

1   BEFORE THE  
2   TEXAS RACING COMMISSION  
3   AUSTIN, TEXAS  
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11   COMMISSION MEETING  
12   AUGUST 29, 2014  
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20           BE IT REMEMBERED that the above entitled matter  
21           came on for hearing on the 29th day of August, 2014,  
22           beginning at 10:30 A.M. at 105 West 15th Street, Room  
23           120, Austin, Travis County, Texas, and the following  
24           proceedings were reported by SHERRI SANTMAN FISHER,  
25           Certified Shorthand Reporter for the State of Texas.

APPEARANCES

Commissioners:        ROBERT SCHMIDT  
                             RONALD F. EDERER  
                             MIKE MARTIN  
                             GLORIA HICKS  
                             GARY P. ABER  
                             VICKI WEINBERG  
                             JOHN T. STEEN, III  
                             ANN O'CONNELL  
                             A. CYNTHIA LEON

1 CHAIRMAN SCHMIDT: It's 10:30 on the 29th  
2 of August and we'll call this meeting of the Texas  
3 Racing Commission to order.

4 Ms. Welch, will you call roll call,  
5 please?

6 MS. WELCH: Chairman Robert Schmidt?

7 CHAIRMAN SCHMIDT: Here.

8 MS. WELCH: Commissioner Ron Ederer?

9 VICE-CHAIRMAN EDERER: Here.

10 MS. WELCH: Commissioner Gloria Hicks?

11 COMMISSIONER HICKS: Here.

12 MS. WELCH: Commissioner Michael Martin?

13 COMMISSIONER MARTIN: Here.

14 MS. WELCH: Commissioner Vicki Weinberg?

15 COMMISSIONER WEINBERG: Here.

16 MS. WELCH: Commissioner Gary Aber?

17 COMMISSIONER ABER: Here.

18 MS. WELCH: Commissioner John Steen?

19 COMMISSIONER STEEN: Here.

20 MS. WELCH: Commissioner Ann O'Connell?

21 MS. O'CONNELL: Here.

22 MS. WELCH: Commissioner Cynthia Leon?

23 MS. LEON: Here.

24 CHAIRMAN SCHMIDT: It looks like we have  
25 a quorum.

1 MS. WELCH: We do.

2 CHAIRMAN SCHMIDT: Great. Great.  
3 Public comment section?

4 MS. BIJANSKY: The only cards we've  
5 received cited No. II, Item II, and also cited the  
6 historical racing rules. So I believe they all wish to  
7 speak on that issue.

8 CHAIRMAN SCHMIDT: Okay. Do we have any  
9 elected representatives here or State legislators  
10 here?

11 MS. BIJANSKY: Not that I'm aware of.

12 CHAIRMAN SCHMIDT: Okay. In order to  
13 minimize the impact on their day, we'd certainly take  
14 them at this time so they don't have to wait through  
15 the meeting.

16 When we get to historical racing on the  
17 agenda, we will open the meeting to some additional  
18 public comments, but only for a very limited time. As  
19 you may know, the Commission has already held a formal  
20 public comment hearing and accepted over 13,000 written  
21 comments and petition signatures. If you have already  
22 commented, there is no need to repeat what you have  
23 said. I promise you we've reviewed it and are aware of  
24 your position. If you do have something new to say,  
25 this will be your opportunity, but I will limit each

1 speaker to two minutes, and I will close the comment  
2 time after 30 minutes.

3 MR. FENNER: Mr. Chairman?

4 CHAIRMAN SCHMIDT: Yes.

5 MR. FENNER: I also wanted to clarify  
6 that as we discussed, this is not a formal reopening of  
7 the public comment period --

8 CHAIRMAN SCHMIDT: No.

9 MR. FENNER: -- for the rules. This is  
10 just if anybody has something for the education of the  
11 chairman and the other Commissioners, this is their  
12 opportunity to provide it, but we're not formally  
13 reopening the comment period.

14 CHAIRMAN SCHMIDT: Thank you. Thank you  
15 for clearing that up.

16 General business, reports by the  
17 executive director and staff regarding administrative  
18 matters, budget and update -- budget and finance  
19 update. Lane Goetsch? Lane?

20 MS. GOETSCH: Thank you, Commissioner.

21 I have two items today. I have both the  
22 budget update and the presentation of the LAR, the  
23 legislative appropriations request. My name is Lane  
24 Goetsch, director of finance and administration for the  
25 Texas Racing Commission, here to give the budget and

1 finance update.

2           On pages six and seven of your agenda  
3 packet, you will find the agency's fiscal year 2014  
4 operating budget reflecting revenue collections and  
5 expenditures through July 31st, 2014. As of that date,  
6 the agency had collected 8.54 million, or 87 percent of  
7 revenues, and expended 7.35 million, or 79 percent of  
8 budgeted expenditures. At this time the Racing  
9 Commission is in good operating condition.

10           If the Commissioners have any questions,  
11 I will answer them now.

12           CHAIRMAN SCHMIDT: Any questions?

13           Okay. Please go on.

14           MS. GOETSCH: I'll present the  
15 legislative appropriations request, giving an overview  
16 of budget and full-time position needs and major policy  
17 changes that affect those budget and full-time position  
18 needs as well as rider revisions and additions and  
19 exceptional items.

20           Budget and full-time position needs. The  
21 fiscal year '15 operating budget has been prepared  
22 assuming the agency will regulate, staff, and support  
23 259 live greyhound performances, 188 live horse race  
24 days, and 2600 simulcast race days. These key  
25 assumptions are very similar to the fiscal year 2014

1 actual racing and wagering opportunities offered at the  
2 eight operating racetracks.

3           Based on these assumptions, the staff  
4 estimates the agency will need 51.6 full-time positions  
5 or FTE's, 7.73 million in appropriated budget  
6 authority, and 1.087 million in unappropriated budget  
7 authority, for a total budget of 8,817,000 for fiscal  
8 year 2015.

9           Commission staff has performed a review  
10 of the agency's cash flow for 2015 based upon the  
11 racetrack annual license fee schedule that is found  
12 under Commission Rule 309.8 as well as the occupational  
13 license fee schedule that is found under Commission  
14 Rule 311.5.

15           Our review indicates that 8.44 million in  
16 new revenue will be generated in fiscal year '15 and  
17 that 590,000 in cash will be carried forward from  
18 fiscal year '14 to fiscal year '15. The combination of  
19 new revenue and cash carried forward will be adequate  
20 to fund the fiscal year '15 operating budget and  
21 provide an estimated ending cash balance of  
22 approximately \$210,000 to carry forward to fiscal year  
23 '16.

24           The agency's '16 and '17 legislative  
25 appropriations request has been prepared assuming the

1 agency will continue to regulate, staff, and support  
2 essentially the same number of performances and race  
3 days in each year of the biennium as in 2015.

4           Based on these assumptions, it is assumed  
5 that for 2016 the agency will need 51.2 full-time  
6 positions, 7.675 million in appropriated budget  
7 authority, and 1.086 million in unappropriated budget  
8 authority, for a total budget of \$8,761,000 in budget  
9 authority. Similarly, for 2017 the agency will need  
10 51.2 full-time positions, 7.717 million in appropriated  
11 budget authority, and 1.086 million in unappropriated  
12 budget authority, for a total budget of 8,803,000 in  
13 budget authority.

14           The 2016-17 legislative appropriation  
15 request, if approved, results in a biennial  
16 appropriated budget of 15.392 million and is in balance  
17 with the base reconciliation filed by the agency with  
18 the Legislative Budget Board.

19           Major policy changes that affect the  
20 budget. Starting in fiscal year 2015, the agency is  
21 implementing a new travel policy that will move the  
22 Commission's current travel caps for travel  
23 reimbursement expenses up to the State-approved rates  
24 for food, lodging, and mileage in fiscal years 2016 and  
25 '17.



1           This transition consists of a two-phase  
2 approach. In fiscal year 2015, the travel cap will  
3 increase approximately 75 percent to account for the  
4 inflationary increases in the cost of meals, lodging,  
5 and fuel that have occurred since the last time the  
6 travel cap was adjusted. In fiscal years 2016 and '17,  
7 the travel cap will be raised an additional 25 percent,  
8 with the goal being full reimbursement of travel  
9 expenses up to the State-approved rates.

10           The additional travel cost is estimated  
11 to be 48,000 in fiscal year 2015 and an additional  
12 30,000 each in 2016 and '17 of the biennium. The  
13 additional travel cost is covered by reductions in  
14 professional fees and services.

15           Rider revisions and additions. The  
16 Racing Commission has submitted one new rider at the  
17 request of our director of investigations for seized  
18 funds or assets. The result is the agency's increased  
19 participation in investigations and raids conducted  
20 with local, State, and Federal law enforcement agencies  
21 in Texas on illegal racetracks.

22           These operations divert customers and  
23 participants away from licensed tracks and make it more  
24 difficult for an already struggling industry. Most  
25 provide unsafe racing and illegal wagering that

1 compromises legitimate racing operations.

2 This new rider would allow the agency to  
3 participate in an equitable distribution of any seized  
4 funds or assets with the appropriate law enforcement  
5 agencies that conducted the investigations and raids.  
6 Any proceeds derived from the agency's participation in  
7 illegal gambling investigations would be used for  
8 enforcement purposes.

9 MR. FENNER: Mr. Chairman?

10 CHAIRMAN SCHMIDT: Yes.

11 MR. FENNER: I just want to clarify.  
12 Lane, you're going over into the LAR issues right now,  
13 right?

14 MS. GOETSCH: Yes, this is the LAR  
15 issues.

16 CHAIRMAN SCHMIDT: Yeah. Right. I  
17 figured we'd take them at one time and then we'd get to  
18 the next item and we'd be up to date.

19 MS. GOETSCH: Exceptional items. We have  
20 submitted one exceptional item that would add  
21 appropriated budget authority beyond the base in the  
22 event the Legislature reclassifies the executive  
23 director exempt position from Salary Group 2 to Salary  
24 Group 3.

25 The State Auditor's Office issued Report

1 No. 12-708, a report on executive compensation at State  
2 agencies, dated August of 2012 that recommends the  
3 agency reclassify the executive director position to  
4 Salary Group 3. For the agency to be able to meet this  
5 recommendation, an additional \$34,600 in appropriation  
6 authority will be needed in each year of the biennium.

7 This concludes my overview of the Racing  
8 Commission's fiscal year 2015 operating budget and  
9 2016-17 legislative appropriations request. At this  
10 time I would be glad to answer any questions.

11 CHAIRMAN SCHMIDT: Excellent  
12 presentation.

13 Any questions on either presentation?

14 Okay. Thank you very much, Ms. Goetsch.

15 Report on wagering statistics. Carol  
16 Olewin?

17 MS. OLEWIN: Good morning, Mr. Chairman,  
18 Commissioners. I'm Carol Olewin, pari-mutuel auditor.

19 Commissioners, pages 12 through 14 of  
20 your agenda packet contain the wagering statistics  
21 report for the periods of January 1st through August  
22 17th for both 2013 and 2014. The report shows that the  
23 2014 total wagering activity has decreased at greyhound  
24 tracks by 3.7 percent and increased at horse tracks by  
25 3.2 percent. Statewide the handle has increased two

1 percent compared to the same time period last year.

2           Commissioners, are there any questions  
3 about the wagering statistics report?

4           CHAIRMAN SCHMIDT: Any questions at all?

5           Okay. Thank you very much, Carol.

6           Report on racetrack inspections.

7 Mr. Blodgett?

8           MR. BLODGETT: Good morning,  
9 Commissioners.

10           Commissioners, the racetrack inspection  
11 report is included in your agenda packet under the  
12 general business tab. It covers a period of time of  
13 June 1st, 2014, through July 31st, 2014.

14           During that period of time a total of 19  
15 racetrack inspections were reported by staff. As  
16 outlined within your packets, these inspections were  
17 conducted within the areas of veterinarian, safety and  
18 security, racing, administration, and wagering at  
19 Retama Park, Gillespie County Fair, Gulf Greyhound  
20 Park, Lone Star Park, Gulf Coast Racing, and Valley  
21 Race Park. A breakdown of the inspection types  
22 included nine scheduled inspections, six no-notice  
23 inspections, and four follow-up inspections.

24           Commissioners, at the time of this  
25 report, one unsatisfactory inspection issue was

1 documented within your material for Gulf Greyhound Park  
2 related to a photo finish light. I'm pleased to report  
3 as of yesterday evening's performance at Gulf, this  
4 issue was resolved by the racetrack management.

5           There are currently no unresolved issues  
6 for this reporting period.

7           I'll be happy to answer any questions  
8 that I could.

9           CHAIRMAN SCHMIDT: Any questions on  
10 racetrack inspections?

11           Thank you, Mr. Blodgett.

12           Enforcement report. Joel Speight?

13           MR. SPEIGHT: Good morning,  
14 Commissioners. Included in your information on page 16  
15 is the current enforcement report for the period  
16 covering January 1st, 2014, to July 31st, 2014. There  
17 are no significant items to report at this time.

18           If you have any questions, I can answer  
19 them now.

20           CHAIRMAN SCHMIDT: Any questions at all?

21           Okay. Thank you, Joel. Thank you very  
22 much.

23           Then moving on to approval of the  
24 Commission's legislative appropriations request for  
25 fiscal year 2016-2017 and operating budget for fiscal

1 year 2015. Ms. Goetsch has laid this item out for us.

2 Any public comment at all?

3 MS. BIJANSKY: No.

4 CHAIRMAN SCHMIDT: Any discussion at all  
5 about the budget? Any concerns, questions?

6 I'll certainly entertain a motion to  
7 approve the Commission's legislative appropriations  
8 requests for 2016-17 and operating budget for fiscal  
9 year 2015.

