

## Sunset Review – New Mexico Racing Commission

In New Mexico, the Sunset Act (Sections 12-9-11 through 12-9-21 NMSA 1978) requires periodic review of agencies and regulatory boards. The Act requires the Legislative Finance Committee (LFC) to hold a public hearing, receive testimony from the public and the head of the regulatory agency involved, and make a recommendation to the next session of the Legislature for the sunset or continuance of the agency prior to its termination date.

The New Mexico Racing Commission (NMRC) is currently scheduled to terminate on July 1, 2021. Per statute, the agency would have a one-year period, through July 1, 2022, to continue operations. The Horse Racing Act would be repealed on July 1, 2022. See below for sunset review considerations in the Sunset Act.

**AGENCY:** New Mexico Racing Commission

**DATE:** June 24, 2021

**PURPOSE OF HEARING:** Sunset review for the New Mexico Racing Commission

**WITNESSES:** Ismael “Izzy” Trejo, Director, New Mexico Racing Commission; Sam Bregman, Commission Chair

**PREPARED BY:** Alison Nichols

### Sunset Act Considerations

The Sunset Act stipulates that the LFC take into consideration the extent to which:

- The agency has permitted qualified applicants to serve the public
- The agency has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures and practices and by budgetary, resource, and personnel matters
- The agency has recommended statutory changes to the legislature which would benefit the public as opposed to the persons it regulates
- Persons regulated by the agency have exercised control over the policies and actions of the agency
- Persons regulated by the agency have been required to assess problems in their industry which affect the public
- The agency has encouraged participation by the public
- Formal public complaints filed with the agency have been processed to completion by the agency
- Changes are necessary in the enabling laws of the agency to adequately comply with the above factors

LFC staff recommend providing preliminary approval to extend the life of the Racing Commission by five years, recognizing the need for continued regulation of horseracing in the state, as well as the strides that the commission has made over the last few years in increasing drug testing to identify violators, strengthening penalties, and bringing the agency in line with national standards. However, the commission must continue to address racehorse fatalities, which, while lower than in the past, are still high, with 112 horses dying between 2018 and 2020. Building on its out-of-competition testing program, which has shown positive initial results, would likely help to bring down fatality rates at racetracks. LFC staff also recommend requiring, as part of the bill, that the commission take steps to address lagging collections of penalty fee revenue and also add at least one public member to the commission.

With uncertainty around a recently-passed federal law to regulate horseracing, as well as lingering effects of Covid-19-related racing shutdowns, the agency is likely to face challenges in providing effective regulation to improve the integrity of horseracing in the state, necessitating a robust strategic plan to meet new and existing challenges in the industry.

### NMRC January 2021 Sunset Review

At an earlier sunset review hearing in January, the sunset review subcommittee took no action on extension of agency life, given the need for further review and discussion of several key policy and operational issues affecting the horseracing industry and the agency, including drug violations and racehorse fatalities, high amounts of uncollected penalty fees, illegal track activity, and uncertainty around the implications of a new federal horseracing law.

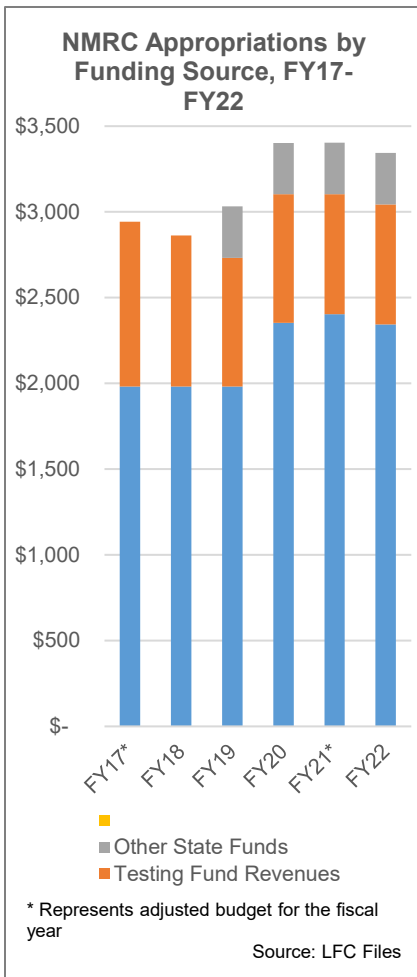
The subcommittee recommended a more comprehensive hearing on extension of agency life during the 2021 interim. The agency has until July 1, 2022 to operate, and statutes of the Horse Racing Act are in place until the same date, providing more time for further analysis and discussion.

