

TEXAS RACING COMMISSION

MEETING

10:30 a.m.  
Tuesday,  
October 29, 2019

John H. Reagan Building  
Room 140  
105 West 15th Street  
Austin, Texas

COMMISSIONERS PRESENT:

JOHN T. STEEN III, Chair  
TIM KLEINSCHMIDT  
CONNIE McNABB, D.V.M.  
MIKE MOORE  
ROBERT C. PATE  
ARVEL "A.J." WAIGHT, JR.

*ON THE RECORD REPORTING*  
*(512) 450-0342*

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1  
2 CHAIRMAN STEEN: Good morning. The time is  
3 10:30. At this time I'd like to call today's meeting of  
4 the Texas Racing Commission to order.

5 Robert, please call the roll.

6 MR. ELROD: Commissioner Martin?

7 (No response.)

8 MR. ELROD: Commissioner Mach?

9 (No response.)

10 MR. ELROD: Commissioner McNabb?

11 COMMISSIONER McNABB: Here.

12 MR. ELROD: Commissioner Kleinschmidt?

13 COMMISSIONER KLEINSCHMIDT: Here.

14 MR. ELROD: Commissioner Moore?

15 COMMISSIONER MOORE: Here.

16 MR. ELROD: Commissioner Pate?

17 COMMISSIONER PATE: Here.

18 MR. ELROD: Commissioner Waight?

19 COMMISSIONER WAIGHT: Here.

20 MR. ELROD: Commissioner Ederer?

21 (No response.)

22 MR. ELROD: Chairman Steen?

23 CHAIRMAN STEEN: Here.

24 Do we have a quorum?

25 MR. ELROD: Yes, we do.

1                   CHAIRMAN STEEN: Thank you.

2                   Up next we have item II. Public comment. We  
3 have one person signed up to speak. It's Fran Cavanaugh.

4                   Did I say your name correctly? Welcome.

5                   MS. CAVENAUGH: I just want to thank y'all,  
6 Commission, for allowing me to come and speak.

7                   My name is Fran Cavanaugh. I'm an  
8 owner/breeder of Quarter Horses. I live in Arkansas, but  
9 we actually breed in Oklahoma and we race throughout the  
10 United States.

11                   I'm here as an owner to ask that Texas look at  
12 ways for us to address the illicit drug use in horse  
13 racing. As an owner, I want a level playing field for all  
14 my horses, from the horses that are running the allowance  
15 races and the overnight races, to the horses -- like our  
16 horse, Uncle D, who happens to be the number one colt in  
17 the nation -- on the high futurities.

18                   It bothers me, as an owner, that we have people  
19 who don't take the welfare of the horse into  
20 consideration. They want to win at any cost. I believe  
21 all owners should be ultimately responsible for what is  
22 done to their horse. Owners, in my opinion, should be as  
23 held responsible as the trainers are.

24                   As an owner, I know what a trainer is doing to  
25 my horse. I research my trainer, I talk to my trainer. I

1 make sure my trainer understands I don't want to do these  
2 things at any cost to win. And I feel, as an owner, it is  
3 our obligation to know what is being done to our horse and  
4 to make sure that it is being taken care of in the most  
5 proper way.

6 No one can win all the time, and I realize  
7 that. My horses can't win every time. I'd like them to,  
8 but that's just not possible. I don't always have the  
9 best horse in the race, but I want them to be given the  
10 best opportunity to perform at their level that they can.

11 And one other thing that bothers me about the  
12 whole use of drugs, performance-enhancing drugs in the  
13 horses, is it's really a way to lie to two people. It's a  
14 way to lie to the betting public because you have a horse  
15 that's not running on their own ability.

16 But it's also a way to lie to the breeders  
17 because when I'm trying to breed my mares, or as I'm going  
18 to have a sire, I want to know that that horse is going  
19 to take the athletic ability that it has and pass down to  
20 its offspring. If we're using enhanced performance drugs,  
21 that cannot be done.

22 So I would like to ask that Texas look at the  
23 way that they're going to be doing their testing. I'm an  
24 advocate for hair testing across the board, but I'm an  
25 advocate that it be done consistently from state to state

1 to state.

2 In my other role in life I'm a state  
3 legislator. I'm a state representative from Arkansas. I  
4 would like us to see, as states that deal with racing,  
5 that we come together and form some kind of compact that  
6 we can have from state to state that will allow us to have  
7 consistencies in the very major things that we do in  
8 racing, so that we don't have owners that have a positive  
9 test on one horse and then the next day they're running in  
10 another.

11 Because owners and trainers that are using  
12 these enhanced performance drugs, they're not doing it  
13 only to one horse, they're doing it to their whole stable,  
14 and that's what we need to address in this industry. I  
15 love my animals, they're like family to me, and I'm  
16 passionate about giving every horse the opportunity that  
17 they deserve to be able to run at their best and not have  
18 to compete against drugs. They can't do it.

19 In Texas you're raising your purses. It's only  
20 going to grow, the issue about people wanting to do things  
21 to enhance that. As your purses grow, they're going to  
22 get more and more incentive, so I think we have to get  
23 ahead of that curve.

24 I do appreciate you allowing me to come and  
25 speak, and I'd be glad to take any questions.

1           CHAIRMAN STEEN: Thank you, Cavanaugh.

2           Commissioners, do you have any questions?

3           COMMISSIONER PATE: I have one question. Is  
4 there something specific that you're asking that you see  
5 Texas not doing that we should do, or something that  
6 Arkansas does that you think we ought to do that we're not  
7 doing?

8           MS. CAVENAUGH: Well, what's really strange is  
9 I don't run in Arkansas. They only run Thoroughbreds, I'm  
10 a Quarter Horse girl. But for me, I don't really see you  
11 hair testing.

12           And hair testing, I realize, can't catch it all  
13 but it can catch the habitual of enhanced drugs. You have  
14 to do both hair testing and urine both, and blood. I  
15 think it's a three-prong attack to it. So I would love to  
16 see hair testing.

17           And also, I'm a proponent to do hair testing  
18 before they're allowed to enter because then you have the  
19 ability -- if I'm running a horse and then somebody runs  
20 and beats me and then I have to -- they don't pass a test.

21           It doesn't help me because that horse still had to  
22 perform against that other horse.

23           So I'm a proponent that we get together all the  
24 states in racing and that we come together with rules that  
25 apply across borders. One thing would be hair testing, I

1 think is a big deal, and to have the same protocol in all  
2 states so that one can't have a clean hair test in  
3 California and a bad hair test in New Mexico, or vice  
4 versa.

5 Thank y'all.

6 CHAIRMAN STEEN: Thank you.

7 Next is agenda item III.A.1., Budget and  
8 finance report.

9 Patrick Pence, please give us the update.

10 MR. PENCE: Good morning, commissioners. I'm  
11 Patrick Pence, finance officer for the Racing Commission.

12 On page 6 through 10 of your agenda packet is  
13 the agency's FY 2019 monthly operating budget report.  
14 This summarizes the revenue collection and expenditures as  
15 of the end of August 2019.

16 As of the last day of August of FY 2019, the  
17 agency had collected approximately 7.25 million in  
18 revenues, which is about 95 percent of the revenue that  
19 had been projected for the fiscal year.

20 On the expense side we've expended just over  
21 7 million, or about 93 percent of the budgeted  
22 expenditures. Of the 7.1 million, as a reminder,  
23 approximately 6 million are appropriated expenditures and  
24 just over 1 million are unappropriated expenses such as  
25 agency shares of retirement health costs, employee

1 insurance costs and FICA costs.

2 That's the summary. If you have any questions,  
3 I'll be happy to answer.

4 CHAIRMAN STEEN: Commissioners, any questions?

5 (No response.)

6 CHAIRMAN STEEN: I've got one, Patrick. Can  
7 you give us an update on the simulcast tax money and the  
8 potential flows of that to the agency?

9 MR. PENCE: I don't have the specific dollar  
10 amount. I just ran the numbers on a day-by-day last week,  
11 and we were down about 4.3 percent, by my calculation,  
12 from the previous fiscal year. I can pull those numbers  
13 for you.

14 CHAIRMAN STEEN: The question is are we  
15 receiving those funds, the tax funds. I know there was a  
16 potential trying to work out some issues.

17 MR. PENCE: The fund has been sent up with the  
18 LBB, and of course, the Comptroller has to clear the  
19 funding to be released. The fund itself, a separate fund  
20 has been set up, but I don't know if it's been disbursed  
21 yet. I can defer that question to Gerry.

22 MR. DUBE: Good morning, Mr. Chairman,  
23 commissioners.

24 The simulcast tax fund is being collected by  
25 the State of Texas. We received word just last week that

1 those funds will be deposited to the Texas Racing  
2 Commission fund once a month.

3 They're not doing automatic electronic deposits  
4 daily because the state's accounting system can't  
5 accommodate that yet, so that's still a work-through for  
6 the Comptroller, but they will be depositing at  
7 approximately mid month every month simulcast tax  
8 revenues.

9 And as Patrick told you, I think the amount  
10 that -- he has some numbers that he can speak to you later  
11 about -- that amount is running about 4.3 to 4.5 percent  
12 below comparative amounts last year, but that's -- it's a  
13 point in time.

14 CHAIRMAN STEEN: Have we received a deposit  
15 yet?

16 MR. DUBE: We have, we have received one this  
17 month. Yes.

18 CHAIRMAN STEEN: Thank you.

19 The next item is agenda item III.A.2., Wagering  
20 statistics report.

21 Curley Trahan, would you please give us the  
22 report?

23 MR. TRAHAN: Thank you, Mr. Chairman. Good  
24 morning, commissioners. For the record, I am Curley  
25 Trahan, the director of pari-mutuels for the agency.

1           In your meeting materials on pages 11 through  
2 13 is the comparison report on wagering statistics for the  
3 period ending August 31. The report is a comparison of  
4 2019 handle figures against those from the same period for  
5 calendar year 2018.

6           The report shows that total wagering activities  
7 at the greyhound racetracks decreased by 1.84 percent over  
8 the same period in 2018, equating to just over \$530,000  
9 less handle.

10           The report also shows that total wagering  
11 activities declined at the horse racetracks by 4.43  
12 percent for 2019 as compared to 2018. This represents  
13 decreased handle of approximately \$11.82 million.

14           Overall the report indicates that total wagers  
15 placed in Texas decreased by 4.77 percent, or just over  
16 \$9.7 million, while total wagers placed on Texas races  
17 decreased by approximately \$3.24 million, or 2.95 percent.

18           This concludes my report, and I'd be happy to  
19 answer any questions.

20           CHAIRMAN STEEN: Commissioners, do you have any  
21 questions?

22           (No response.)

23           CHAIRMAN STEEN: Thank you, Curley.

24           MR. TRAHAN: Thank you.

25           CHAIRMAN STEEN: The next item is agenda item

1 III.A.3., Enforcement report.

2 Jim Blodgett, will you please present the  
3 report?

4 MR. BLODGETT: Mr. Chairman, commissioners,  
5 good morning. Commissioners, your enforcement report this  
6 morning can be viewed on page 14 of your materials packet.

7 Since our last meeting in September, Lone Star  
8 Park is the only licensed racetrack operating a live race  
9 meet, which began on September 20. This enforcement  
10 report covers ten live race days. Lone Star's fall meet  
11 concludes on November 9, 2019. Notable racing during the  
12 closing weekend for Lone Star would be the Texas Classic  
13 Series with purses up to a million dollars this year.

14 In viewing this report you will notice minimal  
15 activities handled by our enforcement personnel at Lone  
16 Star Park. They include one human methamphetamine case,  
17 one conduct violation, one insufficient check to the  
18 licensing division, and two trainer infractions.

19 Please keep in mind when viewing these  
20 enforcement stats that they only represent cases that have  
21 been adjudicated by our personnel at this time, and there  
22 are additional cases that remain in process.

23 I'd be happy to answer any questions that you  
24 might have.

25 CHAIRMAN STEEN: Commissioners, any questions?

1 (No response.)

2 CHAIRMAN STEEN: Thank you, Jim.

3 The next item is agenda item III.B., Discussion  
4 and possible action to approve the agency's FY 2020  
5 operating budget.

6 Patrick Pence, will you please present this  
7 item?

8 MR. PENCE: Again, good morning, commissioners.

9 For the record again, my name is Patrick Pence, Racing  
10 Commission finance officer.

11 On page 15 through 22 of your agenda packet  
12 contains the proposed FY 2020 operating budget and cash  
13 flow statements the agency is submitting for your  
14 consideration and approval.

