

TEXAS RACING COMMISSION

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COMMITTEE ON RULES

Tuesday, December 4, 2012
1:00 p.m.
Texas Racing Commission Offices
8505 Cross Park Dr., Suite 110
Austin, TX 78754

Agenda

The Committee will accept comments in response to the publication of the following rule proposals in the October 26, 2012, edition of the *Texas Register*.

Chapter 311, Other Licenses

- Rule 311.1, Occupational Licenses
- Rule 311.2, Application Procedure
- Rule 311.3, Information for Background Investigation
- Rule 311.5, License Categories and Fees
- Rule 311.101, Horse Owners
- Rule 311.102, Greyhound Owners

Chapter 321, Pari-Mutuel Wagering

- Rule 321.15, License to Provide Totalisator Services
- Rule 321.29, Mutuel Tickets
- Rule 321.31, Vouchers
- Rule 321.46, Payment on No Ticket Issue
- Rule 321.215, Multiple Wagers
- Rule 321.320, Super Hi-Five
- Rule 321.321, Fortune Pick (n)
- Repeal and Adoption of Chapter 321, Subchapter B, Totalisator Requirements and Operating Environment (Includes repeal of existing Rules 321.101, 321.103, 321.105, 321.107, 321.121, 321.123, 321.124, 321.125, 321.127, 321.131, 321.133, 321.135, 321.137, 321.139, 321.141, and 321.143, and adoption of new Rule 321.101, Totalisator Requirements and Operating Environment.)

The Committee will discuss the following requests for new rules or rule amendments.

Amend Rule 309.1, Racetrack Licenses

New Rule 307.8, Negotiated Rulemaking and Alternative Dispute Resolution

The following requests for new rules or rule amendments relate to the prohibition of live lures in the training of greyhounds:

Amend Rule 309.359, Live Lures

Amend Rule 311.6, Denial, Suspension, and Revocation of Licenses

Amend Rule 311.102, Greyhound Owners

Amend Rule 311.104, Trainers

New Rule 311.217, Greyhound Training

New Rule 315.112, Ineligibility Due to Improper Greyhound Training

The Committee will discuss the implementation of Sections 10 and 28 of HB 2271, 82nd Regular Legislative Session, relating to the establishment of a staggered schedule and the procedure for the review of the ownership and management of active racetrack licenses.

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 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

Sec. 311.1.Occupational Licenses.

(a) License Required.

(1) A person other than a patron may not participate in racing at which pari-mutuel wagering is conducted unless the person has a valid license issued by the Commission. Any individual who enters an animal is deemed to be a participant in racing.

(2) A licensee may not employ a person to work at a racetrack at which pari-mutuel wagering is conducted unless the person has a valid license issued by the Commission.

(3) An association may not employ a person who works in an occupation that affords the employee an opportunity to influence racing with pari-mutuel wagering, or who will likely have significant access to the backside or restricted areas of a racetrack, unless the person has a valid license issued by the Commission.

(b) Duration of License.

(1) Except as provided in paragraph [~~subsection (b)~~] (2) of this subsection [~~section~~], an occupational license expires one year after the last day of the month in which the license was issued.

(2) - (3) (No change.)

(c) - (d) (No change.)

CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

Sec. 311.2.Application Procedure.

(a) (No change.)

(b) Application Site.

(1) Except as provided in paragraphs [~~subsection (b)~~] (2) and [~~(b)~~] (3) of this subsection [~~section~~], an applicant for an occupational license must file the appropriate application form and related documents at the licensing office at a licensed racetrack.

(2) An applicant for the following occupational license types may file the appropriate application form and related documents by mail to the main office of the Commission in Austin; kennel owner, kennel owner/owner, kennel owner/owner/trainer, kennel owner/trainer, owner, owner/trainer, trainer, multiple owner/stable/farm registration, training facility employee, and training facility general manager/CEO.

(3) An applicant for [~~who is eligible to renew~~] an occupational license that is available through the Texas OnLine portal may submit [~~file~~] the required application information through the Texas OnLine portal.

(c) - (e) (No change.)

CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

Sec. 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 to resubmit the original fingerprints in lieu of submitting another set of fingerprints under paragraph (5) [~~(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) Waiver.]~~

~~[(A) Pursuant to Texas Civil Statutes, Article 179c, §7.10, the Commission will waive the fingerprint requirements in this section for an applicant for an owner or trainer license if:]~~

~~[(i) the individual presents proof of a valid owner or trainer license issued in a racing jurisdiction that requires the submission of fingerprints to the Federal Bureau of Investigation and the Commission verifies that fingerprints were submitted by that jurisdiction for the applicant within the three years preceding the date of the application in Texas; and]~~

~~[(ii) the applicant's permanent residence is outside the State of Texas.]~~

~~[(B) This subsection does not apply to an applicant who:]~~

~~[(i) has a criminal history in another state, as revealed by a report by the Federal Bureau of Investigation or other reliable criminal information sources;]~~

~~[(ii) maintains a residence or is employed, whether self-employed or otherwise, in Texas; or]~~

~~[(iii) obtains a license badge issued by the Commission which gives the applicant access to a restricted area on association grounds.]~~

~~[(C) Notwithstanding a waiver of the fingerprint requirements under this subsection, the Commission reserves the~~

CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

~~right, at its sole discretion, to require the submission of fingerprints after a license has been issued.]~~

(5) ~~[(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 and a processing fee equal to the amounts necessary to reimburse the Commission and the Department of Public Safety for obtaining criminal history records under subsection (b) of this section.

(b) (No change.)

CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

Sec. 311.5. License Categories and Fees.

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

(d) The fee for an occupational license is as follows:

Type of License	1 Year Fee	2 Year Fee	3 Year Fee
Adoption Program Personnel	\$25		
Announcer	\$35		
Apprentice Jockey	\$75		
Assistant Farrier/Plater/Blacksmith	\$25		
Assistant Starter	\$25		
Assistant Trainer	\$100		
Assistant Trainer/Owner	\$100		
Association Assistant Management	\$50		
Association Management Personnel	\$75		
Association Officer/Director	\$100		
Association Other	\$75		
Association Staff	\$35		
Association Veterinarian	\$75		
Authorized Agent	\$15		
Chaplain	\$25		
Chaplain Assistant	\$25		
Exercise Rider	\$25		
Farrier/Plater/Blacksmith	\$75		
Groom/Hot Walker	\$25		
Jockey	\$100	\$200	\$300
Jockey Agent	\$100		
Kennel	\$75		
Kennel Helper	\$25		
Kennel Owner	\$100	\$200	\$300
Kennel Owner/Owner	\$100	\$200	\$300
Kennel Owner/Owner-Trainer	\$100	\$200	\$300
Kennel Owner/Trainer	\$100	\$200	\$300

CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

Lead-Out	\$25		
Maintenance	\$35		
Medical Staff	\$35		
Miscellaneous	\$25		
Multiple Owner	\$35	\$70	<u>\$105</u> [100]
Mutuel Clerk	\$35		
Mutuel Other	\$35		
Owner	\$100	\$200	\$300
Owner-Trainer	\$100	\$200	\$300
Pony Person	\$25		
Racing Industry Representative	\$100		
Racing Industry Staff	\$30		
Racing Official	\$50		
Security Officer	\$30		
Stable Foreman	\$50		
Tattooer	\$100		
Test Technician	\$25		
Tooth Floater	\$100		
Trainer	\$100	\$200	\$300
Training Facility Employee	\$30		
Training Facility General Manager	\$50		
Valet	\$25		
Vendor Concessionaire	\$100		
Vendor/Concessionaire Employee	\$30		
Vendor Totalisator	\$500		
Vendor/Totalisator Employee	\$50		
Veterinarian	\$100	\$200	\$300
Veterinarian Assistant	\$30		

CHAPTER 311. OTHER LICENSES
SUBCHAPTER B. LICENSING PROVISIONS

Sec. 311.101.Horse Owners.

(a) - (f) (No change.)

(g) Emergency License.

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

(4) If an owner submits an incomplete application for an owner's license, the application will remain in pending status until:

(A) the owner submits any additional information required to process the application;

(B) the application expires in accordance with the term of the applied-for license; or

(C) a horse is entered in the owner's name or in the name of a multiple owner of which the owner is a member, in which case the pending license will be presumed to be a request for an emergency license.

