Texas Register

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Texas Register

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Governor–appointments, executive orders, and proclamations

Attorney General–summaries of requests for opinions, opinions, and open records decisions

Emergency Sections–sections adopted by state agencies on an emergency basis

Proposed Sections–sections proposed for adoption

Withdrawn Sections–sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

Adopted Sections–sections adopted following a 30-day public comment period

Open Meetings–notices of open meetings

In Addition–miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

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In order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 TexReg 3."

How To Research: The public is invited to research rules and information; of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, sections number, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How To Cite: Under the TAC scheme, each agency section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code;*

TAC stands for the *Texas Administrative Code;*

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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In Additions

Texas Air Control Board

Texas Department of Banking

Office of Consumer Credit Commissioner

Credit Union Department

Texas Department of Health

Texas Department of Human Services

Texas State Board of Examiners of Professional Counselors

Name: Chris Gradt

Grade: 12

School: Plano High School, Plano

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TAC Titles Affected–February

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Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 305. Licenses for Pari-Mutuel Racing

Subchapter C. Racetrack Licenses

Application Procedure

• 16 TAC §305.83

The Texas Racing Commission adopts on an emergency basis an amendment to §305.83, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to designate a primary contact person and clarifies the deadline for filing the documents. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules relating to making racetrack applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.83. Application Documents.

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

(d) The applicant must state the name, address, and telephone number of an individual designated by the applicant to be the primary contact person for the commission during the application process.

(e)[(d)] The applicant must submit all application documents **not later than 5 p.m. on the last day of** [before the end of] the application period.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001642 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 15, 1990

Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.84

The Texas Racing Commission adopts on an emergency basis an amendment to §305.84, concerning the types of application documents that must be submitted for a racetrack license. The amendment clarifies the format for a racetrack application and the types of tables that must be included. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making applications for racetrack licenses are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02 and §6.03, which authorize the commission to adopt rules to administer the Texas Racing Act and to prescribe a form for making racetrack applications.

§305.84. Type of Documents Required.

(a) (No change.)

(b) In addition to documents required under subsection (a) of this section, an applicant requesting to operate a racetrack for more than 16 but less than 45 days a year must submit the documents required by this subchapter concerning:

(1) financing; and

(2) operations [and financial forecasts].

(c) (No change.)

(d) An applicant for a racetrack license must submit the application documents in printed or typewritten form on 8 1/2 by 11 inch paper; architectural drawings must be submitted on 11 by 15 inch paper, folded to 8 1/2 by 11 inches. The section, subsection, and subdivision designation of the rule that requires the submission of a document must be noted at the top of each page of the document. The applicant must provide photographs of any three-dimensional exhibits. The documents must be submitted in three ring binders, consisting of five volumes as follows: Volume 1: executive summary; Volume 2: background information and ownership; Volume 3: site and facilities and economic and social projections; Volume 4: financing and operations; Volume 5: safety and security.

(e) Each volume must contain a table of contents and dividers to clearly designate the various sections covered in the volume. The documents within each volume must be consecutively paginated.

(f) The executive summary must contain an index of the entire application. The executive summary must include a table which contains information regarding the ownership, residency, and contributions of each officer, director, partner, or owner of an interest of 5.0% or more in the applicant. The table must be submitted in the following format:

OWNERSHIP SUMMARY

Name	Reason for Inclusion*	Cash Contributed	Other Capital Contributed**	Expected or Actual Date of Contribution	Percent Ownership	10 Year Texas Resident?
TOTALS					100%	

* Director, Officer, Organizer, Partner, or Owner as stipulated by rules 305.101(a), 305.123, 305.126, or 305.127.

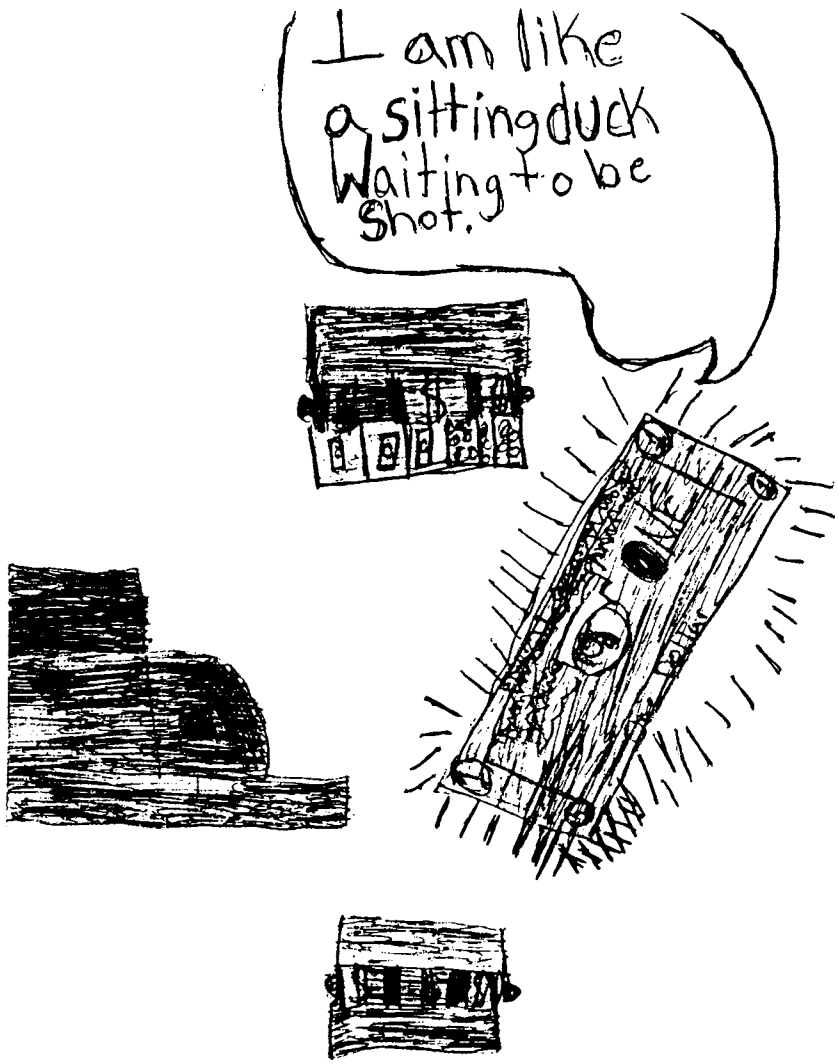
** Specifically identify any services, physical goods, or real estate contributed in return for ownership exceeding 5% of total cash and other capital contributed.

(g) The executive summary must include a table containing an attendance and wagering summary of information submitted in the financial forecasts. The table must be submitted in the following format:

Attendance and Wagering Summary

	APPLICANT FORECASTED DATA				
	19x1	19x2	19x3	19x4	19x5
Number of Race Days					
Annual Attendance					
Average Daily Attendance					
Pari-Mutuel Handle					
Average Handle per Day					
Per Capita Handle					
Total Purses[1]					
Average Purse per Day					

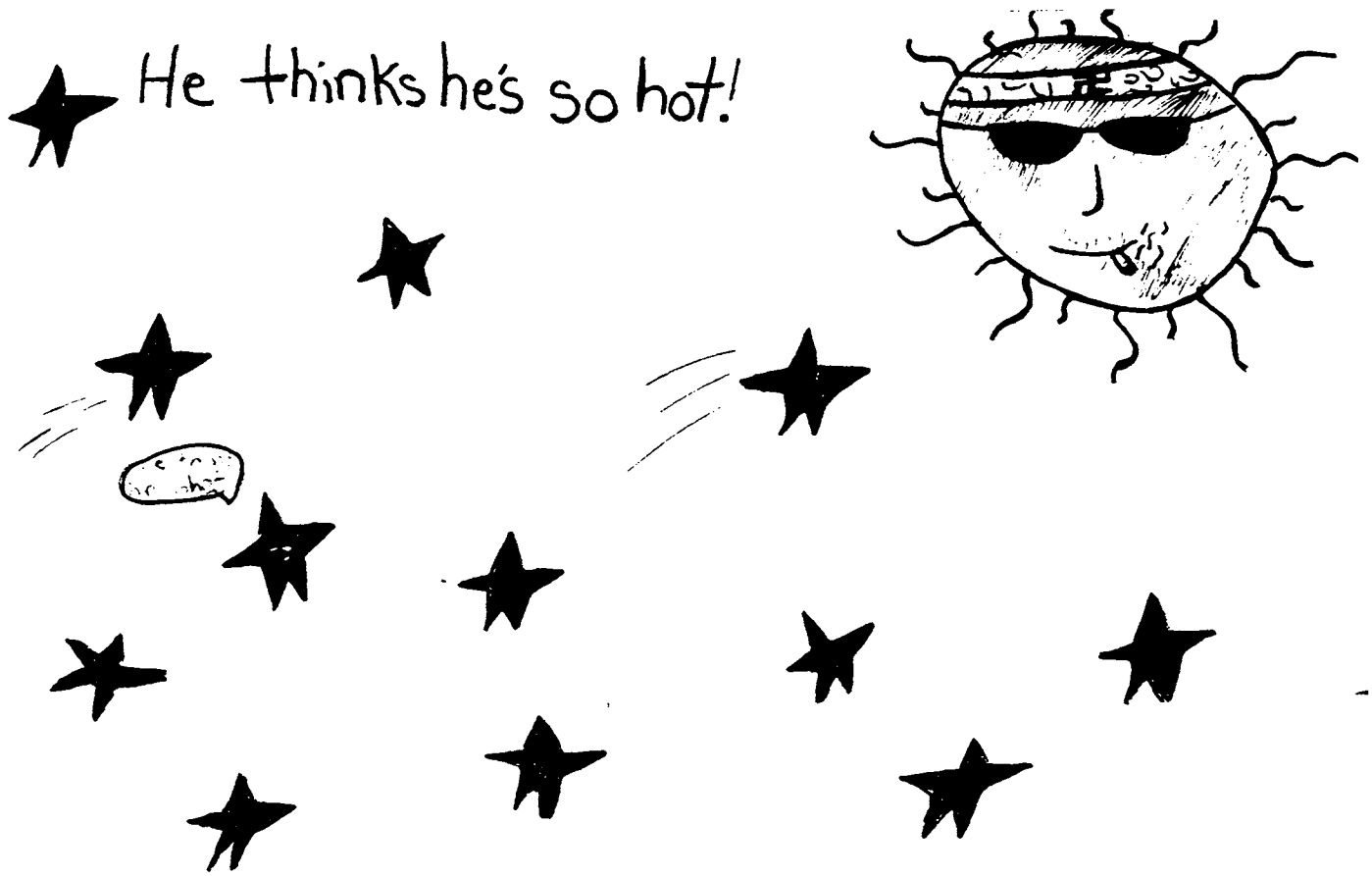
(1) Include statutory purse amount (5% of total handle) and non-statutory purse supplements.



Name: Priscilla Zuniga

Grade: 5

School: Forbes Elementary #124, San Antonio



Name: Adam Cardenas

Grade: 5

School: Forbes Elementary #124, San Antonio

Issued in Austin, Texas on February 5, 1990.

TRD-9001641 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 15, 1990

Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.85

The Texas Racing Commission adopts on an emergency basis an amendment to §305.85, concerning the review of application documents for a racetrack license. The amendment clarifies the procedure for reviewing application documents for completeness and certification of receipt. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making applications for racetrack licenses are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.85. Review of Application Documents and Certification of Receipt.

(a) Not later than the **15th** [fifth] day after the last day of an application period, the executive secretary shall [make a preliminary] review [of] each application submitted **to** [. For each application, the executive secretary shall] determine whether the application is complete and complies with **this chapter** [the rules of the commission].

(b) If the executive secretary determines that **an** [the] application is not complete or does not comply with **this chapter** [the rules of the commission], the executive secretary shall notify the applicant in writing and state the nature of the deficiency in the application. The applicant shall submit the documents necessary to complete the application before the **30th** [15th] day after the last day of the application period. If the applicant fails to submit the requested documents in a timely manner, the executive secretary may not certify the applications as received.

(c) (No change.)

Issued in Austin, Texas, on February 5, 1990.

TRD-9001640 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 15, 1990

Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.87

The Texas Racing Commission adopts on an emergency basis new §305.87, concerning the submission of prepared testimony in support of an application for a racetrack license. The section requires an applicant to submit prepared testimony not later than 21 days before the hearing on the application. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The section is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making a racetrack license application are in place.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.87. Prepared Testimony. An applicant for a racetrack license must file prepared testimony not later than 21 days before the date set for the hearing on the application. The prepared testimony must be in printed or typewritten form on 8 1/2 by 11 inch paper, and must be submitted in not more than two three-ring binders, similar in design to the binders used for the application documents.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001639 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 15, 1990

Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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Background Information

• 16 TAC §305.107

The Texas Racing Commission adopts on an emergency basis new §305.107, concerning the submission of application documents for a racetrack license. The section requires an applicant to submit a list of all consultants used by the applicant for the preparation of the application and the preparation for pari-mutuel racing. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The new section is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making a racetrack license applications are in place.

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.107. Consultants.

(a) The application documents must include a list of all paid consultants used by the applicant during the three-year period preceding the date the application was filed. The documents must also include a list of all paid consultants expected to be used by the applicant to prepare for the hearing on the application and to prepare the racetrack for racing.

(b) The documents must state the name of the consultant, the type of services rendered or expected to be rendered, and the cost incurred to date and the additional projected cost of the services. The documents must include all consulting services, such as veterinary, racetrack design or maintenance, management, marketing, legal, or legislative services.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001638 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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Ownership

• 16 TAC §305.125

The Texas Racing Commission adopts on an emergency basis an amendment to §305.125, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to submit a copy of each prospectus, pro forma, or other promotional material given to potential investors. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.125. Capital Stock.