15 The proposed operating budget is 4.572 million.

16 This total includes approximately 3.52 million for the  
17 cost of general regulatory operations and approximately  
18 1.05 million for unappropriated expenses, or the cost of  
19 employee benefits. This proposed operating budget does  
20 not include the approximately \$3.13 million that's  
21 associated with the Texas-Bred incentive fund.

22 The operating budget was prepared to support  
23 the regulation of 148 live horse race dates, 36 live  
24 greyhound performances, approximately 2,140 simulcast  
25 dates across seven tracks, and the administrative

1 operations of the agency.

2 I would note that we have already received one  
3 request, which our executive director has approved, for  
4 additional race days. That puts us over 148 race days, as  
5 we may receive more. However, because we would need to  
6 request authority to increase our budget under Rider 6A in  
7 order to increase our appropriation to pay our costs to  
8 regulate additional race days, the budget we will submit  
9 to the LBB will be based on 148 days, so that's what  
10 reflected in the numbers I'm presenting.

11 Staff estimates the agency will need 37.5 FTEs,  
12 or full-time equivalent positions, for the year. The  
13 following pages contain the cash flow statement prepared  
14 by the regulatory operations. The agency carried forward  
15 a cash balance of approximately \$70,000.

16 The agency proposes to collect approximately  
17 2.57 million in simulcast revenue, approximately 1.92  
18 million from annual track fees, and approximately 574,000  
19 in occupational license fees and other miscellaneous  
20 revenue. At the end of FY20 operations, we anticipate the  
21 ending cash balance to be estimated to be approximately  
22 \$562,000.

23 I'd be happy to answer any questions you have  
24 regarding the FY20 budget, and I ask for your approval.

25 CHAIRMAN STEEN: Commissioners, any questions?

1                   COMMISSIONER PATE: How many additional race  
2 days beyond the 148 have been requested?

3                   MR. PENCE: At this time they've -- the tracks  
4 have indicated that there could be as many as 10 to 20.  
5 I'll defer that to Gerry.

6                   Additional race days? During the Rules meeting  
7 it was unclear as to the actual number they will be  
8 requesting.

9                   MR. DUBE: Good morning, Chairman and  
10 commissioners. Gerry Dube.

11                   At the Rules Committee meeting there was  
12 discussion of about another 12 race days, but there are  
13 probably others that may be requested. We're not sure  
14 what the final number is, though.

15                   COMMISSIONER PATE: I'm new to this, so what is  
16 the rule for a supplemental budget? Explain to me how  
17 that works if we end up needing more money to meet our  
18 obligations for these additional race days.

19                   MR. PENCE: This budget represents what's  
20 appropriated to the Commission and, of course, our budget  
21 within that appropriation. The additional contingency  
22 rider is -- allows the appropriation to be increased, not  
23 necessarily the collection but the appropriation to be  
24 increased in the event that there's additional race days  
25 beyond the 148. It's part of the contingency rider that

1 was included in the bill that was passed.

2 COMMISSIONER PATE: All right. Thank you.

3 CHAIRMAN STEEN: Any other questions?

4 (No response.)

5 CHAIRMAN STEEN: Robert, has anyone signed up  
6 to speak on this item?

7 MR. ELROD: No, sir.

8 CHAIRMAN STEEN: Thank you, Patrick.

9 If there's no further questions, I'll entertain  
10 a motion to approve the agency's operating budget for  
11 fiscal year 2020.

12 COMMISSIONER KLEINSCHMIDT: I move to approve  
13 the proposed fiscal year 2020 operating budget.

14 CHAIRMAN STEEN: Motion made by Commissioner  
15 Kleinschmidt.

16 COMMISSIONER McNABB: Second.

17 CHAIRMAN STEEN: Seconded by Commissioner  
18 McNabb.

19 Commissioners, any further discussion?

20 (No response.)

21 CHAIRMAN STEEN: If not, we'll take this up for  
22 a vote. All in favor please signify by saying aye.

23 (A chorus of ayes.)

24 CHAIRMAN STEEN: Any opposed?

25 (No response.)

1 CHAIRMAN STEEN: Motion carries.

2 The next item is agenda item IV., TAC 309.8  
3 Racetrack License Fees.

4 Devon, I believe you'll present on this topic.

5 MS. BIJANSKY: Yes, sir. Good morning,  
6 commissioners.

7 This first rule is 309.8, the Racetrack License  
8 Fee rule. As we discussed at the last meeting, it  
9 includes projected base of 48 days of racing for a Class 1  
10 racetrack, eight days for a Class 3 or 4 racetrack, and 36  
11 performances of greyhound racing per year.

12 It provides that any Class 1 track that doesn't  
13 use all of its days shall share its unused days with  
14 another track. It increases the per-day fee for  
15 additional race days to 5,345 which is consistent with the  
16 actual cost to run the day of racing.

17 It also has provisions that if the simulcast  
18 tax falls short of our projections, there is a trigger to  
19 make up the difference. And it provides that if we end up  
20 with more money than we need, the executive director can  
21 call a moratorium on all or part of the fee.

22 There is one change. We received no written  
23 comments on this or on any other proposed rule. There  
24 were some comments at the Rules Committee meeting about  
25 the per-race-day fee, and the Rules Committee is

1 recommending changing the provision on the per-race-day  
2 fee to say an amount not to exceed 5,345 in the event that  
3 the simulcast tax or other funds are sufficient that we  
4 don't need to charge that entire additional race day fee.

5 I think that pretty much covers the summary,  
6 and I'm happy to answer any questions.

7 CHAIRMAN STEEN: Thank you.

8 Robert, is anyone signed up to speak on this  
9 item?

10 MR. ELROD: Yes, sir.

11 CHAIRMAN STEEN: John Cardwell, representing  
12 Lone Star Park, wishes to testify on the item.

13 MR. CARDWELL: Good morning, commissioners. My  
14 name is John Cardwell; I represent Lone Star Park.

15 I understand that this fee rule is going to  
16 proceed to be passed, but there is one part of it which we  
17 have consistently objected to and think it is a bad metric  
18 to be using and a disincentive to what our main mission  
19 should be, which should be live racing.

20 And we had a very thorough discussion at the  
21 Rules Committee meeting last week with Commissioner  
22 Ederer. The industry was unaware that the Racing  
23 Commission staff had gone in 2016 and requested this rider  
24 for an appropriation.

25 This inclusion, I believe, of this limitation

1 on the number of racing days -- live racing days before  
2 it's being charged was made by the staff, and it's in this  
3 contingent rider which leads to an appropriation, and we  
4 are all so ignorant of the process that we thought  
5 appropriation meant that's what the money they got.

6 No. The money they're going to get is going to  
7 be coming from the tax on the simulcasting, and so what we  
8 found ourselves in finally, after discussing this last  
9 week, is that we're kind of caught in a time trap.

10 The Racing Commission staff in the summer of  
11 2018 had no idea that the two bills that Tommy and Jim  
12 Shearer got passed, which increased the purses and which  
13 also provide about 2.7 million plus, we hope, in simulcast  
14 tax -- hey didn't know that was going to pass, and nobody  
15 knew that was going to pass until the governor signed it  
16 this past June of 2019.

17 So they had to go forward with the budget and  
18 the funding that they thought was appropriate and was  
19 available. And so now we find ourselves with that rider  
20 that says you can't spend the money if you have more than  
21 144 days. And it was previously 188 days, and we have no  
22 explanation of why it went down from 188 to 144. Industry  
23 certainly didn't know anything about it, but it did and it  
24 was done a year ago.

25 And so we're going to continue to talk to your

1 staff and to yourselves about we don't think it's an  
2 appropriate metric to have somebody achieve what we're all  
3 trying to achieve, which is more race days, more  
4 participation, more horses running, and then turn around  
5 and put an extra fee on it. I mean, to me it's kind of  
6 like I have a mare and she gives me a colt and it wins the  
7 Kentucky Derby, and I decide I'm not going to breed that  
8 mare again; I'm penalizing the process.

9 So appreciate your patience, appreciate you  
10 helping. We certainly appreciate the opportunity to get  
11 our fees cut, but we will be continuing to talk to you  
12 about that. Thank you.

13 Any questions?

14 CHAIRMAN STEEN: Commissioner Kleinschmidt.

15 COMMISSIONER KLEINSCHMIDT: Just so  
16 everybody -- I don't know if it makes it any clearer for  
17 anybody, but I was in the Rules Committee the last time we  
18 met, and Devon has correctly stated the change that we  
19 discussed in the Rules Committee to propose to the  
20 Commission, and it's correctly stated here.

21 The proposal actually involves some very  
22 complicated budgeting situations under -- the General  
23 Appropriations Act passed by the legislature this last  
24 time around in essence tells the Commission that we cannot  
25 spend that additional, what was it, 34-, 35-, mid-\$3,000

1 per day for an additional race day unless we charge this  
2 \$5,345.

3 So we're locked into that language under the  
4 Appropriations Act, is what it amounts to. And it might  
5 seem somewhat cumbersome, but it is the way we get the  
6 authority to additionally appropriate -- an additional  
7 appropriation or spend the money for those additional race  
8 days.

9 So we did -- rather than saying exactly 5,345,  
10 we recommended a not to exceed 5,345 but, in essence, if  
11 we don't have some mechanism for charging for additional  
12 race days, we don't get appropriated that money that sends  
13 our staff out to attend to those additional race days.

14 Am I getting that roughly correct, Devon?

15 MS. BIJANSKY: Yes, sir.

16 COMMISSIONER KLEINSCHMIDT: Okay. Just thought  
17 I would just make it clear as mud for everybody, but it is  
18 somewhat of a complicated process, and I do believe this  
19 language, you know, as we changed here is necessary in  
20 order to spend that additional allowed appropriation for  
21 race days.

22 CHAIRMAN STEEN: Thank you.

23 Commissioners, any further questions or  
24 discussion?

25 (No response.)

1           CHAIRMAN STEEN:  If no further discussion, I'll  
2 entertain a motion to adopt the amendments to Section  
3 309.8, Racetrack License Fees.

4           COMMISSIONER PATE:  So moved.

5           CHAIRMAN STEEN:  Motion made by Commissioner  
6 Pate.

7           COMMISSIONER KLEINSCHMIDT:  Second.

8           CHAIRMAN STEEN:  Seconded by Commissioner  
9 Kleinschmidt.

10           Any further discussion?

11           (No response.)

12           CHAIRMAN STEEN:  All those in favor please  
13 signify by saying aye.

14           (A chorus of ayes.)

15           CHAIRMAN STEEN:  Any opposed?

16           (No response.)

17           CHAIRMAN STEEN:  Motion carries.

18           The next item is agenda item IV.A.2.,  
19 Designation of Active and Inactive Racetrack Licenses.

20           Devon, will you please present on this item.

21           MS. BIJANSKY:  Yes, sir.

22           Commissioners, this is simply an update from  
23 the Escrowed Purse Account to the Horse Industry Escrow  
24 Account, consistent with House Bill 2463, and there were  
25 no comments on this proposal.

1 CHAIRMAN STEEN: Thank you, Devon.

2 Robert, is anyone signed up to speak up to  
3 speak on this item?

4 MR. ELROD: No, sir.

5 CHAIRMAN STEEN: Commissioners, do you have any  
6 questions?

7 (No response.)

8 CHAIRMAN STEEN: If no discussion, I'll  
9 entertain a motion to adopt the amendments to Section  
10 309.51, Designation of Active and Inactive Racetrack  
11 Licenses.

12 COMMISSIONER McNABB: So moved.

13 CHAIRMAN STEEN: Motion made by Commissioner  
14 McNabb.

15 COMMISSIONER WAIGHT: Second.

16 CHAIRMAN STEEN: Seconded by Commissioner  
17 Waight.

18 Any further discussion?

19 (No response.)

20 CHAIRMAN STEEN: Okay. We'll take this up for  
21 a vote. All those in favor please signify by saying aye.

22 (A chorus of ayes.)

23 CHAIRMAN STEEN: Any opposed?

24 (No response.)

25 CHAIRMAN STEEN: Motion carries.

1           Next item is agenda item IV.A.3., regarding 16  
2 TAC 309.118, Regulatory Office Space and Equipment.

3           Devon, would you please present on this item?

4           MS. BIJANSKY: Yes, sir.

5           And I think we might be able to just go through  
6 these next few all together, if you prefer.

7           CHAIRMAN STEEN: Okay. Sure. Can you say  
8 which ones we'd take together?

9           MS. BIJANSKY: IV.A.3. through IV.A.7.

10          CHAIRMAN STEEN: IV.A.3. through IV.A.7.

11          MS. BIJANSKY: Robert, there aren't any  
12 comments on these, are there?

13          MR. ELROD: No, ma'am.

14          CHAIRMAN STEEN: No comments. Go ahead.

15          MS. BIJANSKY: IV.A.3., as you said, is  
16 309.118, Regulatory Office Space and Equipment. This is  
17 an update updating telephone lines to ethernet access as  
18 part of the infrastructure that tracks provide to the  
19 agency within the offices that they provide to our staff  
20 working at the tracks.