10 COMMISSIONER HICKS: I'll make the  
11 motion.

12 CHAIRMAN SCHMIDT: Motion, Commissioner  
13 Hicks.

14 COMMISSIONER MARTIN: Second.

15 CHAIRMAN SCHMIDT: Seconded, Dr. Martin.

16 If there's no further discussion, all  
17 those in favor signify by saying aye.

18 COMMISSIONERS: Aye.

19 CHAIRMAN SCHMIDT: Anyone opposed?

20 Okay. That's passed.

21 Proceedings on racetracks. Allocation of  
22 live race dates for horse racetracks under Commission  
23 Rule 303.41 for the period beginning January 1, 2015,  
24 and ending August 31st, 2016.

25 Mr. Speight, will you lay this item out

1 for us, please?

2 MR. SPEIGHT: Yes, sir. Included in your  
3 information on pages 55 through 95 are the 2015 and  
4 2016 horse race date calendars, the individual horse  
5 racetrack requests for live race dates, coordination  
6 forms that state all affected breed registries and  
7 racetracks concur with the race date calendars and that  
8 the calendars accurately reflect each track's request.  
9 The final supporting document are the Texas Horsemen's  
10 Partnership, the Texas Thoroughbred Association, and  
11 the Texas Quarter Horse Association communication of  
12 their support for the requested race dates.

13 Also in your information packets on a  
14 separate color printout are the race date calendars for  
15 2015 and 2016 that show the horse racetracks requested  
16 race dates. So if we look at 2015, the 2015 calendar,  
17 it includes both requests for new dates in red-colored  
18 font and previously granted dates in black numbers.

19 Only active operating racetracks  
20 submitted requests for dates in 2015. Race days are  
21 totaled by month and by breed at the bottom of the  
22 calendar. The 2015 calendar includes a total of 186  
23 live race days. This is the same number of  
24 Thoroughbred and Quarter Horse race days that were in  
25 the 2014 calendar.

1           There are some minor adjustments in the  
2 race date requests. One would be Lone Star Park will  
3 run every Sunday and eliminate all but four Thursdays  
4 to take advantage of more revenue, handle, and  
5 attendance on Sundays. Sam Houston 2015 requested race  
6 dates show an additional week between the Thoroughbred  
7 and Quarter Horse meets. This additional time is  
8 welcomed by the horsemen.

9           Looking now at the 2016 calendar, no race  
10 dates for 2016 have been previously granted.

11 Therefore, the 2016 calendar shows only requests for  
12 new dates. The calendar also shows new dates requested  
13 by two racetracks, Laredo Downs and Valle de los  
14 Tesoros, that are not operating and have no  
15 facilities. However, staff has not included the actual  
16 request in the packets and is recommending at this time  
17 the Commission only consider the request from active  
18 operating racetracks. Those requests have support of  
19 the horsemen and the breed organizations.

20           Staff recommends approval of the requests  
21 for the 2015 and 2016 race dates made by Lone Star  
22 Park, Sam Houston Race Park, Retama Park, and Gillespie  
23 County Fair. Staff recommends tabling the requests for  
24 Laredo Downs and Valle de los Tesoros until the next  
25 Commission meeting.



1 CHAIRMAN SCHMIDT: Thank you, Joel.

2 Do we have anyone from the racetracks who  
3 would like to speak? I think Steve Ross -- Mr. Ross  
4 from Retama?

5 MR. ROSS: I'm just really here to --

6 CHAIRMAN SCHMIDT: To answer questions?

7 MR. ROSS: I think he laid it out as good  
8 as I've ever heard it laid out. We are applying for  
9 very similar dates, Thoroughbred dates, similar to what  
10 we're doing this year starting the Friday after Labor  
11 Day, going through the last Saturday in November. And  
12 then our 2016 Quarter Horse dates are very similar to  
13 what we've done in the past of the Friday prior to the  
14 Belmont Stakes and then for 10 weeks until the first --  
15 or in that case it will be the second Saturday, I  
16 think, in August, a very similar schedule.

17 So I'm happy to answer any questions.

18 CHAIRMAN SCHMIDT: Any questions of  
19 Mr. Ross?

20 Okay. Any further discussion by the  
21 Commission?

22 I'll certainly entertain a motion to  
23 approve the race dates as requested by the currently  
24 racing tracks, the live tracks, Lone Star Park, Retama  
25 Park, Sam Houston Race Park, and Gillespie County Fair,

1 as shown on the calendars of pages 56 and 57 of our  
2 packet.

3 Is there a motion?

4 COMMISSIONER MARTIN: I make a motion.

5 CHAIRMAN SCHMIDT: Motion, Dr. Martin.

6 VICE-CHAIRMAN EDERER: I'll second.

7 CHAIRMAN SCHMIDT: Second, Vice-Chair  
8 Ederer.

9 Any further discussion?

10 All those in favor signify by saying  
11 aye.

12 COMMISSIONERS: Aye.

13 CHAIRMAN SCHMIDT: Anyone opposed?

14 Okay. And do we need a motion to table  
15 or do we just not act on it?

16 MR. FENNER: The remaining --

17 CHAIRMAN SCHMIDT: Dates.

18 MR. FENNER: Sure, we can -- that's a  
19 good idea, sir, a motion to table the remaining  
20 application requests for race dates that haven't been  
21 acted on by you.

22 CHAIRMAN SCHMIDT: Okay. I'll certainly  
23 entertain a motion to table the remaining requests for  
24 race dates that have not been approved.

25 VICE-CHAIRMAN EDERER: I'll make the

1 motion to table.

2 COMMISSIONER HICKS: Second.

3 CHAIRMAN SCHMIDT: A motion by Vice-Chair  
4 Ederer, seconded by Commissioner Hicks.

5 All those in favor signify by saying  
6 aye.

7 COMMISSIONERS: Aye.

8 CHAIRMAN SCHMIDT: Anyone opposed?

9 Okay. Those also passed.

10 Allocation of race dates for greyhound  
11 racetracks under Commission Rule 303.41 for the period  
12 beginning January 1st, 2015, and ending August 31st,  
13 2016.

14 Mr. Speight, can you lay that out for us  
15 as well?

16 MR. SPEIGHT: Sure can, sir.

17 Included in your information on pages 96  
18 through 103 is the 2015 greyhound race date calendar,  
19 Gulf Greyhound Park's request for live race dates, and  
20 coordination forms stating Gulf Coast Racing  
21 Association supports the race date calendar and that  
22 the calendars accurately reflect Gulf Greyhound Park's  
23 requested race dates.

24 On a separately included color printout  
25 is the race date calendar for 2015 that shows Gulf

1 Greyhound Park's requested race dates. It also  
2 includes one race date for Valley Race Park previously  
3 granted. Race days are totaled by month for both  
4 matinee and evening performances at the bottom of the  
5 calendar. The 2015 calendar reflects a total of 255  
6 performances requested.

7 Staff recommends approval of the request  
8 for 2015 race dates made by Gulf Greyhound Park.

9 CHAIRMAN SCHMIDT: Is there any public  
10 comment?

11 Any comment by the Commission?

12 Okay. I'll certainly entertain a motion  
13 to approve the race dates as requested by Gulf  
14 Greyhound Park and as shown on the calendar in our  
15 packet page 97.

16 COMMISSIONER HICKS: I make the motion.

17 CHAIRMAN SCHMIDT: A motion by  
18 Commissioner Hicks.

19 COMMISSIONER WEINBERG: I'll second.

20 CHAIRMAN SCHMIDT: Seconded by  
21 Commissioner Weinberg.

22 All those in favor signify by saying  
23 aye.

24 COMMISSIONERS: Aye.

25 CHAIRMAN SCHMIDT: Anyone opposed?

1                   That's also approved.

2                   Item C, request by Saddle Brook Park --

3                   MR. FENNER:    Mr. Chairman?

4                   CHAIRMAN SCHMIDT:    Yes.

5                   MR. FENNER:    To be consistent, Gulf Coast

6 Racing did have some requests for race dates in 2016.

7 Isn't that correct, Joel?

8                   Do you want to table those?

9                   CHAIRMAN SCHMIDT:    Sure.  I missed that.

10 I apologize.  Yeah.

11                   MR. SPEIGHT:    Not for 2016, no, there

12 weren't.

13                   MR. FENNER:    Can I get clarification from

14 Mr. Moltz?

15                   MR. MOLTZ:    I'm sorry, Mark.  I couldn't

16 hear you.

17                   MR. FENNER:    Do you have a pending race

18 date request for Gulf Coast Racing?

19                   MR. MOLTZ:    Yes, for August of 2016.  It

20 did not make it into the agenda package.

21                   MR. FENNER:    We would like to table that

22 as well.

23                   CHAIRMAN SCHMIDT:    Okay.  Is there a

24 motion to --

25                   COMMISSIONER MARTIN:  I make a motion to

1 table it.

2 COMMISSIONER STEEN: Second.

3 CHAIRMAN SCHMIDT: Seconded by  
4 Commissioner Steen.

5 All those in favor signify by saying  
6 aye.

7 COMMISSIONERS: Aye.

8 CHAIRMAN SCHMIDT: Anyone opposed?

9 Okay. Moving forward, Item C, request by  
10 Saddle Brook Park to designate an application period --  
11 an application period for the race dates under Rule  
12 303.41.

13 Mark, can you lay that item out?

14 MR. FENNER: Yes, sir.

15 Mr. Newby, on behalf of Saddle Brook  
16 Park, has requested that the Commission designate an  
17 application period for which it will accept race dates  
18 during the fourth quarter of calendar year 2016. This  
19 was authorized under Commission Rule 303.41. If you  
20 approve the request to open an application period, then  
21 we will notify all the racetracks of it and they will  
22 have at least 30 days in which to apply for race dates  
23 during that period.

24 CHAIRMAN SCHMIDT: Thank you, Mark.

25 Mr. Johnsen would like to speak.

1 Corey, are you available? Welcome back  
2 to Texas.

3 MR. JOHNSEN: Thank you. Mr. Chairman,  
4 members of the Commission, I'm Corey Johnsen. I'm a  
5 part owner of Saddle Brook Park and I'm here on behalf  
6 of that organization.

7 As Mark said, we would request that the  
8 Commission open up an application period for race dates  
9 for October to December 2016 and I'm here to answer any  
10 questions you might have on that.

11 CHAIRMAN SCHMIDT: Anyone have any  
12 questions from the Commission?

13 Okay. Thank you, Corey. Thank you very  
14 much.

15 Any additional public comment we do not  
16 have.

17 Again, I would emphasize, this is not a  
18 race date. This is an application period. So I'd  
19 certainly entertain a motion to approve Saddle Brook  
20 Park's request to open an application period for live  
21 race dates in October through December of 2016.

22 COMMISSIONER ABER: I make that motion.

23 CHAIRMAN SCHMIDT: A motion per  
24 Dr. Aber.

25 COMMISSIONER MARTIN: Second.

1 CHAIRMAN SCHMIDT: Seconded by  
2 Dr. Martin.

3 All those in favor signify by saying  
4 aye.

5 COMMISSIONERS: Aye.

6 CHAIRMAN SCHMIDT: Anyone opposed?

7 Okay. That item is also approved.

8 Moving on to Item D, review and renewal  
9 of inactive racetrack licenses under Commission Rule  
10 309.52. We'll deal with Laredo Downs, Laredo Race  
11 Park, Longhorn Downs, and Manor Downs.

12 Mr. Fenner, can you lay this item out for  
13 us, please?

14 MR. FENNER: Yes, sir.

15 The most recent sunset bill affecting the  
16 Texas Racing Act amended the act to require the  
17 Commission to review inactive racetrack licenses each  
18 year and to either designate the license as active, to  
19 renew it as inactive, or to refuse to renew it, which  
20 would require a referral to the State Office of  
21 Administrative Hearings.

22 In conducting its review, the Commission  
23 needs to consider the license holder's financial  
24 stability, its ability to conduct live racing, its  
25 ability to construct and maintain a racetrack facility,



1 and other good faith efforts to conduct live racing,  
2 plus other necessary factors considered in the original  
3 issuance of the license. And we have in our rule  
4 established factors to be considered in determining  
5 whether or not good faith efforts have been  
6 demonstrated and, in fact, the application form for  
7 renewal follows the rule in setting out what those  
8 factors and criteria are.

9           So at this point I would -- I'm available  
10 to answer any questions, but it's up to the license  
11 holders to come up and explain their application.

12           CHAIRMAN SCHMIDT: Okay. Thank you.

13           Any questions of Mr. Fenner?

14           Let's move forward first with Mr. Moltz  
15 for Laredo Downs.

16           MR. MOLTZ: Good morning, Commissioners,  
17 Chairman.

18           First I would like to basically say that  
19 we did file an application for renewal. It goes into  
20 some detail. And we stand by that application and I  
21 won't repeat everything in there. We believe it meets  
22 the criteria for renewal and request that it be  
23 renewed. But I would like to take this opportunity to  
24 go a little further than that.

25           I came before you all a few meetings

1 back, two or three meetings back, basically informing  
2 the Commission that Laredo Downs, along with other  
3 tracks with a relationship in the ownership, were going  
4 to be coming before you all with plans to move forward  
5 with various activities which ultimately would include  
6 live racing.

7           Later that same meeting, Mr. Chairman,  
8 the chairman appointed an advisory committee on  
9 pari-mutuel wagering. And then that started -- those  
10 meetings were occurring and it became obvious that the  
11 landscape may change a little bit depending on if and  
12 when rulemaking occurred. And so those plans were -- I  
13 won't say put on hold, but they were kind of set aside  
14 for their scope.