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

(h) The application documents must include a copy of each prospectus, pro forma, or other promotional material given to potential investors about the proposed racetrack.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001637 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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Site and Facilities

• 16 TAC §305.141

The Texas Racing Commission adopts on an emergency basis an amendment to §305.141, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to submit an aerial photograph of the racetrack site and a photograph of the site from each adjacent roadway. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.141. Location. The application documents must include:

(1) the name of the county **and/or** [and] municipality in which the racetrack is to be located;

(2) the actual legal description of the racetrack site;

(3) the name and address of each person who has held title to the real property during the five-year period preceding the date on which the application documents are **filed** [submitted to the commission].

(4) the name and address of each person who holds a mortgage or other security interest in the real property; [and]

(5) an unconditional commitment by the owner for a title insurance policy; [.]

(6) an aerial photograph of the racetrack site, platted by government lot;

(7) a photograph of the site from each roadway adjacent to the site; and

(8) a description of the current commercial and industrial uses for all property within a 1/2-mile area around the racetrack site.

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TRD-9001636 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.143

The Texas Racing Commission adopts on an emergency basis an amendment to §305.143, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to state the applicable zoning designation for the racetrack site and whether a height variance will be required. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making a racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.143. Zoning and Governmental Improvements.

(a) The application documents must describe **the applicable zoning designation for the racetrack site and** any local zoning or special use permits**, including liquor sales permits,** that the applicant must obtain for the racetrack site. **In addition, the documents must describe** [,] the procedure by which the applicant must obtain the permit, all conditions likely to be placed on the permit, and the estimated date on which the applicant will obtain the permit. **The documents must state whether a variance is required for the height of the facilities.**

(b)-(c) (No change.)

(d) The application documents must state whether local governmental approval is necessary for **making** [financing] improvements described under subsections (b) or (c) of this section, and include a description of the procedure by which the approval is obtained, all conditions likely to be placed on the approval, and the estimated date on which the approval will be granted.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001633 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 15, 1990

Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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Site and Facilities

• 16 TAC §305.144

The Texas Racing Commission adopts on an emergency basis an amendment to §305.144, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to state whether the proposed racetrack site is located in a flood plain and describe the flood history of the site. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.144. Defects.

(a) The application documents must state whether the racetrack site has any geological or structural defects and include a description of the engineering, design, and construction plans to remedy the defect.

(b) The application documents must state whether the racetrack site is located in a flood plain and include a description of the flood history of the site.

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TRD-9001632 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.145

The Texas Racing Commission adopts on an emergency basis an amendment to §305.145, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to submit a traffic flow study, prepared by a traffic engineer, and to state the experience of the engineer. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.145. Access and Transportation.

(a) The application documents must include **a traffic flow study prepared by a traffic engineer. The study must contain:**

(1) a statement, in miles, of the distance of the racetrack site from the center of the nearest population center;

(2) a description and map of the roadway access to the racetrack site;

(3) **a photograph of each roadway that will be used to access the site;**

(4) a description of the transportation facilities that serve the population center; and

(5) [(4)] a description of the transportation facilities that will serve the racetrack site.

(b) The application documents must state the experience and qualifications of the engineer who prepared the study submitted under this section.

(c) This section does not apply to an applicant for a Class 3 horse racetrack license.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001631 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.146

The Texas Racing Commission adopts on an emergency basis an amendment to §305.146, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to submit layout drawings of the proposed racetrack facilities and state the experience of the architect who designed the proposed facility. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.146. Architect's Drawings[Plan].

(a) The application documents must include layout drawings of the racetrack facility which show the proposed racetrack. The documents must include drawings of sufficient detail to illustrate the facilities and equipment specified under §305.147 of this title (relating to Track Dimensions and Specifications) §305.148 of this title (relating to Public Areas), and §305. 150 of this title (relating to Facilities for Animals and Personnel). The drawings must be drawn to scale and must show the measurements of all areas, including barns, stalls, and kennel buildings [If the applicant for a license to operate a racetrack intends to initiate construction or make improvements requiring construction on the racetrack facility, the application documents must include two copies of an architect's plan showing the details of the proposed construction].

(b) The application documents must include a description of the experience of the architect who designed the proposed facility and a statement of the number of racetracks the architect has visited and designed.

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TRD-9001629 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.147

The Texas Racing Commission adopts on an emergency basis an amendment to §305.147, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the type of information that must be submitted regarding the racetrack's dimensions and specifications. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.147. Track Dimensions and Specifications.

(a) The application documents must state the dimensions and specifications of **each** [the] track **to be provided on association grounds,** including:

(1) the total length;

(2) the width;

(3) the banking, **with a description of the method of transition into and out of turns;**

(4) **the radius of each turn and** the length of each stretch and chute;

(5) the distance between the judges' or stewards' stand and the finish lines;

(6) the distance between the starting gate and the first turn, if applicable;

(7) the location of the starting gates or boxes;

(8) the type of inside and outside rail;

(9) the composition and depth of the base, subsurface, and cushion of the track, **with a schematic drawing of the racing surface;** [and]

(10) the drainage system for the racing surface;

(11) the location and design of the video towers;

(12) the location and method of closing gaps in the rail;

(13) the location of lighting for the racetrack;

(14) the type of turn for a turf racetrack; and

(15) the method by which the track will be winterized.

(b) The application documents must describe the racing surface maintenance plan and the necessary maintenance equipment, including equipment to water the racetrack.

(c) The application documents must provide the information required by this section in sufficient detail to show compliance with the applicable sections of Chapter 309 of this title (relating to Operation of Racetracks).

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TRD-9001628 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.148

The Texas Racing Commission adopts on an emergency basis an amendment to §305.148, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the type of information that must be submitted regarding the public areas of the racetrack facility. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.148. Public Areas.

(a) The application documents must state the specifications for areas of the racetrack facility to which the public will have access and include a description of the configuration and location of:

(1) the grandstand;

(2) the seating areas, including;

(A) the total seating capacity **and the total number of seats;**

(B) the indoor and outdoor seating capacity;

(C) the reserved and nonreserved seating capacity; and

(D) the seating capacity in areas that are air-conditioned or heated;

(3) television monitors available for viewing by patrons;

(4) the pari-mutuel facility;

(5) the concession areas;

(6) the restrooms;

(7) the drinking fountains; [and]

(8) special clubs or other facilities for certain patrons;[.]

(9) the turnstiles or the method for counting patrons; and

(10) the fencing around the grandstand.

(b)-(d) (No change.)

(e) The application documents must state the maximum capacity of the facilities, and include the area in square feet of the grandstand and of the entire area accessible by patrons.

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TRD-9001627 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.150

The Texas Racing Commission adopts on an emergency basis an amendment to §305.150, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the type of information that must be submitted regarding the facilities for animals and personnel. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.150. Facilities for Animals and Personnel.

(a) The application documents must describe:

(1) the facilities for housing horses or greyhounds;

(2) the facilities for obtaining specimens for testing animals and humans for drugs;

(3) the lockout or the pre-race holding area and paddock;

(4) the facilities for owners, trainers, and other racetrack personnel;

(5) the facilities for a racetrack chaplain at a horse racetrack;

(6) the lounge area, **education facilities,** and other recreational facilities for racetrack personnel;

(7) the facilities for jockeys; [and]

(8) the **stand** [work areas] for the racing judges or stewards and **the work areas for** [other] representatives of the commission, **the Department of Public Safety, and the** [or] comptroller;[.]

(9) the size and composition of the planned path for horses from the stable to the pre-race holding area, paddock, racetrack, and test barn;

(10) the areas and equipment in and around the stable area where horses may be cooled out or leisurely exercised, such as gallops, grass paddocks, pastures, wood chip trails, or electric walkers;

(11) the equine ambulance and the location of the covered area for the equine ambulance;

(12) child care facilities for the patrons or the licensees.

(b)-(c) (No change.)

(d) The application documents must describe the extent to which the applicant's proposal exceeds the commission's minimum standards regarding:

(1) barn or kennel design and construction; and

(2) additional facilities or programs designed for the comfort of the licensees that work at the racetrack.

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TRD-9001626 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 15, 1990

Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.151

The Texas Racing Commission adopts on an emergency basis new §305.151, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to describe the location of utilities on the racetrack site and to describe all easements across the site. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The section is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making a racetrack license application are in place.

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.151. Utilities and Easements.

(a) The application documents must describe the location of utilities throughout the racetrack site, including:

(1) whether electrical service is overhead or underground; and

(2) the location, depth, and size of water and sewer lines.

(b) The application documents must state the name of each owner of an easement across the racetrack site and describe the nature of the easement.

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TRD-9001625 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.152

The Texas Racing Commission adopts on an emergency basis new §305.152, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to list each exemption from the commission's rules that is requested by the applicant. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The section is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making a racetrack license application are in place.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.152. Exemptions from Rules. The application documents must state each exemption requested under §309.2 of this title (relating to Exemption) and include all information required by that section.

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TRD-9001624 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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Financing

• 16 TAC §305.165

The Texas Racing Commission adopts on an emergency basis an amendment to §305.165, concerning the submission of application documents for a racetrack license. The amendment clarifies the format for submitting information regarding the budget for the application and the construction of the racetrack. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making a racetrack license application are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

*§305.165. **Budget** [Construction Costs].*

(a) The application documents must describe the costs of construction or improvement of the racetrack facilities. The documents must state whether each item is a fixed cost or a projection, and must include costs of:

(1) architectural and engineering services;

(2) land acquisition;

(3) site development;

(4) facility construction;

(5) equipment acquisition;

(6) **capitalized interest** [interim financing];

(7) **loan placement fees and other guarantee fees;**

(8) any other financing costs relating to construction;

(9) [organizational,] administrative[, and legal] services **relating to construction;**

(10) legal services relating to construction; and

(11) other areas relating to construction, providing details of any costs exceeding 5.0% of the total cost of construction.

[(8) permanent financing; and]

[(9) promotions and advertising.]

(b) The application documents must describe the costs of operating the facility and the association before the first day of racing, including the costs of:

(1) promotion and advertising;

(2) application development;

(3) application fees;

(4) licensing fees;

(5) management, administrative, and other salaries;

(6) interest and other financing costs not related to construction; and

(7) other areas relating to operations, providing details of any costs exceeding 5.0% of the total costs.

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TRD-9001623 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.166

The Texas Racing Commission adopts on an emergency basis an amendment to §305.166, concerning the submission of application documents for a racetrack license. The amendment clarifies the type of information that must be submitted regarding the time schedule for constructing the racetrack facilities. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.166. Time Schedule. The application documents must describe the time schedule proposed by the applicant for preparing the racetrack for racing. The time schedule must state the **estimated number of weeks, after the date of the commission order granting the license, that the racetrack will open and that each of the following tasks will begin and end** [proposed date for]:

(1) acquiring land;

(2) soliciting bids;

(3) awarding construction contracts;

(4) [beginning] construction;

(5) hiring management personnel [completing construction];

(6) **staffing and implementing marketing plan; and**

(7) training staff. [;and]

[(7) beginning racing.]

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TRD-9001622 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.167

The Texas Racing Commission adopts on an emergency basis an amendment to §305.167, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to state the amount of working capital the applicant intends to have available for the first six weeks of racetrack operations. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.167. Funding.

(a) The application documents must state each source of funds for the construction or operation of the racetrack. The documents must state:

(1) each source of equity contribution, the amount of contribution, and the terms of any commitment from that source; [and]

(2) each source of debt contribution, the amount of the contribution, and the terms of any

commitment from that source; **and** [.]

(3) the basis for valuing non-cash contributions.

(b) The application documents must include documents from which the commission can conclude that financing for the racetrack is reasonably assured, **such as letter of commitment,** and that the financing is conditioned only on conditions normal and customary to a sophisticated financing, such as acquisition of zoning variances, building permits, and other governmental approval.

(c) (No change.)

(d) The application documents must state the amount of working capital the applicant intends to have available for the first six weeks of racetrack operations, including funds for the payment of expenses for officials, drug testing, and purses.

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TRD-9001621 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.168

The Texas Racing Commission adopts on an emergency basis new §305.168, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to submit financial forecasts for each of the first five years the racetrack is in operation. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The section is adopted on an emergency basis to expidite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.168. Financial Forecasts.

(a) The application documents must include a financial forecast regarding the operation of the racetrack and pari-mutuel wagering for each of the first five years after racing with pari-mutuel wagering begins.

(b) The financial forecasts must include forecasts of revenues and expenses and changes in capital accounts and cash flows.

(c) The application documents must include a projected balance sheet to document the financial forecasts for each year for which a financial forecast is made. The balance sheet must state the assets, liabilities, and amount of capital of the applicant, based on variables such as:

(1) average daily attendance;

(2) average daily handle;

(3) average per capita wager;

(4) average number of admissions, including ticket price and free admission;

(5) the shares for the state and the association from the pari-mutuel handle;

(6) minimum purse schedule;

(7) payroll;

(8) taxes;

(9) cost of interest;

(10) cost of insurance, legal, and accounting services;

(11) cost of operating supplies and services;

(12) cost of maintenance and repairs;

(13) cost of totalisator services and pari-mutuel operations;

(14) advertising and promotion expenses;

(15) travel expenses; and

(16) equipment depreciation.