## New Mexico Racing Commission

NMRC was created in 1938 to regulate New Mexico’s pari-mutuel horseracing industry to protect the interest of wagering patrons and the state and promote a climate of economic prosperity for horsemen, horse owners, and racetrack management. The commission has six primary activities: equine drug testing, investigations and enforcement; licensing; auditing and financial oversight, race meet oversight; and administration and support. The commission oversees racing at five racetracks, as well as races at the New Mexico State Fair. All five racetracks also operate casinos. While the number of racetrack licenses that can be issued is not limited, the tribal gaming compact limits the number of racetrack casino operator licenses to six. NRMC announced in 2019 it has no plans to award a sixth and final racetrack casino license, indicating a sixth license would not be in the best interest of the state or existing racetrack casino operators.

**Agency Budget.** The commission’s general fund appropriation for FY22 was \$2.34 million, in addition to \$700 thousand in revenue from the racehorse testing fund and \$300 thousand from industry revenue, representing a total budget decrease of 1.8 percent from the prior year. Cash balances in the racehorse testing fund were approximately \$644.5 thousand as of May 2021. Unexpended or unencumbered balances over \$600 thousand revert to the general fund at the end of the fiscal year.

The agency’s overall budget grew approximately 14 percent between FY17 and FY22, with general fund revenues growing by 18 percent.



### New Mexico Racing Commission Budget

Category	FY20 Actual	FY21 Budgeted	FY22 Projected
<b>SOURCES</b>			
General Fund Transfers	\$2,400.9	\$2,403.3	\$2,359.3
Other Transfers	\$458.7	\$700.0	\$700.0
Other Revenues		\$300.0	\$300.0
<b>TOTAL SOURCES</b>	<b>\$3,084.9</b>	<b>\$3,403.3</b>	<b>\$3,359.3</b>
<b>USES</b>			
Personal Services and Employee Benefits	\$1,338.3	\$1,664.9	\$1,620.9
Contractual Services	\$835.3	\$1,512.8	\$1,512.8
Other Costs	\$209.3	\$225.6	\$225.6
<b>TOTAL USES</b>	<b>\$2,382.9</b>	<b>\$3,403.3</b>	<b>\$3,359.3</b>

Horseracing generates revenues of approximately \$900 thousand per year. Revenues come from a pari-mutuel tax on wagering, a daily racing tax, licensing fees, and occupational fines.

The racing industry relies heavily on casino revenues to fund racing purses, or prize money, with racing purses receiving 20 percent of net win from racetrack casinos. In FY20, purse money totaled \$34.23 million, down from \$48.1 million the previous year, due to impacts of Covid-19 restrictions on gaming activity.

**Commission Members.** The commission is composed of five governor-appointed positions. At least three members must be New Mexico racehorse breeders, and there is no statutory requirement for the commission to include public members. Commission chair Sam Bregman was appointed in February 2021. NMRC considers Mr. Bregman a public member, as he is not directly

### Commission Organization

- Y **1 of 5** Commissioner vacancies
- G **0 of 4** Commissioners are serving expired terms
- G **1 of 5** Commissioner positions are public member positions
- G **15** Meetings in 2020

involved in racing. However, he is a horse owner, and the commission could benefit from a true public member. The commission currently has one vacancy that occurred in December 2020. The commission has two committees – rules/medication and race dates.

### New Mexico Racing Commissioners

Member Name	Appointment Date	Qualification	Locations
Sam Bregman (Chair)	February 10, 2021	Public Member	Albuquerque
David "Hossie" Sanchez	April 25, 2019	Industry Representative	Albuquerque
John Buffington	April 25, 2019	Industry Representative	Farmington
Billy G. Smith	April 25, 2019	Industry Representative	Albuquerque
<i>Vacant</i>			

The commission typically meets at least once a month. In 2020, the commission met 15 times, which included ten regular meetings and five special meetings. The race dates committee met twice, while the rules/medication committee met once. The commission met five times in the first half of 2021, and the rules/medication committee met once.

**Licensing and Constituency.** NMRC licenses participants in the state’s horseracing industry, including jockeys, owners, vendors, veterinarians, clerks, announcers, grooms, trainers, and others. The agency offers 70 license types, with fees and requirements varying based on the license type. Fees range from \$10 to \$200 (see full fee schedule in Appendix B). NMRC reviews applicants’ qualifications and checks federal and state criminal background checks.