15           The plans never did -- never were  
16 contingent on any rulemaking or any changes. Let me  
17 make that clear. But what happens later in this  
18 meeting, I suspect, will have an impact on, let me say,  
19 the scope and the timing and things like that of these  
20 plans.

21           So I'm kind of back here saying what I  
22 told you last time, or a few meetings ago, but under  
23 perhaps different circumstances, that we do have plans  
24 for Laredo Downs to move forward. It will include  
25 another track, probably in McAllen, as far as part of

1 an overall plan to -- our tracks, my clients, believe  
2 they have come up with a way to make these things  
3 profitable and that was with or without this  
4 rulemaking. But that would certainly enhance it and  
5 change some of the designs and things like that.

6 So that's where that is, that whichever  
7 way the rulemaking goes, we will be back. How the  
8 rulemaking goes will depend on the scope and what that  
9 exactly looks like. So that is our plan going  
10 forward. We would have been here previously except  
11 it's hard to design facilities when you don't know  
12 exactly what's going in those facilities, so it was  
13 kind of put on hold.

14 I'd be welcome to answer any questions --  
15 or happy to answer any questions that anyone may have.

16 CHAIRMAN SCHMIDT: Any questions of  
17 Mr. Moltz?

18 MS. O'CONNELL: I have a question.

19 CHAIRMAN SCHMIDT: Go ahead.

20 MR. MOLTZ: Yes, ma'am.

21 MS. O'CONNELL: Do you have a property  
22 interest or a leasehold on your license location?

23 MR. MOLTZ: There is a -- there's no  
24 ownership or leasehold in Webb County, no, ma'am, which  
25 is Laredo.

1 MS. O'CONNELL: I have a question then  
2 for the general counsel. And that is, I'm under the  
3 impression that a racing license holder has to keep a  
4 property interest on the license location, that the  
5 licenses are location specific. And I do have some  
6 concerns that that requirement has lapsed for this  
7 license holder. And I want to make sure that we are  
8 applying the rules to all of the license holders fairly  
9 and consistently. I assume the other license  
10 holders -- I've not seen any evidence that they have an  
11 issue with this and I'm sure that's costing them. It's  
12 a cost of their business to maintain that requirement.

13 So I just want to ask, what status does  
14 that put the license in? Does the license fail by not  
15 upholding that requirement? Is that a requirement that  
16 is curable? If the license holder comes to us later  
17 and wants to move the location, are we even able to do  
18 that if there is no location to move? I just have a  
19 lot of questions about that.

20 MR. FENNER: Yes, Commissioner. Licenses  
21 are indeed location specific, and the failure of a  
22 license holder to maintain its location has caused a  
23 great deal of problems in the past for this agency.  
24 And you may remember that Longhorn Downs for several  
25 years had no location and trying to find a new location

1 took a long time and it was a very big problem for us.

2           In this case, the rule regarding renewal  
3 of an inactive license specifically identifies that the  
4 failure of an inactive racetrack holder -- license  
5 holder to comply with -- no, to maintain the ownership  
6 or leasehold interest in the real property of the  
7 designated location is a factor that demonstrates that  
8 renewal may not be in the best interest of the public  
9 or the racing industry.

10           So if you were to elect to refer this to  
11 SOAH for nonrenewal hearings, then this would be  
12 something that we would point to very clearly as  
13 demonstrating that renewal is not in the best interest  
14 of the public.

15           But there's no single factor that  
16 requires you to not renew the license. It's really at  
17 the election of the Commission whether you want to take  
18 that action or not.

19           MS. O'CONNELL: So in the Longhorn Downs  
20 example from the past years, was that licensee allowed  
21 to -- I guess they moved their location. They did not  
22 cure it? Or how did that play out?

23           MR. FENNER: They ultimately moved their  
24 location to Creedmoor, which is just southeast of  
25 Austin.

1 MS. O'CONNELL: But prior to that they  
2 didn't cure it in order to meet the -- to move it?

3 MR. FENNER: They made a couple of failed  
4 attempts to move it before. Once they tried to move it  
5 to Pflugerville and that was rejected, or failed  
6 anyway. And then on another attempt to try to sell it  
7 and move it to -- I believe it was Lancaster, just  
8 south of Dallas, and that was a failed effort as well.

9 MS. O'CONNELL: Are you all able to cure  
10 that, to get another leasehold to get it into  
11 compliance?

12 MR. MOLTZ: Well, let me tell you two  
13 things. First, there is a site that Laredo Downs has  
14 an option on in Tarrant County. There is a site and  
15 they have -- as far as business advantage, they have  
16 obtained an option. But it is not in Webb County.

17 Now, with respect to could they come up  
18 with a site in Webb County, I'm sure they could. In  
19 fact, one of the primary principals in Laredo Downs  
20 informed me yesterday that he owns 12,000 acres about a  
21 mile down the road which is basically identical  
22 property. If you want 200 acres that looks just like  
23 what the site was, you know, a mile down the road, we  
24 can put it there.

25 But the bottom line is that that really

1 doesn't make any sense because with the status of the  
2 horse racing industry, the optimism with regard to two  
3 racetracks in Laredo has sort of waned and that the  
4 decision was made to not have two racetracks in Webb  
5 County. Laredo Race Park is also there, or at least  
6 the license is there. So one would have to move.

7           And Laredo Downs is looking at doing  
8 that, has a site, and where we are now is finalizing  
9 the plans for that application and the designs and  
10 things like that. So we do have a site. It's just not  
11 the original site. And it's actually not in the same  
12 county.

13           MS. O'CONNELL: And I did see that in  
14 your application. It just puts us in a bind because  
15 that's not, you know, something that is listed anywhere  
16 as a substitute or an alternative. So it puts us in a  
17 little bit of a bad position to allow you to -- to not  
18 require you to meet the requirements that all of the  
19 other racetrack holders are meeting. I mean, I  
20 realize -- I hear what you're saying, but it does  
21 create a -- put us in a little bit of a bind.

22           MR. MOLTZ: Hopefully, in the relatively  
23 near future, this issue will go away when we move  
24 forward with the proposal to remedy the situation.

25           MR. FENNER: May I ask a question?

1                   Mr. Moltz, is the original site still  
2 available?

3                   MR. MOLTZ: I don't know the answer to  
4 that, Mr. Fenner. I don't know.

5                   CHAIRMAN SCHMIDT: I think it is also, I  
6 think, understood by the Commission, Mr. Moltz, that  
7 were we to vote to renew your inactive license, we're  
8 doing so under the assumption that it's in Laredo and  
9 we're making no promises, implied or unimplied or in  
10 any way, that a site in Tarrant or Parker would be  
11 approved.

12                   MR. MOLTZ: I understand.

13                   CHAIRMAN SCHMIDT: Any further questions  
14 of Mr. Moltz?

15                   Okay. Ms. Young for Laredo Race Downs?

16                   Thank you, Mr. Moltz.

17                   MS. YOUNG: Good morning, Commissioners.

18 My name is Andrea Young. I'm here in my capacity as  
19 the president of Laredo Race Park this morning to  
20 request that you approve our application for renewal of  
21 our license in Laredo.

22                   Our letter that we submitted in the  
23 packet is fairly detailed. Hopefully you've had a  
24 chance to review it. There are a number of criteria  
25 just like you guys were now considering with the



1 previous stakeholder. We believe we clearly meet this  
2 criteria.

3 In addition to our license in Laredo, we  
4 also operate Sam Houston Race Park in Houston and  
5 Valley Race Park in Harlingen. I think through our  
6 operations there over the last number of years, we  
7 clearly demonstrate that we meet the financial  
8 stability requirements, the ability to conduct live  
9 racing, and the ability to construct and maintain a  
10 racing facility once we believe the economic outlook  
11 improves.

12 Also outlined are other good faith  
13 efforts that we have taken in our letter. We have  
14 pursued regulatory changes to improve the economics  
15 overall in racing. We'll continue to do that for the  
16 indefinite future. We continue to maintain rights to a  
17 piece of land on Mines Road in Webb County, along with  
18 appropriate zoning, and have made timely payments as  
19 requested by the Racing Commission.

20 I'm happy to answer any questions you  
21 might have.

22 CHAIRMAN SCHMIDT: Any questions of  
23 Mrs. Young?

24 Okay. Thank you, Andrea. Thank you very  
25 much.

1 MS. YOUNG: Thank you.

2 CHAIRMAN SCHMIDT: Item D-3, Longhorn  
3 Downs, we'll have two separate speakers.

4 Mr. Brown, if you'll speak to us on  
5 behalf of KTAGS Holding Company, please.

6 MR. BROWN: Good morning, Mr. Chairman  
7 and Commissioners. Bryan Brown representing KTAGS  
8 Downs Holding Company, LLC.

9 We have outlined in our application for  
10 renewal our satisfaction of the rule criteria. A  
11 couple of highlights I'd like to point out in the  
12 application. We closed quite some time ago on a  
13 148-acre tract in Creedmoor. We paid cash for that  
14 tract and have maintained that ownership consistently  
15 since.

16 In addition to that, we've maintained a  
17 close relationship with Robert Wilhite, the mayor, and  
18 appear to have very good support in the community,  
19 which I think was pointed out earlier, sometimes that  
20 support hasn't been there for us in this area.

21 In addition to that, we continue to have  
22 the full support financially of Cliff Thomas. He has  
23 demonstrated to the Commission, by providing  
24 information on his financial capability, more than  
25 enough funding available for the project once we get

1 going.

2           It's well-known we've been hamstrung by  
3 court action both in Dallas and in Houston. It's  
4 outlined in great detail in the application. One thing  
5 to update the Court -- excuse me, the Commission, the  
6 Court, the Supreme Court, has requested briefs in  
7 relation to our Houston case. That came out on  
8 Saturday. And those briefs would deal with releasing  
9 the stock of Longhorn Downs out of the Court registry.

10           So more detail than you'd ever want in  
11 the application, but I'd be happy to answer any  
12 questions you may have.

13           CHAIRMAN SCHMIDT: Any questions of  
14 Mr. Brown?

15           Okay. A complex situation. Thank you,  
16 sir.

17           MR. BROWN: I would say so. Thank you  
18 very much.

19           CHAIRMAN SCHMIDT: Mr. Carr, Dallas City  
20 Limits? Welcome back.

21           MR. CARR: Mr. Chairman, Commissioners,  
22 my name is Snapper Carr. I'm an attorney representing  
23 Dallas City Limits.

24           You all are well aware of the history and  
25 the litigation that has occurred with regards to this

1 particular license. This is one of probably a few  
2 times we get to come before you and say that we're in  
3 agreement with Mr. Brown's statement of we would  
4 support renewal of this license. Both parties that are  
5 in litigation, I think it's clearly evident, have the  
6 financial wherewithal and the resources to move forward  
7 on a track and then move towards live racing once we  
8 get title cleared up.

9                   One -- only one note I would make to  
10 Mr. Brown's comments is that, yes, the Supreme Court  
11 has asked for briefing, although they have not accepted  
12 the case. That's a preliminary step, of course. At  
13 this juncture Dallas City Limits has proceeded to win  
14 at every turn and at the appellate level. And we look  
15 forward to having this cleared so that we can move  
16 forward.

17                   CHAIRMAN SCHMIDT: Any questions of  
18 Mr. Carr?

19                   Okay. Thank you, sir.

20                   And then Manor Downs. Is Howard -- is  
21 anyone here to speak for Manor Downs?

22                   Howard, welcome.

23                   MR. PHILLIPS: Thank you. Mr. Chairman,  
24 Commissioners, I'm glad to report I received a new left  
25 knee and I'm assured it's going to be okay eventually.

1           As you know, we have a facility and an  
2 existing racetrack and we have continued to spend the  
3 funds and take the necessary actions to keep that track  
4 in what I consider a next-to-ready condition. Our  
5 audited financial statements which are on file with the  
6 Commission and available to the public will show that  
7 we expended over \$500,000 last calendar year in doing  
8 this and we continue to do so now. So we'd request  
9 that we be given an inactive license renewal.

10           I'd be glad to answer any questions.

11           CHAIRMAN SCHMIDT: Any questions from the  
12 Commissioners?

13           Thank you for coming up here, sir.  
14 Appreciate it.

15           MR. PHILLIPS: Thank you.

16           CHAIRMAN SCHMIDT: Any other public  
17 comment?

18           Okay. Any comments from the  
19 Commissioners?

20           VICE-CHAIRMAN EDERER: I have a  
21 question. As far as Laredo Downs is concerned, can it  
22 be tabled? It doesn't have to be taken up at this  
23 time, is what I'm saying, and table it until the next  
24 meeting until they can clarify their land position.

25           MR. FENNER: Yes, sir, you can do that.

1 There's no requirement that you act on it at this  
2 meeting.

3 VICE-CHAIRMAN EDERER: Thank you.

4 CHAIRMAN SCHMIDT: Any other questions or  
5 comments?

6 Any motion to be made?

7 COMMISSIONER ABER: I would make a motion  
8 to table it, to table to the next meeting.

9 VICE-CHAIRMAN EDERER: Laredo Downs?

10 COMMISSIONER ABER: Laredo Downs.

11 CHAIRMAN SCHMIDT: And go forward with  
12 the other three?

13 COMMISSIONER ABER: Yeah, go forward with  
14 the other three.

15 MS. O'CONNELL: Is the purpose of tabling  
16 to clarify the land at the license location or  
17 elsewhere?

18 VICE-CHAIRMAN EDERER: So that they will  
19 meet the criteria for the application in response to  
20 your questions.