(d) The financial forecasts must be presented in the following format:

BALANCE SHEET - ASSETS

CURRENT ASSETS

Cash
Marketable securities
Receivables
- trade
- associated companies
- officers, directors, employees, and security holders
- others

Allowance for doubtful receivables
Inventories
Prepaid expenses
Other current assets

Total current assets

INVESTMENTS

Investments in associated companies
Other investments

Total investments

PROPERTY

Land
Land improvements
Buildings and building improvements
Equipment, furnishings and fixtures
Work in progress
Accumulated depreciation and amortization

Total property

OTHER ASSETS

Intangibles
Organization expense
Non-current receivables
- trade
- officers, directors, employees, and security holders
- others

Deferred charges
Miscellaneous

Total other assets

Total assets

CURRENT LIABILITIES

Accounts and notes payable
- trade
- associated companies
- officers, directors, employees, and security holders
- others

Notes payable - banks
Accrued liabilities
- outstanding mutuel tickets
- common purse pool and stakes
- extra days proceeds
- state mutuel tax
- state and federal income tax
- interest
- other

Current portion of long-term debt
Dividends payable
Other current liabilities

Total current liabilities

LONG-TERM LIABILITIES

Long-term liabilities
- associated companies
- officers, directors, employees, and security holders
- others

Total long-term liabilities

OTHER LIABILITIES

Deferred credits
Other liabilities

Total other liabilities

Total liabilities

CAPITAL

Capital shares
Additional paid-in capital
Retained earnings
Reacquired capital

Total capital

Total liabilities and capital

INCOME STATEMENT

REVENUE
Pari-mutuel commissions (takeout)
Breakage
Outstanding tickets
Other revenue
    Admissions
    Parking
    Programs
    Concession
    Miscellaneous
    Charity day proceeds
Total racing related revenue

EXPENSES
Statutory expenses
    State pari-mutuel tax
    Admissions tax
    Purses and awards
    Drug testing
    Breakage
    Outstanding tickets
Total statutory expenses

Operating expenses
    Compensation expenses
        Salaries and wages
        Payroll taxes and fringe benefits
    Total compensation expenses

Management fees
Nonstatutory purses, stakes, and awards
Advertising, publicity, and public relations
Concession expenses
Repairs and maintenance
Totalisator expenses
Rent
    - track and facilities
    - other
Insurance
Utilities
Real estate taxes
Other taxes
General and administrative
Legal and audit
Travel and entertainment
Depreciation
Amortization

Operating supplies and services
Charitable contributions
Other expenses (separately identify if amount exceeds 10% of total operating expenses)

Total operating expenses

Total statutory and operating expenses

INCOME FROM OPERATIONS

OTHER INCOME AND EXPENSES
Interest income
Interest expense
Other (separately identify)
Total income and expenses

INCOME BEFORE FEDERAL INCOME TAXES

PROVISION FOR FEDERAL INCOME TAXES
Current
Deferred
Total provision for Federal income taxes

NET INCOME

(e) The financial forecasts must include a report on the forecasts by an independent certified public accountant. The forecasts and accountant's report must be prepared in accordance with the *Guide for Prospective Financial Statements*, published by the Financial Forecasts and Projections Task Force of the American Institute of Certified Public Accountants. The application documents must state the qualifications and background of the accountant who prepared the report submitted under this section.

(f) The application documents must describe the criteria that were used to select the comparable racetracks for purposes of determining the information supplied in subsection (c) of this section.

(g) The application documents must include a projection of breakeven operations prepared on the basis of cash flow from operations after debt service. The projections must be prepared using the same number of race days, per capita handle, and other assumptions used in the financial forecasts and must express breakeven in terms of attendance per race day.

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General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Subchapter C. Racetrack Licenses

Operations and Financial Forecasts

• 16 TAC §305.181

The Texas Racing Commission adopts on an emergency basis an amendment to §305.181, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to specify the time of day racing will be conducted on each requested race date. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.181. Racing and Race Dates. The application documents must state the type of racing the applicant plans to conduct and the race dates the applicant is requesting. **For each race date requested, the documents must indicate the time of day the races will be conducted.**

Issued in Austin, Texas, on February 5, 1990.

TRD-9001655 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.182

The Texas Racing Commission adopts on an emergency basis an amendment to §305.182, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the type of information that an application for a racetrack license must submit regarding the people who are involved in the mangagement of the proposed racetrack and the strategies management intends to use for the operation of the racetrack. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.182. Management.

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

(c) The application documents must include an organizational chart of the management personnel and **the** [a] job description, **compensation, proposed percentage ownership,** and [the] qualifications for each position. **For each individual who has been hired to fill a**

key management position, the documents must include a resume and state the total number of years experience the individual has in:

(1) pari-mutuel racing;

(2) nonpari-mutuel racing; and

(3) other businesses relevant to the management position.

(d) (No change.)

(e) If the applicant intends to contract with a person or management company to manage the racetrack, the application documents must include:

(1) a copy of the written contract; [and]

(2) **a description of the person or company's previous experience operating a pari-mutuel racetrack; and**

(3) all the information required by this section as it pertains to the **person or** [management] company and its employees.

(f) **the application documents must describe the operating strategies the management intends to use to make the racetrack successful. The documents must describe the methods by which the application will:**

(1) budget for operations;

(2) monitor and control costs;

(3) select and implement marketing and promotional programs;

(4) analyze the performance of the racetrack's operations; and

(5) provide for internal reporting to management. [The application documents must identify any consultants or other persons with whom the applicant intends to contract or has contracted to provide management related services to the applicant. The documents must include:

(1) a copy of the written contract; and

(2) all the information required by this section as it pertains to the person providing management-related services.]

[(g) The application documents must include a business plan for the operation of the racetrack, containing information required by the commission.]

Issued in Austin, Texas, on February 5, 1990.

TRD-9001654 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.183

The Texas Racing Commission adopts on an emergency basis an amendment to §305.183, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the type of information an applicant for a racetrack license must submit regarding the marketing plans and budget for the proposed racetrack. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

*§305.183. **Marketing**[Promotion]*

(a) The application documents must describe the **methods by which the applicant intends to identify specific target segments of the applicant's market.**

(b) The application documents must include applicant's **advertising and promotional** plans for the development period and for the first race meeting. **The documents must include a discussion of the unique advertising and promotional efforts that will be made to enhance the image of racing in Texas and attract patrons to the racetrack.**

(c) The application documents must state the percentage of the total construction and pre-opening budget that is allocated for marketing.

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TRD-9001653 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.187

The Texas Racing Commission adopts on an emergency basis an amendment to §305.187, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to provide information regarding the amount of the applicant's anticipated revenues will be distributed to persons or entities outside the State of Texas. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

*§305.187. **Out of State Distributions.** [Financial Forecasts]* **The application documents must state the amount of money that will be paid by the association, during each of the first five years of operation, to entities located outside the State of Texas as:**

(1) payments of profit or other distributions to investors residing outside Texas;

(2) interest on debt with lenders located outside Texas;

(3) payment for supplies purchased from or services rendered by entities based outside Texas other than the management company;

(4) payments to the management company as reimbursement for expenses or as payment for services;

(5) rent for facilities or equipment owned by entities based outside Texas; and

(6) any other payments to out-of-state entities.

[(a) The application documents must include a financial forecast regarding the operation of the racetrack and pari-mutuel wagering for each of the first five years after racing with pari-mutuel wagering begins.]

[(b) The financial forecasts must include forecasts of revenues and expenses and changes in capital accounts and cash flows.]

[(c) The application documents must include a projected balance sheet to document the financial forecasts for each year for which a financial forecast is made. The balance sheet must state the assets, liabilities, and amount of capital of the applicant, based on variables such as:

[(1) average daily attendance;

[(2) average daily handle;

[(3) average per capita wager;

[(4) average number of admissions, including ticket price and free admission;

[(5) the shares for the state and the association from the pari-mutuel handle;

[(6) minimum purse schedule;

[(7) payroll;

[(8) taxes;

[(9) cost of interest;

[(10) cost of insurance, legal, and accounting services;

[(11) cost of operating supplies and services;

[(12) cost of maintenance and repairs;

[(13) cost of totalisator services and pari-mutuel operations;

[(14) advertising and promotion expenses;

[(15) travel expenses; and

[(16) equipment depreciation.]

[(d) The financial forecasts must include a report on the forecasts by an independent certified public accountant. The forecasts and accountant's report must be prepared in accordance with the Guide for Prospective Financial Statements, published by the Financial Forecasts and Projections Task Force of the American Institute of Certified Public Accountants.]

[(e) The application documents must state the qualifications and background of the accountant who prepared the report submitted under this section.]

Issued in Austin, Texas, on February 5, 1990.

TRD-9001652 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.188

The Texas Racing Commission adopts on an emergency basis an amendment to §305.188, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to describe the starting gate or box the applicant intends to use. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.188. Racing Equipment.

(a) The application documents must describe the equipment to be used in conducting races, including the starting **gate or box and the**[,] timing, photofinish, and videotape equipment.

(b)-(c) (No change.)

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TRD-9001651 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.189

The Texas Racing Commission adopts on an emergency basis new §305.189, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to submit information regarding the applicant's plans to ensure the health and well-being of the race animals. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The section is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.189. Animal Health and Safety.

(a) The application documents must describe the methods the applicant proposes to use to obtain better racing times, lessen injuries, lengthen the racing life of the applicable race animal, and achieve the maximum potential of the race animal.

(b) The application documents must describe the applicant's plans for alleviating stress in the race animal.

(c) The application documents must describe the applicant's plans for enhancing sports medicine research in Texas through the reporting and review of data on injuries and accidents in race animals.

(d) The application documents must describe the applicant's plans for incentives for retirement programs for race animals who can no longer race, such as horse shows or Adopt-A-Greyhound Programs.

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TRD-9001650 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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Operations and Financial Forecasts

• 16 TAC §305.190

The Texas Racing Commission adopts on an emergency basis new §305.190, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to describe the source of all funds for purses beyond the statutory requirements. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The section is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules of making racetrack license applications are in place.

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.190. Purse Structure. The application documents must describe the source of all funds for purses beyond the statutory requirements.

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TRD-9001649 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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Economic and Social Projections

• 16 TAC §305.204

The Texas Racing Commission adopts on an emergency basis an amendment to §305.204, concerning the submission of application documents for a racetrack license. The amendment expands the types of information an applicant for a racetrack license must submit regarding the affect of the racetrack on surrounding neighborhoods, and applicant's plans for public relations, and the relations with adjacent landowners. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.204. Social Information and Projection.

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

(c) The application documents must describe the applicant's plans to enhance the local community's appreciation of the racetrack. **The application documents must describe the effect the racetrack will have on any residential neighborhoods located within a 1/2-mile radius of the racetrack.**

(d) The application documents must describe the applicant's plans for public relations, such as racing journalism scholarships or veterinary medical scholarships.

(e) The application documents must state, for each entity owning property adjacent to the racetrack site, the entity's name, whether or not the applicant has contacted the entity regarding the proposed racetrack, and the entity's opinion of the proposed racetrack.

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TRD-9001648 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Safety and Security

• 16 TAC §305.221

The Texas Racing Commission adopts on an emergency basis an amendment to §305.221, concerning the submission of application documents for a racetrack license. The amendment clarifies the format for the submission of the safety and security plans. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.221. [Submission of] Security Documents.

[(a)] The application documents must include plans that provide the safety and security of the patrons, the racing animals, and the racetrack personnel.

[(b) The plans are confidential and must be submitted under separate cover and be labeled "Safety and Security Plans."]

Issued in Austin, Texas, on February 5, 1990.

TRD-9001647 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 15, 1990

Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.226

The Texas Racing Commission adopts on an emergency basis an amendment to §305.226, concerning the submission of application documents for a racetrack license. The amendment expands the type of information an applicant for a racetrack license must submit regarding fire safety at the proposed racetrack. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.226. Fire Safety and Emergency Procedures.

(a) The safety and security plans must describe the fire safety and emergency procedures for the racetrack, including procedures for:

(1) **protecting or** evacuating the patrons and controlling traffic in an emergency**, such as a natural disaster;**

(2) inspecting the facilities for fire hazards;

(3) restricting smoking in areas where smoking would create a fire hazard; and

(4) coordinating the efforts of the security personnel and the local emergency services.

(b) The safety and security plans must describe how the proposed racetrack is in compliance with National Fire Protection Association standards.

(c) The safety and security plans must describe the alternate source of power in the event of a power failure and the length of time the alternate source is capable of providing power. The documents must describe the facilities for storing fuel for the alternate source of power.

(d) The safety and security plans must describe the locations of fire hydrants on the racetrack site.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001646 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.227

The Texas Racing Commission adopts on an emergency basis an amendment to §305.227, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to submit information regarding the travel time to the hospital nearest the proposed racetrack and the average response time at that hospital. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.227. First Aid [and Medical] Plans.

[(a)] The safety and security plans must describe the first aid facilities and personnel available at the racetrack**,including the level of training of the personnel.** The safety and security plans must state the travel time to the hospital nearest the racetrack and the average response time at that hospital.

[(b) The safety and security plans must describe the applicant's plans for alleviating stress in race animals and individual licensees.

[(c) The safety and security plans must describe the applicant's plans for enhancing sports medicine research in Texas through the accumulation of data on injuries and accidents.]

Issued in Austin, Texas, on February 5, 1990.

TRD-9001645 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.228

The Texas Racing Commission adopts on an emergency basis new §305.228, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to submit a description of the applicant's plans for monitoring the safety of the race animals, patrons, and racetrack personnel. The section adopted on an emergency basis is contemporaneously proposed for public

comment in this issue of the *Texas Register.*

The section is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules for making racetrack license applications are in place.

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§305.228. Safety Monitoring. The application documents must describe in detail the applicant's plans for monitoring the safety of the race animals, patrons, and racetrack personnel.