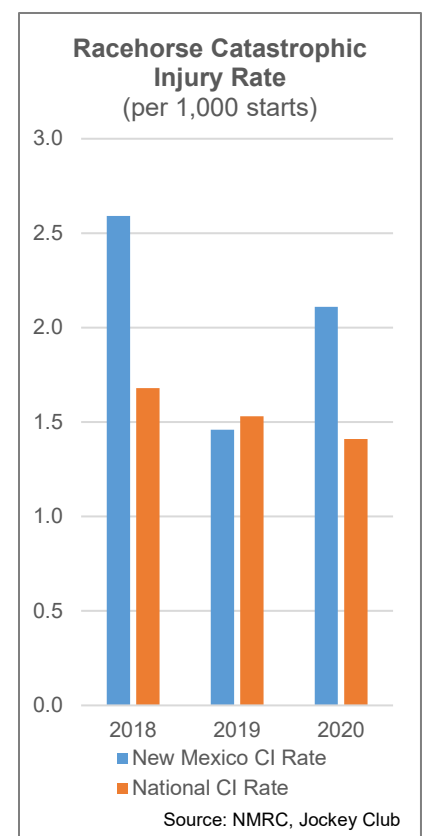
The agency also conducts inspections of racing facilities and equipment before each live race meeting to ensure compliance with statute, codes, and safety standards. Racing stewards represent NMRC at meets and are accredited by nationally-recognized programs.

### Racehorse Fatalities and Drug Testing

While the agency has made progress in recent years, increasing testing and strengthening penalties, and continues to work towards enhancing integrity of the racing industry, the rate of racehorse fatalities remains above national averages in many years.

**Racehorse Fatalities.** Historically, New Mexico has seen high rates of racehorse injuries and fatalities. For example, a 2012 [investigation](#) by the New York Times found that five of the seven tracks with the nation’s highest incident rates were in New Mexico, and four of the state’s five tracks had incident rates double the national average. In recent years, tracks have made progress in reducing fatality rates, but rates are still high in some years and 112 horses died as a result of race-related catastrophic injuries between 2018 and 2020.

The statewide fatality rate fell from 3.5 to 2.6 catastrophic injuries per 1,000 starts between 2013 and 2018, and all five racetracks saw declines in their fatality rates. The rate fell to 1.46 per 1,000 starts during the 2018-2019 season, before rising to



2.11 per 1,000 starts for the 2019-2020 season. The agency has set a target of less than 1.41 catastrophic injuries per 1,000 starts for FY21 and FY22.

**Catastrophic Injury Rate by Racetrack**  
(per 1,000 starts)

Racetrack	2017-2018	2018-2019	2019-2020
Sunland Park	2.43	1.03	1.62
SunRay Park*	2.59	1.34	n/a
Ruidoso Downs	2.37	2.07	2.25
Downs at Albuquerque	3.15	1.74	2.55
New Mexico State Fair*	0.00	0.80	n/a
Zia Park	3.48	1.45	2.26
<b>TOTAL</b>	<b>2.59</b>	<b>1.46</b>	<b>2.11</b>

Note: The 2020 season was cancelled at SunRay Park and the State Fair

Source: NMRC

***In 2020, the national rate of racehorse fatalities fell to the lowest rate since 2009***

Nationally, racehorse fatalities have fallen in recent years. The Jockey Club’s Equine Injury Database showed the lowest rates of fatal injury in 2020 – 1.41 per 1,000 starts – since 2009.

**Racehorse Testing.** NMRC tests blood, urine, and hair samples from racehorses, both after races and outside of competitions. Funding for testing comes from the racehorse testing fund, which receives 50 percent of a pari-mutuel tax collected from racetrack licensees. Actual revenues for the racehorse testing fund were \$663 thousand in FY19 and \$458.7 thousand in FY20. Post-race testing increased steadily between 2017 and 2019, but fell significantly in 2020, due to decreased racing activity as a result of Covid-19. Positivity rates fell steadily during that time, with rates of less than 1 percent for both blood and urine samples in 2020, pointing to success in identifying violators.