~~[(4) An application for an owner's license submitted to the Commission's main office in Austin that is incomplete will be presumed to be a request for an emergency license and an emergency license may be granted.]~~

(5) A license issued under this section expires on the 21st day after the date the emergency owner's license is issued. An owner may obtain only one emergency license per year. An emergency license cannot be issued if the owner failed to complete the prior licensing process.

(6) (No change.)

CHAPTER 311. OTHER LICENSES
SUBCHAPTER B. LICENSING PROVISIONS

Sec. 311.102. Greyhound Owners.

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

(c) Emergency License.

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

(4) If an owner submits an incomplete application for an owner's license, the application will remain in pending status until:

(A) the owner submits any additional information required to process the application;

(B) the application expires in accordance with the term of the applied-for license; or

(C) a greyhound is entered in the owner's name or in the name of a multiple owner of which the owner is a member, in which case the pending license will be presumed to be a request for an emergency license.

~~[(4) An application for an owner's license submitted to the Commission's main office in Austin that is incomplete will be presumed to be a request for an emergency license and an emergency license may be granted.]~~

(5) A license issued under this section expires on the 21st day after the date the emergency owner's license is issued. An owner may obtain only one emergency license per year. An emergency license cannot be issued if the owner failed to complete the prior licensing process.

(d) (No change.)

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 3. MUTUEL TICKETS AND VOUCHERS

Sec. 321.15. License to Provide Totalisator Services.

(a) To provide totalisator services to an association in Texas, a totalisator company must be licensed by the Commission as a Totalisator Vendor. The license application must include:

(1) (No change.)

(2) a list of all totalisator personnel assigned to work in Texas, or on behalf of an association operating in Texas, as described in Subchapter B [§321.123] of this chapter [title] (relating to Totalisator Requirements and Operating Environment) [~~Personnel Requirements~~];

(3) - (4) (No change.)

(b) (No change.)

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 3. MUTUEL TICKETS AND VOUCHERS

Sec. 321.29. Mutuel Tickets.

Each mutuel ticket issued must have printed on its face:

- (1) the name of the racetrack facility where the wager was placed;
- (2) the name of the racetrack where the race was conducted;
- (3) the number of the race;
- (4) the unique computer-generated ticket number;
- (5) the date the ticket was issued;
- (6) the date of the race for which the ticket was issued;
- (7) the number of the ticket-issuing machine;
- (8) the type of pool;
- (9) the number of each entry on which the wager was placed;
- (10) the dollar amount of the wager; and
- (11) appropriate language to indicate the expiration [~~date~~] of the ticket shall be the first anniversary of the day the ticket was purchased.

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 3. MUTUEL TICKETS AND VOUCHERS

Sec. 321.31.Vouchers.

Each voucher issued must have printed on its face:

- (1) the name of the racetrack facility where the voucher was issued;
- (2) the unique computer-generated voucher number;
- (3) the date the voucher was issued;
- (4) the number of the ticket-issuing machine;
- (5) the dollar amount of the voucher; and
- (6) appropriate language to indicate the expiration [date] of the ticket shall be the first anniversary of the day the ticket was purchased.

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 3. MUTUEL TICKETS AND VOUCHERS

Sec. 321.46. Payment on No Ticket Issue.

When a ticket issuing machine does not produce a paper ticket due to a mechanical failure, the mutuel manager may validate the wager through totalisator logs. If the transaction is a winning wager and the mutuel manager pays the patron, then the mutuel manager shall report the transaction to the Commission within 24 hours on a form prescribed by the association and approved by the executive secretary. The form must contain, at the minimum, the following: [~~Commission~~]

- (1) Association name;
- (2) Date and time of the machine failure;
- (3) Terminal number;
- (4) Bet description to include:
 - (A) racetrack;
 - (B) race number;
 - (C) animal number;
 - (D) bet type;
 - (E) amount wagered;
 - (F) total ticket cost;
 - (G) winning amount; and
 - (H) ticket serial number;
- (5) Patron's name and phone number;
- (6) Signature of the patron;
- (7) Description of the incident;
- (8) Date and time of the report; and
- (9) Signature of the mutuel manager.

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

REPEAL OF THE FOLLOWING DIVISIONS AND RULES:

DIVISION 1. FACILITIES AND EQUIPMENT

§321.101.Purpose.