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TRD-9001644 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Expiration date: May 16, 1990

For further information, please call: (512) 476-7223

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Subchapter E. Renewal of Licenses

• 16 TAC §305.264

The Texas Racing Commission adopts on an emergency basis an amendment to §305.264, concerning the renewal of a racetrack license. The amendment requires an association seeking to renew a racetrack license to submit a statement of any changes to the information required under the Texas Racing Act, §6.03(a), that have occurred during the preceding year. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to ensure racetrack licenses are adequately informed of the procedures for renewing racetrack licenses.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §6.03, which authorize the commission to prescribe the form for racetrack licenses renewal applications.

§305.264. Racetrack License

(a) The renewal application for a license to operate a racetrack must be submitted to the commission not later than April 15, of each [the] year [in which the license expires].

(b) In the renewal application, the association must:

(1) submit profit and loss statements for the preceding year; [and]

(2) **submit a statement of any changes to the information required under the Texas Racing Act, §6.03(a), that have occurred during the preceding year; and**

(3) request race dates for the next calendar year.

(c) (No change.)

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TRD-9001643 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Facilities and Equipment

• 16 TAC §309.19

The Texas Racing Commission adopts on an emergency basis an amendment to §309.19, concerning the office space for government representatives at a pari-mutuel racetrack. The amendment requires an association to provide adequate office space for occupational licensing personnel and for all office space for government representatives to be approved by the commission or its designee. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for making a racetrack license application are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§309.19. Office Space.

(a) An association shall provide adequate office space for the use of the commission, **occupational licensing personnel,** the comptroller, and the Department of Public Safety. **The office space required under this subsection must be approved by the commission or its designee.**

(b)-(d) (No change.)

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TRD-9001661 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §309.29

The Texas Racing Commission adopts on an emergency basis an amendment to §309.29, concerning the videotape equipment at a pari-mutuel racetrack. The amendment requires a Class 1 association to provide four videotape cameras and all associations to provide separate monitors in the stewards' stand to simultaneously display the various images from the videotape cameras. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for making a racetrack license application are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§309.29. Videotape Equipment.

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

(c) The association shall provide, [a monitor] in the stewards' or judges' stand, **separate monitors which simultaneously display the images being received by each camera during the running of a race** for reviewing a race.

(d) A horse race run on an oval racetrack must be recorded by at least three video cameras. A horse race run on a straight course racetrack must be recorded by at least two video cameras. **At a Class 1 racetrack, a horse race run on an oval racetrack must be recorded by at least four video cameras.**

(e) The location **and height of video towers and the operation** of the videotape system must be approved by the commission **or its designee** before its first use in a race.

(f)-(g) (No change.)

(h) A Class 1 racetrack must have:

(1) a video camera that provides a complete, uninterrupted view of the entire oval;

(2) a video camera located in a tower that provides a head-on view of the backstretch;

(3) a video camera located in a tower that provides a head-on view of the homestretch; and

(4) a video camera located in a tower that provides a rear view of the homestretch.

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TRD-9001660 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• **16 TAC §309.33**

The Texas Racing Commission adopts on an emergency basis new §309.33, concerning monitoring attendance at a pari-mutuel racetrack. The new section requires an association to provide turnstiles or another method approved by the commission for monitoring attendance at the racetrack. The new section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The new section is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for making racetrack license applications are in place.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§309.33. Attendance. An association shall provide turnstiles or another method approved by the commission or its designee for monitoring the attendance at the racetrack.

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TRD-9001659 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Operations

• **16 TAC §309.68**

The Texas Racing Commission adopts on an emergency basis an amendment to §309.68, concerning the accounting practices at a pari-mutuel racetrack. The amendment requires an association to maintain a system of internal accounting controls and authorizes the commission to audit all accounting systems maintained by the association. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§309.68. Accounting Practices.

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

(c) An association shall maintain a system of internal accounting controls approved by the commission or its designee.

(d) The commission may review and conduct audits of all systems maintained under this section.

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TRD-9001658 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Subchapter B. Horse Racetracks

Racetracks

• **16 TAC §309.104**

The Texas Racing Commission adopts on an emergency basis an amendment to §309.104, concerning the elevation of a pari-mutuel racetrack. The amendment requires the cross-slope of the straightaway to be sufficient for adequate drainage, but not more than 2.0%. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§309.104. Elevation.

(a) On each straightaway, the **cross-slope** [top of the cushion of the track] at the crown or the outside rail must be **sufficient to ensure adequate drainage, but may not be more than 2.0%** [2.0% higher than the top of the cushion at the inside rail].

(b)-(c) (No change.)

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TRD-9001657 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• **16 TAC §309.107**

The Texas Racing Commission adopts on an emergency basis an amendment to §309.107, concerning the rail at a pari-mutuel racetrack. The amendment requires the top of the rail to be not less than 38 nor more than 42 inches above the top of the cushion. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for making racetrack license applications are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

§309.107. Rails.

(a) (No change.)

(b) The top of the rail must be **not less than 38 nor more than 42** [at least 40] inches **above** [from] the top of the cushion.

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

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TRD-9001656 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter J. Petroleum Products Delivery Fee

• **34 TAC §3.152**

The Comptroller of Public Accounts adopts on an emergency basis an amendment to new emergency §3.152, concerning imposition and collection of the fee. The original emergency section appeared in the October 20, 1989, issue of the *Texas Register* (14 TexReg 5603). The new emergency section explains the standards for determining when the Texas petroleum product delivery fee applies and the amount to be collected.

This amendment is adopted on an emergency basis to provide guidance to persons required to pay or collect the fee. The new section implements recent legislation which became effective September 1, 1989.

The amendment is adopted on an emergency basis under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.152. Imposition and Collection of the Fee.

(a) The Texas Petroleum Product Delivery Fee is imposed, collected, and paid to the state by operators of bulk facilities. The fee is assessed when petroleum products are withdrawn from the bulk facility and delivered into a cargo tank or barge or imported into this state in a cargo tank or barge **for delivery to an aboveground or underground storage tank at another location for distribution or sale.** The fee is not assessed when the fuel is destined for delivery to another bulk facility, export from the state, an electrical generating plant, or common carrier railroad for its exclusive use.

(b)-(j) (No change.)

(k) **Only persons who** [Unless required to do so by other government agencies, sellers who do not] hold a petroleum product delivery fee permit may [not] charge and collect the fee on the basis of the bracket system established in [subsection (b) of] this section[, and may not list the fee as a separate item on invoices or manifests]. **No other person selling fuel may list the fee as a separate item on invoices or manifests except:**

(1) when required to do so by other governmental agency; or

(2) when an amount is clearly identified as reimbursement. An amount collected as reimbursement may not exceed the amount of fee actually paid by the person issuing the manifest or invoice.

(l) This section is effective November 1, 1989.

Issued in Austin, Texas on February 14, 1990.

TRD-9001577 Bob Bullock
Comptroller of Public Accounts

Effective date: February 14, 1990

Expiration date: April 14, 1990

For further information, please call: (512) 463-4004

Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part VII. Texas Racing Commission

Chapter 305. Licenses for Pari-mutuel Racing

Subchapter C. Racetrack Licenses

Application Procedure

• 16 TAC §305.83

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.83, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to designate a primary contact person and clarifies the deadline for filing the documents.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that the evaluation process for racetrack license applications is efficient and effective. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001681 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.84

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.84, concerning the types of application documents that must be submitted for a racetrack license. The amendment clarifies the format for a racetrack application and the types of tables that must be included.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that the evaluation process for racetrack license applications is efficient and effective. The cost of preparing the additional portions of the application documents as required by the amendment will vary depending on the type of racetrack license applied for, but is expected to cost approximately $400. There is no anticipated economic cost to persons required to comply with the amendment.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act and to prescribe a form for making racetrack applications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001680 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.85

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.85, concerning the review of application documents for a racetrack license. The amendment clarifies the procedure for reviewing application documents for completeness and certification of receipt.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that the evaluation process for racetrack license applications is efficient and effective. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001679 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• **16 TAC §305.87**

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §305.87, concerning the submission of prepared testimony in support of an application for a racetrack license. The section requires an applicant to submit prepared testimony not later than 21 days before the hearing on the application.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated from the enforcement of the section is the assurance that the evaluation process for racetrack license applications is efficient and effective. The cost of complying with the section for a small business making a racetrack license application will depend on the type of racetrack applied for; however, the cost of compliance is expected to range from $50 to $20,000. There are no anticipated economic costs to persons required to comply with the section.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001678 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• **16 TAC §305.107**

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §305.107, concerning the submission of application documents for a racetrack license. The section requires an applicant to ubmit a list of all consultants used by the applicant for the preparation of the application and the preparation for pari-mutuel racing.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated from the enforcement of the section is the assurance that the Texas Racing Commission is aware of all individuals and companies involved in racetrack licenses and applications. There will be an effect on small businesses submitting an application for a racetrack license. The cost of preparing and submitting the documents required by the section will be approximately $50. There are no anticipated economic cost to persons required to comply with the amendment.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001677 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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Ownership

• **16 TAC §305.125**

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.125, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to submit a copy of each prospectus, pro forma, or other promotional material given to potential investors.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. The cost of complying with the amendment to a small business applying for a racetrack license will range from $0 to $200. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001676 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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Site and Facilities

• **16 TAC §305.141**

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.141, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to submit an aerial photograph of the racetrack site and a photograph of the site from each adjacent roadway.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. The cost of complying with the amendment to a small business applying for a racetrack license will depend on the location of the racetrack, but is expected to range from $750 to $1,000. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula

Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001675 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.143

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.143, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to state the size the applicable zoning designation for the racetrack site and whether a height variance will be required.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001674 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.144

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §304.144, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to state whether the proposed racetrack site is located in a flood plain and describe the flood history of the site.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001673 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.145

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.145, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to submit a traffic flow study, prepared by a traffic engineer, and to state the experience of the engineer.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be an effect on small businesses as a result of enforcing the section. The cost of complying with the amendment to a small business applying for a racetrack license will vary, depending on the location of the racetrack, but is expected to range from $2,500 to $10,000. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001672 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.146

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.146, concerning the submission of application documents for a racetrack license. The amendment requires an applicant to submit layout drawings of the proposed racetrack facilities and state the experience of the architect who designed the proposed facility.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the facilities for pari-mutuel racing will be of the assurance that the process for evaluating racetrack license applications is thorough and fair. The cost of complying with the section for a small business applying for a racetrack license will vary, depending on the type of racetrack applied for. The estimated cost for compliance is $50 per layout drawing. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001671 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.147

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.147, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the type of information that must be submitted regarding the racetrack's dimensions and specifications.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001670 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.148

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.148, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the type of information that must be submitted regarding the public areas of the racetrack facility.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001669 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.150

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.150, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the type of information that must be submitted regarding the facilities for animals and personnel.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001668 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.151

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §305.151, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to describe the location of utilities on the racetrack site and to describe all easements access the site.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed section may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001667 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 §305.152

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §305.152, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to list each exemption from the commission's rules that is requested by the applicant.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed section may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001665 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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Financing

• 16 TAC §305.165

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.165, concerning the submission of application documents for a racetrack license. The amendment clarifies the format for submitting information regarding the budget for the application and the construction of the racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. The cost of complying with the amendment for a small business making a racetrack license application is approximately $50. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001664 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.166

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.166, concerning the submission of application documents for a racetrack license. The amendment clarifies the type of information that must be submitted regarding the time schedule for constructing the racetrack facilities.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001663 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.167

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the

new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.167, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to state the amount of working capital the applicant intends to have available for the first six weeks of racetrack operations.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001662 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.168

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §305.168, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to submit financial forecasts for each of the first five years the racetrack is in operation.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. The cost of complying with the section for a small business making a racetrack license application will vary depending on the type of racetrack, but is estimated to range from $5,000 to $75,000. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed section may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9001682 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Operations and Financial Forecasts

• 16 TAC §305.181

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.181, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to specify the time of day racing will be conducted on each requested race date.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9001696 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.182

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.182, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the information that an applicant for a racetrack license must submit regarding the people who are involved in the management of the proposed racetrack and the strategies management intends to use for the operation of the racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9001697 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.183

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.183, concerning the submission of application documents for a racetrack license. The amendment expands and clarifies the information an applicant for a racetrack license must submit regarding the marketing plans and budget for the proposed racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9001698 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.187

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.187, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to provide information regarding the amount of the applicant's anticipated revenues will be distributed to persons or entities outside the State of Texas.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. The cost of complying with the amendment for a small business making a racetrack license application is expected to range from $200 to $400. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9001699 Paula Cochran Carter
General Counsel
Texas Racing Commission

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• 16 TAC §305.188

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.188, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to describe the starting gate or box the applicant intends to use.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001700 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.189

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §305.189, concerning the submission of application documents for a racetrack license. The new section requires an applicant for a racetrack license to submit information regarding the applicant's plans to ensure the health and well-being of the race animals.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed section may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001701 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.190

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §305.190, concerning the submission of application documents for a racetrack license. The new section requires an applicant for a racetrack license to describe the source of all funds for purses beyond the statutory requirements.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed sectiuon may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001702 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Economic and Social Projections

• 16 TAC §305.204

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.204, concerning the submission of application documents for a racetrack license. The amendment expands the types of information an applicant for a racetrack license must submit regarding the affect of the racetrack on surrounding neighborhoods, the applicant's plans for public relations, and the relations with adjacent landowners.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001694 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Safety and Security

• 16 TAC §305.221

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.221, concerning the submission of application documents for a racetrack license. The amendment clarifies the format for the submission of the safety and security plans.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001693 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.226

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.226, concerning the submission of application documents for a racetrack license. The amendment expands the type of information an applicant for a racetrack license must submit regarding fire safety at the proposed racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair.