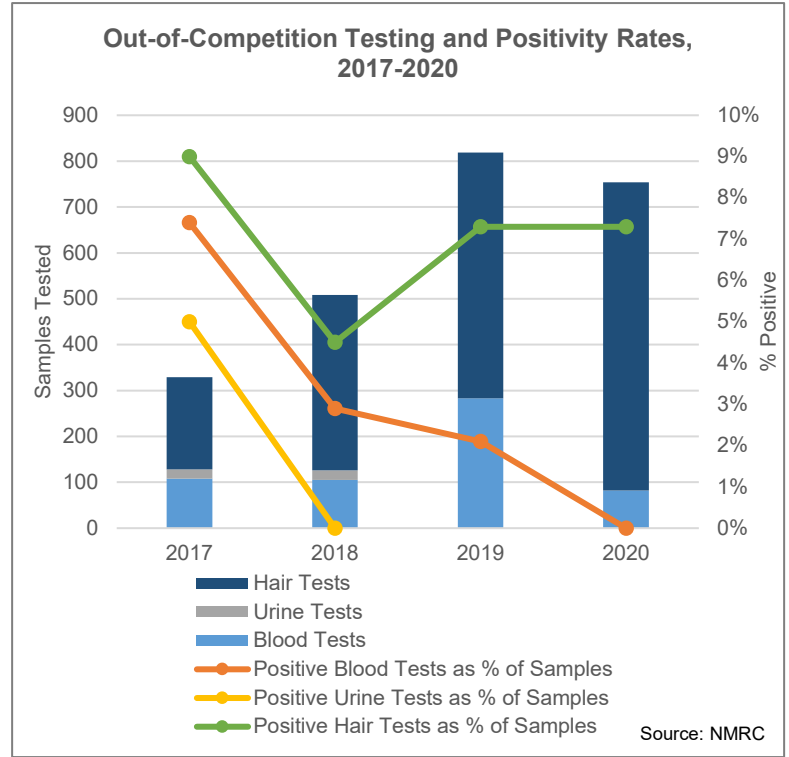
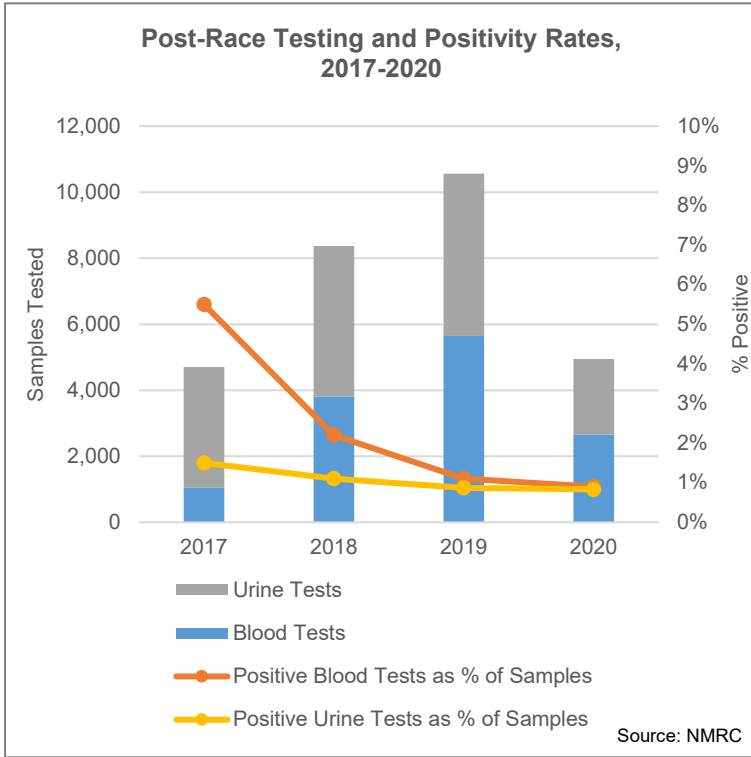
**Drug Use and Racehorse Deaths in the News**

In 2019, the Jockey Club released a [report](#) citing improper drug use as a critical problem contributing to racehorse deaths. The report came after the death of 22 racehorses at California’s Santa Anita Park in less than three months.

A May 2021 National Geographic [article](#) notes that while some drugs are legal and beneficial at certain times and in certain dosages, drugs can also be abused to mask a horse’s injury or provide a competitive edge. Development of new synthetic drugs makes it difficult for regulators to stay on top of drug abuse in the industry.

A high-profile case hit the news in May, when the 2021 Kentucky Derby winner tested positive for betamethasone, a therapeutic drug whose use is banned within 14 days of racing. The trainer was suspended by Churchill Downs, home of the Derby, for two years.

In 2016, NMRC increased its out-of-competition testing regimen, performing more drug tests on horses outside of race meets. The number of total samples tested more than doubled, from 329 to 754, between 2017 and 2020. However, positivity rates remain high. The positivity rate for hair samples, which accounted for almost 90 percent of all out-of-competition samples in 2020, was 7.3 percent, suggesting a need to further increase out-of-competition testing. NMRC also wants to implement drug testing during training hours to ensure that horses are not being trained for races under the influence of pain-masking drugs.



