not on file with the Daily Racing
6 Form or Equibase ~~the American Quarter Horse Association~~, may not
7 be entered at a racetrack licensed in this state unless the
8 owner of the horse has furnished performance records to the
9 racing secretary at the time of entry.

10 (f) A person entering a dually registered Accredited Texas Bred
11 horse in a mixed breed conditioned race shall declare during
12 entry which breed the horse shall run as for purposes of Breeder
13 Awards eligibility.

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

1 **Sec. 313.104. Registration Certificates**

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

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

Texas Racing Commission
Title 16, Part VIII
Chapter 313. Officials and Rules of Horse Racing
Subchapter C. Claiming Races

1 **Sec. 313.306. Transfer of Claimed Horse**

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

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

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

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

Texas Racing Commission
Title 16, Part VIII
Chapter 303. General Provisions
Subchapter D. Texas Bred Incentive Programs General Provisions
Program for Horses

- 1 **Sec. 303.97. Dually Registered Horses**
- 2 Dually registered horses that are eligible for Accredited Texas
- 3 Bred Incentive program awards are not eligible for awards from
- 4 more than one recognized breed registry per race.

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 04/24/12

***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:	Cathy Cantrell	Phone(s):	512-833-6699
E-mail address:	cathy@txrc.state.tx.us	Fax number:	512-833-6907
Mailing address:	8505 Cross Park Dr. Ste 110, Austin Texas, 78754		

Check appropriate box(s)

Personal Submission *OR*

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

If known, Proposed Change to Chapter: Chapter: 311.3 Rule: (4)(C)

If known, Proposed Addition to Chapter: Chapter: 311.3 Rule: (6)

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

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

A. Brief Description of the Issue

The Federal Bureau of Investigation (FBI) has decreased its fingerprint charges from \$19.25 to \$16.50. The Commission collects the passthrough fees charged by the FBI.

B. Discussion of the Issue and Problem

No issues/problems.

C. Possible Solutions and Impact

Since the Texas Racing Commission only collects the passthrough fees charged by the FBI, the rule must be revised to reflect the decrease.

D. Support or Opposition

N/A

E. Proposal

Rule 311.3. Information for Background Investigation

- (a) Fingerprint Requirements and Procedure
- (1)-(3) (No change.)
 - (4) A person who desires to renew an occupational license must:
 - (A)-(B) no change
 - (C) if the applicant's original fingerprints are classified and on file with the Department of Public Safety, the applicant must pay a processing fee ~~of \$34.25~~ to resubmit the original fingerprints in lieu of submitting another set of fingerprints under paragraph (6) of this subsection. The processing fee shall be equal to the amount necessary to reimburse the Department of Public Safety for obtaining criminal history records under subsection (b) of this section.
 - (5) (No change.)
 - (6) If an applicant for a license or license renewal is required to submit fingerprints under this section, the applicant must also submit a fingerprinting fee of \$9.95 and a processing fee equal to the amount necessary to reimburse the Department of Public Safety for obtaining criminal history records under subsection (b) of this section. ~~\$44.20.~~
- (b) (No change.)

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: May 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.

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Personal Submission *OR*

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

If known, Proposed Change to Chapter: Chapter: 313 Rule: 313.304

If known, Proposed Addition to Chapter: Chapter: _____ Rule: _____

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

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

A. Brief Description of the Issue

Texas has closely followed changes being made or that are being considered regarding claiming rules, especially in regards to voiding a claiming race if a horse is euthanized on the track or tests positive for a prohibited drug or substance.

The Commission recently sent out a survey to ARCI members and received information regarding two types of new rules that have been enacted in other jurisdictions:

1. A claim shall be voided if the horse suffers a fatality (dies or is euthanized on the track) during the running of the race or before the horse is returned to be unsaddled.
2. A claimant may elect to void a claim if the analysis of a post-race blood or urine sample taken from a claimed horse results in a positive or if the tests results from a previous race have not cleared by the date of the claim and those results result in a positive.

B. Discussion of the Issue and Problem

Some state commissions have become concerned that certain owners and trainers are using claiming races to sell horses that they know are no longer sound. These states believe that some of these horses have been drugged to mask any problems that would otherwise dissuade an interested individual from making a claim for the horse. As a result, claimants who are trying to acquire a sound and healthy horse end up defrauded.