There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9001692 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §305.227

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.227, concerning the submission of application documents for a racetrack license. The amendment requires an applicant for a racetrack license to submit information regarding the travel time to the hospital nearest the proposed racetrack and the average response time at that hospital.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001691 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.228

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §305.228, concerning the submission of application documents for a racetrack license. The section requires an applicant for a racetrack license to submit a description of the applicant's plans for monitoring the safety of the race animals, patrons, and racetrack personnel.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the process for evaluating racetrack license applications is thorough and fair. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed section may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001690 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Subchapter E. Renewal of Licenses

• 16 TAC §305.264

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.264, concerning the renewal of a racetrack license. The amendment requires an association seeking to renew a racetrack license to submit a statement of any changes to the information required under the Texas Racing Act, §6.03(a), that have occurred during the preceding year.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that racetrack license renewal procedures comply with the state law. Because the number of changes and the documentation to describe those changes will vary from association to association, the cost of complying with the amendment for a small business renewing a racetrack license cannot be determined at this time. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §6.03, which authorize the commission to prescribe the form for racetrack license renewal applications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001689 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Facilities and Equipment

• 16 TAC §309.19

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §309.19, concerning the office space for government representatives at a pari-mutuel racetrack. The amendment requires an association to provide adequate office space for occupational licensing personnel and for all office space for government representatives to be approved by the commission or its designee.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the facilities for pari-mutuel racing will be of the highest quality. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 5, 1990.

TRD-9001688 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §309.29

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §309.29, concerning the videotape equipment at a pari-mutuel racetrack. The amendment requires a Class 1 association to provide four videotape cameras and all associations to provide separate monitors in the stewards' stand to simultaneously display the various images from the videotape cameras.

Paula Cochran Carter, general counsel for the Texas Racing Commission has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government. Ms. Carter also has determined that for each year of the first five years the amendment is in effect, the cost of complying with the amendment for a small business is expected to be approximately $15,000 to build the additional video tower, plus approximately $200 per day for the additional videotape services.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of the enforcement of the amendment is the assurance that the facilities for pari-mutuel racing will be of the highest quality and that pari-mutuel racing is of the highest integrity. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9001687 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §309.33

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes §309.33, concerning attendance at a pari-mutuel racetrack. The new section requires an association to provide turnstiles or another method approved by the commission for monitoring attendance at the racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Ms. Carter also has determined that for each of the first five-years the section is in effect, there will be fiscal implications for small businesses. Because the methods for monitoring attendance will vary, depending on the location and size of the racetrack, it is not possible to determine the cost of complying with the section for small businesses.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that the facilities for pari-mutuel racing will be of the highest quality. There is no anticipated economic cost to persons who are required to comply with the section.

Comments on the proposed section may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001686 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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Operations

• 16 TAC §309.68

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §309.68, concerning the accounting practices at a pari-mutuel racetrack. The amendment requires an association to maintain a system of internal accounting controls and authorizes the commission to audit all accounting systems maintained by the association.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that pari-mutuel racing will be conducted by associations of the highest integrity. There will be no effect on small businesses. There

is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001685 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §309.104

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §309.104, concerning the elevation of a pari-mutuel racetrack. The amendment requires the cross-slope of the straightaway to be sufficient for adequate drainage, but not more than 2. 0%.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that the facilities for pari-mutuel racing will be of the highest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001684 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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Subchapter B. Horse Racetracks

Racetracks

• 16 TAC §309.107

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §309.107, concerning the rail at a pari-mutuel racetrack. The amendment requires the top of the rail to be not less than 38 nor more than 42 inches above the top of the cushion.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that the facilities for pari-mutuel racing will be of the highest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before March 15, 1990, to Paula Cochran Carter, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on February 5, 1990.

TRD-9001683 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: March 26, 1990

For further information, please call: (512) 476-7223

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Support Documents

• 40 TAC §48.9808

The Texas Department of Human Services (DHS) proposes new §48.9808, concerning reimbursement methodology for 1915(c) Medicaid home and community- based waiver services for persons with related conditions, in its Community Care for Aged and Disabled chapter. The purpose of the new section is to comply with state legislation by providing new home and community-based services as cost-effective alternatives to placement in intermediate care facilities for persons with mental retardation/related conditions (ICF-MR/RC VII). The department is developing a 1915(c) Medicaid waiver to request approval from the Health Care Financing Administration to provide the services. The notice concerning the filing of the waiver appears in the "In Addition" section of this issue of the *Texas Register.*

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be alternatives to ICF-MR/RC institutional services through a fee-for-service reimbursement methodology for home and community- based services for persons with related conditions. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Anita Anderson at (512) 450-3195 in DHS's Health Policy Initiatives Section. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-064, Texas Department of Human Services 181-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.9808. Reimbursement Methodology for 1915(c) Medicaid Home and Community Based Waiver Services for Persons With Related Conditions.

(a) General. The Texas Department of Human Services (DHS) will reimburse qualified providers for waiver services provided to Medicaid-eligible

persons with related conditions (waiver services). "Persons with related conditions" is defined according to §27.102 of this title (relating to Definitions for Level-of-Care Criteria). The DHS Board determines, for Medicaid waiver services, reimbursement rates that are uniform, prospective, and cost related. The DHS Board determines reimbursement rates according to §24.101 and §24.102 of this title (relating to General Specifications and Methodology). DHS staff submit rate recommendations to the DHS Board.

(b) Frequency of rate determination. DHS determines rates at least annually. Rates may be determined more often than annually if the DHS Board determines that it is necessary.

(c) Initial rate analysis. For the initial rate period, providers will be reimbursed on a fee-for-service basis using a method based upon pro forma projected expenses. Until an adequate cost report data base becomes available, the pro forma expenses are developed for each separate delivered service by specifying a list of staff, supplies, and administrative overhead expenses required to provide services in compliance with state standards, and by costing out those requirements at estimated current year prices. Costs will be developed by using data from surveys; cost report data from other similar programs; consultation with other service providers, associations, professionals experienced in delivering services to persons with related conditions; and other sources.

(d) Reporting of cost.

(1) Cost report. Each provider must submit financial and statistical information on a cost report or in a survey format designated by DHS. The cost report must capture the expenses of the waiver services provider, including salaries and benefits, administration, building and equipment, utilities, supplies, travel, and indirect overhead expenses related to the waiver services program.

(A) Accounting requirements. All information submitted on the cost reports must be based upon the accrual method of accounting unless the provider is a governmental entity operating on a cash basis. The provider must complete the cost report according to the prescribed statement in subsection (f) of this section, concerning allowable and unallowable costs. Cost reporting should be consistent with generally accepted accounting principles (GAAP). In cases where cost reporting rules conflict with GAAP, IRS, or other authorities, the rules specified in this section take precedence for Medicaid provider cost reporting purposes.

(B) Reporting period. The provider must prepare the cost report to reflect activities during the provider's fiscal year. The cost report is due 90 days after the end of the provider's fiscal year. DHS may require cost reports or other information for other periods. Failure to file an acceptable cost report or complete required additional information will result in a hold being placed on the vendor payments until the cost report information or additional information is provided. The provider must certify the accuracy of his cost report or additional information.

(C) Allowable and unallowable costs. Providers must complete the cost report according to DHS's statement of allowable and unallowable costs in subsection (f) of this section.

(D) Cost report certification. Providers must certify the accuracy of cost reports submitted to DHS in the format specified by DHS. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to DHS requirements.

(E) Extension of due date. DHS may grant extensions of due dates for good cause. A good cause is defined as a cause that the provider could not reasonably be expected to control. Providers must submit requests for extensions in writing to DHS before the cost report due date. DHS staff will respond to requests within 10 working days of their receipt.

(F) Amended cost reports. DHS accepts amended cost reports until the completion of the rate determination process. Amended cost reports filed after the actual rate determination have no effect on the rate and are not accepted.

(G) Cost report supplements. DHS may require additional financial and other statistical information to ensure the fiscal integrity of the program.

(H) Failure to file an acceptable cost report. If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, DHS may withhold vendor payments to that provider until the deficiencies are corrected.

(I) Record keeping requirements. Each provider must maintain records according to the requirements stated in §51.50 of this title (relating to Record Retention Reguirements). The provider must ensure that the records are accurate and sufficiently detailed to support the financial and statistical information reported in the cost report. If a provider does not maintain records which support the financial and statistical information submitted on the cost report, the provider will be given 90 days to correct his record keeping. A hold of the vendor payments to the provider will be made if the deficiency is not corrected within 90 days from the date the provider is notified.

(J) Audit and review of cost reports.

(i) Review of cost reports. DHS reviews each cost report or survey to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. Desk reviews are performed on all cost reports according to §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports). Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(ii) On-site audit of cost reports. DHS staff perform a sufficient number of audits each year to ensure the fiscal integrity of the waiver services reimbursement rates. The number of on-site audits actually performed each year may vary. Adjustments consistent with the results of on-site audits are made to the rate base until closure before the final rate analysis. During either desk audits or on-site audits according to §24.401 of this title (relating to Notification), DHS notifies providers of the exclusions and adjustments to reported expenses made .

(iii) Access to records. The provider must allow DHS or its designated agents access to all records necessary to verify information on the cost report. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. If a provider does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold will be placed on the vendor payments until access to the records is allowed.

(iv) Reviews of cost report disallowances. Under §24.601 of this title (relating to Reviews and Administrative Hearings), providers may request an informal review and, if necessary, an administrative hearing to dispute any action taken by the department .

(2) Other sources of cost information. In the absence of reliable cost report data from which to set rates, rates will be developed by using data from surveys; cost report data from other similar programs; consultation with other service providers, associations, professionals experienced in delivering services to persons with related conditions; and other sources.

(e) Rate setting methodology

(1) Rates by unit of service. Reimbursement rates for related-conditions waiver services will be determined on a fee-for-service basis for each of the services

provided under the 1915(c) Medicaid waiver for persons with related conditions.

(2) Exclusion or adjustment of expenses. Providers must eliminate unallowable expenses from the cost report. DHS excludes from the rate base any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses reported by providers; the purpose is to ensure that the rate base reflects costs which are consistent with efficiency, economy, and quality of care; are necessary for the provision of waiver services; and are consistent with federal and state Medicaid regulations. If there is doubt as to the accuracy or allowableness of a significant part of the information reported, individual cost reports may be eliminated from the rate base.

(3) Rate determination process. The DHS Board determines, for each service, fee-for-service reimbursement rates which will reasonably reimburse the costs of an economic and efficient provider. DHS staff submit recommendations for reimbursement rates. Recommended rates are determined in the following manner.

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(B) Each provider's total allowable costs are projected from the historical cost reporting period to the prospective rate period as described in §24.301 of this title (relating to Determination of Inflation Indices).

(C) An allowable cost per unit of service is calculated for each service. The allowable costs per unit of service are arrayed and weighted by the number of units of service and the median point is calculated.

(D) The median cost component is multiplied by an appropriate percentage incentive factor, determined by the DHS Board, to calculate the recommended reimbursement rates which, in the Board's opinion, will be

(i) within budgetary constraints;

(ii) adequate to reimburse the cost of operations for an efficient and economic provider; and

(iii) justifiable given current economic conditions.

(E) The department also adjusts rates according to §24.501 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs) if new legislation, regulations, or economic factors affect costs.

(f) Allowable and unallowable costs.

(1) General. Allowable and unallowable costs are defined to identify expenses which are and are not reasonable and necessary to provide waiver services to clients by an economic and efficient provider. Only allowable cost information is used to compile the rate base. Cost reporting by providers should be consistent with generally accepted accounting principles (GAAP). In cases where DHS cost reporting rules conflict with GAAP, IRS, or other authorities, DHS rules take precedence for cost reporting purposes.

(2) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise. Allowable costs–Those expenses that are reasonable and necessary in the normal conduct of operations relating to the provision of waiver services.

(A) "Reasonable" refers to the amount expended. The test of reasonableness is that the amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.

(B) "Necessary" refers to the relationship of the cost to provision of waiver services. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of waiver services and must meet the following requirements.

(i) The expenditure was not for personal or other activity not specifically related to the provision of waiver services.

(ii) The cost does not appear on the list of specific unallowable costs and is not unallowable under other federal, state, or local laws or regulations.

(iii) The cost bears a significant relationship to the provision of waiver services. The test of significance is whether elimination of the expenditure would adversely affect the delivery of waiver services.

(iv) The expense was incurred in the purchase of materials, supplies, or services provided directly to the clients or staff of the program in the conduct of normal business operations.

(C) Normal conduct of operations relating to waiver services includes, but is not limited to, the following.

(i) Expenses not used solely for the provision of waiver services. Whenever allowable costs are attributable partially to personal or other business interests not related to the provision of waiver services and partially to waiver services, the latter portion may be allowed on a pro rata basis if the proportion of use by the waiver services is well-documented.

(ii) Related-party transaction. Allowable costs must result from arms-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the waiver services program is the cost to the related party. Allowable costs in this regard are limited to the lesser of the actual purchase price to the related party, or usual and customary charges for comparable goods or services. A related party is a natural person or organization related to the provider entity by blood/marriage, or common ownership, or any association which permits either entity to exert power or influence, either directly or indirectly, over the other. Unallowable costs–Those expenses that are not reasonable or necessary for the provision of waiver services. Unallowable costs are not included in the rate base used to determine recommended rates.

(3) List of Allowable Costs. The following list of allowable costs is not comprehensive, but rather serves as a general guide and identifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost.

(A) Compensation of waiver services staff. Compensation will be given only to those staff who provide waiver services directly to the clients or in support of staff of the waiver services in the normal conduct of operations relating to the provision of waiver services. This includes:

(i) Wages and salaries.

(ii) Payroll taxes and insurance. Federal Insurance Contributions Act (FICA or social security), unemployment compensation insurance, workman's compensation insurance.