The agency currently has one staff veterinarian, and indicates it needs two more to effectively conduct drug testing and other oversight activities, including meeting its goal of having a veterinarian examine all horses scheduled to race each race day. Currently, the agency is able to inspect less than 30 percent of horses before a race.

NMRC has adopted the Association of Racing Commissioners International (ARCI) “model rules” of racing, which are used as a national standard for horseracing, and has implemented stronger sanctions against violators in recent years. In March 2021, the commission adopted the latest ARCI guidelines, which included more restrictive standards for certain drugs and harsher penalties for violations. For the most serious drug violations, trainers can receive a suspension ranging from one to three years for a first offense, as well as fines up to \$25 thousand or 25 percent of the total purse. For the least serious type of drug violations, the recommended penalty for a trainer committing a first offense is a fine of at least \$1,000 but no suspension. However, penalties for owners are less severe. For the most serious type of drug offense, the recommended penalty is loss of purse and fines for repeat offenses, as well as suspension of the horse, but not the owner. In addition, ARCI sanctions do not apply to veterinarians, who may knowingly administer prohibited substances to racehorses.

***Funding for a new federal horseracing authority will come in part from states, which will likely impose additional fees on New Mexico racing participants***

**Federal Standards.** The federal Horseracing Integrity and Safety Act, passed in late December of 2020, enacts more stringent and standardized national anti-doping standards for horseracing, creating an independent anti-doping authority. The national standards, which will go into effect on July 1, 2022, will replace a patchwork of different rules and standards across states, which have allowed cheaters to seek out races with more lenient rules. Funding for the authority will come in part from states, which will likely impose additional fees on New Mexico racing participants. However, NMRC has not yet developed a funding model, as racing jurisdictions have not received cost details from federal regulators. NMRC notes that costs will likely rise for testing, investigation, prosecution, and rulemaking under the new law, which could significantly increase the cost of regulating horseracing in the state.

NMRC also points out that currently, quarter horses are not covered by the new law, while thoroughbreds are covered, meaning that races at the same track could fall under two different jurisdictions. The quarter horse industry could choose to opt in to the federal law, but has concerns about the law banning the drug Furosemide, also known as Lasix. According to NMRC, racing in high elevations and arid environments like New Mexico increases the risk of pulmonary hemorrhaging, necessitating the use of Lasix to prevent respiratory bleeding (Lasix is also used as a diuretic, causing a horse to lose fluid before a race and allowing the animal to run faster, and is banned for race-day use in Europe, Asia, and Australia).

A national horsemen's group has challenged the constitutionality of the new federal law, claiming that it violates a right to due process.