21                 319.3, Medication Restricted, this adds  
22 albuterol to clenbuterol as a prohibited substance,  
23 removes the provisions about putting a horse on the vet's  
24 list for a clenbuterol positive, as that was determined to  
25 be a bit cumbersome to administer, and also provides that

1 in order to have a horse removed from the vet's list after  
2 being placed on for treatment, that it would need to test  
3 negative for clenbuterol, albuterol or any other beta-  
4 agonist drugs. And there were no comments on this.

5 319.102, Veterinarian's List, clarifies that  
6 for a workout or a qualifying race to be used for the  
7 purpose of removing a horse from the vet's list, the horse  
8 must not have any detectable level of permissible  
9 therapeutic medication other than furosemide.

10 319.333, Specimen Tags, essentially strips away  
11 most of the detail of what needs to be on specimens that  
12 are collected for drug testing. It instead says the  
13 Commission needs to be able to identify which horse,  
14 trainer, owner, and race the specimen came from, and the  
15 lab testing sample must not be able to identify those  
16 things, and the details of what goes on the tag and who  
17 initials where and all of that will be addressed in agency  
18 procedural documents.

19 Last, 321.313, Select Three, Four or Five, was  
20 requested by Sam Houston Race Park, with the agreement of  
21 the other tracks, and these amendments change how the  
22 Select Three, Four, or Five wagers are handled when turf  
23 conditions warrant a change of racing surface and the  
24 change was not made known to the public before the first  
25 of the included races. In that case such a race would be

1 declared a no contest for purposes of that wager.

2 And as I said, there are no comments on any of  
3 these proposals, and so they're before you for final  
4 action today.

5 CHAIRMAN STEEN: Commissioners, any questions  
6 on any of these?

7 (No response.)

8 CHAIRMAN STEEN: Devon, would you help me frame  
9 the motion on this?

10 MS. BIJANSKY: The motion would be to adopt the  
11 proposed amendments to 16 TAC Sections 309.118, 319.3,  
12 319.102, 319.333, and 321.313.

13 CHAIRMAN STEEN: Do I have a motion?

14 COMMISSIONER KLEINSCHMIDT: I move to adopt the  
15 proposed amendments to 16 Texas Administrative Code  
16 Sections 309.118, 319.3, 319.102, 319.333, and 321.313.

17 CHAIRMAN STEEN: Motion made by Commissioner  
18 Kleinschmidt.

19 COMMISSIONER PATE: Second.

20 CHAIRMAN STEEN: Seconded by Commissioner Pate.  
21 Any further discussion?

22 (No response.)

23 CHAIRMAN STEEN: We'll take this up for a vote.  
24 All those in favor please signify by saying aye.

25 (A chorus of ayes.)

1 CHAIRMAN STEEN: Any opposed?

2 (No response.)

3 CHAIRMAN STEEN: Motion carries.

4 Next is agenda item IV.B. and IV.C., which I  
5 believe Devon will present both items.

6 MS. BIJANSKY: Actually, we're at IV.B.

7 CHAIRMAN STEEN: Do you want to take those one  
8 at a time, or are you going to take them together?

9 MS. BIJANSKY: All of IV.B. together.

10 CHAIRMAN STEEN: Okay. We'll take all of IV.B.  
11 together, and you'll present on that?

12 MS. BIJANSKY: Yes, sir.

13 CHAIRMAN STEEN: Thanks.

14 MS. BIJANSKY: This is new Subchapter G to  
15 Chapter 303, which implements House Bill 2463 regarding  
16 the Horse Industry Escrow Account. I'll go section by  
17 section and summarize each provision and also mention the  
18 few changes that came up out of the Rules Committee  
19 meeting.

20 303.301, Definitions, defines some terms. At  
21 the meeting it was decided that the definition of event  
22 would be deleted and the common definition of event would  
23 be used in implementing this bill.

24 303.302 is General Provisions. This  
25 incorporates some of the provisions that are currently in

1 321.509 relating to the Escrowed Purse Account, which has  
2 been proposed for repeal a little bit later in this  
3 agenda. The general provisions part of that section is  
4 now moved to 303.302.

5 Provisions specific to horse racetrack  
6 associations, allocations to the associations is moved to  
7 303.311. Again, that's straight from 321.509.

8 303.312 is Limitation on Use of Funds by  
9 Racetrack Associations, essentially just saying that the  
10 purse portion of the funds goes to purses. There is a  
11 change to clarify that administrative expenses that are  
12 currently payable to the Horsemen's organization, pursuant  
13 to the Act, will still be payable out of those funds.

14 303.321 creates new provisions for Allocations  
15 to Breed Registries. It establishes the process for  
16 applying for funds and for the agency to approve requests.

17 303.322 outlines Limitations on Use of Funds by  
18 Breed Registries. At the Rules Committee meeting there  
19 was discussion about allowing some percentage of the total  
20 to be used for breed registry operating expenses and/or  
21 the purchase of capital assets.

22 So I moved those items out of the list of  
23 prohibitions into new Subsection (c), which is on page 41  
24 of your materials, which allows an amount not to exceed X  
25 percent, with that decision of what percentage is

1 appropriate to be made by you commissioners.

2 And then 303.323 addresses Modifications to  
3 Approved Events. In the event that an event has been  
4 approved by the Commission and then some change needs to  
5 be made to the budget, to the nature of the event, what  
6 changes can be made by the executive director and what  
7 needs to come back before you.

8 303.324 addresses Recordkeeping and Audit  
9 Requirements.

10 303.325 addresses Quarterly Reports.

11 And then 321.509, as I mentioned, has been  
12 proposed to be repealed, as those provisions were moved  
13 into this new subsection -- subchapter.

14 CHAIRMAN STEEN: Commissioners, any questions?

15 COMMISSIONER KLEINSCHMIDT: I have comments on  
16 the 303.322, the limitations. And, folks, that's in pages  
17 40 and 41 of our packets, if you need to get there.

18 We were discussing -- and Devon moved this  
19 according to our discussion in the Rules Committee --  
20 which was to allow the administrative costs, to some  
21 extent, of the breed registries to be paid out of these  
22 monies. And I'm sure these folks would like to get some  
23 idea.

24 Devon, what -- for instance, if we proposed a 5  
25 percent, a limit of 5 percent of the total funds

1 available, what kind of funds do you think we'd be looking  
2 at total available to the registries for administrative  
3 fees and capital expenditures if we were to plug in a 5  
4 percent metric.

5 MS. BIJANSKY: Sure. Assuming 30 percent of  
6 the \$25 million per year goes to breed registries, that  
7 would be \$7.5 million, so 5 percent of that would be 375-  
8 divided among the breed registries proportionally to what  
9 each one is allocated.

10 COMMISSIONER KLEINSCHMIDT: And, folks, our  
11 discussion simply was, and my comment was that when you're  
12 dealing with sums of money that are available here, it  
13 really does take money to move money. You have your  
14 administrators, you know, your paid help; they simply  
15 can't work for free in moving this.

16 And so my thought was, you know, a 5 percent  
17 limitation in there for use in administrative expenses and  
18 capital expenses, and that's just one person's thought,  
19 but that is one of the areas we were discussing.

20 COMMISSIONER PATE: And that's permissible  
21 under the statute?

22 COMMISSIONER KLEINSCHMIDT: Yes.

23 COMMISSIONER McNABB: Did we have no one signed  
24 up to speak to this, none of the breeders?

25 CHAIRMAN STEEN: We have two people signed up

1 for but not wishing to testify. That's Rob Werstler from  
2 the TQHA and Marsha Rountree from the Texas Horsemen's  
3 Partnership.

4 COMMISSIONER KLEINSCHMIDT: And I would tell  
5 you, of course, some of y'all may not know, I work for the  
6 Texas Department of Agriculture. It's quite common for us  
7 to receive grant funds and funds that we can use that are  
8 passed through to other programs.

9 And I would say in my experience it's quite  
10 acceptable in the agency industry, so to speak, to be able  
11 to use up to 5 percent of those funds to cover your  
12 additional administrative expenses that are caused simply  
13 by having to go through the agency time in administering  
14 those additional funds, or in this case, the registry time  
15 in administering those additional funds.

16 And so I don't think we'd get any objection out  
17 there to a 5 percent number, but there's nothing magical  
18 about that either.

19 COMMISSIONER McNABB: We have the power to  
20 revisit this if there's any objection from the field, but  
21 the fact that no one is offering some different number, I  
22 have no problem with that. And I agree that, you know,  
23 you get a lump of money, if you haven't got the people to  
24 administer it, it doesn't go where it's intended.

25 COMMISSIONER KLEINSCHMIDT: Right.

1 MS. BIJANSKY: Commissioner McNabb, you  
2 reminded me. One other change that's related to this  
3 issue is that we've added an item or added language to the  
4 requirements for sending a proposal that they specifically  
5 detail any operating expenses or capital assets that  
6 they're proposing to pay for out of these funds, so you  
7 would also have the opportunity when you receive a  
8 proposal to decide if something was appropriate or not.

9 COMMISSIONER McNABB: And it's just a matter of  
10 due diligence that if this money is coming in that, it's  
11 going where it's intended to go and not just window  
12 dressing. It goes to help the breeds and the industry.

13 COMMISSIONER WAIGHT: Am I right and this is  
14 just for the upcoming year? This is not ongoing, it's  
15 going to be looked at again?

16 COMMISSIONER KLEINSCHMIDT: Until these  
17 rules -- it will apply equally to any year that they fund  
18 this source. Right, Devon?

19 MS. BIJANSKY: Right.

20 COMMISSIONER KLEINSCHMIDT: I mean, if these  
21 funds aren't available, then this 5 percent won't be  
22 available, and so it will be an every two-year biennial  
23 re-up on the General Appropriations Act, because if the  
24 funds aren't there, there's no 5 percent; I mean, 5  
25 percent of zero would be zero.

1           CHAIRMAN STEEN: Any other questions?

2           COMMISSIONER WAIGHT: I guess the 5 percent  
3 could be high also, it could be more than necessary. Is  
4 that fair?

5           COMMISSIONER KLEINSCHMIDT: I'm just saying my  
6 experience in administering many millions of dollars in  
7 grant funds through USDA and the other federal agencies  
8 that we deal with is that -- I mean, it floats anywhere  
9 from a zero to a 5 percent, it truly does coming through.

10           But I haven't seen one exceed a 5 percent, and  
11 I can tell you that I've never considered 5 percent to be  
12 too much. Of course, maybe I have a prejudice from the  
13 agency side of the program there, and of course, this is a  
14 registry, and I'm sort of analogizing to them, but I know  
15 they can't move this money for free either.

16           COMMISSIONER McNABB: Just my experience in the  
17 business, when I was chief of staff with the Guard, we  
18 would have legislative pass-throughs, and they still  
19 required quite a bit of administrative work, and we just  
20 couldn't take it out of HUD.

21           COMMISSIONER KLEINSCHMIDT: Just like we're  
22 talking here, everybody wants a report on where you spent  
23 the money, how you spent the money, and the administrative  
24 effort to create those reports and do the accounting, none  
25 of that's free, you're paying people to do that.

1                   COMMISSIONER McNABB: As long as our due  
2 diligence making sure that they can administer the money,  
3 so we're making it possible for them to use the money for  
4 the intent, and if the breed registries aren't speaking up  
5 with any heartburn with this, we have to start somewhere.  
6       And if we're not giving them enough, I'm sure we'll hear  
7 about it.

8                   COMMISSIONER KLEINSCHMIDT: Right.

9                   CHAIRMAN STEEN: Just for a point of  
10 clarification, Devon, so regardless of what guideline or  
11 cap that we set here, it would all come before the  
12 Commission before it would be approved, the spending?

13                   MS. BIJANSKY: That's correct.

14                   COMMISSIONER McNABB: Do we need to then make a  
15 motion on the percentage today? Is that part of what  
16 we're doing?

17                   CHAIRMAN STEEN: I think we need to make a  
18 motion overall and put a number in the percentage. Is  
19 that correct?

20                   MS. BIJANSKY: Yes, sir.

21                   CHAIRMAN STEEN: Would anyone like to make that  
22 motion?

23                   COMMISSIONER McNABB: I'll so move then for the  
24 5 percent.

25                   CHAIRMAN STEEN: So Devon, would you mind just

1 framing the motion for us?