(iii) Employee benefits. Employer-paid health, life, accident, liability, and disability insurance for employees; contributions to employee retirement fund; and deferred compensation limited to the dollar amount the employer contributes. The expense:

(I) must represent a clearly enumerated liability of the employer to individual employees;

(II) must not be incurred as a benefit to employees who do not provide services directly to the clients or staff of the waiver services program.

(III) must not represent any form of profit sharing.

(B) Compensation of staff outside of the waiver program who provide services directly to the clients or in support of staff of the program. Allowable compensation is limited to the pro rata portion of the actual working time spent on behalf of the program.

(C) Compensation of outside consultants providing services directly to the clients or in support of staff of the program.

(D) Materials and supplies. Includes office supplies, housekeeping supplies, medical, and other supplies.

(E) Utilities. Includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph.

(F) Buildings, equipment, and capital expenses. Buildings, equipment, and capital used by the waiver provider or in support of the waiver services staff, and not for personal business. If these costs are shared with other program operations, the portion of the costs relating directly to waiver services may be allowed on a pro rata basis if the proportion of use for waiver services is documented.

(G) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased, or rented property used by the waiver provider that are valued at more than $500 at the time of purchase must be depreciated or amortized using the straight line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows:

(i) buildings: 30 years, with a minimum salvage value of 10%; and

(ii) transportation equipment used for the transport of clients, materials and supplies, or staff providing waiver services: a minimum of three years for passenger automobiles and five years for light trucks and vans, all with a minimum salvage value of 10%.

(H) Provider-owned property. Property owned by the provider entity and improvements to property owned, leased, or rented by the provider that are valued at less than $500 at the time of purchase may be treated as ordinary expenses.

(I) Rental and lease expense. This includes rental and lease expenses for buildings, building equipment, transportation equipment, and other equipment, and related materials, and supplies used by the waiver provider. Rental or lease expense paid to a related party is limited to the actual allowable cost incurred by the related party.

(J) Transportation expense. This includes the cost of public transportation or mileage claimed at the allowable reimbursement per mile set by the state legislature for state employees.

(K) Interest expense. Interest expense is allowable on loans for the acquisition of allowable items, subject to:

(i) all of the requirements for allowable costs,

(ii) written evidence of the loan, and

(iii) the provider entity being named as maker or comaker of the note. Allowable interest is limited to the lesser of the cost to the related party or the prevailing national average prime interest rate for the year in which the loan contract was executed.

(L) Tax expense. This includes real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees.

(M) Insurance expense. This includes facility fire and casualty, professional liability and malpractice, and transportation insurance.

(N) Contract waiver services provided by outside vendors to persons with related conditions.

(O) Business and professional association dues limited to associations devoted primarily to the issues of related conditions.

(P) Outside training costs. Limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the clients or staff of the waiver provider. The training must be directly related to issues concerning related conditions and located within the continental United States.

(4) List of unallowable costs. Unallowable costs are those expenses that are not reasonable or necessary for the provision of waiver services. Unallowable costs are not included in the rate base used to determine recommended rates. The following list is not intended to be comprehensive, but rather to serve as a general guide and identify certain key expense areas that are not allowable. The absence of a particular cost does not necessarily mean that it is an allowable cost.

(A) Compensation in the form of salaries, benefits, or any form of compensation given to individuals who do not provide waiver services either directly to clients or in support of staff.

(B) Personal expenses not directly related to the provision of waiver services.

(C) Client room and board expenses, except for those related to respite care.

(D) Management fees paid to a related party that are not derived from the actual cost of materials, supplies, or services provided directly to the program.

(E) Advertising expenses other than those for yellow pages advertising, advertising for employee recruitment, and advertising to meet any statutory or regulatory requirement.

(F) Business expenses not directly related to the provision of waiver services.

(G) Political contributions.

(H) Depreciation and amortization of unallowable costs. This includes amounts in excess of those resulting from the straight line depreciation method, capitalized lease expenses in excess of the actual lease payment, and goodwill or any excess above the actual value of the physical assets at the time of purchase.

(I) Trade discounts of all types. Returns, allowances, and refunds.

(J) Donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers.

(K) Dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with the provision of waiver services.

(L) Entertainment expenses except those incurred for entertainment provided to the staff of the waiver provider as an employee benefit.

(M) Boards of directors' fees.

(N) Fines and penalties for violations of regulations, statutes, and ordinances of all types.

(O) Fund raising and promotional expenses.

(P) Expenses incurred in the purchase of goods and services with revenues from gifts, donations, endowments, and trusts.

(Q) Interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income.

(R) Insurance premiums pertaining to items of unallowable cost.

(S) Accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount. This includes any form of profit sharing and the accrued liabilities of deferred compensation plans.

(T) Planning and evaluation expenses for the purchase of depreciable assets, except where purchases are actually made and the assets are put into service in providing waiver services.

(U) Mileage expense which exceeds the current reimbursement rate set by the Texas Legislature for state employee travel or expenses exceeding actual cost of public transportation.

(V) Costs of purchases from a related party which exceed the original cost to the related party.

(W) Out-of-state travel expenses, except for provision of waiver services that may include training and quality assurance functions.

(X) Legal and other costs associated with litigation between a provider and state or federal agencies, unless the litigation is decided in the provider's favor.

(Y) Contributions to self-insurance funds which do not represent payments based on current liabilities.

(Z) Any expense incurred because of imprudent business practices.

(AA) Expenses which cannot be adequately documented.

(BB) Expenses not reported according to the instructions on the cost report.

(CC) Expenses not allowable under other pertinent federal, state, or local laws and regulations.

(DD) Federal, state, and local income taxes and any expenses related to preparing and filing income tax forms.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

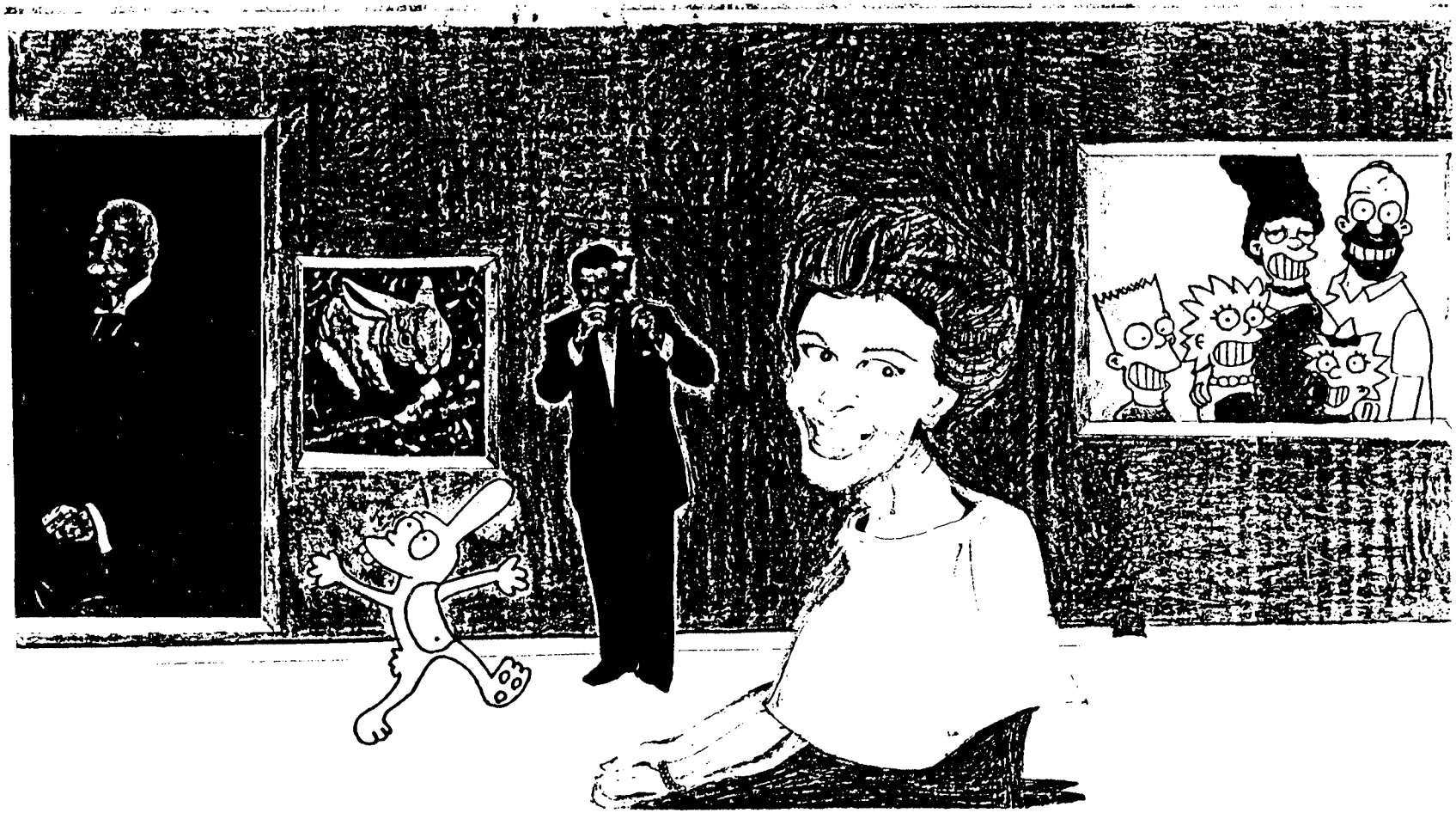
Issued in Austin, Texas, on February 15, 1990.

TRD-09001617

Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Proposed date of adoption: May 1, 1990

For further information, please call: (512) 450-3765



Name: Dan Quirin

Grade: 12

School: Plano High School, Plano

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. Agriculture
Part I. Texas Department of Agriculture
Chapter 7. Pesticides

- **4 TAC §§7.1, 7.4, 7.8-7.20, 7.22-7.26, 7.28, 7.32-7.34, 7.40**

The Texas Department of Agriculture (TDA) adopts §§7.1, 7.4, 7.8-7.20, 7. 22-7.26, 7.28, 7.32-7.34, and 7.40. Sections 7.1, 7.8, 7.10, 7.11, 7.14, 7.15, 7.16, 7. 17, 7.20, 7.24, 7.32, and 7.34, are adopted with changes to the proposed text as published in the December 1, 1989, issue of the *Texas Register* (14 TexReg 6221). Sections 7.4, 7.9, 7.12, 7.13, 7.18, 7.19, 7.22, 7.23, 7.26, 7.28, 7.33, and 7. 40, are adopted without changes and will not be republished.

New Section 7.34 and amendments to §§7.1, 7.4, 7.8-7.20, 7.22-7.24, 7.26, 7. 28, 7.32, 7.33, and 7.40 are adopted, concerning implementation of changes to the Texas Agriculture Code as amended by the 71st Legislature through the Texas Department of Agriculture Sunset legislation and department efforts to clean up the regulations, as well as department efforts to make corrections of grammatical and citation errors throughout the regulations.

TDA is authorized to regulate the use of pesticides under the Texas Pesticide Control Act, the Texas Agriculture Code, Chapter 76 (the Act). The Sunset legislation was a response to the findings and recommendations made by the Texas Sunset Advisory Commission after a two-year study of the department's powers and functions.

The adopted regulations are intended to clarify the rights and responsibilities of all entities affected by the Act under the Texas Agriculture Code. The adopted regulations do not restate all provisions contained in the Act and do not restate those regulations not being amended. Both the Act, as amended, and all regulations must be read in conjunction to understand all rights and responsibilities created by the Act.

Section 7.1 is adopted with changes. The definition of "nurseryman" in §7.1 has been changed to include any person who possesses a current Class 1, 2, 3, or 4 nursery and floral inspection certificate. This change has been made in response to comments that the proposed definition too narrowly construes the meaning of "nurseryman" as used in the Texas Structural Pest Control Law (Texas Civil Statutes, Article 135b-6).

Section 7.8 is adopted with extensive changes. Adopted §7.8(b)(4) clarifies that the recordkeeping requirements imposed on licensed pesticide dealers by the Texas Agriculture Code, §76.075, may be satisfied either with invoices or separate record forms. Adopted §7.8(b)(4) incorporates the additional recordkeeping which will serve to document that sales of state-limited-use and restricted-use pesticides to unlicensed persons are made in accordance with §7. 8(b)(5). The changes are made in response to numerous comments describing the proposed recordkeeping requirement as burdensome to dealers and applicators alike. On review of the proposed section, the department found several duplicated requirements. With the changes, the recordkeeping requirements for a sale to an unlicensed person working under the supervision of a licensed applicator are essentially the same as those for any sale of a state-limited-use or restricted-use pesticide, except that the dealer selling to an unlicensed person must also verify that the pesticide is for use by or under the supervision of a licensed applicator. The changes serve to simplify these recordkeeping requirements while ensuring that restricted and state-limited-use pesticides are not inadvertently supplied to unlicensed unsupervised persons. Section 7.8(b)(6) is eliminated. This change is made in order to eliminate unnecessary recordkeeping requirements because many of the items listed in proposed §7.8(b)(6) are already required to be recorded for each sale of a state-limited-use or restricted-use pesticide.