21 MS. O'CONNELL: Okay.

22 VICE-CHAIRMAN EDERER: And in response to  
23 your questions.

24 CHAIRMAN SCHMIDT: So just so I  
25 understand, the motion has been made by Commissioner --

1 Dr. Aber and seconded by Vice-Chair Ederer to table the  
2 application for Laredo Downs, but is it to approve the  
3 other three?

4 VICE-CHAIRMAN EDERER: Yes.

5 CHAIRMAN SCHMIDT: Okay. To approve  
6 Laredo Race Park, Longhorn Downs, and Manor Downs.

7 There's been a motion that's been made  
8 and seconded.

9 Any further discussion?

10 All those in favor signify by saying  
11 aye.

12 COMMISSIONERS: Aye.

13 CHAIRMAN SCHMIDT: Anyone opposed?

14 Okay. I would -- just a comment from the  
15 Chair. I think the period has been one of great flux  
16 for these inactive tracks; and were the landscape to  
17 change, I think the Commission is going to look at  
18 these inactive licenses in a much more rigorous way at  
19 the time of the next renewal period, just as a way of  
20 comment.

21 Okay. Item E, ownership and management  
22 review of Gulf Coast Racing's active racetrack license  
23 under Commission Rule 309.53.

24 Mr. Fenner, can you lay this item out for  
25 us, please, sir?

1 MR. FENNER: Yes, sir.

2 The 6.06 Subsection (k) of the Racing Act  
3 requires the Commission to review the ownership and  
4 management of active racetrack licenses every five  
5 years. And when it passed Rule 309.53, it also set the  
6 schedule for when those renewal reviews -- or ownership  
7 and management reviews would take place. The license  
8 of Gulf Coast Racing is subject to review this year.

9 Now, as part of that process, staff does  
10 a review of the management, concession, and tote  
11 contracts. We review the security plan. We review the  
12 backgrounds also of everybody owning five percent or  
13 more as well as the officers and directors of the  
14 racetrack.

15 We have done that and we have prepared a  
16 report to you that begins on page 134 of your packet  
17 that describes our findings.

18 In summary, the ownership and management,  
19 these people are qualified and none of them have  
20 anything in their background that would disqualify them  
21 from owning the license or serving on the board. We  
22 reviewed the security plan and it is satisfactory. The  
23 tote contract and management contract are the same as  
24 were approved by the Commission previously. We've  
25 provided you copies of the financial documents provided



1 by the racetrack.

2                   And we've also reviewed the results of  
3 various investigations and inspections. We've found  
4 only three minor technical violations of the  
5 Commission's rules in the past five years and those  
6 were all resolved in a timely fashion. There's no  
7 pending investigations or administrative penalties  
8 involving Gulf Coast Racing.

9                   So at the conclusion of a review, you can  
10 take any action that's authorized under the act; and if  
11 you don't have anything that you want to do, then the  
12 other thing to do is just schedule the next review.  
13 Since it's every five years, the next review would be  
14 scheduled for 2019.

15                   CHAIRMAN SCHMIDT: Thank you.

16                   Any questions of Mr. Fenner?

17                   Okay. Thank you for that update, sir.

18                   Any public comment?

19                   Mr. Moltz is available to testify if  
20 needed.

21                   Any discussion by the Commissioners?

22                   Okay. If there is none, I'll certainly  
23 entertain a motion to schedule the next ownership and  
24 management review of Gulf Coast Racing for 2019.

25                   Is there a motion?

1 COMMISSIONER HICKS: I make the motion.

2 CHAIRMAN SCHMIDT: A motion by

3 Mrs. Hicks, seconded by Dr. Martin.

4 All those in favor signify by saying

5 aye.

6 COMMISSIONERS: Aye.

7 CHAIRMAN SCHMIDT: No one opposes?

8 Okay. It's unanimous.

9 Proceedings on occupational licenses.

10 This is really, I guess, an appeal, the proposal for  
11 decision in SOAH No. 476-14-3075 regarding the appeal  
12 of Anna Marie Crowson from Stewards' Ruling Lone Star  
13 Park 2946.

14 Ms. Bijansky, can you bring us up to date  
15 on this?

16 MS. BIJANSKY: Yes.

17 Mr. Chairman, Commissioners, good  
18 morning. I'm here to present for final action the case  
19 against Anna Marie Crowson for five Clenbuterol  
20 positives in four horses at Lone Star Park in October  
21 and November of last year.

22 Before I do, I have two preliminary  
23 matters to address. First, I received a motion for  
24 continuance from Ms. Crowson's attorneys yesterday.  
25 I've got a handout of some additional materials

1 including that motion that I'm going to hand out now.

2           The motion for continuance is the first  
3 page of the packet. Although you do have the ability  
4 to grant the continuance if you choose, I believe the  
5 information I'm going to be presenting will show that  
6 it's not warranted.

7           Second, I know it's been quite awhile  
8 since the Commission has had a case like this before  
9 it, so I'd like to take just a couple of minutes to  
10 walk you through the disciplinary process. And I've  
11 made a handout that's on the second page of that packet  
12 that kind of details the process. I'm focusing on a  
13 drug positive case because, of course, that's what  
14 we're looking at here today, but it's essentially the  
15 same process for most disciplinary matters that may  
16 come before you.

17           As you know, after a race, at least the  
18 top two finishers are drug tested; and if anything  
19 comes back positive, it's assigned to an investigator  
20 and the licensee is given an opportunity to request a  
21 split sample.

22           If the split comes back positive or the  
23 trainer has waived the testing, the case then goes to  
24 the stewards to be set for a hearing. The hearing  
25 notice indicates the expected penalty and the licensee

1 has an opportunity to accept it without going to a  
2 hearing. If the offer is accepted, the stewards issue  
3 a ruling and that's the end of the case. If the offer  
4 is not accepted, the hearing goes forward. The  
5 licensee has the opportunity to be represented by  
6 counsel and can bring whatever evidence and witnesses  
7 they want within reason like a regular trial.

8           After the stewards -- after the hearing,  
9 the stewards issue their ruling. If the ruling isn't  
10 appealed, that's the end of the case. If it is  
11 appealed, it goes to the State Office of Administrative  
12 Hearings, which we abbreviate as SOAH. SOAH employs  
13 administrative law judges, ALJ's, who hear cases from a  
14 variety of regulatory agencies. The licensee can also  
15 ask for a stay of any suspension that the stewards  
16 impose. That request goes to the executive director  
17 and it's his decision.

18           The SOAH hearing is similar to the  
19 stewards' hearing, with a couple of key differences.  
20 It's a bit more formal; and instead of entirely coming  
21 to their own conclusions about the facts and the  
22 appropriate penalty, the ALJ is tasked with deciding  
23 whether the stewards' ruling was clearly in error. So  
24 even if the ALJ would have decided it differently, if  
25 they can't say that the stewards were clearly wrong,

1 the ruling should be upheld.

2           The ALJ has 60 days to rule on the case  
3 and they issue what's called a proposal for decision or  
4 PFD. And it's called a proposal for decision because  
5 you all have the final decision. They just make a  
6 proposal. There are timelines for certain optional  
7 filings between the issue of a PFD and before it comes  
8 to the Commission; but assuming nothing is filed within  
9 those time periods, the case then goes on the  
10 Commission's next agenda for final action. In the  
11 handout, I put the word "final" in quotes because it  
12 can still be appealed up through the courts, but we'll  
13 get to that.

14           So when a PFD comes before you for final  
15 action, you have the option to accept the ALJ's  
16 recommendation or to modify it within certain  
17 parameters. If you rule in favor of a licensee,  
18 undoing the stewards' action against them, that's the  
19 end of the case. If you rule against the licensee, he  
20 or she can then appeal to District Court and  
21 potentially all the way up through the court system.

22           So that's the usual process. What we  
23 have before us today is a little different. In this  
24 case, Clenbuterol was found above the legal limit in  
25 four of Anna Marie Crowson's horses on two race dates

1 totaling five positives, four on one day of trials and  
2 one of the same horses again in the final.

3           Back in February we had the stewards'  
4 hearing where she was represented by counsel, a New  
5 Mexico attorney named Cody Kelly, and the stewards  
6 ruled against her. The ruling starts on page 139 of  
7 the main meeting packet.

8           Ms. Crowson appealed that ruling and  
9 requested a stay of a 60-day suspension. That's on  
10 page 144 of the materials. And Mr. Trout granted her a  
11 six-month stay on March 6th. And the case was  
12 scheduled for a hearing at SOAH on June 11th.

13           I would note that in their request for  
14 the stay, their basis was -- and this is on the third  
15 page of the additional handout I gave you -- was to  
16 obtain -- they wanted to obtain additional information  
17 from the drug testing lab about a defense theory that  
18 they had in mind. That was back on March 4th. They've  
19 never requested that additional information.

20           We sent the hearing notice to Ms. Crowson  
21 and to her attorney for that SOAH hearing that took  
22 place in June. Neither Ms. Crowson nor anybody  
23 representing her showed up for that hearing. On June  
24 23rd the ALJ dismissed the case and sent it back to the  
25 agency for final action on a default basis.

1           So instead of a proposal for decision, we  
2 have the ALJ's order dismissing the case and sending it  
3 back to the agency to be handled as a default. That  
4 could potentially be handled, I think, by Mr. Trout.  
5 We don't have any rules explaining what a default --  
6 how a default proceeding should be addressed, so I'm  
7 bringing it before you today kind of out of an  
8 abundance of caution.

9           The ALJ's order is page 153 of the  
10 meeting materials. A copy of it also went to  
11 Ms. Crowson and her attorney. I haven't heard from  
12 them and they didn't file anything further until this  
13 week. I did send them, by mail, a copy of the proposed  
14 order that I included in the materials; and when that  
15 meeting was canceled on I believe it was August 8th, I  
16 sent Mr. Kelly an e-mail letting him know that the  
17 meeting was canceled and that I'd let him know as soon  
18 as it had been rescheduled.

19           Last Thursday, when the meeting was  
20 rescheduled for today, I sent him another e-mail  
21 letting him know that it was going to be today. And  
22 that's on -- that's the fourth page of the handout I  
23 just handed out. So I've always kept him in the loop  
24 even though I wasn't even sure until I received the  
25 motion yesterday that he was still representing her.

1           So the matter is before you today for  
2 final action and there's a draft order in your  
3 materials beginning on page 154. I have a clean copy  
4 of the order here with the dates updated to reflect  
5 today's meeting.

6           This order adopts the stewards' ruling in  
7 full with one exception. Four of Ms. Crowson's  
8 Clenbuterol positives, as I said, were in the trials  
9 and one was in the final, but she actually had a second  
10 horse of those first four that did run in the final.  
11 It placed fourth, so it wasn't tested again. But  
12 because it was disqualified from the trial, it should  
13 also have been disqualified from the final and that was  
14 overlooked in the stewards' ruling. And so currently,  
15 as it stands, the horse -- the horse would still be  
16 placed fourth and the purse would be paid out. So that  
17 horse should have been disqualified and ordered  
18 unplaced due to the positive in the trial.

19           Now, about the motion for continuance  
20 that Ms. Crowson's new attorney, Blake Hansen, filed  
21 yesterday. He wasn't an attorney of record in the case  
22 until he sent that motion, actually until we spoke  
23 yesterday, so I didn't know to send notices to him; but  
24 I did, as I said, notify Mr. Kelly, who's been the  
25 attorney of record throughout the case, that it was



1 canceled on August 12th, that it was rescheduled for  
2 today.

3           So I'm not too sure what to make of their  
4 contentions in the motion that they weren't notified,  
5 that they did show up on the 12th, they didn't receive  
6 any notice of today's hearing and only heard about it  
7 sort of accidentally.

8           I would also note that their stated  
9 reason for requesting the continuance, which was to  
10 obtain information from the lab for their expert to  
11 evaluate, appears to be nothing more than stalling,  
12 just as they did when they used that reason to request  
13 the stay back in early March.

14           They've had more than enough time to  
15 explore that issue since that time and they've never  
16 even asked for the information and they didn't appear  
17 at SOAH to contest the positives. That was their  
18 opportunity to defend Ms. Crowson. It's not proper to  
19 be asking all this time later to send the case back to  
20 the stewards, as they requested, to do what they really  
21 should have done at SOAH back in June.

22           So again, I would ask that you deny the  
23 motion for continuance, adopt the stewards' ruling in  
24 full with that one change to the order of finish that  
25 we discussed, and I'm happy to answer any questions you

1 may have.

2 CHAIRMAN SCHMIDT: Any questions of Devon  
3 or Ms. Bijansky?

4 Ms. Bijansky, just looking over these  
5 Clenbuterol positives, the range is 233 to 253. Is  
6 there a therapeutic range for treatment of horse asthma  
7 or --

8 MS. BIJANSKY: Are you referring to the  
9 threshold?

10 CHAIRMAN SCHMIDT: Yes.

11 MS. BIJANSKY: The threshold is 140  
12 picograms per milliliter in urine.

13 CHAIRMAN SCHMIDT: So these are almost  
14 twice that.

15 MS. BIJANSKY: Right.

16 CHAIRMAN SCHMIDT: Thank you.

17 Any other questions?

18 Thank you, ma'am. We might call you back  
19 in just a second.

20 Is Ms. Crowson or her attorney present?  
21 Okay. They're not?

22 Okay. Any discussion from the Commission  
23 then?

24 I think these folks have had a lot of  
25 time to present their case. I'd certainly entertain a

1 motion to deny their motion for continuance --

2 VICE-CHAIRMAN EDERER: So moved.

3 CHAIRMAN SCHMIDT: -- and to dismiss the  
4 appeal of Anna Marie Crowson and uphold the stewards'  
5 ruling in full with the exception of a correction to  
6 the order of finish in the 10th race at Lone Star Park  
7 November 9, 2013, reflecting that the horse RC Tres  
8 Times Seis was disqualified and is unplaced.