§321.103.Facility Requirements.

§321.105.Hardware Requirements.

§321.107.Software Requirements.

DIVISION 2. OPERATIONAL REQUIREMENTS

§321.121.General Management Requirements.

§321.123.Personnel Requirements.

§321.124.Waivers for Technological Advancement of Off-site Processing.

§321.125.Totalisator Network.

§321.127.Data Transmission Protocols.

§321.131.General Requirements.

§321.133.Pre-Race Reports.

§321.135.Race-by-Race Reports.

§321.137.End-of-Day Reports.

§321.139.Ad Hoc Reports.

§321.141.Special Reports.

§321.143.Logs.

DIVISION 3. REPORTING AND LOG REQUIREMENTS

§321.131.General Requirements.

§321.133.Pre-Race Reports.

§321.135.Race-by-Race Reports.

§321.137.End-of-Day Reports.

§321.139.Ad Hoc Reports.

§321.141.Special Reports.

§321.143.Logs.

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

Sec. 321.101.Totalisator Requirements and Operating Environment.

Each association shall conduct wagering using a pari-mutuel system approved by the Commission. The pari-mutuel system shall operate in accordance with applicable laws and rules and meet the technical standards set forth in the Association of Racing Commissioners International Totalisator Technical Standards as amended in July 2012. Copies of the Totalisator Technical Standards are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the Commission office at 8505 Cross Park Dr., #110, Austin, Texas 78754.

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER C. REGULATION OF LIVE WAGERING
DIVISION 1. GENERAL PROVISIONS

Sec. 321.215. Multiple Wagers.

(a) The following wagers are considered to be multiple two wagers for all purposes:

- (1) daily double;
- (2) quinella;
- (3) exacta; and
- (4) quinella double.

(b) The following wagers are considered to be multiple three wagers for all purposes:

- (1) trifecta;
- (2) twin trifecta;
- (3) pick (n);
- (4) select three, four, or five;
- (5) superfecta; [~~and~~]
- (6) tri-superfecta; [~~and~~]
- (7) fortune pick (n); and
- (8) super hi-five.

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER C. REGULATION OF LIVE WAGERING
DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

Sec. 321.320. Super Hi-Five.

(a) - (g) (No change.)

(h) If on the final day of a race meeting or on a designated mandatory payout date the pool has not been distributed under subsection (b) or (c) of this section, then the net pool for that performance plus any carryover from previous performances shall be paid out in the following manner: [~~is canceled or the super hi-five pool has not been distributed, the pool shall be deposited in an interest-bearing account approved by the executive secretary. The pool plus all accrued interest shall then be carried over and added to the super hi-five pari-mutuel pool in the following race meeting on a date and performance designated by the executive secretary.~~]

(1) To those who selected first-place, second-place, third place, and fourth-place finishers in order. If there are no such wagers, then:

(2) To those who selected first-place, second-place, and third-place finishers in order. If there are no such wagers, then:

(3) To those who selected first-place and second-place finishers in order. If there are no such wagers, then:

(4) To those who selected the first-place finisher.

(i) If the final or designated mandatory payoff performance is canceled or the pool has not been distributed under subsection (h) of this section the pool shall be deposited in an interest-bearing account approved by the executive secretary. The pool plus all accrued interest shall then be carried over and added to the super hi-five pari-mutuel pool in the following race meeting on a date and performance designated by the executive secretary.

(j) [(i)] If an animal is scratched or declared a nonstarter, no further tickets may be issued designating such animal and all super hi-five tickets previously issued designating such animal shall be refunded and the money deducted from the gross super hi-five pool.

(k) [(j)] For purposes of statutory deductions and commissions, the net amount does not include any amounts carried over from any previous super hi-five pool.

(l) The association may select a distinctive name for the super hi-five, with prior approval of the executive secretary.

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER C. REGULATION OF LIVE WAGERING
DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

Sec. 321.321. Fortune Pick (n).

(a) - (f) (No change.)