Section 7.10 is adopted with changes. The period for fulfillment of the recertification requirements by certified private applicators in §7.10(h)(1) has been changed to end December 1, 1995, and is made in response to the United States Environmental Protection Agency's requirement that all private applicators must be recertified by January 1, 1996. Due to comments on the recertification needs of private applicators and comments requesting a reduction in the number of recertification credits required for private applicators, the continuing education requirement in §7.10(h)(1) has been reduced from 20 credits every five years to 15 credits every five years, and the requirement for four credits in the last year of the recertification period has been deleted. These changes are also made in §7.10(h)(3) and (4) respectively. There was considerable confusion over the intent of §7.10(o) and many comments were received opposing any arrangement that would prohibit or limit the ability of state associations and non-applicator businesses to sponsor recertification courses. The department does not intend to narrow the existing regulations on eligibility for sponsorship of recertification courses. Therefore, §7.10 has been redrafted to help clarify that this new provision in the recertification regulations does not detract from the existing mechanism for accreditation of recertification courses but, instead, merely adds a means for applicators to acquire recertification while reducing duplication of efforts by affected individuals, agencies, and professional societies. The requirement that only national societies or associations could enter into a memorandum of agreement has been dropped due to widespread requests for this change, and a provision for agreements with other states has been added to accommodate applicators licensed in several states. Additionally, the scope of §7.10 has been expanded to include private applicators, in response to comments requesting that private applicators be recertified in the same manner as commercial or noncommercial applicators. Section 7.10(o)(1)(2) has been changed to reflect the private applicator recertification period. Section 7.10(o)(4) has been deleted due to numerous comments in opposition. Furthermore, the department can assure the quality and acceptability of recertification through proper construction and enforcement of the memorandum of agreement.

Section 7.11 is adopted with changes. Section 7.11(e) has been changed to clarify the definition of nurseryman. Section 7.11(f) is changed to specify that noncommercial applicators that are certified in the demonstration and research category may be certified for use of M-44 sodium cyanide. The change is made to make this section consistent with §7.33(d).

Section 7.14 is adopted with changes. The last sentence of §7.14(a)(3) has been deleted. There were numerous comments submitted by applicators and applicator insurers regarding this proposed language. Most comments stated that applicator insurance was not available without some exclusions and that the cost of "buying back" exclusions would make insurance cost prohibitive to applicators. While the department does believe that this proposed amendment disallowing chemical exclusions policies merely restates the law, an attorney general's opinion has been requested as to whether or not the law allows the department to accept such policies. If the attorney general believes that the law so allows, these policies will be accepted. Regardless of the outcome, the attorney general's opinion will make this amendment unnecessary, and it has been deleted.

Section 7.15 is adopted with changes. The phrase "Except as provided on the application form," has been added to adopted §7.15(a). This change is made to allow the department to use a single application form for both commercial and noncommercial applicators. Although the application form for a noncommercial applicator license requires much of the same information required for a

there are certain items which may be required only for one class of license. In that event, the department will specify on the application itself that the item pertains only to commercial or noncommercial applicants, as appropriate. Adopted §7.15(a)(e) is changed by the deletion of the word "the" in between the words "within" and "six" in the second sentence of that subsection. The unnecessary "the" was inadvertently included in the proposed section.

Section 7.16 is adopted with changes. In adopted §7.16(d) the phrase "the last day of February, 1995" is replaced with the phrase "December 31, 1995". This change is made to coordinate the licensing requirements in this section with the recertification requirement in adopted §7.10(h)(2).

Section 7.17 is adopted with changes. Although no comments were received about this section, the department is making one change for clarification. In the last sentence of §7.17(c) the phrase "license-use" is deleted. While continuing education credits are assigned to specified subject matter topics or "categories" they are not assigned to "license-use categories". The latter term describes areas in which an applicator may be licensed and does not describe continuing education topics.

Section 7.20 is adopted with changes. In subsection (a) the word "oral" replaces the word "verbal" and the phrase "anonymously if desired" is deleted. The first change is made for clarification and accuracy. The word "verbal" may describe written or spoken words and is somewhat vague, and the department wishes to be absolutely clear that an "oral" (or spoken) complaint is appropriate under this section. Subsection (f) is added. The new subsection provides no finding of violation by the agency will be premised solely on the uncorroborated statements of an unidentified or anonymous complainant. For each complaint, the agency will determine the extent of investigation which is appropriate to address the complaint. These changes to §7.20 are intended to address the concerns expressed by a number of individuals. Generally the comments expressed two concerns: that applicators are likely to become the target of numerous complaints and will be required to endure a demanding investigation based solely on an anonymous call; and that an applicator will be subjected to punishment or found in violation of the pesticide laws or regulations without regard for the right, secured under the United States Constitution, to confront one's accuser(s). These changes address these concerns. Subsection (c), as adopted, clarifies that the extent of the investigation triggered by any complaint will continue to reflect the totality of all relevant circumstances including the likelihood that the complaint is either unfounded or well-founded, the seriousness of the violation reported, the history of the alleged violator, and the department's resources at the time of the complaint. Each report of a violation does not result in a comprehensive investigation. The appropriate response to each complaint will necessarily vary with the circumstances and exigencies of the situation. The new subsection (f) protects potential respondents by guaranteeing that the department will not make a finding of a violation based solely on the uncorroborated word of an unidentified or anonymous witness. This change will not alter the department's current practice; however, the department does agree with numerous individuals who commented that the right to confront one's accuser is fundamental to a fair hearing. This change is made in response to those comments.

Section 7.24 is adopted with changes. Subsection (a) has been changed to delete the active ingredients hexazinone, diuron, and triclopyr. Numerous comments were received that suggested that the department did not have enough research to justify adding these active ingredients to the state-limited-use classification. These comments suggested that the department has proposed that additional restrictions be placed on these active ingredients based on the number of complaints investigated by the department involving the misuse of these active ingredients. This was not believed, by the individuals commenting, to be a valid criteria to use to evaluate the need for additional restrictions.

The department agrees that a well-defined set of criteria would make the process of reclassifying pesticides as state-limited more uniform. In the past, the department has given different factors great weight in this determination. In 1982, the department responded to the great number of substantiated complaints involving certain herbicides by state-limiting those chemicals. In 1987, four termiticides were reclassified based primarily on their human toxicity and persistence. The department believes that the statutory authority to state-limit pesticides allows these factors to be considered and given primary importance: number of complaints received involving the pesticide, human toxicity, and persistence. However, in the final analysis of a proposal to reclassify a pesticide, several other factors may be weighed. These additional factors include: residual activity/longevity of the active ingredient, type of pesticide movement noted and believed to be responsible for undesirable effects, the existence and extent of undesirable effects, the percentage of complaints found to be substantiated, and the license status of the applicator involved.

Comments were also received that requested that the reclassification of any of the proposed active ingredients be delayed so that appropriate training and licensing could be completed, and existing stocks could be depleted before the additional restrictions were required. A majority of the comments requested that hexazinone, diuron, and triclopyr be removed from consideration, while some recommended an intermediate classification. The department agrees with many of these comments and has determined that the active ingredients hexazinone, diuron, and triclopyr should be deleted from the list of proposed state-limited-use pesticides. Although hexazinone, diuron, and triclopyr were each involved in a number of complaints over the years and the herbicides seem to demonstrate some propensity to move off-target, whether through soil mobility or drift, triclopyr in particular has a relatively short residual longevity, diuron is most often found in misuse cases also involving bromacil so that it is difficult to pinpoint it as the responsible active ingredient. In light of all of these factors, the department will, at this time, only add bromacil and prometon to the list of state-limited-use pesticides.

Although the department is at this time deleting hexazinone and diuron from this section, a review will continue of soil applied herbicides for possible future inclusion as state-limited-use pesticides. While triclopyr is not a soil applied herbicide, the department will also continue to' evaluate it for possible future consideration.

Section 7.32 is adopted with changes. In response to a request for clarification, §7.32(c)(8) has been changed to indicate that a site review and sales date form must be completed for each sale or transfer of collars. This change is to assure that records are maintained in accordance with the state plan approved by the United States Environmental Protection Agency for the livestock protection collar use monitoring period.

Section 7.34 is adopted with changes. A statement that certified private applicators shall not supervise noncertified or unlicensed applicators has been added to §7.34(e) in response to comments on the need for the regulations to clearly set out statutory changes in the provisions regarding supervision. Certain comments expressed concern that the definition of "working" used for purposes of explaining the scope of direct supervision requirements was overly broad and included activities that would not involve exposure of workers to restricted-use or state-limited-use pesticides. The definition of "working" in §7.34(d) has been changed to only include those activities involving either open containers or actual use, disposal, and cleanup of pesticides. Section 7. 34(d)(1) has been changed to indicate that a specimen label or photocopy of the label or specimen label are suitable documents to date and sign as documentation of fulfillment of direct supervision requirements governing assurance that persons are knowledgeable of pesticides being used. This change has been made in response to comments, with which the department agrees, that full labels other than those attached to pesticide containers may be difficult to obtain, and comments regarding the impracticality of keeping entire containers.

Section 7.1 as adopted, adds definitions for agricultural commodity and nurseryman.

Section 7.4 as adopted, requires submission of a material safety data sheet with an application for pesticide registration.

Section 7.8(a) as adopted, pursuant to the Texas Agriculture Code, §76.105, specifies who may use restricted-use or state-limited-use pesticides.

Section 7.9 as adopted, for purpose of clarification, changes the citation referencing specific sections of the Act to comply with sunset legislative changes to those sections.

Section 7.10 as adopted, provides that private applicators, as well as commercial and noncommercial applicators, must meet certain recertification requirements, including continuing education. Specific training and continuing education requirements are provided for each classification of applicators.

Section 7.11 as adopted, was changed to reflect Texas Attorney General's Opinion Number JM-1078 that determined that TDA did not have authority to license, certify, and regulate applicators of termiticides who do

not work for commercial pest control businesses but who wish to apply restricted-use or state-limited-use pesticides in non-agricultural settings. Four new license use categories and one subcategory are added to meet either expected United States Environmental Protection Agency requirements or requests by the regulated community for special training in these areas. Subsection (e) sets prerequisites to certify in the ornamental and turf pest control and weed control license use subcategories. Subsection (f) sets prerequisites for certification for use of M-44 sodium cyanide by commercial and noncommercial applicators.

Section 7.12 as adopted, clarifies the exact testing requirements for commercial and noncommercial applicators to be eligible to be certified in a license use category or subcategory.

Section 7.13 as adopted, clarifies the exact requirements for commercial applicators to receive an original license or to renew their license.

Section 7.14 as adopted, changes the amounts of bonds or liability insurance required by commercial applicators to comply with the changes made to the Texas Agriculture Code by the 71st legislature.

Section 7.15 as adopted, adds subsections (e) and (f). Subsection (e) sets specific requirements applicable to fee exempt noncommercial licensees regarding the termination, recertification or renewal of their licenses. Subsection (f) sets specific requirements applicable to fee paid noncommercial licensees regarding conversion to commercial licenses.

Section 7.16 as adopted, sets specific requirements and limitations for licensed or certified private applicators, including training, testing, and certification in license use categories and subcategories.

Section 7.17 as adopted, corrects language to comply with changes made to the Texas Agriculture Code by the 71st Legislature concerning renewal fees for late renewals of licenses. Subsection (c) is amended to extend the renewal period from 90 days to one year and to clarify the renewal requirements for expired licenses.

Section 7.18 as adopted, specifies exact records required to be maintained by commercial and noncommercial licensees and specifies the type of information to be kept.

Section 7.19 as adopted, clarifies the requirements for registration and the inspection of equipment under the Texas Pesticide Law.

Section 7.20 as adopted, provides that oral and written complaints may be filed when a person believes that a provision of the Act or this chapter has been violated.

Section 7.23 as adopted, reflects periodic changes made to the State of Texas plan for certification of pesticide applicators which is filed with the United States Environmental Protection Agency.

Section 7.24 as adopted, adds two herbicides to the state-limited-use pesticide list.

Section 7.26, subsection (b), as adopted, provides for qualified persons to be able to request prior notification of applications of pesticides made by airblast or mistblowing equipment as well as for aerial applications and makes a grammatical correction to subsections (h)(5) and (j)(1).

Section 7.32 as adopted, reflects the United States Environmental Protection Agency approved state plan for Sodium Fluoroacetate (Compound 1080) livestock protection collars (LPC) applicator certification. The changes provide for a ranch employee to become a certified noncommercial applicator and for government employees to convert to a fee paid license upon termination of government employment; clarifies that TDA prescribed forms for the site review and sales data report will be used; clarifies the licensing requirements for noncommercial LPC applicators; provides a fee exemption for licenses issued to employees of governmental entities; and provides for late fees to be imposed for fee paid licenses. Subsection (i) as adopted, clarifies that the LPC applicator is to maintain the signed and dated label for at least two years after the last date of supervision.

Section 7.33 as adopted, makes clerical citation corrections and sets specific requirements for M-44 applicators and dealers.

Section 7.34 as adopted, sets the supervision requirements that each licensed applicator must practice in order to comply with both state and federal laws and regulations.

Section 7.40 as adopted, is changed to reflect Texas Attorney General's Opinion Number JM-1078 that determined that TDA did not have authority to license, certify, and regulate applicators of termiticides who do not work for commercial pest control businesses but who wish to apply restricted-use or state-limited-use pesticides in non-agricultural settings.

In addition to the comments noted above, the department received numerous comments on other sections of the proposed regulations.

Comments were received that supported the definition of "nurseryman" in proposed §7.1 because it would help clarify jurisdictional boundaries between the department and the Structural Pest Control Board.

On Section 7.8, comments were received on subsection (a) regarding authorized pesticide users. The comments suggested that a licensed technician category be established. Although the department's licensing procedures have recently undergone major changes, statutory changes were not adopted to allow the department to develop a technician's license. One comment suggested that the department license businesses rather than individuals and criticized the license fee as excessive. The department feels that the license fee is reasonable in particular because the amount is authorized by the legislature, Texas Agriculture Code, §76.108. A comment was received on subsection (b)(2) requesting clarification of the term "outlet" and particularly whether it applies to both a warehouse and the actual point of sale. The department feels that the term "outlet" refers to any location used to distribute a restricted-use or state-limited-use pesticide. One comment was received on subsection (b)(4)(c) questioning the inclusion of both the brand name and the EPA registration number on the record of sale of a restricted-use or state-limited-use pesticide. The department believes that the inclusion of both the brand name and the EPA registration number provides a valuable cross-reference in the event that either item was recorded incorrectly. It also allows the department to monitor sales of misbranded products. One comment was received on subsection (b)(5) that suggested that the words "the purchaser presents or provides proof" be replaced by the word "verification". The department feels that this change is not warranted in that it would not affect the intent of the regulation in requiring persuasive evidence that the purchaser holds a valid license at the time of purchase. In most instances, this will be accomplished by presentation of the current license.