2 MS. BIJANSKY: Sure. The motion would be to  
3 adopt new 16 TAC Chapter 303, Subchapter G, Horse Industry  
4 Escrow Account, including a 5 percent cap on operating  
5 expenses and purchases of capital assets.

6 CHAIRMAN STEEN: Motion made by Commissioner  
7 McNabb.

8 COMMISSIONER KLEINSCHMIDT: I'll second.

9 CHAIRMAN STEEN: Second by Commissioner  
10 Kleinschmidt.

11 Any further discussion?

12 (No response.)

13 CHAIRMAN STEEN: We'll take this up for a vote.

14 All those in favor please signify by saying aye.

15 (A chorus of ayes.)

16 CHAIRMAN STEEN: Any opposed?

17 (No response.)

18 CHAIRMAN STEEN: That motion carries.

19 MS. BIJANSKY: And I should have included the  
20 repeal of 321.509 in that, but I didn't.

21 CHAIRMAN STEEN: I was trying to include it.

22 (General laughter.)

23 CHAIRMAN STEEN: Do we need to adjust the  
24 motion? Do you need to present on it?

25 MS. BIJANSKY: Did you get it in?

1                   COMMISSIONER KLEINSCHMIDT: I can make an  
2 additional motion to repeal that, if you want me to. Are  
3 you talking about item C?

4                   MS. BIJANSKY: Yes, sir.

5                   COMMISSIONER KLEINSCHMIDT: Okay. I move to  
6 adopt the repeal of 16 Texas Administrative Code 321.509,  
7 Escrowed Purse Account.

8                   CHAIRMAN STEEN: Motion made by Commissioner  
9 Kleinschmidt.

10                   COMMISSIONER MOORE: Second.

11                   CHAIRMAN STEEN: Seconded by Commissioner  
12 Moore.

13                   Any further discussion, commissioners?

14                   MS. BIJANSKY: Commissioner Pate, you're  
15 correct. It should have said with changes as --

16                   COMMISSIONER PATE: That's .301, .302 and the  
17 others also.

18                   MS. BIJANSKY: With the changes as noted in the  
19 materials.

20                   Can I start that over?

21                   CHAIRMAN STEEN: Yes. Let's do it again.

22                   MS. BIJANSKY: The motion is to adopt new 16  
23 TAC Chapter 303, Subchapter G, with a 5 percent cap on  
24 operating expenses and purchase of capital assets in  
25 303.322, and the other changes in the materials to the

1 other sections, and to adopt the repeal of 16 TAC 321.509.

2 COMMISSIONER McNABB: So moved.

3 COMMISSIONER KLEINSCHMIDT: And I will withdraw  
4 my motion, prior motion.

5 CHAIRMAN STEEN: Prior motion withdrawn by  
6 Commissioner Kleinschmidt. Motion made by Commissioner  
7 McNabb.

8 COMMISSIONER PATE: Second.

9 CHAIRMAN STEEN: Seconded by Commissioner Pate.  
10 Any further discussion?

11 (No response.)

12 CHAIRMAN STEEN: We'll take this up for a vote.  
13 All those in favor please signify by saying aye.

14 (A chorus of ayes.)

15 CHAIRMAN STEEN: Any opposed?

16 (No response.)

17 CHAIRMAN STEEN: That motion carries.

18 The next agenda item is item IV.D., Discussion  
19 and possible action to propose new 16 TAC 309.106,  
20 Transfers to Texas-Bred Incentive Fund.

21 Devon, will you please present the item?

22 MS. BIJANSKY: Yes, sir.

23 Commissioners, this new rule would implement  
24 House Bill 3366, which requires rules regarding the  
25 deposit and use of Texas-Bred funds. There already is a

1 rule that addresses the use of the funds so this simply  
2 memorializes what's already being done by the tracks with  
3 regard to the deposit of the funds. And this is on the  
4 table for proposal today.

5 CHAIRMAN STEEN: Robert, is anyone signed up to  
6 speak?

7 MR. ELROD: No.

8 CHAIRMAN STEEN: Commissioners, any questions?

9 (No response.)

10 CHAIRMAN STEEN: No further discussion, I'll  
11 entertain a motion to propose new 16 TAC 309.106,  
12 Transfers to Texas-Bred Incentive Fund.

13 COMMISSIONER PATE: So moved.

14 CHAIRMAN STEEN: Motion made by Commissioner  
15 Pate.

16 COMMISSIONER McNABB: Second.

17 CHAIRMAN STEEN: Seconded by Commissioner  
18 McNabb.

19 Any further discussion?

20 (No response.)

21 CHAIRMAN STEEN: We'll take this up for a vote.

22 All those in favor please signify by saying aye.

23 (A chorus of ayes.)

24 CHAIRMAN STEEN: Any opposed?

25 (No response.)

1           CHAIRMAN STEEN: The motion carries.

2           Next is item IV.E. Discussion and possible  
3 actions to propose amendments to 15 TAC 311.2, Application  
4 Procedure.

5           Devon, will you please present on the item?

6           MS. BIJANSKY: Yes, sir.

7           These amendments to 311.2 would implement  
8 Senate Bill 1200, which allows for military spouses acting  
9 under an out-of-state license that they can currently use  
10 their license to get a license in Texas by reciprocity,  
11 but this actually is a little more straightforward for  
12 them: They can act under their out-of-state license as  
13 long as the other state had a similar license requirement  
14 and the person is licensed in good standing in the other  
15 jurisdiction, and so this would implement Senate Bill  
16 1200.

17           CHAIRMAN STEEN: Thank you, Devon.

18           Robert, is anyone signed up to speak?

19           MR. ELROD: No, sir.

20           CHAIRMAN STEEN: Commissioners, any questions?

21           (No response.)

22           CHAIRMAN STEEN: If no further discussion, I'll  
23 entertain a motion to propose amendments to 16 TAC 311.2,  
24 Application Procedure.

25           COMMISSIONER McNABB: So moved.

1 CHAIRMAN STEEN: Motion made by Commissioner  
2 McNabb.

3 COMMISSIONER PATE: Second.

4 CHAIRMAN STEEN: Second by Commissioner Pate.  
5 Any further discussion?

6 (No response.)

7 CHAIRMAN STEEN: We'll take this up for a vote.  
8 All those in favor please signify by saying aye.

9 (A chorus of ayes.)

10 CHAIRMAN STEEN: Any opposed?

11 (No response.)

12 CHAIRMAN STEEN: Motion carries.

13 The next item is agenda item V.A., Allocation  
14 of live race dates for horse racetracks under 16 TAC,  
15 Section 303.41 for the period beginning August 2, 2021,  
16 and ending August 31, 2021. There was a typo on the last  
17 agenda so we had to add this to the agenda.

18 Ricky, would you mind presenting the item?

19 MR. WALKER: Good morning, commissioners. My  
20 name is Ricky Walker, chief steward for the Racing  
21 Commission. Commissioners, I would like to cover agenda  
22 items A and B together.

23 At the October 9, 2018, Commission meeting, the  
24 Commission granted approval of race dates requested by  
25 both the horse and greyhound associations. The agenda

1 items today are an administrative action to include the 30  
2 days remaining in August 2021, from August 2, 2021,  
3 through August 31, 2021, which was inadvertently left out  
4 of the race date agenda items that were approved.

5 Commissioners, on page 49 through 63, the two  
6 racetracks that requested race dates covering this time  
7 period are Gillespie County Fair, eight days, August 3-4,  
8 August 14-15, August 17-18, August 28-29; and Valley  
9 Greyhound Park, five days, August 20-21, 25, 27 and 28.

10 Staff recommends your approval of this item to  
11 complete racetracks' 2020 through 2021 requests.

12 I will answer any questions you may have at  
13 this time.

14 CHAIRMAN STEEN: Commissioners, do you have any  
15 questions?

16 (No response.)

17 CHAIRMAN STEEN: Thank you, Ricky.

18 MR. WALKER: Thank you.

19 CHAIRMAN STEEN: Then I have two comment cards,  
20 one from Rob Werstler, representing TQHA, for the item but  
21 not wishing to testify, and Marsha Rountree from the Texas  
22 Horsemen's Partnership, the same, not wishing to testify,  
23 but for the item.

24 CHAIRMAN STEEN: Commissioners, any further  
25 questions on this?

1 (No response.)

2 CHAIRMAN STEEN: Can we take A and B together  
3 in that case?

4 MS. BIJANSKY: Yes, sir.

5 CHAIRMAN STEEN: Okay. So is there a motion to  
6 allocate race dates from August 2, 2021, to August 31,  
7 2021 for both horse and greyhound racetracks?

8 COMMISSIONER KLEINSCHMIDT: So moved.

9 CHAIRMAN STEEN: Motion made by Commissioner  
10 Kleinschmidt.

11 COMMISSIONER MOORE: Second.

12 CHAIRMAN STEEN: Second by Commissioner Moore.  
13 Any further discussion?

14 (No response.)

15 CHAIRMAN STEEN: We'll take this up for a vote.  
16 All those in favor please signify by saying aye.

17 (A chorus of ayes.)

18 CHAIRMAN STEEN: Any opposed?

19 (No response.)

20 CHAIRMAN STEEN: Motion carries.

21 The next item is agenda item V.C., the  
22 reallocation of interstate cross-species purse money under  
23 Commission Rule 303.102(d) for the period from February  
24 24, 2019, through February 29, 2020.

25 Curley Trahan, would you please present this

1 item?

2 MR. TRAHAN: Good morning again, commissioners.

3 The Texas Racing Act requires horse racetracks  
4 to pay a purse in the amount of 5.5 percent of interstate  
5 cross-species handle to the Texas Greyhound Association  
6 for use at greyhound racetracks in Texas.

7 Under Section 303.102 of the rules, the TGA  
8 must pay to the greyhound racetracks the purse money it  
9 collects pursuant to the Act from Texas horse racetracks,  
10 less allowable administrative costs, in accordance with an  
11 allocation approved by the Commission. The TGA prepares  
12 and submits a proposed allocation for consideration by the  
13 Commission.

14 At the October 9, 2018, Commission meeting, the  
15 Commission voted to approve the allocation of cross-  
16 species funds for the period of February 24, 2019. through  
17 February 26, 2020, to Valley Race Park. Since Valley Race  
18 Park will not be running their previously approved meet,  
19 these funds must be reallocated.

20 On pages 66 and 67 of your meeting packet is a  
21 letter from staff to the TGA requesting its proposed  
22 reallocation of the cross-species purse money, followed by  
23 a letter from the TGA laying out the paying of these funds  
24 to Gulf Greyhound Park.

25 Gulf Greyhound Park requested at the last

1 Commission meeting to run a live meet from January 2,  
2 2020, through February 29, 2020. That request was  
3 subsequently approved, and the reallocation of the cross-  
4 species funds is based on those approved race dates for  
5 Gulf Greyhound Park.

6 TGA proposes for all interstate cross-species  
7 money earned, less allowable expenses, for the period of  
8 February 24, 2019, through February 29, 2020, be  
9 reallocated from Valley Race Park to Gulf Greyhound Park.

10 In that same letter, TGA notes that the funds  
11 will accrue for the period following Gulf's live race meet  
12 until the next live meet, which is yet to be determined.

13 Staff recommends approval of the reallocation  
14 as proposed by the TGA through February 29, 2020.

15 I'd be happy to answer any questions.

16 CHAIRMAN STEEN: Thank you, Curley.

17 MR. TRAHAN: Thank you.

18 CHAIRMAN STEEN: Robert, is anyone signed up to  
19 speak?

20 MR. ELROD: No, sir.

21 CHAIRMAN STEEN: Commissioners, do you have any  
22 questions?

23 (No response.)

24 CHAIRMAN STEEN: If not, is there a motion to  
25 approve the reallocation of interstate cross-species purse

1 money as proposed by the Texas Greyhound Association from  
2 February 24, 2019, through February 29, 2020?

3 COMMISSIONER McNABB: So moved.

4 CHAIRMAN STEEN: Motion made by Commissioner  
5 McNabb.

6 COMMISSIONER KLEINSCHMIDT: Second.

7 CHAIRMAN STEEN: Second by Commissioner  
8 Kleinschmidt.

9 Any further discussion?

10 (No response.)

11 CHAIRMAN STEEN: If not, we'll take this up for  
12 a vote. All those in favor please signify by saying aye.

13 (A chorus of ayes.)

14 CHAIRMAN STEEN: Any opposed?

15 (No response.)

16 CHAIRMAN STEEN: Motion carries.

17 The next item is agenda item V.D., the  
18 allocation of funds for the Texas-bred incentive program  
19 as provided by Rule 321.505(b) for the calendar year 2020.