(g) Fortune pick (n) with minor pool and carryover with unique wager:

(1) the entire net fortune pick (n) pool and carryover, if any, shall be distributed to the holder of a unique wager selecting the first place finisher in each of the selected fortune pick (n) contests, based upon the official order of finish. If there is no unique wager selecting the first place finisher in all fortune pick (n) contests, the minor share of the net fortune pick (n) pool shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of fortune pick (n) contests; and the major share shall be added to the carryover; [-]

(2) if the fortune pick (n) minor pool cannot be distributed in accordance with paragraph (1) of this subsection, the minor pool shall be combined with the major pool and added to the previous day's carryover. The entire pool plus carryover shall be carried forward to the next fortune pick (n) pool.

(h) - (p) (No change.)

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 11/21/12

***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:	TxRC staff	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> <small>(Name of Organization)</small>

<input checked="" type="checkbox"/>	If known, Proposed Change to Chapter:	Chapter: <u>309</u>	Rule: <u>309.1</u>
<input type="checkbox"/>	If known, Proposed Addition to Chapter:	Chapter: _____	Rule: _____
<input type="checkbox"/>	If known, Other Rules Affected by Proposal:	Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____

A. Brief Description of the Issue

Commission Rule 309.1(b) still provides that a racetrack license is perpetual unless suspended, revoked, or voluntarily surrendered. This conflicts with the language of the TRA §6.0601(e) and the repeal of §6.18(a).

B. Discussion of the Issue and Problem

With the implementation of Active and Inactive licenses and the creation of a Review and Renewal process, racetrack licenses are no longer perpetual. Failing to adjust Rule 309.1(b) creates ambiguity regarding the final disposition of a non-renewed license.

C. Possible Solutions and Impact

Edit Rule 309.1 to track the language of 6.0601(e). One impact of this change is that the proposed rule and the Act speak of an active license being “effective”. The Commission will need to determine what it means to be effective.

D. Support or Opposition

N/A

E. Proposal

Rule 309.1. Racetrack Licenses

(a) (No change.)

(b) Duration of License. An active license is effective until the license is designated as an inactive license or is surrendered, suspended, or revoked. ~~A racetrack license is perpetual. The Commission may suspend or revoke a license in accordance with the Act and these rules.~~ By agreement with the Commission, an association may voluntarily surrender a racetrack license for suspension or revocation.

(c)-(d) (No change.)

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 11/21/12

***Request for Proposed Change to an Existing Rule or
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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:	TxRC staff	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 type="checkbox"/>	If known, Proposed Change to Chapter:	Chapter: <u>307</u>	Rule: <u>307.8</u>
<input checked="" type="checkbox"/>	If known, Proposed Addition to Chapter:	Chapter: _____	Rule: _____
<input type="checkbox"/>	If known, Other Rules Affected by Proposal:	Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____

A. Brief Description of the Issue

The Sunset Advisory Commission, during the 82nd Legislative Session (2011), required that the Texas Racing Commission (TxRC) implement a “Negotiated Rulemaking and Alternative Dispute Resolution Procedures” policy. See TRA § 2.25, which provides:

Sec. 2.25. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution shall conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a) of this section;

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

B. Discussion of the Issue and Problem

The traditional notice-and-comment rulemaking provided in the Administrative Procedure Act (APA) requires an agency planning to adopt a rule on a particular subject to publish a proposed rule in the *Texas Register* and to offer the public an opportunity to comment. The APA does not specify who is to draft the proposed rule nor any particular procedure to govern the drafting process. Ordinarily, agency staff performs this function, with discretion to determine how much opportunity is allowed for public input. At some agencies, there is little opportunity for interchange of views among potentially affected parties, even where an agency chooses to conduct a hearing. At the Texas Racing Commission, however, parties are typically given extensive opportunity to provide comment and feedback at Committee meetings, even before a proposed rule is published for public comment.

Regarding Alternative Dispute Resolution, Commission Rule provides 307.31(b) already provides the executive secretary with the authority to settle any contested case proceeding. If the contested case involves a racetrack license, such settlements are subject to the Commission's approval. If the contested case involves an occupational license, the executive secretary may issue a ruling superceding the decision of the judges or stewards.

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 proposed language conforms to the requirements of the Act. Since the Commission already engages in extensive discussions with the industry prior to the adoption of any rules, and the executive secretary already has the authority to settle contested cases, the proposed rule is unlikely to cause any major changes in rule-making or contested case proceedings. However, its adoption will provide additional tools to the Commission and staff when confronted by particularly difficult rules or cases.