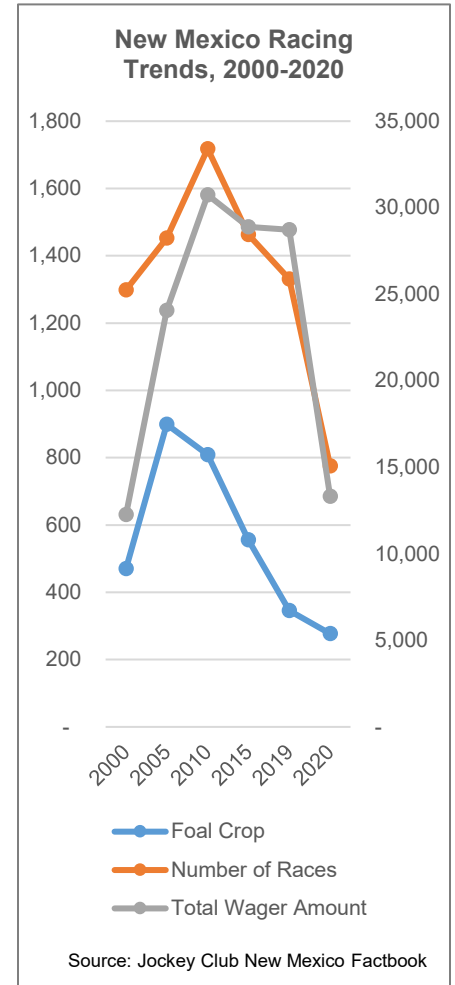
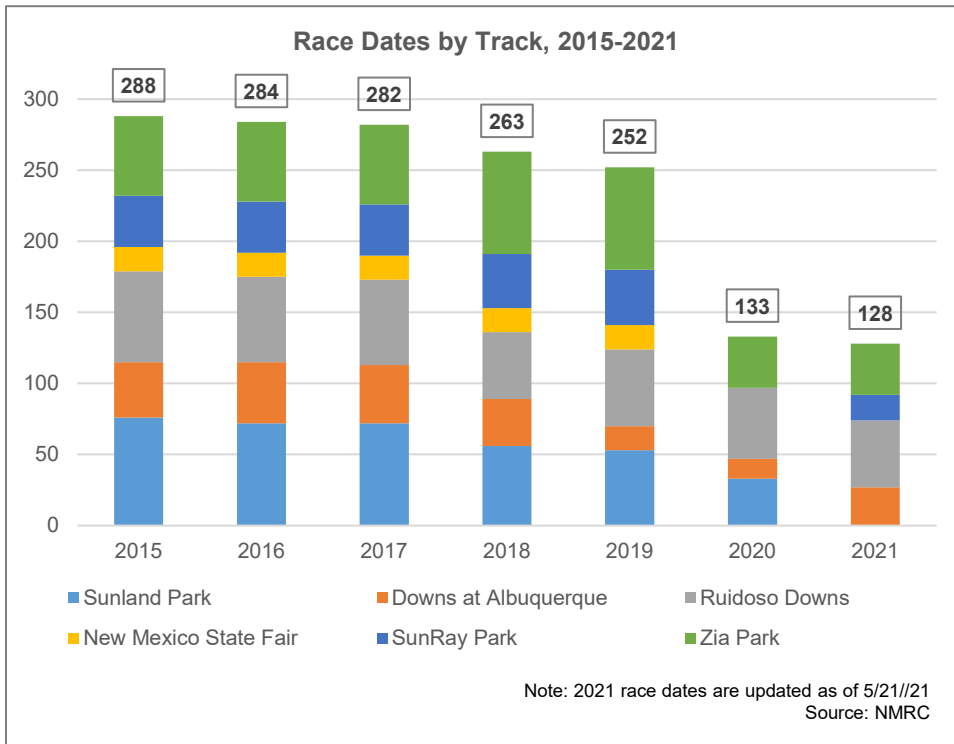
**Illegal Track Activity.** Illegal horse tracks – sometimes called “bush tracks” – continue to negatively affect the reputation and operations of legal horseracing in the state. According to the agency, bush tracks attract unsafe and illegal activity, and individuals who administer prohibited drugs to racehorses at bush tracks may then race the horses at licensed racetracks. NMRC cites a race meet in Hobbs, near bush tracks in West Texas, that resulted in 50 drug positives in 56 days of racing, as well as a 2016 report that found evidence of licensees bringing illegal drugs and guns onto racetracks. In March 2020, an illegal racetrack was reported under construction in Valencia County. However, there is no reliable source of data to suggest whether the number of illegal tracks, and activity at those tracks, is increasing or decreasing. Increasing out-of-competition testing could help to root out racehorse doping associated with illegal track activity.

While the Horse Racing Act (Section 60-1A-18 NMSA 1978) specifies that it is a violation of the Act to hold a public horse race for profit without a license issued by NMRC, the agency does not have law enforcement capabilities and must rely on law enforcement agencies to address illegal track activity. NRMC notes that it has been monitoring illegal tracks in Valencia County and is in contact with county officials and law enforcement. If requested, the agency provides licensing and horse ownership information, as well as drug classification information, to law enforcement agencies.



## Declining Popularity of Horseracing

Nationally and in New Mexico, trends suggest that horseracing is in decline, a trend that has likely been accelerated by the Covid-19 pandemic. In New Mexico, the number of registered thoroughbred foals fell by almost 60 percent between 2010 and 2019, and then fell another 20 percent in 2020. The number of races fell by nearly a quarter between 2010 and 2019, before falling by 42 percent in 2020. The Covid-19 pandemic significantly impacted the industry, forcing the cancellation of over half of scheduled race days in 2020 and 2021. The 2019-2020 and 2020-2021 seasons were both amended a number of times, and as of a schedule revision in late May for the current season, there are a total of 128 race days scheduled across four venues, with no races at Sunland Park or the State Fair.



The shutdown of casinos in March 2020 also negatively affected horseracing. Racetracks receive 20 percent of net win from racetrack casino operators for purses, and total purse revenues fell from \$48.1 million in FY19 to \$34.4 million in FY20 as a result of decreased casino activity.