20 Curley, will you please present this item?

21 MR. TRAHAN: Commissioners --

22 CHAIRMAN STEEN: Sorry, Curley, one second.

23 These all seem to have Curley presenting the  
24 next few. Do we need to take them separately, or should  
25 we take them together?

1 MR. SPEIGHT: Separately.

2 CHAIRMAN STEEN: We need to take them  
3 separately?

4 We'll make you get up and down a few times,  
5 then.

6 MR. TRAHAN: Commissioners, a portion of the  
7 money wagered on simulcast races offered at horse  
8 racetracks is dedicated to the accredited Texas-bred  
9 incentive program.

10 Commission Rule 321.505(b) requires the  
11 Commission to determine the division of funds after  
12 affording each official horse breed organization an  
13 opportunity to present written information addressing the  
14 criteria listed in paragraph (2) of this subsection.

15 Alternatively, the breed organizations may  
16 present to the Commission an agreement in lieu of  
17 providing written information. The agreement must meet  
18 two specific requirements.

19 First, the agreement must be signed by all of  
20 the official breed organizations designated in the Act  
21 that participate in the program. Secondly, the agreement  
22 must delineate the percentages by which the Texas-bred  
23 incentive program funds generated from simulcasting are to  
24 be divided among the various breeds of horses.

25 You will find on pages 72 through 75 of your

1 meeting material a submitted agreement signed by all of  
2 the participating breed registries in accordance with the  
3 rules. Included on page 70 is a summary of the  
4 allocations contained in the agreement.

5 The agreement lists the established percentages  
6 by which the accredited Texas-bred program funds will be  
7 allocated among the various breeds of horses for calendar  
8 year 2020. This agreement maintains the same allocations  
9 that were approved for current year 2019 and have remained  
10 the same since 2008.

11 Since all parties have agreed to the  
12 allocations and all requirements of the rule have been  
13 met, staff recommends approval of the submitted accredited  
14 Texas-bred incentive program breed split agreement for  
15 calendar year 2020.

16 I'd be happy to answer any questions.

17 CHAIRMAN STEEN: Thank you, Curley

18 Any questions, commissioners?

19 COMMISSIONER McNABB: Anyone signed up to  
20 speak?

21 CHAIRMAN STEEN: Robert, is anyone signed up to  
22 speak?

23 MR. ELROD: No, sir.

24 CHAIRMAN STEEN: If no questions or further  
25 discussion, I'd entertain a motion to approve the

1 allocation of funds for the Texas-bred incentive program  
2 as provided by Rule 321.505(b) for the calendar year 2020.

3 COMMISSIONER PATE: So moved.

4 CHAIRMAN STEEN: Motion by Commissioner Pate.

5 COMMISSIONER MOORE: Second.

6 CHAIRMAN STEEN: Second by Commissioner Moore.

7 Any further discussion?

8 (No response.)

9 CHAIRMAN STEEN: If not, we'll take this up for  
10 a vote. All in favor please signify by saying aye.

11 (A chorus of ayes.)

12 CHAIRMAN STEEN: Any opposed?

13 (No response.)

14 CHAIRMAN STEEN: Motion carries.

15 The next item is agenda item V.E., the  
16 allocation of purses as provided by Rule 321.505(a) for  
17 the calendar year 2020.

18 Curley, will you please continue?

19 MR. TRAHAN: Commissioners, as with the Texas-  
20 bred incentive program in the previous agenda item, a  
21 portion of the money wagered on simulcast races in Texas  
22 is dedicated to purses at the horse racetracks.

23 Pursuant to Commission Rule 321.505(a), each  
24 year the racetracks must negotiate with representatives of  
25 the officially recognized organizations representing horse

1 owners, trainers and/or breeders for the allocation of  
2 purse funds earned at each track.

3 Racetrack management then recommends to the  
4 Commission the specific allocation of simulcast purse  
5 revenue among the various breeds of horses at their  
6 respective racetrack.

7 The Commission may look to criteria detailed in  
8 Subsection 321.505(a)(4) when evaluating the racetracks'  
9 recommendation; however, if the racetracks and all of the  
10 official horse industry organizations reach a signed  
11 agreement, that agreement may then be presented to the  
12 Commission for approval.

13 Commissioners, beginning on page 84 of your  
14 meeting material and continuing through page 87 are the  
15 racetrack recommended allocations of the simulcast purse  
16 funds. Also included on pages 91 and 92 are two letters  
17 of support from the Texas Thoroughbred Association and the  
18 Texas Horsemen's Partnership for all the racetracks'  
19 submitted breed split allocations.

20 Staff reached out to each of the other three  
21 breed registries, seeking indication of support for the  
22 racetracks' recommended allocations, but no such  
23 communications were forthcoming. However, Gillespie  
24 County Fair and Festival Association did submit signed  
25 pages indicating support from the Texas Arabian Breeders

1 Association and the Texas Thoroughbred Association, which  
2 are included on pages 89 and 90.

3 Each of the racetracks have recommended  
4 maintaining the status quo for calendar year 2020 for  
5 simulcast purse funds. I have provided a summary of the  
6 racetrack requested allocations for simulcast purses on  
7 page 79 for your convenience.

8 Due to the fact that not all of the breed  
9 registries have indicated their support for each of the  
10 racetracks' recommended allocation, staff has no  
11 recommendation on approval of the racetracks' proposals.

12 I'd be happy to answer any questions.

13 CHAIRMAN STEEN: Commissioners, any questions?

14 (No response.)

15 CHAIRMAN STEEN: Thank you, Curley.

16 MR. TRAHAN: Thank you.

17 CHAIRMAN STEEN: We do have, I believe signed  
18 up for this item, Ed Wilson, representing the TABA. Is  
19 that correct? Is this the item?

20 MR. WILSON: Mr. Chairman, commissioners. When  
21 I was looking through the proposal, I saw two different  
22 agreements here from Gillespie Park. A few years back  
23 there was not any Arabians here in the summer to run at  
24 Gillespie; therefore, we gave -- we decided that the Paint  
25 Association should get all of the amount of breed money,

1 because they were able to run there and we were not. Last  
2 year we had owners and trainers that wanted to return to  
3 get racing at Gillespie.

4 When this first proposal came out, I contacted  
5 Gillespie and asked them to split the breed as we had done  
6 prior to the previous agreement, and they sent back a  
7 letter on October 4 out to all the breeds, and it's my  
8 understanding all of us have signed agreeing that the .75  
9 percent would go to the Arabian breeders, which gives us  
10 some money there to run. That, with the money coming from  
11 the House bill, we would have enough money to run at least  
12 one or more races.

13 So I was a little bit concerned which one is  
14 going through, zero percent or .75 for us. We do wish to  
15 run there. We have owners and trainers both who will be  
16 here this summer who will be running at Retama Park, we  
17 would like also the opportunity to run at Gillespie during  
18 the same time.

19 Thank you. Any questions?

20 CHAIRMAN STEEN: Sorry, Mr. Wilson. What was  
21 your -- your proposal is different from what is --

22 MR. WILSON: I would like what the breed  
23 organizations, all breeds signed off on this agreement.  
24 It was signed on -- it was dated October 4.

25 CHAIRMAN STEEN: And this is regarding

1 Gillespie Downs?

2 MR. WILSON: Yes.

3 CHAIRMAN STEEN: Is that different from what we  
4 have here in the materials, Devon?

5 MS. BIJANSKY: On page 84 of your materials is  
6 Fredericksburg Downs' form indicating zero percent for  
7 Arabian and 1.5 percent for Paints.

8 And, sir, you're saying that there's another  
9 agreement signed after this one that shares that 1.5 with  
10 the Arabians?

11 MR. WILSON: I have the letter right here. It  
12 was in the packet. It's dated October 4; the other one is  
13 dated September 12, so this is the latest on Gillespie and  
14 signed off by the president, and then all the breeds  
15 signed off on that, is my understanding.

16 COMMISSIONER McNABB: Do we have anyone from  
17 the Paint Horse Association to speak to this today?

18 CHAIRMAN STEEN: Sir, are you from the Paint  
19 Horse Association? Would you mind stepping forward?

20 Thank you, Mr. Wilson.

21 MR. SMURTHWAITE: My name is Lex Smurthwaite.  
22 I'm with the Texas Paint Horse Association, and we do not  
23 object to any change to the -- so if the Arabians want a  
24 percent, that's fine with us.

25 COMMISSIONER McNABB: So what you're saying --

1 MR. SMURTHWAITE: I don't recall signing  
2 anything or seeing something to sign.

3 COMMISSIONER McNABB: Are you saying a number  
4 or are you just --

5 MR. SMURTHWAITE: I'm not sure that we've seen  
6 this October 4 letter that Mr. Wilson is talking about.  
7 Is there a signature from us on there?

8 MR. WILSON: The only thing that I saw was  
9 signed by Pancho.

10 MR. SMURTHWAITE: Okay.

11 CHAIRMAN STEEN: So what's the proposed split  
12 then? It goes from 1.5 to is it .75 each? Is that the  
13 proposal?

14 MR. WILSON: I don't understand the figures, to  
15 be honest with you. Out of the original allocation, 1.5  
16 percent was to go to minor breeds, if you look at this,  
17 .75 to Arabians and 1.5 to Paints, so their figures don't  
18 really amount up to 1.5, so I'm sure the Paints will take  
19 the full 1.5 and we'll take the .75 if that's what y'all  
20 approve.

21 COMMISSIONER McNABB: Are we ready to vote on  
22 this, or does this need to have additional discussion?

23 COMMISSIONER MOORE: It's on page 79 in the  
24 first column, and it lists these percentages.

25 MR. WILSON: Without some money, that won't

1 give us a race, and that's all we're trying to do is get a  
2 race there.

3 (General discussion among commissioners.)

4 MR. TRAHAN: The original simulcast allocation  
5 request from Fredericksburg has zero percent for the  
6 Arabians, 1.5 for Paint Horse, 68.95 percent for Quarter  
7 Horse, and 29.55 percent for Thoroughbred.

8 This was the only thing I received from  
9 Gillespie other than the two approval letters that were  
10 signed off by Mr. Wilson and Mary Ruyle from the Texas  
11 Thoroughbred Association. On those letters that Mr.  
12 Wilson and Mr. Ruyle signed, the percentages are different  
13 from the original request from Fredericksburg.

14 CHAIRMAN STEEN: And what are the requested  
15 percentages?

16 MR. TRAHAN: The signed-off percentages, .75  
17 for Arabians, 1.5 for Paint Horse, 68.57 for Quarter  
18 Horse, and 29.18 for Thoroughbred.

19 CHAIRMAN STEEN: And we have no opposition to  
20 that?

21 I'm sorry, sir, I didn't catch your name. Is  
22 that satisfactory from the Paint Horse point of view?

23 MR. SMURTHWAITE: 1.5 for the Paint Horse?  
24 Yes, it is.

25 CHAIRMAN STEEN: Okay. Do we need an official

1 new document from Gillespie Downs, or can we adopt as  
2 proposed in the letter, subject to receiving an updated --

3 MS. BIJANSKY: You can adopt.

4 CHAIRMAN STEEN: So potentially we could make a  
5 motion to adopt according to the letter percentages  
6 subject to receiving a -- what do you call this?

7 COMMISSIONER PATE: Mr. Chairman, I'm confused.  
8 Have the other breeds signed off on any percentages?

9 MR. TRAHAN: The Texas Thoroughbred Association  
10 did sign the Gillespie County Fair letter. I have --

11 COMMISSIONER PATE: That's the October 4  
12 letter? Because my copy is not executed.

13 MR. TRAHAN: Yes, it's the October 4. Well,  
14 there should be two copies of that letter.

15 COMMISSIONER PATE: I'm sorry. I see it now.

16 MR. TRAHAN: One has Mr. Wilson and one has Ms.  
17 Ruyle.

18 COMMISSIONER PATE: So the Quarter Horse  
19 Association has not signed off?

20 MR. TRAHAN: The Quarter Horse has not and the  
21 Paint Horse has not, but the Paint Horse did just say that  
22 they would approve those percentages.

23 COMMISSIONER McNABB: Well, then that begs some  
24 coordination with the Quarter Horses.

25 MR. WERSTLER: Good morning, Mr. Chairman,

1 commissioners. Rob Werstler with the Texas Quarter Horse  
2 Association.

3 It must be an oversight on my part. I thought  
4 we had signed it and I had signed it, and it seems like I  
5 had signed everything Gillespie sent to me. But yes,  
6 we're in full support.