D. Support or Opposition

N/A since the adoption of a policy is required by the Act.

E. Proposal

Sec. 307.8. Negotiated Rulemaking and Alternative Dispute Resolution.

(a) Policy. It is the commission's policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures in appropriate situations.

(b) Negotiated Rulemaking. When the commission finds that a rule to be proposed is likely to be complex, controversial, or affect disparate groups, the commission may propose to engage in negotiated rulemaking in accordance with Government Code, Chapter 2008.

(1) When negotiated rulemaking is considered, the commission's general counsel, or designee, shall be the commission's negotiated rulemaking convener.

(A) The convener shall assist in identifying persons who are likely to be affected by a proposed rule, including those who oppose issuance of a rule. The convener shall discuss with those persons or their representatives as provided in Government Code §2008.052 (c) .

(B) The convener shall then recommend to the commission whether negotiated rulemaking is a feasible method to develop the proposed rule and shall report to the agency on the relevant considerations, including those listed in Government Code §2008.052(d).

(2) Upon the convener's recommendation to proceed, the commission may initiate negotiated rulemaking according to the provisions of Government Code, Chapter 2008 and Government Code §2054.121(c)

(c) Alternative Dispute Resolution. The commission encourages the fair and expeditious resolution of disputes through alternative dispute resolution (ADR) procedures.

(1) ADR procedures include any procedure or combination of procedures described by Civil Practice and Remedies Code, Chapter 154. ADR procedures are intended to supplement and not limit other dispute resolution procedures available for use by the commission.

(2) Any ADR procedure used to resolve disputes with the commission shall conform with Government Code, Chapter 2009, and, to the extent possible, the model guidelines for the use of ADR issued by the State Office of Administrative Hearings (SOAH).

(3) Upon receipt of notice of a dispute, the commission's executive secretary, in consultation with the commission's general counsel, shall determine whether use of an ADR procedure is an appropriate method for resolving the dispute.

(4) If an ADR procedure is determined to be appropriate, the commission's executive secretary shall recommend to the opposing party the use of ADR to resolve the dispute. The commission's general counsel will collaborate with the opposing party to select an appropriate procedure for dispute resolution and implement the agreed upon procedure consistent with SOAH's model guidelines.

(5) ADR for Breach of Contract Claims. Resolution of breach of certain contract claims brought by a contractor against the commission shall conform to the requirements of Government Code, Chapter 2260. The commission adopts by reference the Office of the Attorney General's rules regarding the negotiation and mediation of certain contract disputes (1 Texas Administrative Code Part 3, Chapter 68).

(6) The requirements of Government Code, Chapter 2260, and the Office of the Attorney General's model rules are required prerequisites to a contractor filing suit in accordance with Civil Practices and Remedies Code, Chapter 107.

(d) The commission's general counsel, or designee, shall coordinate the implementation of the policy set out in subsection (a) of this section in accordance with state law and provide necessary training. The commission's general counsel, or designee, is designated as the coordinator to implement the commission's policy under this rule, provide necessary training, and collect data concerning the effectiveness of the implemented procedures.

TEXAS RACING COMMISSION

COMMITTEE ON RULES

Date of Request: August 1, 2011

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 21 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:	TxRC Staff	Phone(s):	512-833-6699
E-mail address:		Fax number:	512-833-6907
Mailing address:			

Personal Submission *OR*

Submission on behalf of TxRC Staff
(Name of Organization)

Amend Rule 309.359, Live Lures

Amend Rule 311.6, Denial, Suspension, and Revocation of Licenses

Amend Rule 311.102, Greyhound Owners

Amend Rule 311.104, Trainers

New Rule 311.217, Greyhound Training

New Rule 315.112, Ineligibility Due to Improper Greyhound Training

A. Brief Description of the Issue

The Commission learned of and took disciplinary action against a licensee who trained greyhounds using live animals as a lure. This practice, once thought to be obsolete, is not only against greyhound racing rules, it is also a felony for animal cruelty under Chapter 42 of the Texas Penal Code. Following a hearing before a panel of three Commission judges, the individual agreed to surrender his Owner/Trainer license for revocation and waived all appeal rights.