California has adopted a rule that voids a claim if "the horse suffers a fatality during the running of the race or before it is returned to be unsaddled." California also considered, but decided against, a proposal that would have voided a claim if a horse was found to have a drug in its system.

New York has adopted an emergency rule that voids a claim if a horse dies during a race or is euthanized on the track.

Massachusetts and South Dakota have adopted rules that give the new owner of a claimed horse the right to void the claim if a horse tests positive for a banned substance.

The states of Washington and Nevada are both currently studying and reviewing the issues.

C. Possible Solutions and Impact

This rule would make it harder for individuals to use claiming races to sell horses that are not sound. The rule would protect the health and safety of race horses by reducing the incentive to administer drugs that mask any physical problems of unsound horses.

No fiscal implications at local or state levels are expected as a result of this change.

The proposed rules will better assure that claiming races are not being used in a manner in which unsound horses are sold to other individuals or groups.

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.*

Support:

Undetermined

Opposition:

Undetermined

E. Proposal

The following draft is for discussion purposes only and is not intended for presentation to the full Commission.

Sec. 313.304, Claim Irrevocable

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

(b) If the stewards declare a claiming race a "no race," all claims for that race are invalid.

(c) If a claimed horse dies during a race or is euthanized on the racetrack, the claim for that horse shall be void.

(d) If the result of the initial test on a specimen taken from a claimed horse is positive for a Class 1, 2, or 3 substance, the claimant shall be promptly notified by the Stewards and the claimant may request to void the claim. The claimant shall submit the request to void the claim in writing no later than forty-eight hours after being notified of the positive test.

The request must be filed at the main Commission office in Austin or with the stewards at a Texas pari-mutuel racetrack where a live meet is being conducted.

(e) The stewards shall approve a claimant's request to void a claim under subsection (d) of this section unless the stewards determine that, due to actions by the claimant after taking possession of the horse, approval is not in the best interest of racing. If the stewards approve a claimant's request to void a claim, the claimant shall deliver the horse to the previous owner at the racetrack at which it was claimed within three calendar days of notification of the decision.

ARCI Model Rules

ARCI-009-010 General Provisions

- (2) Title to a claimed horse shall be vested in the successful claimant at the time the horse leaves the paddock. The successful claimant shall then become the owner of the horse whether it be alive or dead, sound or unsound or injured at any time after leaving the paddock, during the race or after. However, the successful claimant may request on the claim blank at the time he/she makes the claim that the horse be tested for the presence of equine infectious anemia via a Coggins test., or other test as approved by the official veterinarian. Should this test prove positive, it shall be cause for voiding the claim. The expense of the test and the maintenance of the horse during the period requested for the test, shall be the responsibility of the successful claimant, unless the test proves positive, wherein the owner(s) of the horse at the time of entry shall be responsible.
- (4) The stewards may set aside and order rescision of a claim for any horse from a claiming race run in this jurisdiction upon a showing that any party to the claim committed a prohibited action, as specified in ARCI-009-025 of this chapter, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of these rules. Should the stewards order a rescision of a claim, they may make a further order for the costs of maintenance and care of the horse as they may deem appropriate.

ARCI-009-035 Transfer Of Claimed Horses

- (1) Upon successful claim, the stewards shall issue, upon forms approved by the Commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the stewards and the racing secretary. Upon notification by the stewards, the horsemen's bookkeeper shall immediately debit the claimant's account for the claiming price, applicable taxes and transfer fees.
- (2) A person shall not refuse to deliver a properly claimed horse to the successful claimant.
- (3) Transfer of possession of a claimed horse shall take place immediately after the race has been run unless otherwise directed by the stewards. If the horse is required to be taken to the test barn for post-race testing, the original trainer or his/her representative shall maintain physical custody of the claimed horse and shall observe the testing procedure and sign the test sample tag. The successful claimant or his/her representative shall also accompany the horse to the test barn.
- (4) When a horse is claimed out of a claiming race, the horse's engagements are transferred, with the horse, to the claimant.
- (5) Ownership interest in any horse claimed from a race shall not be resold or transferred back to the original owner for 30 days after such horse was claimed, except by claim from a subsequent race.
- (6) A claimed horse shall not remain in the same stable or under the control or management of its former owner.
- (7) If the claimed horse has been approved by the stewards to run without the registration certificate on file in the racing office, then the registration certificate must be provided to the stewards for transfer to the new owner before claiming funds will be approved for transfer by the stewards.