9 VICE-CHAIRMAN EDERER: So move.

10 CHAIRMAN SCHMIDT: Moved by Vice-Chair  
11 Ederer, seconded by --

12 COMMISSIONER ABER: I'll second.

13 CHAIRMAN SCHMIDT: -- Dr. Aber.

14 Any further discussion?

15 All those in favor signify by saying  
16 aye.

17 COMMISSIONERS: Aye.

18 CHAIRMAN SCHMIDT: Opposed?

19 MS. O'CONNELL: Abstain.

20 CHAIRMAN SCHMIDT: Abstain. Okay.

21 Proceedings on rulemaking. Just for your  
22 information, the first rule is a proposal for Rule 309,  
23 Temporary License to Conduct Racing, from Saddle Brook  
24 Park. I spoke with Mr. Newby earlier in the week and  
25 he asked that we take this item down from today's

1 meeting. We'll not be discussing it. He and his team  
2 would like some additional time to gain additional  
3 information to present to us. So I anticipate bringing  
4 this up at the October meeting, but it's taken down  
5 from this one.

6           Moving forward to Item B, the adoption of  
7 proposed rule amendments and new rules authorizing  
8 historical racing. As you may know, last evening the  
9 Racing Commission heard via press release that there  
10 was an effort to obtain a temporary restraining order  
11 against the Commission from bringing this item up.  
12 This restraining order request was heard in Judge  
13 Evans' court this morning in Tarrant County and denied,  
14 so we'll be moving forward.

15           Mr. Fenner, can you lay out the proposed  
16 amendments and bring us up to date where we stand?

17           MR. FENNER: Yes, sir.

18           Commissioners, these proposals were  
19 requested by the entire racing industry and they were  
20 published in the June 27th edition of the Texas  
21 Register for public comment. During the comment period  
22 we received over 13,000 comments, with about three  
23 quarters in favor and about one quarter against. The  
24 majority of the 13,000 comments came in the form of  
25 petitions and their signatures and most of these were

1 in favor and, again, some were against.

2 Detailed comments came from a variety of  
3 places, including, not necessarily limited to, State  
4 Representatives, State Senators, industry groups, the  
5 City of Grand Prairie, Texas Association of Business,  
6 the Kickapoo Tribe of Texas, Grey2K USA, the Texas  
7 Baptist Christian Life Commission, First Baptist Church  
8 of Arlington, the ASPCA, the Texas Public Policy  
9 Foundation, and individual horsemen. And copies of  
10 these comments have been provided to you in a separate  
11 binder.

12 Commission staff also held a public  
13 comment hearing on July 17th. 18 people testified, 15  
14 in favor and three against. Two of the three who  
15 opposed the proposal represent the bingo industry and a  
16 third represented the Texas Humane Legislation  
17 Network. A copy of the transcript from that meeting is  
18 also in your binder. In addition to those that  
19 testified, 45 turned in comment cards, with 43 in  
20 support for the proposals and two opposed.

21 You may also recall that during the  
22 comment period State Representative Dan Flynn filed a  
23 request with the Attorney General's office for an  
24 opinion as to whether the Commission had the authority  
25 to adopt rules authorizing historical racing. On

1 August 12th I filed a brief with the Attorney General's  
2 office defending the Commission's authority to adopt  
3 these rules and I provided a copy of that brief to  
4 you. The Attorney General's decision is not due until  
5 January 18th, 2015. My opinion has not changed. I  
6 think the rules are within your authority.

7 Also to speak this morning is Kevin  
8 Mullally of Gaming Laboratories International. He's  
9 here to make a presentation on historical racing  
10 terminals from the perspective of an independent  
11 third-party testing laboratory.

12 That concludes my presentation.

13 CHAIRMAN SCHMIDT: Any initial questions  
14 of Mr. Fenner?

15 Okay. We have had a request for some  
16 additional information. So, Mr. Mullally, thank you  
17 for visiting us this morning. Can you bring us up to  
18 date?

19 MR. MULLALLY: Sure, Mr. Chairman.

20 Members of the Commission, thank you for  
21 having me.

22 CHAIRMAN SCHMIDT: Just for clarity, you  
23 do not make these machines. You test them.

24 MR. MULLALLY: Correct.

25 CHAIRMAN SCHMIDT: Is that correct?

1 You're an independent auditor as it were?

2 MR. MULLALLY: Yes.

3 I'll give you just a brief sketch of my  
4 biographical background. I started work in public  
5 service in 1981 as a legislative assistant to the  
6 majority leader of the Missouri State Senate. In 1984  
7 I became his chief of staff and did that until 1993  
8 when the Governor of the State of Missouri asked me to  
9 go help start up the newly created Missouri Gaming  
10 Commission, where I became their first lawyer and  
11 deputy director and wrote all the initial rules setting  
12 up the regulatory structure for the gaming industry in  
13 Missouri. And then I served as the director of that  
14 agency from 2000 to 2006 when I left to come to GLI.  
15 So I've had a long history in public policy and public  
16 administration and over the last 21 years have focused  
17 that on the regulation of various types of gaming.

18 Gaming Laboratories International is the  
19 world's leading independent testing laboratory. We  
20 work for regulators, about 450 all told over the world,  
21 through 20 laboratory facilities around the globe. We  
22 work for regulators to independently test equipment to  
23 ensure that it meets the technical requirements under  
24 their laws and under the rules that they have  
25 promulgated.

1                   We are scientists by a large part. About  
2 85 percent of our staff consists of engineers  
3 specializing in hardware, software, communications. We  
4 have a large math department that consists of over 21  
5 mathematicians worldwide, including four Ph.D.'s in  
6 math. So we understand the intricacies of technology  
7 and work directly for regulators around the world.

8                   To us, technology is science. GLI has  
9 never taken a position on any legislative -- gaming  
10 legislative policy, whether it be in the pari-mutuel  
11 industry, the lottery industry, in the gaming industry,  
12 or otherwise. We test equipment to standards set by  
13 regulators. We don't set the standards ourselves.

14                   GLI does not have a financial interest in  
15 the outcome of testing other than to ensure that our  
16 testing is accurate. We believe that accuracy is our  
17 paramount obligation; and if we weren't accurate, not  
18 very many people would hire us. The good news is that  
19 of all this type of work done in the world, GLI does  
20 about 85 percent of it.

21                   Science is not emotional to us. We don't  
22 rely on how something looks but rather how it  
23 technically operates. So your staff has asked me to  
24 take a look at the rules that have been proposed, offer  
25 some commentary as to how that -- how it could be



1 properly regulated in Texas according to the vision  
2 that you may have for it and how it may compare to some  
3 other types of pari-mutuel activity.

4           So if you look at pari-mutuel wagering in  
5 general, it requires that the wagers come from -- that  
6 the pools come from wagers. There is a framework that  
7 is based on horse racing so that that is -- that the  
8 outcome of the race is determinative of the outcome of  
9 the wagers. The structure is regulated by wagering  
10 rules that are available to patrons. And there are  
11 clear payouts and results with an appropriate paper  
12 trail that can be audited. And then there are a  
13 variety of rules governing fairness to the patrons.

14           So if you look at this -- your existing  
15 regulatory structure in the context of historical  
16 racing or what other jurisdictions have done, each  
17 jurisdiction has established its own rules for  
18 historical racing, the other jurisdictions that have  
19 this, those being Arkansas, Kentucky, Idaho, Wyoming.  
20 Oregon is in the process and, of course, it's on the  
21 ballot in Nebraska.

22           The way I read your rules, the Commission  
23 will evaluate the technology and propose terminals and  
24 wagers and will have the benefit of a testing lab  
25 report in order to make your decision as to whether to

1 approve each type of terminal and each type of wager  
2 allowed by the terminal.

3           Because -- not one single state has  
4 identical terminals. The terminals in Wyoming are not  
5 the same as they are in Kentucky, nor are they the same  
6 in Arkansas. We've tested all of them. There are no  
7 two states that have identical terminals. Comparisons  
8 to racing terminals used in other jurisdictions may not  
9 be relevant based on the vision that you have for the  
10 technology that you will allow -- that may be allowed  
11 in Texas.

12           So if you look at the basics of what is  
13 going on with historical racing, it's really not much  
14 of a change from what you already have. There's a  
15 totalisator system with pari-mutuel pools. They're  
16 seeded on the first race day and thereafter funded only  
17 by wagers. The regulated pools are defined in ways to  
18 win and pool payout methods. The wager outcomes and  
19 payouts are calculated and accounted for by the  
20 totalisator just as they are with live racing.  
21 Self-service terminals provide an entertaining  
22 interaction for wager selection and outcome of the  
23 display.

24           So if you look at what you already allow  
25 in Texas, you have self-service wagering terminals

1 where people can go up and place wagers on live races.  
2 The relatively minor modification necessary for  
3 historic racing is you have the same type of  
4 self-service terminal with almost identical  
5 functionality. The terminal provides an entertaining  
6 interface to one or more of the wagering pools. The  
7 rules of wagering and wagering pools are displayed to  
8 the patron just like they are on a self-service  
9 terminal. The patron inserts cash or a voucher and  
10 then initiates a wager and the totalisator system  
11 selects one or more races from a historic racing  
12 database for the wager.

13           So rather than having the outcome of a  
14 live race of these things, you're just selecting a  
15 historic race, but all the other wagering operates  
16 exactly the same way and through the same totalisator  
17 system that you have now.

18           The selected race has identifiable  
19 information removed so that it doesn't allow patrons  
20 who are very familiar with a large number of races to  
21 have an unfair advantage over other patrons. But other  
22 race information is shown to the patron that allows  
23 them to handicap, use their handicapping skill to place  
24 their wager. Things such as past performance info, et  
25 cetera, is displayed to the patron.

1           The patron makes selections based on the  
2 rules of wagering for the wagered pool. The patron  
3 finalizes a selection, electronically sending the wager  
4 to the totalisator system just like when you finalize a  
5 wager in a self-service terminal. The totalisator then  
6 compares the patron's selections to the actual historic  
7 race results just as you compare a patron's selection  
8 of a live race to the outcome of a live race.

9           The wager may be eligible for winnings in  
10 multiple pools according to the wagering rules.  
11 Winnings are awarded paying part or all of the  
12 applicable pool if the wager wins.

13           The race results and any winnings are  
14 sent to the terminal. The terminal then displays the  
15 race. And the winnings, if any, are awarded to the  
16 patron. These winnings can be displayed in an  
17 entertaining manner as approved by the Commission. So  
18 if there's any music that is offensive to you, you can  
19 ban those from being allowed by the wagering terminal.

20           So the point here is you're really just  
21 taking a terminal that you have now and in order to  
22 allow a great -- the reason this has motivated other  
23 Racing Commissions to do this is that by using historic  
24 races, you can allow patrons to play -- to wager in a  
25 pari-mutuel fashion at a pace that they choose rather

1 than one dictated by the logistics and the  
2 practicalities of live racing. Otherwise, it works  
3 exactly like a self-service terminal.

4 It's really that simple. It's not  
5 particularly complicated technology, to be honest with  
6 you. And we have been reviewing it for any number of  
7 years now, about the past four or five years.

8 I'd be happy to answer any questions that  
9 you might have.

10 CHAIRMAN SCHMIDT: Do we have any  
11 questions for Mr. Mullally from any of the  
12 Commissioners?

13 Actually I just had one. We've had all  
14 our comments summarized by the Racing Commission; and  
15 it was referred in one letter, possibly two, that a  
16 vote in favor would be allowing Las Vegas style casino  
17 gambling if this were approved. How many historical  
18 racing machines are there in Las Vegas? Do you have  
19 any ability to know that?

20 MR. MULLALLY: Historical racing  
21 machines? Zero. These are not slot machines. They're  
22 not competitive against slot machines. If you have a  
23 historic racing machine in the vicinity of a slot  
24 machine, it doesn't do well. They don't play well.

25 In anticipation -- I've heard this

1 question before and I've heard the comparison before  
2 and the whole "looks like a duck". Frankly, to those  
3 who are experienced in the industry, they don't even  
4 really look like a slot machine. If you really know  
5 what happens with a slot machine, they don't look like  
6 one, but it certainly is not one.

7           The first thing, slot machines produce an  
8 outcome based on a random number generator from  
9 software contained within the device. Historic racing  
10 terminals do not produce an outcome. They present an  
11 outcome of a race that was previously run as determined  
12 by the totalisator system that utilizes the outcome of  
13 the race to determine the result of the wagers.

14           So the terminal is essentially a dumb  
15 terminal. It doesn't really have any functionality  
16 other than money handling and some really basic  
17 accounting features. Everything continues to be  
18 handled by the totalisator system just like it is with  
19 a self-service terminal. Slot machines, there's tons  
20 of software contained right in the device that really  
21 determines the outcome of the game.

22           Secondly, slot machines pay fixed prize  
23 amounts based on pre-programmed values and  
24 probabilities. The house guarantees the award using  
25 house money. Thus the patron is playing against the

1 house in a slot machine, creating what we call a  
2 house-banked game, whereas with a historic racing  
3 machine, all the machines are pari-mutuel. They're  
4 using pari-mutuel pools. The players are playing  
5 against -- the patrons are playing against each other.  
6 And the wagers are pari-mutuel as opposed to  
7 house-banked.