The practice of using live lures in greyhound training and racing is outlawed by every jurisdiction and is banned by the American Greyhound Council and the Greyhound Racing Association of America. Both of these organizations have the following statement under the Frequently Asked Questions on their websites:

FAQ's

Does the industry use live lures?

No, the industry has banned the use of live lures in training and racing. In all states, state laws and/or racing rules prohibit the use of live lures in training or racing. Industry members who violate this practice may be expelled from the sport for life.

Most states, like Texas, also ban this practice under their state's animal cruelty laws.

TEXAS PENAL CODE

CHAPTER 42

§ 42.092. Cruelty to Nonlivestock Animals

(b) A person commits an offense if the person intentionally, knowingly, or recklessly:

(8) uses a live animal as a lure in dog race training or in dog coursing on a racetrack;

(c) An offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09. **An offense under Subsection (b)(1), (2), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.**

B. Discussion of the Issue and Problem

This topic was discussed at the January 24, 2012, Rules Committee Meeting. Industry representatives expressed concern that the prohibition could be extended to certain commercially available lures that are made in part from animal pelts or hides.

C. Possible Solutions and Impact

Proposed Solution:

Amend the present rule and add additional rules to ensure that the training of any greyhound by using any animal or fowl, living or dead, in this state or out of this state is a violation of the Texas Racing Commission's rules and is grounds for license revocation. Additionally, any greyhound that was trained using this method shall be banned for life from participating in pari-mutuel racing in Texas. Any greyhound whelped or trained at a specific facility or by a specific person that has been found to have used a live or dead animal or fowl shall also be banned for life. The Racing Commission will notify all greyhound racing jurisdictions and the National Greyhound Association of any banned greyhounds. Clarify the proposal to specify that the prohibition does not apply to commercially available lures that are made from animal pelts or hides.

D. Support or Opposition

As this practice is banned by both regulators and the national associations for greyhounds, there should be no opposition to strengthening the rules to ensure compliance. To prevent animal cruelty while training greyhounds and to ensure each greyhound is competing with similar training practices, the Texas Rules of Racing should explicitly ban this practice. These changes will protect the animals, the industry, and the wagering public.

E. Proposals

Sec. 309.359. Use of Lures in Training or Racing. ~~Live Lures~~

(a) An association may not permit the use of a live or dead animal or fowl for training or racing purposes ~~lure~~ on association grounds. This subsection does not apply to the use of a training lure that is made from cured animal hides or pelts and is commercially available to the public.

(b) An association may not permit a greyhound to be kenneled or to race on association grounds if the association knows or can reasonably be expected to know that the greyhound was trained in a state that by statute or rule does not prohibit the knowing use of a live or dead animal or fowl for training purposes ~~lures~~.

(c) An association may not permit a greyhound to be kenneled or to race on association grounds if the greyhound has been banned from pari-mutuel racing by any racing jurisdiction.

Sec. 311.6. Denial, Suspension, and Revocation of Licenses.

(a) (No change.)

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

(5) Detrimental Practices. A license may be denied, suspended or revoked if it is determined that the licensee is engaged in activities or practices that are detrimental to the best interests of the public, racing animals, or to the racing industry.

Sec. 311.102. Greyhound Owners.

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

(d) Restriction on Racing. An owner may not enter a greyhound or cause a greyhound to be entered in a race at a racetrack if:

(1) the owner knows or can reasonably be expected to know that the greyhound was trained using a live or dead animal or fowl as a lure in this state or out of this state. This paragraph does not apply to the use of a training lure that is made from cured animal hides or pelts and is commercially available to the public;

(2) the owner or trainer is employed by the racetrack association in a management or supervisory position that is capable of affecting the conduct of races or pari-mutuel wagering at the racetrack; or

(3) ~~(2)~~ the owner or trainer is involved in any way with the sale or publication of tip sheets on association grounds.

Sec. 311.104. Trainers.