7 COMMISSIONER PATE: Of the October 4  
8 allocation, the 68.57 percent?

9 MR. WERSTLER: Yes, sir.

10 COMMISSIONER McNABB: So it's safe to say from  
11 the affected breed associations, the numbers as we have  
12 listed proposed here, so Arabians 0.75, Paint Horses 1.5,  
13 Quarter Horses 68.57, and Thoroughbreds 29.18.

14 MR. WERSTLER: Yes, ma'am.

15 COMMISSIONER McNABB: Everyone is in  
16 concurrence on those numbers?

17 MR. WERSTLER: Yes, and I believe that's the  
18 same splits we've had for several years now.

19 COMMISSIONER McNABB: I just want to make sure  
20 everybody is singing kumbaya.

21 MR. WERSTLER: We're good. I apologize. Like  
22 I said, I thought we had signed it. Thank you.

23 CHAIRMAN STEEN: Thank you, Rob.

24 So, Devon, can we make a motion according to  
25 the letter, or do we need the actual form to come in later

1 to --

2 MS. BIJANSKY: Everyone is on board, so you can  
3 go forward.

4 CHAIRMAN STEEN: Okay. Can you just frame the  
5 motion for us then, since it's not in our --

6 MS. BIJANSKY: Sure. So the motion would be to  
7 approve the allocate purses as provided under 321.505(a)  
8 for calendar year 2020 according to the letter on pages 89  
9 and 90 of the materials.

10 COMMISSIONER McNABB: And substantiated by  
11 public testimony.

12 MS. BIJANSKY: Yes, Commissioner.

13 COMMISSIONER McNABB: So moved.

14 CHAIRMAN STEEN: Motion made by Commissioner  
15 McNabb.

16 COMMISSIONER KLEINSCHMIDT: Second.

17 CHAIRMAN STEEN: Seconded by Commissioner  
18 Kleinschmidt.

19 Any further discussion?

20 (No response.)

21 CHAIRMAN STEEN: We'll take this up for a vote.

22 All those in favor please signify by saying aye.

23 (A chorus of ayes.)

24 CHAIRMAN STEEN: Any opposed?

25 (No response.)

1                   CHAIRMAN STEEN: Motion carries.

2                   The next item is agenda item V.F., the  
3 allocation of purse funds in the horse industry escrow  
4 account, as provided by Rule 321.509, for calendar year  
5 2020.

6                   Curley, would you please present on this?

7                   MR. TRAHAN: Thank you again, Mr. Chairman,  
8 commissioners.

9                   The distribution of funds collected in the  
10 horse industry escrow account is covered in Commission Rule  
11 321.509, which you just repealed earlier, which is now  
12 included in Section 303.

13                   The funds set aside for the horse industry  
14 escrow account are now derived from two sources. The first  
15 source of funds results from simulcast wagering on  
16 interstate horse racing at greyhound racetracks in the  
17 state.

18                   The second source of funds originates via a tax  
19 imposed on the sale, storage or use of horse feed, horse  
20 supplements, and horse tack. This second source is a  
21 direct result of passage of House Bill 2463 during the 86th  
22 Legislative Regular Session.

23                   This same bill requires the maximum amount for  
24 purses from the horse industry escrow account be set at 70  
25 percent. The allocation of this 70 percent is what is

1 being proposed in this agenda item.

2           The rules state that at least once a year the  
3 Commission shall distribute all funds accrued in the purse  
4 or purses in the escrow account to the horse racetracks.  
5 The racetrack associations are required to recommend the  
6 percentages by which the distribution of funds will be  
7 divided among the various breeds of horses.

8           The Commission must determine first the  
9 allocation among the racetracks of the escrow purse funds  
10 and, secondly, the percentages to be divided among the  
11 various breeds at each track for their allocated portion.

12         The Commission may look to the criteria listed in  
13 Subsection (c) of this section of the rules when  
14 evaluating the racetrack association recommendations.

15           In lieu of this process, if the racetrack  
16 associations and all of the official horse industry  
17 organizations reach an agreement, that signed agreement  
18 may be submitted to the Commission for approval as long as  
19 the agreement meets two criteria.

20           First, the agreement must delineate the  
21 percentages by which the purse funds in the horse industry  
22 escrow account received by the associations will be  
23 divided amongst the various breeds of horses.

24           Secondly, the agreement must be signed by all  
25 organizations recognized by the Commission or in the Act

1 as representatives of horse owners, trainers and/or  
2 breeders.

3 Commissioners, beginning on page 96 of the  
4 meeting material and continuing through page 107 is the  
5 industry-wide agreement with the recommended distribution  
6 of the purse funds from the horse industry escrow account  
7 to each of the Texas horse racetracks and the division of  
8 those funds among the various breeds of horses at each  
9 track.

10 The agreement is signed by representatives from  
11 each of the four Texas horse racetracks and the four Texas  
12 breed registries as recognized in the Act. The agreement  
13 is also signed by the Texas Horsemen's Partnership, as  
14 representative to the Texas horse owners and trainers.

15 Since all interested parties are in agreement  
16 with the proposed allocations and having met the  
17 requirements of the rule, staff would recommend approval  
18 of the distribution of purse funds from the horse industry  
19 escrow account for calendar year 2020, as proposed in this  
20 submitted industry-wide signed agreement.

21 I'd be happy to answer any questions.

22 CHAIRMAN STEEN: Commissioners, any questions?

23 (No response.)

24 CHAIRMAN STEEN: Thank you, Curley.

25 Robert, is anyone signed up to speak?

1 MR. ELROD: No.

2 CHAIRMAN STEEN: No further questions or  
3 discussion, I'd entertain a motion to approve the  
4 allocation of purse funds in the horse industry escrow  
5 account, as provided by Rule 321.509, for calendar year  
6 2020.

7 COMMISSIONER PATE: So moved.

8 CHAIRMAN STEEN: Motion made by Commissioner  
9 Pate.

10 COMMISSIONER McNABB: Second.

11 CHAIRMAN STEEN: Second by Commissioner McNabb.  
12 Any further discussion?

13 (No response.)

14 CHAIRMAN STEEN: If not, we'll take this up for  
15 a vote. All in favor please signify by saying aye.

16 (A chorus of ayes.)

17 CHAIRMAN STEEN: Any opposed?

18 (No response.)

19 CHAIRMAN STEEN: Motion carries.

20 The next item is agenda item V.G., the  
21 reallocation of purse funds in the horse industry escrow  
22 account, as provided by Rule 321.509, for the period of  
23 September 1, 2019, through December 31, 2019.

24 Curley, would you please present on this item.

25 MR. TRAHAN: Commissioners, this item, as with

1 the previous item, is regarding the distribution of funds  
2 collected in the horse industry escrow account.

3 At the Commission meeting on October 9, 2018,  
4 the Commission approved the allocations from the horse  
5 escrow purse account for calendar year 2019. However,  
6 since that time legislation was passed that provided a  
7 significant increase to the available purse funds for the  
8 horse racetracks beginning September 1, 2019.

9 Because of this significant increase in  
10 available purse funds, the racetracks and all of the  
11 industry representatives have requested a revision to the  
12 previously approved allocations from this account.

13 The industry-wide agreement submitted for the  
14 previous agenda item had an effective date of September 1,  
15 2019. Since the calendar year 2019 distribution  
16 allocations were previously approved, in order for the  
17 allocations to become effective on September 1, 2019, the  
18 Commission must approve the change.

19 This item is requesting Commission approval of  
20 the distribution allocations contained in the submitted  
21 industry-wide horse industry escrow purse agreement for  
22 the period of September 1, 2019 through December 31, 2019.

23 I'd be happy to answer any questions.

24 CHAIRMAN STEEN: Thank you, Curley.

25 Robert, is anyone signed up to speak?

1 MR. ELROD: No, sir.

2 CHAIRMAN STEEN: Any further questions,  
3 commissioners?

4 COMMISSIONER KLEINSCHMIDT: I move that we  
5 allocate the purse funds in the horse industry escrow  
6 account among the various breeds of horses under  
7 Commission Rule 321.509 for the period from September 1,  
8 2019, through December 31, 2019, according to the  
9 industry-wide agreement submitted.

10 CHAIRMAN STEEN: Motion by Commissioner  
11 Kleinschmidt.

12 COMMISSIONER McNABB: Second.

13 CHAIRMAN STEEN: Second by Commissioner McNabb.  
14 Any further discussion?

15 (No response.)

16 CHAIRMAN STEEN: If not, we'll take this up for  
17 a vote. All those in favor please signify by saying aye.

18 (A chorus of ayes.)

19 CHAIRMAN STEEN: Any opposed?

20 (No response.)

21 CHAIRMAN STEEN: Motion carries.

22 Next we'll take up item VI.A. Discussion and  
23 possible action on the proposal for decision in the case  
24 of Joseph Michael Davis.

25 Virginia Fields, director of Enforcement, will

1 be representing the staff.

2 Is there anyone here on behalf of Mr. Davis?

3 MR. HAYES: I'm here for Mr. Davis.

4 CHAIRMAN STEEN: Thank you.

5 Ms. Fields, why don't you go ahead and present  
6 first?

7 MS. FIELDS: Good morning, commissioners.  
8 Virginia Fields, direct of Enforcement.

9 I'm here to present the Joe Davis SOAH appeal  
10 involving the contest of Stewards' Ruling LSP3513, dated  
11 February 23 of 2019, finding that the trainer's horse  
12 participated in a race with its post-race urine sample  
13 testing results from two separate laboratories being  
14 positive for the prohibited substance of clenbuterol.

15 The appellant argued there was insufficient  
16 notice of the recent rule amendments banning clenbuterol  
17 to withdraw the animal prior to the race.

18 Staff filed a motion for summary disposition,  
19 which the ALJ granted, upholding the ruling, and today  
20 there's a proposed final order in your packet, pages 124  
21 and 125. Staff respectfully requests that you move to  
22 adopt the proposal for decision dated May 6, as written.

23 CHAIRMAN STEEN: Commissioners, any questions  
24 of Ms. Fields?

25 (No response.)

1                   CHAIRMAN STEEN: Thank you, Ms. Fields.

2                   Sir, would you mind coming forward? Good  
3 morning.

4                   MR. HAYES: Good morning, Mr. Chairman. I'm  
5 John Mac Hayes. I represent the licensee trainer in this  
6 case.

7                   Appealed the stewards' ruling. We're asking  
8 you to assert your plenary authority to review it and to  
9 reverse it. On appeal, of course, just looking for you to  
10 review the thing fairly, and in order to do that in this  
11 case there's something the state said over there that  
12 comes right out of the box on this: clenbuterol. Okay?

13                   Because when you hear that word in this sport  
14 today, somebody is cheating, somebody is doing something  
15 bad, something is going on. And I mean, that's just how  
16 it is.

17                   And so the first thing, in order for my client  
18 here to get a fair shake, is we have to go back to the  
19 time of recognizing that clenbuterol -- Ventipulmin, the  
20 trade name -- that it was a good medication for race  
21 horses. We have to get there in order to get a fair  
22 shake.

23                   The second thing is we can't just assume that  
24 just because the primary lab called this small tiny  
25 concentration level of clenbuterol that licensee

1 automatically loses. That would be inconsistent with the  
2 mitigation rules, and that's inconsistent with your  
3 plenary authority to review a violation.

4 We wouldn't need to have a hearing with the  
5 stewards if it was just automatic. So my position is we  
6 can't look at the thing from suggesting that just because  
7 there was a positive, there's a violation. That's why we  
8 had a hearing, that's why I'm here today.

9 And the last thing is I just ask you to leave  
10 room for the possibility that the licensee's  
11 interpretation of the rules could be more reasonable and  
12 more aligned toward the intent of the rule than the  
13 stewards' interpretation.

14 Now, in order to get there, we've got to talk  
15 about this history of clenbuterol, because horses live in  
16 barns and do respiratory exercise. Breathing is so  
17 important. So for years and years and years, the  
18 veterinarians would say -- would prescribe the clenbuterol  
19 because a horse lives in a barn and because he exercises,  
20 and this was just the way it was.

21 Texas had a level for clenbuterol. You had a  
22 level to say, well, as long as you're under the level, you  
23 can't be enhancing performance. It used to be 1,000, then  
24 it came to 140.

25 So the administration of Ventipulmin happened

1 for a long time, and everything was fine with it, until  
2 about 2011 or 2012. Okay? And that's about the time when  
3 the jurisdictions started to figure out they're not using  
4 Ventipulmin, they're compounding some kind of Ventipulmin  
5 derivative to make it different. Okay? I mean, it's not  
6 the same thing. Ventipulmin helps breathe, and this  
7 strong thing that they were making, it builds this muscle  
8 mass. And so all of a sudden the jurisdictions say, hey,  
9 this isn't right.