8                   Slot machines -- slot machine prizes are  
9 based on fixed value prizes. The probability of a  
10 given award will be the same from game to game. So if  
11 I'm playing a slot machine, the casino has priced --  
12 put a price on that machine. There is a certain hold  
13 percentage that the casino has mathematically  
14 guaranteed built into the math of that product. So  
15 it's got a price tag on it just like when you go into a  
16 store and buy it.

17                   Historical racing terminals offer --  
18 winnings differ based on the amount of wagers allocated  
19 to the pool at any given time, so it's all based on the  
20 pari-mutuel pools as you are well accustomed to.

21                   And then finally, slot machines produce  
22 an outcome based entirely on chance. You know, there's  
23 not really -- in slot machines, they don't use truly  
24 random things because it's really hard to do and -- but  
25 it's beyond human comprehension. It's random enough to

1 be beyond human comprehension, whereas a historic  
2 racing terminal, the outcomes are based on the results  
3 of the race and the patrons selecting the winning  
4 participants.

5           And then one other thing to be considered  
6 is that GLI-11 is a standard that has been adopted  
7 by -- it's the most widely adopted technical standard  
8 for slot machines around the world. It was introduced  
9 in 1991 and we've issued nearly a million  
10 certifications to the GLI-11 standard around the  
11 globe.

12           No historical racing terminal on the  
13 market and no historical racing terminal that would  
14 qualify under the rules before you today would meet the  
15 GLI-11 standard. We know slot machines, and these are  
16 not slot machines.

17           CHAIRMAN SCHMIDT: Thank you, sir.

18           Any other questions at all of  
19 Mr. Mullally by the Commissioners?

20           Thank you, sir. Thank you for the  
21 video.

22           Devon, do you have the cards as well?

23           And if you don't mind, I'm just going to  
24 digress just for one second. I apologize to the  
25 Commissioners. Before progressing further on this



1 subject, I did want to take one minute of the  
2 Commission's time to thank Mr. Trout and to thank  
3 Mr. Fenner and ask them also to thank individually each  
4 member of the Commission that are working back at the  
5 office for helping us perform a very thorough,  
6 conscientious, and transparent evaluation of this  
7 issue. I really would like a personal statement from  
8 each of you to those folks.

9                 Several horsemen's groups petitioned the  
10 Commission almost a year ago, really beginning in  
11 September and October of 2013, and they requested the  
12 Commission to consider authorizing the use of  
13 historical racing terminals to allow for pari-mutuel  
14 wagering on recorded races. I personally visited with  
15 several horsemen and I know other Commissioners who  
16 were also petitioned as well. So things really began a  
17 year ago.

18                 The Commission staff was charged to  
19 evaluate this matter internally; and once a preliminary  
20 evaluation was completed, this matter was referred to  
21 the pari-mutuel advisory subcommittee in January.  
22 Multiple additional evaluations were obtained. I  
23 believe the Commission staff and Commission attorney  
24 reviewed eight or nine different legal opinions. There  
25 were at least two or three subcommittee public meetings

1 prior to presentation of this matter to the Commission  
2 in June. And since that time we've had two open  
3 meetings regarding the issue of historical racing. And  
4 as you know, we've had extensive public testimony. We  
5 received over 13,000 written comments, each of which  
6 are read, categorized, and provided back to the  
7 Commissioners for review.

8           Regardless of the outcome of whether this  
9 matter is approved, disapproved, or tabled, I'm just  
10 very appreciative and I know all the Commissioners are  
11 very appreciative of the efforts of the Commission  
12 staff in responding to our multiple, multiple questions  
13 for information and for assistance in organizing these  
14 meetings.

15           We run a real lean ship. We don't have  
16 extra personnel available when new matters occur. It  
17 simply requires people to work later, work harder, and  
18 work more efficiently. And I just wanted to thank  
19 you. I think this has been a very open process, a very  
20 transparent process, and a very fair process. Please  
21 relay that to the Commission staff for me. Okay?  
22 Thanks.

23           Okay. Now we're going to have a brief --  
24 Mark, do you have a timer --

25           MR. FENNER: I do, sir.

1 CHAIRMAN SCHMIDT: -- so we can stay on  
2 time?

3 We'll begin with Mr. Rob Kohler.

4 Mr. Kohler? Welcome, sir.

5 MR. KOHLER: Good morning.

6 CHAIRMAN SCHMIDT: I'm not sure if you  
7 were here when we originally started. We've had an  
8 extensive comment period, but we didn't want to close  
9 anyone out, so we're going to try to limit our  
10 remarks.

11 MR. KOHLER: Great. Great. Appreciate  
12 it.

13 My name is Rob Kohler. I'm here as a  
14 consultant for the Christian Life Commission of the  
15 Baptist General Convention of Texas. I wanted to  
16 follow up with the gentleman that visited with you all  
17 right before.

18 You shouldn't be under the impression  
19 that just because these historical racing machines  
20 don't fit in that tight corner or that tight definition  
21 of what a slot machine or what constitutes a slot  
22 machine in this state that you're home free or that the  
23 device is home free.

24 We have a long history in this state of  
25 folks failing at the Legislature of getting the needed

1 votes to amend the constitution. So what's happened is  
2 they've come up with ways to try to introduce devices  
3 that will function like a slot machine but technically  
4 won't be a slot machine.

5 We've seen that regarding lottery  
6 tickets. We've seen that regarding pull tab tickets  
7 which are instant forms of wagering in this state. And  
8 I just want to make sure that you understand that just  
9 because there is not a random number generator in that  
10 device does not mean that it's not and doesn't function  
11 like a slot machine.

12 In fact, I will tell you that the  
13 majority of the slot machines that you see truly in Las  
14 Vegas, across the country, the idea of a random number  
15 generator is really old. What these are are  
16 service-based wagering machines that there's not an  
17 element of chance. It's predetermined outcomes.

18 So I would encourage you to recognize in  
19 this decision-making process that just because it  
20 doesn't meet that technical definition of what a slot  
21 machine is, truly the slot machines that are operating  
22 in Las Vegas right now could operate in our state with  
23 the current existing laws. So I wanted to make sure  
24 you knew that.

25 There's been an AG opinion that's ruled

1 on video lottery terminals, which, you know,  
2 technically were the representation of outcome, and  
3 also on instant pull tab tickets.

4 Yes?

5 MR. FENNER: Two minutes is the time  
6 limit.

7 MR. KOHLER: Okay. Well, I just wanted  
8 to make sure that you weren't left with the impression  
9 that just because it doesn't have a random number  
10 generator in it that everything is hunky-dory.

11 CHAIRMAN SCHMIDT: Any questions of  
12 Mr. Kohler?

13 Thank you, sir. Thank you very much.

14 Next, Mr. Ken Carson, Valor Farm.

15 MR. CARSON: Good morning,  
16 Commissioners. I spoke at the June meeting, so I'll  
17 make my comments brief.

18 At that meeting I described that Valor  
19 Farm was established in the early '90's and we did  
20 really very well for the first 15 years or so. The  
21 last seven or eight years we've steadily declined in  
22 any measure you look at, number of mares bred, mares  
23 bred to stallions, clients that board mares on the  
24 farms, and so forth.

25 But I can tell you, the point I'd like to

1 make is just in this spring season, just the suggestion  
2 of this has made the phone ring. I mean, there's a  
3 huge underlying amount of people out there that would  
4 get back into horse racing if we had this.

5 Thank you very much. I'll answer any  
6 questions.

7 CHAIRMAN SCHMIDT: Any questions of  
8 Mr. Carson?

9 Thank you, Mr. Carson.

10 MR. CARSON: Thank you.

11 CHAIRMAN SCHMIDT: Jennifer Hughes, Alvin  
12 Stock Contractors.

13 Ms. Hughes? Welcome.

14 MS. HUGHES: Thank you, Mr. Chairman and  
15 Commission. My name is Jennifer Hughes. I'm here for  
16 Alvin E Stock Contractors.

17 Alvin E Stock Contractors is a small  
18 business in Eagle Pass, Texas. It does utility  
19 contracting. It has about -- it was started in 1960.  
20 It's grown to about 20 employees. It does a  
21 significant amount of work for the Kickapoo Traditional  
22 Tribe of Texas.

23 The company understands that if these  
24 proposed rules go through that they will be devastating  
25 to the Kickapoo tribe, thus in turn they would have a

1 major impact on this Alvin E Stock Contractors'  
2 business. They have concerns that they would have to  
3 lay off employees and even close its doors. Therefore,  
4 Alvin E Stock Contractors is opposed to the proposed  
5 rules.

6 Thank you.

7 CHAIRMAN SCHMIDT: Thank you, ma'am.

8 Any questions?

9 Thank you very much, ma'am. Appreciate  
10 it.

11 Charles Wright, Argyle, Texas?

12 MR. WRIGHT: I'll pass.

13 CHAIRMAN SCHMIDT: Do you wish to  
14 testify?

15 MR. WRIGHT: Everybody knows where I  
16 stand. I'm for it. I appreciate your support and I'll  
17 pass on testifying.

18 CHAIRMAN SCHMIDT: Thank you, sir.

19 Joseph Webster of the Kickapoo  
20 Traditional Tribe of Texas.

21 Mr. Webster? Welcome.

22 MR. WEBSTER: Thank you. And good  
23 morning. My name is Joe Webster. I'm an attorney with  
24 Hobbs, Straus, Dean & Walker, again, on the behalf of  
25 the Kickapoo Traditional Tribe of Texas which is a

1 Federally recognized Indian tribe with a reservation  
2 near Eagle Pass, Texas. We appreciate the opportunity  
3 to address the Commission.

4 I've worked on gaming issues, gaming  
5 technology issues, for nearly 20 years for a number of  
6 clients, including Indian tribes and gaming companies.  
7 Since the 1990's, the tribe has attempted to negotiate  
8 a compact with the State of Texas to allow for slot  
9 machine gaming and slot machine broadly defined.

10 The response that the tribe has gotten  
11 all these years from the State is that all forms of  
12 slot machine gaming are prohibited by the State. So  
13 it's somewhat surprising in terms of the position being  
14 taken here about the authorization of so-called  
15 historic racing machines.

16 As a practical matter, the tribe is very  
17 concerned about the impact that the introduction of  
18 these games would have on the tribe's limited gaming  
19 operation on its reservation. Notwithstanding the  
20 comments that were made by the attorney from GLI, the  
21 fact that a game doesn't fit within their GLI-11 does  
22 not mean that it's not a slot machine or slot machine  
23 equivalent in terms of how the game plays.

24 In essence, historical racing machines  
25 are video slot machines that use data that's pulled



1 from tens of thousands of previously run races to  
2 generate outcomes to drive a video slot display.

3           The introduction of this type of game at  
4 Retama Park would have a devastating impact on the  
5 tribe and its gaming facility since more than half of  
6 the patrons for the tribe come from the San Antonio  
7 area. This could force the tribe to lay off many of  
8 its 1100 employees, which include nearly 800 not  
9 Indians. It would also hurt many of the small  
10 businesses that are vendors to the tribe. This  
11 includes more than we could list here today, but a  
12 few --

13           MR. FENNER: Two minutes.

14           MR. WEBSTER: De la Garza -- might I have  
15 another 30 seconds?

16           CHAIRMAN SCHMIDT: Yes, or 45 seconds.

17           MR. WEBSTER: De la Garza, which provides  
18 produce to the tribe; Sarita, which provides tortillas;  
19 and Tex-Mex AC. These are small businesses, all have  
20 fewer than 20 employees, less than a million dollars a  
21 year of business, and derive a significant portion of  
22 their revenue from their dealings with the tribe. If  
23 the tribe is forced to shut down its gaming operation  
24 or dramatically curtail it, these businesses in some  
25 cases will be forced to close.

1                   So again, the tribe is very concerned  
2 about this proposal. The tribe will submit written  
3 comments setting forth its legal position in terms of  
4 why these games exceed the authority of the  
5 Commission.

6                   Again, we appreciate the opportunity to  
7 testify today and I'd be happy to answer any  
8 questions.

9                   COMMISSIONER ABER: I have a question.  
10 How many slot machines do you have?

11                   MR. WEBSTER: The tribe does not have  
12 slot machines. The tribe offers Class 2 electronic  
13 bingo games which are authorized under Federal law.

14                   COMMISSIONER ABER: How about the taxes  
15 you pay the State of Texas?

16                   MR. WEBSTER: The tribe has offered over  
17 the years to enter into a compact that would provide  
18 revenue sharing to the State. However, the State has  
19 been unwilling to negotiate an agreement with the  
20 tribe. So the tribe does pay the Federal Government,  
21 the National Indian Gaming Commission, an assessment.

22                   COMMISSIONER ABER: So your main concern  
23 is the competition?

24                   MR. WEBSTER: Well, from the tribe's  
25 perspective, the revenue that it generates is used to

1 provide health care, law enforcement, housing, all of  
2 the programs for its members. It has over 800  
3 members. This is the economic engine for the tribe as  
4 well as for Maverick County, where they are a major  
5 economic impact down there.

6 CHAIRMAN SCHMIDT: Thank you, sir. Thank  
7 you very much.

8 MR. WEBSTER: Thank you very much.

9 CHAIRMAN SCHMIDT: Dr. Neff from  
10 Bandera?

11 MR. NEFF: Mr. Chairman, Commissioners, I  
12 have a statement I'd like to read. I'm Bryan Neff, a  
13 veterinarian from Bandera. My license number is 85 and  
14 I've been here since the days of G. Rollie White  
15 Downs. I've seen it come and go. I've seen several  
16 State veterinarians, Commissioners, over the years  
17 come.

18 What I'd like to say to you today is you  
19 have the opportunity today to pass a rule that would  
20 help level the playing field with the surrounding  
21 states by enhancing the purse structure at these Texas  
22 racetracks. The Texas horse industry depends heavily  
23 on horse racing. The trickle-down effect has a huge  
24 impact on the breeding industry, the barrel racing,  
25 roping, trail riding, breed registries, and various

1 components of the agriculture industry.