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

(f) Restriction on Racing. A trainer may not enter a race animal or cause a race animal to be entered in a race at a racetrack if:

(1) the trainer knows or can reasonably be expected to know that the greyhound was trained using a live or dead animal or fowl as a lure in this state or out of this state. This paragraph does not apply to the use of a training lure that is made from cured animal hides or pelts and is commercially available to the public;

(2) the owner or trainer is employed by the racetrack association in a management or supervisory position that is capable of affecting the conduct of races or pari-mutuel wagering at the racetrack;

(3) ~~(2)~~ the owner or trainer is involved in any way with the sale or publication of tip sheets on association grounds.

(g)-(k) (No change.)

Sec. 311.217. Greyhound Training.

(a) A person may not use a live or dead animal or fowl to train a greyhound, or send a greyhound to a facility located in this state or out of state for the purpose of being trained using a live or dead animal or fowl. Such activities and practices are detrimental to the best interests of a racing animal and the racing industry.

(b) This section does not apply to the use of a training lure that is made from cured animal hides or pelts and is commercially available to the public.

Sec. 315.112. Ineligibility due to Improper Greyhound Training

(a) The board of racing judges may ban a greyhound for life from being kenneled or participating in racing on association grounds if it finds that the greyhound's owner, trainer, or kennel owner has engaged in any detrimental practice related to the training of greyhounds using a live or dead animal or fowl.

(b) The board of racing judges may ban a greyhound for life from being kenneled or participating in racing on association grounds if it finds that the greyhound has been trained at any facility that has engaged in any detrimental practice related to the training of greyhounds using a live or dead animal or fowl.

(c) This section does not apply to the use of a training lure that is made from cured animal hides or pelts and is commercially available to the public.

DISCUSSION OF STAGGERED SCHEDULE AND THE PROCEDURE FOR THE REVIEW OF ACTIVE LICENSES

REQUIREMENTS

TEXAS RACING ACT

§ 6.06. Racetrack Licenses; Grounds for Denial, Revocation, and Suspension (k)

The commission shall review the ownership and management of an active license issued under this article every five years beginning on the fifth anniversary of the issuance of the license. In performing the review, the commission may require the license holder to provide any information that would be required to be provided in connection with an original license application under Article 5 of this Act or this article. The commission shall charge fees for the review in amounts sufficient to implement this subsection.

HB 2271 – 82nd Regular Session

SECTION 28.

(b) The Texas Racing Commission by rule shall establish a staggered schedule and the procedure for the review of licenses required under Section 6.06(k), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), as amended by this Act.

PROPOSED ELEMENTS OF NEW RULE

1. Ownership.
 - (a) Staff will review and prepare a summary of ownership interests from the association's last June 15th submission.
 - (b) The association must submit fingerprints of each person owning an interest of at least five percent in the association. Fingerprints will be submitted to DPS for criminal history records. Results will be reported confidentially to the Commission.

2. Management.
 - (a) The association must submit fingerprints of each officer and director. Fingerprints will be submitted to DPS for criminal history records. Results will be reported confidentially to the Commission.
 - (b) Staff will review inspection reports from prior five years and prepare a summary for the Commission. Reports cover Administrative, Racing, Veterinary, and Wagering inspections.
 - (c) Staff will review and prepare a summary of audited financial statements from the association's last June 15th submission.
 - (d) The association must submit a copy of its current security plan.
 - (e) The association must submit copies of its current management, concession, and totalisator contracts.

(f) The association must submit any other information required by the Commission.

3. Staff Report. TRC staff will prepare a report for the Commission summarizing its findings from the information described under Parts 1 and 2 above. Confidential information will be provided to the Commission separately from the public report.

4. Fees.

(a) Investigative fees. Fingerprinting fees will be same as for occupational licensees, i.e., \$44.20 or \$34.25 per submission, depending on whether fingerprints are already on file. If DPS incurs additional costs to follow up on the results of a criminal history check, those costs will be billed to the association by TRC on a cost-recovery basis.

(b) Processing fees. TRC will charge associations on a cost-recovery basis for processing the review and report.

5. Results and Scheduling of Active License Reviews.

(a) Recent changes of majority ownership in a license will be treated as a review for purpose of scheduling future reviews.

(b) At the conclusion of each review, the Commission may take any action authorized under the Act or the Rules.

(c) At the conclusion of each review, the Commission will schedule the next review of the active license. The Commission may require an association to undergo its next review in fewer than five years.

(d) On its own motion or at the request of an association, the Commission may adjust the schedule of reviews.