NMRC has not released an annual report since 2018, but in that year, the total pari-mutuel handle at race meets was \$142.2 million, up almost ten percent from 2017 and 23 percent from 2016. NMRC indicates that preliminary figures from the 2021 racing season show that the total pari-mutuel handle at SunRay Park in Farmington was up 123 percent from 2019 (the racetrack did not hold races in 2020), suggesting that tracks could see stronger post-Covid growth in wagering and attendance.

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## Other Issues

**Advance-Deposit Wagering.** Advance Deposit Wagering (ADW) would allow New Mexicans to wager on horse races from a mobile device or computer. Currently, New Mexicans can wager on horse racing online, through companies operating without a license, but are not permitted to bet on in-state races, which may divert some pari-mutuel revenue out of the state. NMRC supports allowing ADW in New Mexico. While expanding forms of wagering or gambling in the state could risk violating the Indian Gaming Compact and voiding the state's revenue sharing agreement with gaming tribes, the tribal gaming compact allows for "the conduct by licensed horse racetracks [...] of pari-mutuel betting on races at such tracks, and on simulcast races at other tracks elsewhere in the country." A proposal to allow ADW during the 2021 regular legislative session (House Bill 199) failed.

**Penalty Fee Collections.** NMRC continues to face challenges in collecting fines, with the agency's 2019 audit noting that the agency's "ability to collect the imposed fines is limited and often impossible, [and] as a result the uncollectable portion is very high." In 2019, the agency estimated that of the \$1 million in fines receivable, approximately \$945 thousand was uncollectable. Fines are required to be paid within 30 days, and unpaid fines can result in a suspension for the offending owner or trainer, but offenders often appeal, keeping fines tied up in legal proceedings, sometimes for years. For example, trainer Bobby Martinez was given a 34-year suspension and fined \$480 thousand for multiple drug violations in 2019 and another licensee was fined \$300 thousand. Both cases are still under appeal. NMRC also notes that some violators cannot afford to pay their fines. Penalties are based on ARCI guidelines.

While the agency struggles to collect unpaid fines, it indicates that penalties are effective in keeping violators out of the industry. In 2019, the commission approved a rule that would not let any horse involved in a drug violation to participate in racing in any jurisdiction in the United States until the adjudication process is concluded, presumably making it less attractive for violators to appeal sanctions and enter into drawn-out appeals processes. It is not yet clear whether this rule is leading to more timely collections. NMRC recently hired an in-house attorney and is exploring options to impose liens against property or taxes of delinquent licensees.

**Horsemen's Association Lawsuit.** In May, the New Mexico Horsemen's Association (NMHA) filed a lawsuit against NMRC, after the commission voted to direct racetracks to withhold transfers of 1 percent of purse money to NMHA, as well as other fees that NMHA members pay. The funds in question amount to approximately \$700 thousand a year. NMHA claims that the NMRC directive would deprive it of a large portion of its funding, and also claims that NMRC is improperly using purse monies for operational expenses at racetracks. While racetracks have traditionally made transfers to NHMA, the Horse Racing Act does not appear to require these transfers.

NMHA previously filed a lawsuit against the commission in December, alleging that NMRC was improperly collecting fees from horsemen since 2004 to pay for liability insurance for jockeys.