2           The beneficial effect of this rule will  
3 be felt around the entire state, not at just some small  
4 localities as indicated before. This rule, if passed,  
5 would not only -- would only add to the already legal  
6 pari-mutuel-based gaming opportunity that exists at  
7 existing racetracks. It would not expand gaming to any  
8 new locations.

9           If you have any questions, I'd entertain  
10 them.

11           CHAIRMAN SCHMIDT: Any questions of  
12 Dr. Neff?

13           Thank you, sir. Thanks for coming down.  
14 Stephen -- I'm sorry.

15           MS. BIJANSKY: Fenoglio.

16           CHAIRMAN SCHMIDT: Fenoglio. Thank you.  
17 I'm sorry, sir.

18           MR. FENOGLIO: Yes. For the record, my  
19 name is Stephen Fenoglio. Thank you. There's been  
20 discussion -- and I represent charitable bingo  
21 operators across the state, over 300.

22           There's been some discussion about  
23 whether this rule would have an impact, adverse impact,  
24 on bingo. We know for certain it will. And we know  
25 for certain it will based on what's happened in real

1 life. In El Paso, Texas, after the Tigua Indian tribe  
2 opened up a casino with over a thousand machines,  
3 charitable bingo in El Paso dropped by over 60 percent,  
4 the number of charities in the business, the number  
5 of -- the revenue they received, their employees, 60  
6 percent in a very, very short period of time.

7 Missouri. Missouri instituted casino  
8 gambling, riverboat. Bingo dropped over a period of  
9 just a few years by over half. They're out of -- those  
10 charities are out of business. They're never coming  
11 back. State revenue was down by over half. The number  
12 of locations that conducted bingo, over half  
13 reduction. The number of employees reduced by over  
14 half.

15 We know if this happens in Austin, Texas,  
16 and there is a racing location that's licensed -- and  
17 you heard earlier another one may come in Creedmoor,  
18 outside of Austin -- 3,000, 5,000 machines, charities  
19 that provide services to senior citizens, to  
20 developmentally disabled, to veterans, they're gone.  
21 So that's why we're opposed to it.

22 Thank you. I'd be happy to answer any  
23 questions.

24 COMMISSIONER ABER: I would like to ask a  
25 question. How do you delineate that from Sunland Park

1 that's always been there?

2 MR. FENOGLIO: How do I --

3 COMMISSIONER ABER: Sunland Park competes  
4 with you all all the time.

5 MR. FENOGLIO: Sunland Park?

6 COMMISSIONER ABER: Yeah.

7 MR. FENOGLIO: In El Paso? Oh, the  
8 casino in New Mexico.

9 COMMISSIONER ABER: They can build a  
10 bigger facility any time they want to.

11 MR. FENOGLIO: You're talking about the  
12 New Mexico location.

13 COMMISSIONER ABER: Right.

14 MR. FENOGLIO: The numbers I gave you  
15 happened in El Paso, Texas, before Sunland Park was up  
16 and running with their casino machines, their slot  
17 machines.

18 COMMISSIONER ABER: How many years has  
19 Sunland been running?

20 MR. FENOGLIO: I don't have that  
21 information. But when they got the casino machines is  
22 when it -- a racetrack -- bingo can compete against a  
23 racetrack in Dallas, Austin, San Antonio, Houston, dog  
24 tracks.

25 COMMISSIONER ABER: What I'm saying is

1 you've got competition there and in El Paso, too. It's  
2 in New Mexico. They're competing with you and they can  
3 build on any time they want to.

4 MR. FENOGLIO: That's true. But when you  
5 look at -- the observation was made, these won't affect  
6 charitable bingo. Au contraire. You put 3,000 of  
7 these style machines in San Antonio, Texas, and the  
8 North Rotary Club of San Antonio that gets about 30 to  
9 50 thousand a year for its rotary club missions, that's  
10 gone. They're not there anymore.

11 VICE-CHAIRMAN EDERER: Bingo generates a  
12 lot of income, doesn't it?

13 MR. FENOGLIO: It generates about 27 and  
14 a half million for the State of Texas over and above  
15 what it costs to regulate it.

16 VICE-CHAIRMAN EDERER: How much do you  
17 make off it?

18 MR. FENOGLIO: How much do I make?

19 VICE-CHAIRMAN EDERER: Yes, your group.

20 MR. FENOGLIO: Texas Charity Advocates?

21 VICE-CHAIRMAN EDERER: Yes.

22 MR. FENOGLIO: I don't have that number  
23 in front of me. Several million.

24 VICE-CHAIRMAN EDERER: Several million,  
25 yes.

1                   In El Paso, when the Tiguas were there,  
2 that was a long time ago. The Tiguas were only there  
3 for a short period of time and then they went out of  
4 business. The bingo continued to flourish. And it  
5 flourished for -- it is still very much flourishing.  
6 But at the same time, right now to this day, there is a  
7 huge casino sitting in Sunland Park. However, bingo is  
8 still flourishing.

9                   MR. FENOGLIO: It's not what it was  
10 before, and the Tiguas are still operating hundreds of  
11 slot style machines today.

12                  VICE-CHAIRMAN EDERER: And you're still  
13 flourishing, though.

14                  MR. FENOGLIO: Flourishing? Half? You  
15 consider half your -- cutting your revenue  
16 flourishing? I don't.

17                  VICE-CHAIRMAN EDERER: The bottom line is  
18 that you are afraid of the competition. Is that  
19 correct?

20                  MR. FENOGLIO: We don't have a tool to  
21 compete with. We know for a fact there will be halls  
22 that will be closed, just as in El Paso, just as in  
23 Missouri. Kingsville, Texas, when they had open  
24 eight-liner style gaming, the number of charities that  
25 were conducting bingo in Kingsville, Texas, and Corpus



1 to the north were cut in half because the State would  
2 not regulate the illegal cash-paying eight-liner game  
3 rooms.

4 So are we scared of competition? Yes.  
5 When the competition has an automatic weapon and we're  
6 still using a bow and arrow, you bet.

7 VICE-CHAIRMAN EDERER: Didn't you just  
8 try to get yourself a new weapon and that didn't pass?

9 MR. FENOGLIO: I'm sorry. Are you  
10 talking about in the legislative session?

11 VICE-CHAIRMAN EDERER: Yes, the little  
12 pull tabs.

13 MR. FENOGLIO: I don't believe we  
14 proposed that in the last legislative session. We have  
15 proposed pull tabs, yes. And Mr. Kohler opposed it.

16 VICE-CHAIRMAN EDERER: Thank you.

17 MR. FENOGLIO: Thank you.

18 CHAIRMAN SCHMIDT: Thank you, sir.

19 We have a little more time. Mr. Boyce  
20 from Flower Mound?

21 MR. BOYCE: Commissioners, my name is Tim  
22 Boyce. I'm from Flower Mound, Texas. I am director of  
23 sales for Fasig-Tipton. We conduct the Thoroughbred  
24 auctions here in Texas and have for a number of years.  
25 We've been in Lone Star Park with our office for --

1 since '97 when I got here.

2 I've always thought that the sales can  
3 mirror the racing around it. And if that's the case,  
4 looking in the mirror, I can tell you it's not doing  
5 well. Back in 2008, less than 10 years ago, we were  
6 the best in the southwest. We had the biggest sale.  
7 The other sales in the states around us were  
8 collectively not even maybe three quarters of what we  
9 were.

10 Now, as of last year, we were outhandled  
11 by two other sales. And the reason being is that  
12 Texas-breds, which used to be twice the value of a  
13 Louisiana-bred, last year fell to being half of what a  
14 Louisiana-bred is worth, average, at the sale. The  
15 Louisiana-breds have gone up, of course, and  
16 Texas-breds, unfortunately, have headed downwards. And  
17 that's ebbing downwards with a drastic decrease in  
18 product.

19 So with your supply and demand, you would  
20 expect, as the horse business experienced in 2010, the  
21 averages actually went up because there was less  
22 horses. But we have less Texas-breds and they're still  
23 selling for less.

24 Now, when you all made the announcement  
25 and we were going to have it on the agenda in August,

1 we had originally combined our yearling sale -- to  
2 create a critical mass, we put it together with a mixed  
3 sale because we were losing critical mass to have a  
4 viable sale. And it was well received by Lone Star and  
5 we were going to have our sale on October 13th and we  
6 were limited to a number of stalls because of the race  
7 meet going on at the time. But what's happened was  
8 when we -- when everyone thought we were going to have  
9 the historical racing, I was overbooked. I had more  
10 horses than I could have stalls, which I've never had  
11 that experience before. It was a good experience.

12 CHAIRMAN SCHMIDT: 30 more seconds.

13 MR. BOYCE: But now I had 80 horses pull  
14 out when the announcement -- when it was taken off the  
15 agenda. So it's that dramatic, I think, how it will  
16 affect horse racing, if it is as dramatic as it has  
17 affected the sales.

18 And I was called by one particular person  
19 to let -- he wanted me to convey this. Tom Durant, who  
20 has been the leading owner in Lone Star for many years,  
21 who probably has won it more than anyone else, he is  
22 getting out of Texas racing. His plans are now to get  
23 out of Texas racing. And he wanted me to present that  
24 just because it had to be said.

25 Thank you.

1                   CHAIRMAN SCHMIDT: Any questions of  
2 Mr. Boyce?

3                   Sir, just -- you used to have two sales,  
4 correct? Are you down to one now?

5                   MR. BOYCE: We used to have three and now  
6 we have two. We had to combine the mixed sale and the  
7 yearling sale. Now, the yearling sale at one point,  
8 and the general sale, they were two days. Now we're  
9 one brief afternoon.

10                  CHAIRMAN SCHMIDT: Thank you, sir. Thank  
11 you very much for coming down here.

12                  MR. BOYCE: Thank you.

13                  CHAIRMAN SCHMIDT: Anatole Barnstone?

14                  MR. BARNSTONE: Good afternoon,  
15 Commissioners. My name is Anatole Barnstone. I  
16 represent the Institute for Disability Access d/b/a  
17 ADAPT of Texas. We're a licensed bingo charity. I'm  
18 here to testify about the impact of the proposed rules  
19 on bingo in general and ADAPT in particular.

20                  ADAPT empowers disabled Texans to obtain  
21 access to government facilities, housing, schools, and  
22 transportation. We host bingo at Big Star Bingo in  
23 Austin, Texas. We earn about a hundred thousand  
24 dollars a year in bingo revenue, and that constitutes  
25 71 percent roughly of the total revenue that ADAPT

1 obtains. ADAPT testified in a recent Federal case that  
2 I was a part of, VFW versus Texas Lottery Commission,  
3 that it could not be nearly as effective as it is today  
4 without that bingo revenue.

5           The proposed rule would have a  
6 catastrophic impact on bingo revenue. Some recent  
7 examples -- and I'll refer to the chart now on page --  
8 I believe it's eight. Bingo revenue peaked in Texas in  
9 1991. It's stagnated or declined ever since then.  
10 1991, as the Commission may be aware, is the year the  
11 State lottery was enacted. That's what I would refer  
12 to as the Commissioner called competition. That's  
13 competition.

14           Here's what happens in the bows and  
15 arrows versus machine gun situation that we talked  
16 about. In other states, in Louisiana, video poker was  
17 adopted in 1995. Pull tab revenue dropped from 200  
18 million dollars to 80 million dollars in just a few  
19 short years. That's a 60 percent decline. In  
20 Washington State, they authorized tribal gaming in 1998  
21 and bingo net receipts declined from 48 million to 12  
22 million. And that's a 75 percent decline in revenue.

23           The industry has attempted to counter  
24 that by saying that in their research that in a  
25 particular county in Kentucky, bingo revenue actually

1 increased one percent in that county when these instant  
2 racing machines were adopted.

3 CHAIRMAN SCHMIDT: 30 more seconds.

4 MR. BARNSTONE: We just submit that the  
5 one percent increase is not significant and the one  
6 county is not really representative of the experience  
7 of bingo in many other states, including in Kentucky  
8 where bingo revenue has dropped.

9 Charities that rely on bingo cannot  
10 afford a 60 or 70 percent decline in revenue. Many of  
11 them, most of which are within 50 miles of licensed  
12 racetracks, would go out of business.

13 In sum, Commissioners, instant racing  
14 devices, historical racing, is not the sort of thing  
15 that the Commission should be adopting in the absence  
16 of legislative approval and, I would submit, in the  
17 absence of a constitutional amendment.

18 Thank you for your time.

19 CHAIRMAN SCHMIDT: Thank you, sir.

20 Any questions?

21 Okay. Thank you.

22 MR. BARNSTONE: Thank you, sir.

23 CHAIRMAN SCHMIDT: Then one more, Robert  
24 Francis from Dallas.

25 Mr. Francis?

1 MR. FRANCIS: I have been a Thoroughbred  
2 breeder since the '80's. Eight years ago I sold my  
3 farm in North Texas and have been breeding out of state  
4 ever since. I think I represent a whole bunch of  
5 people that would come back and bring that business to  
6 Texas if you pass historical racing. We hope you  
7 will.

8 Thank you. Any questions?

9 CHAIRMAN SCHMIDT: Where did you move  
10 your farm to, sir?

11 MR. FRANCIS: Pardon?

12 CHAIRMAN SCHMIDT: Where did you move  
13 your farm to, sir?

14 MR. FRANCIS: I don't have a farm  
15 anymore, but I breed in Kentucky.

16 CHAIRMAN SCHMIDT: Any other questions?

17 Thank you, sir.

18 Okay. I'd like to ask the pari-mutuel  
19 advisory committee members, Vice-Chair Ederer,  
20 Dr. Martin, and Dr. Steen, if they have anything to  
21 add.