State Claiming Rules – Exceptions for Fatality

California

Rule 1658: Vesting of Title to Claimed Horse

- (a) Title to a horse which is claimed shall be vested in the successful claimant from the time the field has been dispatched from the starting gate and the horse becomes a starter; and said successful claimant becomes the owner of the horse whether it is sound or unsound, or injured during the race or after it. Only a horse which is officially a starter in the race may be claimed. A subsequent disqualification of the horse by order of the stewards or the Board shall have no effect upon the claim.
- (b) The stewards shall void the claim if the horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled.
- (c) The claim shall be void if the race is called off, canceled, or declared no contest in accordance with Rule 1544 of this division.

New York

4038.5. Requirements for claim; determination by stewards.

(a) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the racing secretary or his designee, at least 10 minutes before post time. Claim slip forms must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim. Each person desiring to make a claim, unless he shall have such amount to his credit with the association, must first deposit with the association the whole amount of the claim, in a manner approved by the racing secretary or designee for which a receipt will be given. All claims shall be passed upon by the stewards, and the person determined at the closing time for claiming to have the right of claim shall become the owner of the horse when the start is effected, whether it be sound or unsound or injured before or during the race or after it, except that:

- i. the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section 4038.18 of this subchapter [unless the age or sex of such horse has been misrepresented], and subject to the provisions of subdivision (b) of this section; and
- ii. a claim shall be voided for any horse that dies during a race or is euthanized on the track following a race.

In the event more than one person should enter a claim for the same horse, the disposition of the horse shall be decided by lot by the stewards. Any horse so claimed shall then be taken to the test barn for delivery to the claimant after the test sample is taken.

(b) In the event a horse is claimed, and the claimant has indicated on the claiming blank an election to have a test for equine infectious anemia performed and has paid the prescribed fee therefore, a blood sample shall be taken by the board veterinarian, and the sample identified as being from a claimed horse shall be forwarded within 24 hours to an approved laboratory to be tested for equine infectious anemia. Pending the receipt of a negative test for equine infectious anemia the monies paid for the claimed horse shall be held by the track. In the event of a positive test for equine infectious anemia the ownership of the claimed horse shall revert to the owner from whom the horse was claimed and the claiming monies shall be returned to the person or persons who claimed the horse. The cost of the test is to be borne by the claimant.

State Claiming Rules – Exceptions for Positive Test

Delaware

13.12 Nature and Effect of a Claim:

- 13.12.1 Claims are irrevocable except as otherwise provided for in these Rules. Title to a claimed horse shall be vested in the successful claimant from the time the said horse is a starter and said claimant shall then become the Owner of the horse, whether it be alive or dead, sound or unsound, or injured, during the race or after it. A claimed horse shall run in the interest of and for the account of the Owner from whom claimed.
- 13.12.2 A post-race test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race sample is collected. Any claimed horse not otherwise selected for testing by the stewards shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these Rules. The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance, an illegal level of a permitted medication, or if a blood sample exhibits a positive response to the Erythropoietin (EPO) antibody test.

South Dakota

20:04:26:02. Claiming in general.

In claiming races, a horse is subject to claim for its entered price by a licensed owner registered in good faith for racing at the meeting or by a licensed authorized agent for the account of the owner. A person may not claim the person's own horse or cause the horse to be claimed directly or indirectly for the person's own account. The horse the claimant has registered for racing at that meeting, in the opinion of the stewards, must justify the claimant's right to claim. The stewards are the sole judges of the quality of the horses in the stable of the claimant and shall decide when the spirit as well as the intent of this chapter is being violated. They may, at their discretion, declare any claim void.

20:04:27:02. Tests of winner required.

The unofficial winner of every race and any other horses the stewards of the meeting or the commission representative designate, shall be sent immediately after the race to the testing enclosure for examination by the official veterinarian and for the taking of such specimens of saliva, urine, or blood as directed. Blood specimens shall be taken only by a licensed veterinarian.

20:04:26:26. Claims in violation of the rules are void.

Claims made which are not in keeping with this chapter are voidable by the steward.