**Of \$1 million in fines receivable in 2019, the agency estimated that approximately \$945 thousand was uncollectable**



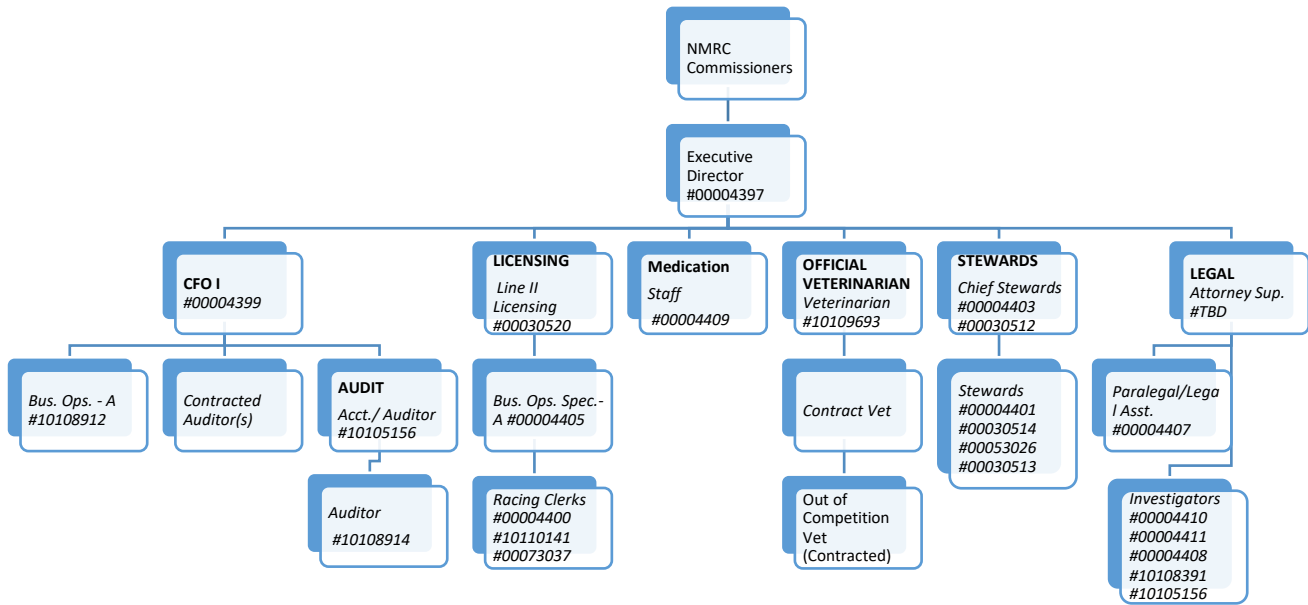
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NMHA represents approximately 4,000 thoroughbred and quarter horse owners and trainers in New Mexico.

### **Recommended Next Steps**

- Draft bill to extend the sunset date of the New Mexico Racing Commission by five years, to July 1, 2026.
- As part of the sunset extension bill, consider requiring the commission to make progress towards improving collections of penalty fee revenue and enforcing sanctions on violators.
- As part of the sunset bill, consider requiring the commission to add at least one public member.

# Appendix A. NMRC Organizational Structure



## Appendix B. NMRC License Fee Schedule

License Type	License Fee	License Type	License Fee
Announcer	\$75.00	Pari-mutuel employee	\$10.00
Assistant general manager	\$100.00	Pari-mutuel manager	\$75.00
Assistant racing secretary	\$20.00	Placing judge	\$20.00
Association	\$100.00	Photo employee	\$10.00
Auditor, official	\$75.00	Plater	\$100.00
Authorized agent	\$10.00	Pony person	\$10.00
Clerk of scales	\$20.00	Private barns	\$100.00
Clocker	\$20.00	Racing secretary-handicapper	\$75.00
Club, racetrack	\$100.00	Security chief	\$75.00
Concession employee	\$10.00	Security staff	\$10.00
Concession operator	\$100.00	Simulcast company employee	\$10.00
Custodian of jockey room	\$20.00	Simulcast coordinator	\$75.00
Director or corporate officer	\$100.00	Simulcast operator	\$100.00
Director of operations	\$75.00	Special event, 1 or 2 day	\$200.00
Director of racing	\$75.00	Stable name (3 year)	\$200.00
Exercise person	\$20.00	Stable name (1 year)	\$100.00
General Manager	\$100.00	Stable superintendent	\$75.00
Groom	\$10.00	Starter	\$75.00
Horseman's bookkeeper	\$20.00	Starter assistant	\$20.00
Identifier (horse)	\$20.00	Ticket seller (admissions)	\$10.00
Janitor	\$10.00	Timer	\$20.00
Jockey (3 year)	\$200.00	Totalisator employee	\$10.00
Jockey (1 year)	\$100.00	Totalisator operator	\$100.00
Jockey (apprentice) (3 year)	\$200.00	Track maintenance, employee	\$10.00
Jockey (apprentice) (1 year)	\$100.00	Track physician	\$100.00
Jockey agent	\$75.00	Track superintendent	\$75.00
Jockey valet	\$10.00	Trainer (3 year)	\$200.00
Laborer	\$10.00	Trainer (1 year)	\$100.00
Official personnel (specify position)	\$10.00	Trainer assistant	\$20.00
Official veterinarian (3 year)	\$200.00	Veterinarian assistant	\$20.00
Official veterinarian (1 year)	\$100.00	Veterinarian, practicing (3 year)	\$200.00
Outrider	\$20.00	Veterinarian, practicing (1 year)	\$100.00
Owner (3 year)	\$200.00	Veterinarian, racing (3 year)	\$200.00
Owner (1 year)	\$100.00	Veterinarian, racing (1 year)	\$100.00
Paddock judge	\$20.00	Watchman	\$10.00