22 VICE-CHAIRMAN EDERER: Well, yes. The  
23 committee did spend a considerable amount of time. We  
24 had a number of meetings. We have reviewed, I think,  
25 just about everything that has been submitted to us.

1 We feel, as a committee, that we do have the authority  
2 as a Commission to vote in favor of the rule, to pass  
3 the rule that would allow historical racing.

4 We feel that as far as the footprint of  
5 gambling on Texas that that is -- that that would not  
6 happen. The only people that will have the machines  
7 are the active tracks. They will be controlled by the  
8 Commission. We believe that the impact on the  
9 community will be very positive. It will not have a  
10 negative effect. And we believe that the community  
11 definitely does support historic gambling.

12 And that is my report.

13 CHAIRMAN SCHMIDT: Thank you, sir.

14 Do you have anything to add, Dr. Martin?

15 COMMISSIONER MARTIN: I do. I think  
16 everybody on the Commission has done their due  
17 diligence on this and listened to both sides of the  
18 stories and have been as transparent as we can be.

19 You know, I look out over the audience,  
20 and I have for the last five years on this Commission,  
21 and not at the racetracks necessarily, but at the horse  
22 people. And you heard Ken Carson, you heard Rob  
23 Francis, and these people, horsemen that have been in  
24 the horse business for 30, 40, 50 years, and want  
25 nothing more than to be able to be competitive with the



1 surrounding states.

2           And looking at all of this, I think this  
3 is one way that we can certainly try to get a little  
4 bit on a fairer playing ground.

5           CHAIRMAN SCHMIDT: Thank you.

6           Commissioner Steen, do you have anything  
7 to add?

8           COMMISSIONER STEEN: I don't have much  
9 more to add. I'll just say that I'm a fairly new  
10 Commissioner and don't have all the background that the  
11 others did on the committee, but -- so with a new  
12 perspective I looked at this. And we believe that we  
13 have the authority to pass the rules and I personally  
14 think it would be beneficial for the industry and for  
15 the State.

16           CHAIRMAN SCHMIDT: Thank you.

17           Commissioner Leon, you said you had a  
18 comment?

19           MS. LEON: Yes. I have a statement that  
20 I worked on here that I would like to prepare -- that  
21 I've prepared.

22           As you know, Chairman, I serve on the  
23 Commission as an ex officio member because of my role  
24 as chairman of the Public Safety Commission. So I  
25 believe that my responsibility on this Commission is to

1 be a voice for law enforcement in general and a voice  
2 for DPS specifically.

3 In considering the appropriateness of  
4 these rules, I've consulted with both law enforcement  
5 resources and legal resources at DPS. I'm going to  
6 vote against the adoption of the proposed rules on  
7 historic racing because we've concluded that the Racing  
8 Commission has no authority to expand gambling in  
9 Texas.

10 I know there's been a variety of legal  
11 opinions on this; but rather than picking among various  
12 legal opinions, we should allow the Attorney General an  
13 opportunity to provide an authoritative opinion before  
14 moving ahead, which I know that one Representative has  
15 asked for.

16 We believe that this type of gambling may  
17 be something that the Legislature could favor and will  
18 consider in the future, but I do not believe it is  
19 appropriate for this Commission to move forward in the  
20 face of numerous legislators asking us not to.

21 I understand that historic racing may  
22 represent an economic lifeline for the racing industry  
23 in Texas and I want you to know that the industry needs  
24 to survive and thrive and believe in that. But as a  
25 representative of law enforcement in Texas, I cannot

1 agree to an expansion of gambling unless it is clear  
2 that the Legislature has intended to allow that  
3 expansion.

4 Thank you.

5 CHAIRMAN SCHMIDT: Good statement. Thank  
6 you, Commissioner Leon.

7 COMMISSIONER ABER: Could I make a  
8 comment on that?

9 CHAIRMAN SCHMIDT: Yes, sir.

10 COMMISSIONER ABER: We already have  
11 gambling in Texas. We have it at the Kickapoo in Eagle  
12 Pass and we have it in the eight-liners everywhere.  
13 And it's already here. And we have pari-mutuel. And I  
14 don't think there's any question that it's legal here  
15 in Texas because it's pari-mutuel. And I think we have  
16 the authority to do it and we should.

17 CHAIRMAN SCHMIDT: Commissioner  
18 O'Connell, did you want to make a statement now or when  
19 we vote?

20 MS. O'CONNELL: Well, we just take note  
21 that the vote that is being called for today is a vote  
22 to allow the implementation of historic racing, but the  
23 Comptroller remains concerned about the threshold  
24 question of the Commission's authority to vote on these  
25 rules.

1                   And while we appreciate the legal advice  
2 that Mr. Fenner has given the Commission, we also  
3 appreciate the legal briefs that have been submitted by  
4 many, many parties that gave a lot of detailed  
5 arguments that show -- that support the position that  
6 the Commission does not have the authority to proceed  
7 on -- proceed with making these rules.

8                   So because of that, the Comptroller will  
9 be abstaining on the vote to implement these rules  
10 because the authority is not clear.

11                   CHAIRMAN SCHMIDT: Does anyone -- has  
12 everyone had their say? Any other questions of  
13 Mr. Fenner?

14                   Okay. I'll certainly entertain a motion  
15 to adopt, not adopt, or table the proposed amendments  
16 and new rules as described in Sections V-B through V-Y,  
17 including the modifications marked on pages 192 and  
18 194.

19                   COMMISSIONER MARTIN: I make a motion to  
20 approve the rules.

21                   VICE-CHAIRMAN EDERER: And I second it.

22                   CHAIRMAN SCHMIDT: So there's a motion to  
23 adopt the proposed amendments, V-B through V-Y, from  
24 Dr. Martin and seconded from Vice-Chair Ederer.

25                   Is anyone opposed to voting on all the

1 rules at one time?

2 Okay. I think, Ms. Welch, we ought to do  
3 a roll call on this vote. Okay?

4 MS. WELCH: All right.

5 Chairman Robert Schmidt?

6 CHAIRMAN SCHMIDT: In favor of adoption.

7 In favor.

8 MS. WELCH: Chairman Robert Schmidt? I  
9 am sorry.

10 CHAIRMAN SCHMIDT: I'll have three  
11 votes.

12 MS. WELCH: Commissioner Ron Ederer?

13 VICE-CHAIRMAN EDERER: I'm in favor of  
14 adoption.

15 MS. WELCH: Commissioner Gloria Hicks?

16 COMMISSIONER HICKS: In favor.

17 MS. WELCH: Commissioner Michael Martin?

18 COMMISSIONER MARTIN: In favor.

19 MS. WELCH: Commissioner Vicki Weinberg?

20 COMMISSIONER WEINBERG: In favor.

21 MS. WELCH: Commissioner Gary Aber?

22 COMMISSIONER ABER: In favor.

23 MS. WELCH: Commissioner John Steen?

24 COMMISSIONER STEEN: In favor.

25 MS. WELCH: Commissioner Ann O'Connell?

1 MS. O'CONNELL: Abstain.

2 MS. WELCH: Commissioner Cynthia Leon?

3 MS. LEON: No.

4 CHAIRMAN SCHMIDT: So I think the motion  
5 carries seven, one, and one, so the rules have now been  
6 adopted.

7 Moving on to the next item, proposal to  
8 amend Rule 319.364, Testing for Androgenic-Anabolic  
9 Steroids.

10 Mr. Fenner, can you bring us up to date?

11 MR. FENNER: Yes, sir. The proposed  
12 change would remove the specific steroid threshold  
13 levels from the rule and instead allow the executive  
14 director to set those levels under the broad authority  
15 granted to him by Rule 319.3. This change would  
16 provide more flexibility to follow the guidance  
17 provided by ARCI through its model rules and Uniform  
18 Classification of Foreign Substances.

19 This rule was published in the Texas  
20 Register on June 27th and the rules committee invited  
21 discussion at its meeting on July 29. There were no  
22 comments, and the committee authorized staff to bring  
23 the proposal to the full Commission for possible  
24 adoption.

25 CHAIRMAN SCHMIDT: Devon, any public

1 comment at all?

2 MS. BIJANSKY: No.

3 CHAIRMAN SCHMIDT: Okay. This really  
4 gives you the latitude to do what you need to do in a  
5 changing environment. Is that right, Chuck,  
6 Mr. Trout?

7 MR. TROUT: Yes, sir.

8 CHAIRMAN SCHMIDT: Okay. Commissioner  
9 O'Connell, do you have anything to add from the rules  
10 committee perspective?

11 MS. O'CONNELL: No, I don't.

12 CHAIRMAN SCHMIDT: Any further  
13 discussion?

14 Okay. I'll certainly entertain a motion  
15 to adopt the proposed amendment to Rule 319.364 as  
16 published in the Texas Register.

17 Commissioner Weinberg, a motion, seconded  
18 by Ms. Hicks.

19 All those in favor signify by saying  
20 aye.

21 COMMISSIONERS: Aye.

22 CHAIRMAN SCHMIDT: Closing of rule  
23 reviews. Mark, can you discuss that we're going to  
24 close Chapters 313 and 315?

25 MR. FENNER: Yes, sir. The Government

1 Code requires that each State agency review all of its  
2 rules at least once every four years, and during the  
3 review you have to assess whether the reasons for  
4 adopting the rules continue to exist.

5           The Commission opened the review of  
6 Chapters 313 and 315 in October of 2013, and on pages  
7 207 through 212 of the packet is the table of contents  
8 of each chapter and the rules that have been modified  
9 during the review are marked.

10           We've received no comments during this  
11 review period other than those that were made during  
12 the amendments to those specific rules, so we would  
13 recommend the readoption of the remaining rules in  
14 Chapters 313 and 315.

15           CHAIRMAN SCHMIDT: Okay. Is there any  
16 public comment, Devon? No?

17           Okay. Any discussion?

18           I'll certainly entertain a motion to  
19 readopt the remaining portions of Chapters 313 and  
20 315.

21           Is there a motion?

22           COMMISSIONER MARTIN: Motion.

23           CHAIRMAN SCHMIDT: Motion, Dr. Martin.

24           COMMISSIONER STEEN: Second.

25           CHAIRMAN SCHMIDT: Second, Commissioner



1 Steen.

2 All those in favor signify by saying  
3 aye.

4 COMMISSIONERS: Aye.

5 CHAIRMAN SCHMIDT: Anyone opposed?

6 Okay. We've readopted Chapters 313 and  
7 315.

8 Opening of rule reviews, Chapters 307 and  
9 323. Mark, can you bring us up to date on this?

10 MR. FENNER: Yes, sir. This is the same  
11 process as what we just closed except this would be  
12 opening up the review of Chapters 307 and 323. We last  
13 completed the reviews of these chapters in June of  
14 2011, so it's time to re-examine those rules.

15 CHAIRMAN SCHMIDT: Good. We've come full  
16 circle now.

17 MR. FENNER: That's right.

18 CHAIRMAN SCHMIDT: Any public comment,  
19 Ms. Bijansky? No?

20 Okay. Any discussion by the Commission?

21 I'll certainly entertain a motion to  
22 publish Chapters 307 and 323 in the Texas Register for  
23 rule review and request public comment.

24 A motion by Commissioner Steen, seconded  
25 Dr. Martin?

1 COMMISSIONER MARTIN: Yes.

2 CHAIRMAN SCHMIDT: Great.

3 All those in favor signify by saying  
4 aye.

5 COMMISSIONERS: Aye.

6 CHAIRMAN SCHMIDT: Anyone opposed?

7 Okay. There is no executive session.

8 I think we tentatively scheduled -- at  
9 the request of some Commissioners, we're still  
10 tentatively scheduled for the 13th of October for the  
11 next meeting.

12 MR. FENNER: The 14th, I believe.

13 CHAIRMAN SCHMIDT: The 14th of October, a  
14 Tuesday.

15 MS. LEON: Whatever that Tuesday is.

16 MR. FENNER: The 14th is a Tuesday.

17 CHAIRMAN SCHMIDT: We did have some  
18 travel dates around then, so if you could just  
19 double-check your schedule. And I would also ask you  
20 to -- I had some Commissioners ask if we could consider  
21 having a November meeting as opposed to -- the meeting  
22 the week before Christmas is a little awkward.

23 And so let Mrs. -- Mary Welch will just  
24 send you a questionnaire. We'll just give you some  
25 dates. There's no planned or unplanned reason other

1 than there's been some thought that maybe our meeting  
2 the week before Christmas just isn't a good time. So  
3 if there's some strong feelings about that, we can  
4 change.

5 MR. FENNER: Mr. Chairman, before you  
6 conclude the meeting, I did want to ask the  
7 Commissioners -- we have the order on Ms. Crowson's  
8 case that has to be signed by each member; so if we can  
9 get your signatures before we leave today, that would  
10 really expedite things.

11 CHAIRMAN SCHMIDT: Okay. So the time now  
12 is 12:24 and we're adjourned.

13 (Proceedings concluded at 12:24 p.m.)  
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1 STATE OF TEXAS )  
2 COUNTY OF TRAVIS )

3

4 I, SHERRI SANTMAN FISHER, a Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that the above-captioned matter came on for  
7 hearing before the TEXAS RACING COMMISSION as  
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said  
10 hearing were reported by me, accurately reduced to  
11 typewriting under my supervision and control and, after  
12 being so reduced, were filed with the TEXAS RACING  
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,  
15 Texas, this 4th day of September, 2014.

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