10 Now, this is about 2013 --

11 MS. BIJANSKY: Mr. Hayes, I'm sorry to  
12 interrupt. Is any of this on the record?

13 MR. HAYES: The clenbuterol case? Yeah, I  
14 think so.

15 MS. BIJANSKY: It was in the record of the  
16 stewards' hearing and/or at SOAH?

17 MR. HAYES: Well, we're talking about, Devon,  
18 the implementation of the clenbuterol prohibition. In  
19 order for me to present that properly, I just need to go  
20 down through the historical how we got there.

21 MS. BIJANSKY: I understand what you're trying  
22 to do, but at this point we're limited to what's on the  
23 record from the previous hearings, so I would ask you to  
24 constrain your comments to that.

25 MR. HAYES: Sure. So going into 2018, Texas

1 has 140 picogram level. One of my -- my best pitch for  
2 clenbuterol being -- not being the bad, horrible drug that  
3 it's got the image of is that Texas was about the last  
4 state to prohibit it, and I can only assume that that's  
5 because there just wasn't a viable alternative. I mean, a  
6 horse has to breathe and a horse has to exercise.

7           So historically we come up with this case.  
8 When the trainer comes to the race meet, they get the  
9 condition book and you train up to the race meet. The  
10 condition book is in the record. It doesn't say what date  
11 it came out, it always comes out a month in advance. All  
12 right. This race meet started in September 2018. The  
13 condition book would have come out in the summer, and it  
14 says 140 picogram level.

15           So the horse trainers are coming to the Dash  
16 for Cash Futurity in 2018 under the perception that  
17 there's going to be 140 picogram level in urine for  
18 clenbuterol. And they're racing on it in Louisiana, but  
19 now in fairness, they're not racing on it in Oklahoma or  
20 New Mexico. It's only legal in Louisiana and Texas in  
21 2018.

22           So now we come into the horse trainer has the  
23 notice through the condition book. Then we get to the  
24 part that's in your record. This Commission came to the  
25 conclusion that they're going to outlaw, prohibit

1 clenbuterol, just like all the other jurisdictions did.

2 And so I can't recite the dates exactly. You  
3 did your first thing in June of 2018 saying we're going to  
4 prohibit it, then you did something else in August and you  
5 published it, you know, you published it and it had the  
6 comment on it, and then it got implemented on September  
7 10, about 12 days before the Dash for Cash trials.

8 Now, as a practical matter, all right, you've  
9 got these horses that are competing in these other  
10 jurisdictions where clenbuterol is legal, and they're  
11 going to come to Texas and participate, in this instance,  
12 in the Dash for Cash.

13 We'd want to have some sort of notice. Now, I  
14 don't read the registry and I bet there's a lot of others  
15 that don't read the registry. I don't think they read the  
16 registry in the shed row either.

17 Now, I'm not being smart-aleck, but I think to  
18 regulate and have a correct notice, you want to look at  
19 that on when would they have found out. Okay? And I can  
20 tell you when they found out.

21 Unless you thought they read the registry, they  
22 can't find until September 10 because it wasn't the law  
23 until September 10. The facts of the case, it wasn't the  
24 law. It wasn't published in the racing office until  
25 September 10, and it wasn't on the website until September

1 10.

2 So now you have notice to my client, and the  
3 Dash for Cash draws are 12 days. He could have scratched.  
4 He's been racing in Louisiana, but the suggestion is,  
5 well, he's going to be able to withdraw from it because  
6 generally they feel like they can. They're experts on  
7 withdrawal time because they've done it in these other  
8 states. Okay. So he goes and races and the horse comes  
9 up with this trace level of clenbuterol.

10 Now, the evidence that he put on at the hearing  
11 is the same thing that we all know, that -- something  
12 about he had to have a study and how long does it take the  
13 horse to get off the clenbuterol. You know, 28 days is  
14 what his evidence was.

15 You can use your knowledge and Dr. McNabb's  
16 knowledge on the history of how long it takes to get off  
17 it. Okay? But it comes down to my guy had 12 days, and  
18 his evidence is that scientifically it would take 28 days  
19 to get off it.

20 Okay. So that gets us to this idea that now we  
21 have returned these primary lab positives, 25 or 23  
22 picograms. Now, our level used to be 140, so we have to  
23 know that 25 or 30 is sure within that group of levels  
24 that wouldn't affect performance. Okay? Now, we've  
25 changed the law, it is not [sic] prohibited anymore, but

1 if the horse is called at 25 or 30 picograms, it's within  
2 the old -- we know it's not enhancing performance because  
3 it's within our old law.

4 So I'm not trying to argue a technicality. The  
5 rules need to be enforced the same for the state as they  
6 are for the horsemen, and in this instance, I very  
7 respectfully submit to you that in the rush to get the  
8 clenbuterol prohibited, there just wasn't enough time to  
9 give real practical notice to your licensees.

10 Now, you know what the next obvious question  
11 is? Well, there was two or three of them that were  
12 positive for clenbuterol. Well, Mr. Hayes, what about all  
13 the other horses that ran in the Dash for Cash and weren't  
14 positive, they were under the same circumstances. Well,  
15 all I can tell you is you've seen that evidence about how  
16 they metabolize the clenbuterol and the 28 days and trying  
17 to come off it.

18 I don't have an explanation, but here's what I  
19 can explain, the prosecutor and the lab has the authority  
20 and you have the authority as the regulator to decide when  
21 to call the thing.

22 You'd want to call it if somebody had cheated,  
23 you'd want to call it if somebody had enhanced performance  
24 on the horse. You don't have any of those things here.  
25 You have this tiny level that wouldn't have enhanced

1 performance in this circumstance where they only had a  
2 short period of time.

3           Would it be fair to this horse to take away the  
4 purse money and to fine the trainer and to suspend him  
5 from practicing his profession just because he couldn't  
6 get off in the 12 days?

7           That's -- in absolute fairness, under your  
8 regulatory authority, I'm asking you to conclude that in  
9 order to make the Dash for Cash for 2018, in order to make  
10 it fair, because you have this horse that wasn't  
11 performance-enhanced, because you have evidence that the  
12 horse was racing legally in Louisiana before it came to  
13 Dallas, because you have evidence that it was so low that  
14 it couldn't have enhanced performance, I submit to you  
15 that the stewards, when they determined that the 12 days  
16 was enough to withdraw, that they made an error.

17           I'm asking that you specifically find that the  
18 12 days wasn't sufficient for the horseman and for the  
19 horse -- for the horseman to be able to get the horse to  
20 withdraw from the medication.

21           And for that reason, since he didn't have an  
22 unfair advantage, and since, really, the unfairness was  
23 against him, I ask very respectfully that you reverse the  
24 ruling of the stewards and find that the notice under the  
25 publication and the notice actually giving it on the

1 website on September 10 and in the racing office, that  
2 that was insufficient for the horse to withdraw from  
3 clenbuterol in that time frame, and therefore, the  
4 stewards should be reversed because there's no clear error  
5 if the fairness didn't come about because he didn't have  
6 enough withdrawal time.

7 Thank you.

8 CHAIRMAN STEEN: Thank you.

9 Commissioners, do you have any questions? Is  
10 there any discussion?

11 COMMISSIONER WAIGHT: Are you suggesting that  
12 the owner of the horse or the trainer of the horse did not  
13 know that this chemical stayed in the horse's body for 28  
14 days?

15 MR. HAYES: Oh, no. He absolutely knew.

16 COMMISSIONER WAIGHT: Did not know that?

17 MR. HAYES: Mr. Waight, that horse trainer, he  
18 or she has to be an expert on withdrawal time. They have  
19 to -- on a therapeutic they have to know exactly when to  
20 quit, so the answer to your question was that horse  
21 trainer would know about -- would know that they would  
22 take 28 days, they would absolutely know.

23 COMMISSIONER WAIGHT: And yet they chose to  
24 race the horse 12 days after.

25 MR. HAYES: And yet they chose to race the

1 horse 12 days later. That's exactly right.

2 COMMISSIONER WAIGHT: Well --

3 MR. HAYES: And, Mr. Waight, you know, the  
4 thing you've got to consider is that owner, you know, what  
5 he did for the year before the Dash for Cash, he paid  
6 money in, the owner did, and he paid that horse trainer to  
7 train it for the race. All right? Horse trainers showed  
8 up at the racetrack and found out that there's a  
9 prohibition, okay, on the 10th.

10 Now, I think I might have misspoke, Mr. Waight.

11 Let me correct that. Okay? Because I agree that the  
12 whole idea of the 28 days that was his evidence on how  
13 long the withdrawal, but Mr. Waight, in absolute fairness,  
14 the 12 days, he would have perceived the 12 days to have  
15 been enough. Okay? It was enough for him to risk his  
16 license because the owner had paid in and because he'd  
17 trained the horse up.

18 He's not going to go commit trainer suicide, he  
19 went and raced that horse on September 22 because he  
20 believed that the horse could have withdrawn from  
21 September 10 until September 22.

22 I hope that answers your question.

23 COMMISSIONER WAIGHT: Well, it doesn't  
24 completely answer my question, because obviously, if you  
25 know that stays in the horse's system for that length of

1 time and only a short period of time has passed, you're  
2 taking a chance.

3 MR. HAYES: Let me make sure we understand each  
4 other.

5 COMMISSIONER WAIGHT: Okay.

6 MR. HAYES: When he comes to defend himself,  
7 okay, when he comes to the stewards' hearing to defend  
8 himself, he brings this scholarly article that says, oh,  
9 some horses it can take 28 days to get it off. And in  
10 fairness, Mr. Waight, this is months after the race when  
11 they're having the hearing. Okay?

12 Months after the race they're having the  
13 hearing and he's coming with this information to defend  
14 himself saying that sometimes it takes 28 days to  
15 withdraw. Okay? That's his evidence.

16 Now, sir, to answer your question, when he  
17 showed up at Grand Prairie in the days in advance of  
18 September 10 to race his horses in the Dash for Cash and  
19 found out on September 10 that it was going to be  
20 prohibited, I mean, the evidence in the record would be  
21 that he had to believe that the horse could withdraw  
22 within the 12 days.

23 I don't want to mix up the 28. The 28 came  
24 later when he's trying to defend himself. The question is  
25 was it reasonable, if he knew the horse is on on September

1 10, to be able to get him off by September 22, and the  
2 answer, sir, is yes, because that was just traditionally  
3 the way. They have to be an expert on withdrawal times  
4 and that's the way he gauged it and that's the way it  
5 happened.

6 COMMISSIONER McNABB: I'd like to offer just a  
7 couple of comments. Number one, one of the key missions  
8 of the Racing Commission in our regulatory role is to  
9 protect the health and the welfare of the racing animal.

10 As far as drug withdrawal times in individual  
11 animals, you may have scholarly articles that have charts  
12 and times and everything else, but the amount of time it  
13 takes for any biologic system to clear the substance is  
14 going to have a lot to do with how long it's been given,  
15 how much has been given, how much has been given for how  
16 long, or were there other opportunities that that  
17 medication may have entered the system of the horse  
18 inadvertently, on purpose, I don't know, I wasn't in the  
19 barn.

20 The fact that clenbuterol is an acknowledged  
21 substance that can, number one, affect the performance of  
22 a horse, it also is recognized that long-term  
23 administration of clenbuterol -- clenbuterol is not a  
24 vitamin, it is not an essential nutrient, it is not  
25 something that they need to survive. Horses lived for

1 many millennia without clenbuterol.

2           So the fact that clenbuterol does have an  
3 effect on the system and the body of a racing animal is  
4 why clenbuterol and albuterol and other substances in that  
5 family have gained so much attention from the racing  
6 regulatory industry, because we do want to go back to our  
7 number one mission: protect the health and the welfare of  
8 the racing animal.

9           If indeed he had 12 days, as a trainer he  
10 should have full knowledge of how long has this horse been  
11 getting clenbuterol, what kind of dosage, what's the  
12 prevalence of clenbuterol in my barn.

13           He has access to his professional veterinary  
14 staff, so I assume he made an educated judgment was he  
15 within the envelope of this horse being cleared. The fact  
16 that this horse tested positive, he made a bad decision.

17           But I do not buy that horses have to breathe,  
18 therefore, they have to have clenbuterol. I don't  
19 subscribe to that basic premise that you put forward.

20           So clearance times are highly affected by a  
21 number of factors. The fact that something can be in for  
22 28 days, it isn't that every single horse that you give a  
23 single dose of clenbuterol, in 28 days it's there, in 29  
24 days it's gone. It doesn't work that way.