Massachusetts

4.06: Claiming

(1) In claiming races any horse is subject to claim for its entered price by any owner registered in good faith for racing at the meeting or by his authorized agent. Said claim is for the account only of the owner making the claim or for whom the claim was made by the agent provided. No person shall claim his own horse or cause his horse to be claimed directly or indirectly for his own account.

4.32: Urine, Other Tests and Examinations

(27) Should the analysis of a post race blood, urine or saliva specimen taken from a claimed horse result in a post race positive test, the claimant's trainer shall be promptly notified by the Stewards and the claimant shall have the option to void said claim. An election to void a claim shall be submitted in writing to the Stewards by the claimant or his trainer.

New York

4038.19. Excess TCO2 levels

(a) Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a post-race positive test, or if the test results of a previous race have not been cleared by the date of the claim and result in a post-race positive test, the claimant's trainer shall be promptly notified by the stewards and the claimant shall have the option to void said claim within five (5) days of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer. In the event the claim is voided, the horse shall be returned to the owner of the horse who subjected the horse to claiming in the race from which the positive test resulted.

(b) *Erythropoietin and darbepoietin.* Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer.

(c) *Reserpine and fluphenazine.* Notwithstanding any inconsistent provision of Part 4043, should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer.

(d) *Upper neurectomy or unreported lower neurectomy.* Where an upper neurectomy as defined in subdivision (a) of section 4025.31 of this Subchapter or a lower neurectomy which has not been reported as required in subdivision (b) of section 4025.31 has been performed on a horse prior to the race in which it is claimed, the claimant shall have the option to void said claim upon written notice to the stewards from the claimant or his trainer given within 10 days following the date of the claim.

(e) *Undeclared pregnant mare.* Where a pregnant mare has been claimed which pregnancy has not been disclosed as required in section 4038.17 of this Part, the claimant shall have the option to void the claim upon written notice to the stewards from the claimant or his trainer within 10 days following the date of the claim.

(f) *Misrepresentation of age or sex.* Where a horse has been claimed and the age or sex of the animal has been misrepresented in the racing program, the claimant shall have the option to void the claim upon written notice to the stewards from the claimant or his trainer within 10 days following the date of the claim.

(g) *Excess TCO2 levels.* In the event that a claimed horse tests in violation of Rule 4043.8, and it is not determined that such TCO2 level is physiologically normal for that particular horse, the claimant or his trainer shall have the option to void the claim upon written notice to the stewards within five (5) days of receiving notice of the violation.

CHAPTERS 301, 303, 311, & 319

Substantive changes

Chapter 301:

The following sentence was added to the definition of Performance. A greyhound performance consists of fifteen or fewer races unless approved by the executive secretary.

These two definitions were added as a result of HB 2271-82R.

- Active license means a racetrack license designated by the commission as active.
- Inactive license means a racetrack license designated by the commission as inactive.

Chapter 311:

Changes were made to Section 311.103. Kennel Owners. The changes were meant to clarify the intent of the rule by prohibiting ownership of multiple kennels by persons who are residentially domiciled together.

Changes were made to Section 311.104. Trainers. The change requires that trainers be responsible for reporting the correct sex of the horses in his/her care to the Commission veterinarian and the horse identifier.

Changes were made to Section 311.3, Information for Background Investigation. The change allows applicants who desire to renew an occupational license to utilize a new process whereby the Texas Department of Public Safety may resubmit an applicant's original fingerprints on file instead of requiring the applicant to provide new fingerprints.

Chapter 319:

Changes were made to Sec. 319.3 Medication Restrictions subsection (b), which lowered the maximum permissible concentration of phenylbutazone in horses from 5.0 micrograms per milliliter of plasma or serum to 2.0 micrograms per milliliter. The majority of Texas horses have tested at a level of 2.0 micrograms per milliliter or less.

Changes were made to Section 319.335. Approval of Testing Costs. The words "The Auditing and" were deleted from the Section Title. The second change was to subsection (a), regarding charges for conducting drug tests. The definition clarifies that charges for conducting tests must be reconciled with the number of test actually conducted and must be approved by the executive secretary before payment.

Changes were made to Section 319.336. Payment of Testing Costs. The following subsections were removed: (c) Accounting and Payment of Remainder and (d) Pooling of Drug Testing Costs.

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