25           So if he had been -- if this horse had been

1 getting clenbuterol under the treatment by a veterinarian  
2 because this horse had a pulmonary condition that required  
3 the use of a therapeutic and this trainer, in consultation  
4 with his professional veterinarian, where are we with this  
5 drug, what is the likelihood, then if he thought that he  
6 was clear and he was not, that horse still had clenbuterol  
7 in the system, the clenbuterol was there, it was  
8 substantiated by two different laboratories.

9 So the fact that it was in the horse's system  
10 and the potential that that clenbuterol was a factor in  
11 the outcome and performance of that horse, I can't dispute  
12 that.

13 MR. HAYES: Is there a question, Dr. McNabb?

14 COMMISSIONER McNABB: It was a commentary to  
15 my peers.

16 MR. HAYES: Okay. And I mean, in response to  
17 your commentary, I respectfully disagree with you that the  
18 25 picograms could have enhanced the Dash for Cash. I  
19 mean, if this body said that 140 in urine going into --  
20 right before -- the day before September 10, I can't  
21 imagine that you would have set a rule that permitted  
22 people to use clenbuterol and enhance performance.

23 And I mean, in fairness, Dr. McNabb, when I  
24 started this, what I'm really trying to get past is that  
25 notion is that you just throw clenbuterol and albuterol in

1 there together and they're just the cheating mechanism.  
2 Or you say, well, that horse had to have a pulmonary  
3 condition in order to give the clenbuterol, because,  
4 Doctor, in fairness, that's not true.

5 If the horses -- there was a level they can  
6 race on the medication in these other states. The  
7 question would then become was it reasonable when he found  
8 out on September 10, was it reasonable to race the horse  
9 on September 22 when, you know, all the information is  
10 that 10-12 days you can get off of it, you can completely  
11 withdraw.

12 Now, did he have it the day before September  
13 10? Probably not, because -- but in any event, when he  
14 showed up on the track, he thought he was going to be able  
15 to use it, and so did everybody else.

16 But when he did -- or when it didn't come off,  
17 you then had this situation where performance wasn't  
18 enhanced. And so the idea that to lump them in there with  
19 the fact that it was clenbuterol, I think that's a little  
20 bit unfair.

21 CHAIRMAN STEEN: Commissioners, any further  
22 discussion?

23 (No response.)

24 CHAIRMAN STEEN: Thank you, sir.

25 MR. HAYES: Thank you.

1 CHAIRMAN STEEN: Is there a motion to be made  
2 or any further discussion on the subject?

3 COMMISSIONER KLEINSCHMIDT: I move to adopt the  
4 proposal for decision in SOAH Action Number 476-19-3110,  
5 and Texas Racing Commission Action Number 2019-02-03 in  
6 full, and according to Stewards' Ruling LSP3513, and that  
7 such be upheld in all respects.

8 COMMISSIONER PATE: Second.

9 CHAIRMAN STEEN: Motion made by Commissioner  
10 Kleinschmidt, seconded by Commissioner Pate.

11 Any further discussion?

12 (No response.)

13 CHAIRMAN STEEN: If not, we'll take this up for  
14 a vote. All in favor please signify by saying aye.

15 (A chorus of ayes.)

16 CHAIRMAN STEEN: Any opposed?

17 (No response.)

18 CHAIRMAN STEEN: Motion carries.

19 Next we'll take up item VI.B. Discussion and  
20 possible action on the proposal for decision in the case  
21 of Rolando Almanza.

22 Virginia Fields, director of Enforcement, will  
23 be representing staff.

24 Is there anyone here on behalf of Mr. Almanza?

25 MR. HAYES: (Speaking from audience.) I

1 represent Mr. Almanza.

2 CHAIRMAN STEEN: Thank you.

3 Ms. Fields, would you please proceed?

4 MS. FIELDS: Yes. Thank you, commissioners.

5 Again, Virginia Fields, director of Enforcement.

6 These rulings are essentially the same as the  
7 case that you just heard. I would only add that the  
8 commissioners may recall that this was actually published  
9 on our website and posted at the various tracks on August  
10 14. The impression is that the horseman didn't know until  
11 September 10, which was the effective date, but the  
12 posting of the notice of the future ban was August 14 of  
13 '19 -- or '18 -- I apologize.

14 Again, just a brief summary of the cases,  
15 commissioners. Rolando Almanza's SOAH appeal involved the  
16 contest of two separate rulings, LSP3514 and 3515, both  
17 dated February 23, finding the trainer's horses  
18 participated in races with post-race urine samples testing  
19 positive from two separate laboratories on each sample  
20 with the prohibited substance, clenbuterol.

21 Again, this appellant argued there was  
22 insufficient notice of the recent rule amendment banning  
23 clenbuterol, to withdraw the animals prior to their  
24 respective races. Staff filed a motion for summary  
25 disposition which was granted by the ALJ upholding the

1 rulings. Today, again, your proposed final order is in  
2 materials pages 144 through 146.

3 Staff respectfully requests that you move to  
4 adopt the proposal for decision upholding these rules.  
5 It's dated May 6, 2019, as written.

6 Any questions I'm happy to take.

7 CHAIRMAN STEEN: Any questions of Ms. Fields,  
8 commissioners?

9 (No response.)

10 CHAIRMAN STEEN: Thank you.

11 Sir, would you come up?

12 MR. HAYES: Mr. Chairman, there's no  
13 substantial difference between this case and those other  
14 cases. I would submit to you that if she's right about  
15 the posting on the website, it's my understanding that it  
16 occurred on the 10th, but it didn't happen in the racing  
17 office till the 10th.

18 I guess I'll just go back to that thing I said  
19 about the registry. I don't think they read the registry  
20 on the backside, on the shed row they don't read the  
21 registry, and they probably don't check the Commission's  
22 website either.

23 And the reason this matters is if you're going  
24 to regulate and going to be fair, you know, we better  
25 consider actual notice. Right? I mean, shouldn't we

1 consider whether they actually found out about it?

2 I mean, we're not trying to trick them. I know  
3 that we didn't go through the process here in June and  
4 then come back in August and have it enacted so that you  
5 could trick those people. I know you didn't.

6 And so in that regard, the suggestion on the  
7 timing of it, you know, did he have enough time. And it's  
8 the same case as the other one, and I'd just submit to you  
9 the same argument, which you've already rejected, which  
10 essentially is that the time frame of their actual notice  
11 wouldn't have been sufficient, unlike the State of  
12 Louisiana and the other states who took lots more time  
13 to -- 78 days, I believe, in Louisiana, because they were  
14 concerned that something like this might happen.

15 You know, do we want to police a situation  
16 where there wasn't any enhanced performance? You know, do  
17 we want to over-police the industry? I don't think so,  
18 and that's why those other states looked at it to say,  
19 well, let's give them plenty of time, let's make sure that  
20 the ones that were using it legally, that they got plenty  
21 of time to get off of it so we're not punishing people and  
22 taking away money just because they didn't withdraw in  
23 time.

24 So they allowed all that time, and here we've  
25 got the 12 days, and I just submit to you that they're

1 being an expert on withdrawal time, that he would have to  
2 know that he felt like he had -- he wouldn't have raced  
3 the horse if he didn't think he'd pass, that's why he  
4 entered him, that's why he let him go down through there,  
5 and I can't say what's on his mind, but I can argue that  
6 it was reasonable to suggest that he wouldn't race the  
7 horse if he thought it wasn't going to pass.

8 So in that regard, I ask you to do the same, I  
9 ask you to reverse the finding of the stewards. And if  
10 there's any questions?

11 CHAIRMAN STEEN: Any questions, commissioners?

12 COMMISSIONER McNABB: Not a question but a  
13 commentary. Number one, we have public hearings. Number  
14 two, we have representatives from the various breeds and  
15 various representatives of the horsemen, so what we do and  
16 what we discuss here is not a secret, things that impact  
17 significantly on the backside of the racetrack.

18 Albuterol and clenbuterol have been of great  
19 interest throughout the horse industry, and we are  
20 certainly not the first state to have pursued a more  
21 restrictive posture on these.

22 So if indeed -- unless the racetrack has  
23 changed significantly since I worked there, if things came  
24 up that had to do with medications, that was big news and  
25 got talked. So if indeed -- we have public hearings,

1 perhaps they don't read the registry, but things that  
2 affect the day-to-day life, especially with medications  
3 that are of great interest to horsemen, I'm afraid I can't  
4 really buy off that if people aren't reading the  
5 legislative registry, they aren't getting the word.

6 MR. HAYES: This is a public hearing today,  
7 though, isn't it, Dr. McNabb?

8 COMMISSIONER McNABB: This is a public hearing,  
9 and people are free to come and go, but you have  
10 representatives who are invited to this, and our posture  
11 on clenbuterol and albuterol were certainly not the first  
12 in the nation, and throughout the racing industry they are  
13 of great concern.

14 And back to my original statement on our  
15 mission is protecting the health and welfare of the racing  
16 animals.

17 MR. HAYES: That's mine too. I mean, nobody  
18 can be against that. But it's interesting in observing  
19 the 14 or 15 people that are here at the public meeting, I  
20 know lots of people in the industry, and I don't see any  
21 trainers out there.

22 And I mean, just in fairness -- okay? I mean,  
23 what you'd want to do -- you're the regulator, you're not  
24 trying to trick them. I know, Dr. McNabb, I know you're  
25 not trying to trick those people, I know you're not.

1           And so you're not -- I don't think you're  
2 trying to say that they ought to be familiar with the  
3 registry on the backside, I mean, I just don't think that.

4           And then -- and I don't think that you're suggesting that  
5 they need to check the website.

6           But I'll tell you what I'm suggesting, I'm  
7 suggesting in order for the regulator to be fair, they've  
8 got to get out there and affirmatively tell them, you  
9 know, hey, the condition book is going to change, you need  
10 to know that here's how it is. And you need to provide  
11 some actual notice, not just behind-the-back notice.

12           And I'm not saying that you did it behind the  
13 back, I'm just saying as a practical matter they don't  
14 read the registry on the back side, they're not here  
15 today, and without it being enacted, it's not fair to  
16 charge them with that knowledge.

17           That's all I have. Any other questions?

18           CHAIRMAN STEEN: Thank you, sir.

19           MR. HAYES: Thanks.

20           CHAIRMAN STEEN: Do we have a motion, further  
21 discussion?

22           COMMISSIONER KLEINSCHMIDT: I move to adopt the  
23 proposal for decision in SOAH Action Number 0476-19-3111  
24 and Texas Racing Commission Action Number 2019-02-04,  
25 Rolando Almanza, and to uphold the Stewards' Ruling

1 LSP3514 and Stewards' Ruling LSP3515 in all respects.

2 CHAIRMAN STEEN: Motion made by Commissioner  
3 Kleinschmidt.

4 COMMISSIONER McNABB: Second.

5 CHAIRMAN STEEN: Seconded by Commissioner  
6 McNabb.

7 Any further discussion?

8 (No response.)

9 CHAIRMAN STEEN: If not, we'll take this up for  
10 a vote. All in favor please signify by saying aye.

11 (A chorus of ayes.)

12 CHAIRMAN STEEN: Any opposed?

13 (No response.)

14 CHAIRMAN STEEN: That motion carries.

15 COMMISSIONER PATE: Will these deals have  
16 orders we have to sign?

17 CHAIRMAN STEEN: Yes.

18 The question is would you have orders for us to  
19 sign?

20 MS. FIELDS: I have orders that I can present  
21 at the end of the meeting.

22 But also, would only ask that the Commission --  
23 Mr. Gonzalez was on the agenda, but he is out of town and  
24 unable to attend and would like to. Staff has no  
25 objection if the Commission would like to move to continue

1 that to the next meeting.

2 CHAIRMAN STEEN: We'll move item VI.C. to the  
3 next Commission meeting. Do we need a vote to do that?

4 MS. BIJANSKY: No, sir. You can just table it.

5 MS. FIELDS: Thank you, commissioners.

6 CHAIRMAN STEEN: Thank you.

7 We will not be entering into executive session  
8 today.

9 Unless something comes up in the meantime,  
10 we'll return to our regular schedule next year, which will  
11 be confirmed shortly.

12 The time is now 12:16. With all business  
13 concluded, we are now adjourned. Thank you.

14 (Whereupon, at 12:16 p.m., the meeting was  
15 adjourned.)

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C E R T I F I C A T E

MEETING OF: Texas Racing Commission

LOCATION: Austin, Texas

DATE: October 29, 2019

I do hereby certify that the foregoing pages, numbers 1 through 91, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Racing Commission.

DATE: November 6, 2019

/s/ Nancy H. King  
(Transcriber)

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