In regards to §7.10, comments stated that the department should provide free training. The department and the Texas Agricultural Extension Service provided a significant amount of free recertification training in 1989 and will continue this practice in 1990. Some comments in regard to §7.10 stated a belief that private applicator recertification should be different than the recertification for commercial and noncommercial applicators while other comments indicated it should be the same. The requirements contained in the regulations allow for private applicator recertification in the same manner as for commercial or noncommercial applicators and an additional option for up to two recertification credits to be given for course provided by the department's Agricultural Right to Know Act or courses conducted by the Texas Agricultural Extension Service without prior accreditation.

On §7.11 several comments were received concerning the inclusion of and effective date for certification of commercial and noncommercial applicators in the chemigation category (proposed §7.11(a)(10)). One comment suggested that rather than certify applicators in this category, the department should outlaw the method of application. One commenter noted that with the strict supervision requirements for unlicensed applicators, the department will not allow an unlicensed applicator to apply state-limited or restricted-use pesticides absent the continuous physical presence of a licensed applicator but it will allow chemigation equipment to operate without similar scrutiny. The department received comments from individuals who recommended that commercial licensing should be available in the chemigation category in 1990. In general, these comments expressed concern with the risks posed by chemigation. The department feels that these comments underscore the need for specific training and certification in the chemigation category. Several comments were received commending the department for responding to the needs of the citrus industry by providing for licensing of commercial and noncommercial applicators in the citrus category. Other comments concerning §7.11 included positive reactions to the deletion of the reference to §7.40 regarding termite control, and to steps to tighten licensing and training requirements as well as comments supporting the proposed change in §7.11(e)

because these would help clarify jurisdictional boundaries between the department and the Texas Structural Pest Control Board.

Regarding §7.20, commenters, both as individuals and as representatives of groups, commented favorably on the provision. These comments pointed out the reluctance of witnesses to come forward even when they have observed a serious violation. The department shares this concern, and does agree that all sectors of the community must feel free to report violations.

On §7.24 other comments received by the department included suggestions that the department direct more energy to education and penalization of those persons who misuse pesticides, establish a technician's applicator license, establish an industrial pest control category, and some recommendations that other pesticides, in addition to the five proposed active ingredients be added to the state-limited use list. The department agrees that more energy should be directed at those who misuse pesticides, but the ability of the department to adequately document violations is hampered by the department's inability to gather information through applicator's records or sales records, when such information is not required to be maintained for pesticides that are not classified as restricted-use or state-limited-use. The authority to establish a technician's license was not provided to the department during the last legislative session. The department further feels that the development of an industrial category would duplicate the Right-of-Way category already established to include these applications, and would further cause confusion regarding licensing requirements under the Structural Pest Control Law. The department realizes that monitoring of pesticides that pose a potential risk to the health of people or the environment is an ongoing responsibility and will recommend that such pesticides be further restricted where justified.

Several comments were received in regard to the burden placed on applicators by the supervision requirements in §7.34, and several comments recommended that the department provide training for unlicensed applicators as allowed by the Texas Pesticide Law, §76.105 in lieu of licensed applicators assuring that unlicensed applicators under their supervision are knowledgeable. The department fully realizes that §7.34 will require work and recordkeeping by applicators. However, the regulation merely provides guidance or a mechanism for verification of requirements of the Texas Pesticide Law. While provision of training by the department would lessen the burden on applicators, no funds and additional personnel were included by the legislature in the department's budget for implementation of this new requirement. Therefore, the only means for compliance at this time is for licensed applicators to provide and document the required instruction of unlicensed persons working under their direct supervision with restricted-use or state-limited-use pesticides. Also, several comments were received opposing the requirement that commercial applicators be continuously physically present for direct supervision of unlicensed persons working with restricted-use or state-limited-use pesticides. This is a requirement of state law and not created by department regulation.

Finally, in regards to §7.40, there was one comment in support of the proposed amendment.

The following groups or associations submitted written or presented oral comments generally in favor of the regulations or parts thereof: Texas Pest Control Association, The Chemical Connection, National Audubon Society, Texas Rural Legal Aid, Consumers Union, Structural Pest Control Board, and Motivation, Education and Training.

The following groups or associations submitted written or presented oral comments generally against the regulations or parts thereof: Associated Applicators, Allied Sprayers, Plains Cotton Growers, Southwest Cotton & Grain Association, Texas Agricultural Aviation Association, Texas Citrus Mutual, Aviation Office of America, Texas Farm Bureau, Cotton & Grain Producers of the Rio Grande Valley, National Alliance of Independent Crop Consultants, State Department of Public Highways and Public Transportation, Texas Forest Service, Texas Agri-Women, Texas A&I University, Texas Association of Nurserymen, Plains Cotton Growers, United States Environmental Protection Agency, Texas Agricultural Aviation Association, Texas Agricultural Chemical Association, National Grain Sorghum Producers Association, Texas Cotton Ginner's Association, Texas Seed Trade Association, Texas Forest Service, Houston Power & Lighting, Texas Power & Light and TU Electric.

While the department has incorporated many of the requested changes into the adopted regulations, in addition to those previously addressed in this preamble, there were some suggestions with which the agency did not agree and therefore did not adopt.

Numerous comments were received on §7.8 that suggested that there should be no requirement for a dealer to obtain information as to the identification of a nonlicensed person to whom a dealer is making available a restricted-use or state-limited-use pesticide. Many of the comments alluded to the fact that dealers are selling to regular customers and consequently know who the applicators' employees are. The comments implied that written authorization will not work any better than current means and this enforcement burden should not be placed on the dealer. The comments reiterated that verification would result in burdensome paperwork and added expense to the dealer. The department disagrees that verification should not be required for sale of a restricted-use or state-limited-use pesticide. It is important for a dealer to verify that a restricted-use of state-limited-use pesticide is sold only to licensed applicators, certified private applicators, persons acting under the direct supervision of a licensed applicator or a licensed dealer. A dealer cannot be assured that the nonlicensed person will only be using the pesticide under the direct supervision of a licensed applicator, without written verification. The department feels that changes made to subsection(b) have not created an unnecessary burden to the dealer.

On §7.10, comments were received concerning reducing the number of credits for private applicator recertification required in §7.10 and only requiring credits in those categories in which the private applicator is involved. Because private applicators are certified or licensed to apply in all agricultural pest control categories, it is not deemed appropriate or feasible to narrowly limit private applicator recertification by categories. Furthermore, under the regulations, applicators can select those recertification courses which meet their particular needs.

One commenter requested a delay in implementation of recertification as required by §7.10. The first year of recertification training for commercial and noncommercial applicators has already been completed. It would not be equitable to those applicators who fulfilled the requirements to retroactively delay requirements. Additionally, the United States Environmental Protection Agency has indicated that the department must provide for private applicator recertification before it will approve a revised state plan for pesticide applicator recertification. The department believes that in addition to meeting federal requirements, recertification training will be beneficial to the health and safety of applicators and the public and should begin as soon as possible.

Two comments were received opposing the establishment of a chemigation category for licensed applicators as proposed in §7.11. Possible groundwater contamination, drift, and lack of supervision were cited as reasons not to ban chemigation. Chemigation is currently allowed under private applicator certification and commercial and noncommercial field crop pest control and fruit and vegetable pest control categories. The department believes that establishment of a separate category requirement for chemigation will result in a greater level of competency, and therefore it will proceed on a schedule that will allow for training materials and testing to be available for commercial and noncommercial applicators in 1991. Private applicator training by the Texas Agricultural Extension Service has already been modified to include coverage of chemigation.

A number of comments were received in opposition to gender, race, and social security information requirements contained in §7.13 regarding commercial applicator license application specifications. Included in the comments were concerns that this information would be used to discriminate against individuals due to sex or race and that requiring the information constitutes an invasion of privacy. The Texas Pesticide Law, §76.108(d) prohibits issuance of a commercial license to anyone convicted of a felony involving moral turpitude within the last two years. The information on sex and race is not being required for discriminatory purposes but rather, because such information is necessary for the department to check for felony convictions of persons applying for a commercial license. Social security numbers are being required so that the department can differentiate between applicators with the same name, particularly when address changes occur. This information can aid in avoiding unnecessary retesting and licensing in instances involving loss or destruction of applicators' records.

On §7.16 several comments were received on the licensing requirements for private

applicators. One commenter suggested that the department specify the passing score for applicators taking the test to be licensed as private applicators. The department intends to accept a 70 as a passing score but feels that given the very early stages of private applicator testing and licensing, it is preferable to set the score as a matter of policy. One individual recommended that §7.16(e) be deleted because a private applicator who ceases production of agricultural commodities may later return to production and have need for a private applicator license. The department recognizes that agricultural production may cease for a short time without meaningfully interrupting the individual's participation in agriculture. However, the department believes that the individual who leaves agricultural production is best served by undergoing training and re-licensing before using state-limited and restricted-use pesticides again. One comment criticized the $50 fee for a private applicator license; one suggested that licensing be provided in specific categories. The department has no discretion in setting the license fee, as the $50 fee is established by statute. The department is also required by statute to license private applicators in all categories. One comment expressed support for licensing and regulating private applicator chemigation; one disagreed stating that chemigation, unlike aerial application, involves a low risk of drift; one suggested that private applicator tests be as stringent and strictly monitored as commercial applicator tests. The department is not imposing additional restrictions on chemigation with state-limited-use and restricted-use pesticides. This activity required a license even under previous regulations. The new category merely brings the categories for private applicators in line with those for commercial and noncommercial licenses.

Comments about proposed §7.18 expressed general approval and disapproval for the more detailed recordkeeping requirements. Additionally, one commenter suggested that the department assist with recordkeeping. Other comments suggested that the phrase "including each time application starts and ends" be deleted, that the phrase "but not limited to" is unnecessarily vague. One commenter specifically agreed with the inclusion of diluents and surfactants as items of recordkeeping. One suggested that the regulations specify that the recording of an EPA registration number is only required if the product is registered by EPA. The department feels that the current and new recordkeeping requirements will benefit its enforcement of the state's Pesticide Law. The new items, starting and stopping times, and diluents and surfactants have been added because thorough inspections and investigation of complaints often require the department to collect this information. For example, chemicals may bear restrictions on the use of surfactants, or the specific starting and stopping times of an application may assist the department in determining the precise conditions during a pesticide application.

Many comments were received by the department on §7.24 which suggested that the active ingredients bromacil and prometon should be deleted from state-limited-use classification because the agency had not shown enough research to warrant this action. The department, in evaluating these two active ingredients, considered the residual longevity of these active ingredients, the type of exposure involved in complaint cases, the extent of effects observed in complaint cases, applicator status, and finally the number of cases investigated. The department believes that these criteria clearly indicate the need to state-limit these two active ingredients, and that the economic, social, and environmental costs and benefits have been duly considered. These two active ingredients tend to be persistent in the environment and may irreversibly effect non-target vegetation. The water solubility of these two active ingredients contributes to increased soil mobility and they are susceptible to run-off even when applied according to label directions. The number of cases investigated by the department further indicates that the majority of the complaints involved unlicensed applicators. Therefore, in order to satisfy statutory responsibilities regarding the regulation of pesticides for which, even when used as directed or in accordance with widespread and commonly recognized practices, additional restrictions are required to prevent unreasonable risk to man and the environment, the department has determined that bromacil and prometon should be classified as state-limited-use pesticides to ensure that only licensed and properly trained applicators should apply these products. This regulation shall become effective January 1, 1991. It should be noted that state-limiting a pesticide does not remove the product from use, but merely requires that the use and sale be available only to licensed applicators and that appropriate recordkeeping of these activities be maintained.

Several comments were received both in support of and against the proposed amendment to §7.26(b). The department feels that the rule as originally proposed strikes a fair balance between the interests of farmers, applicators, and other rural residents. One comment was supportive of the change but suggested that notification be made mandatory. One comment recommended the deletion of the new language until the department can establish unreasonable risk. Several commenters opposed the change because they felt that airblast and mist blower applications are sufficiently regulated by label restrictions on the chemicals used and because the method of application leads to a greatly reduced risk of drift. The department disagrees. The nature of air blast and mist blower applications argues persuasively for these requirements. Because these applications operate by movement of very fine droplets of pesticide solutions, the risk of off-target movement is substantial. Although several commenters noted, many citrus groves are located in heavily populated areas and cannot be moved around, the department does not feel that the burden to the citrus industry will be excessive. In most instances, notification is accomplished by posting the field. Moreover, the department's experience with notification requirements indicates that most persons eligible to receive prior notification of applications do not request it. One citrus industry representative pointed out that neighbors are usually notified as a matter of course. One comment suggested a reduced prior notification radius of 330 feet for these applications. The department feels that this would unduly restrict the rights of very near neighbors to know of pesticide applications. One comment opposed §7.26 in its entirety, and one described the proposed change as prohibitive since the commenter believed that notification would require applications to be scheduled many days in advance. In fact, the requirement is sufficiently flexible to allow advance notice of only 24 hours and also makes allowances for genuine emergencies.

A number of comments were received in opposition to requirements proposed in §7.34. commenters opposed the requirements that commercial applicators be continuously physically present, opposed providing documentation that unlicensed applicators are knowledgeable, and opposed the requirement that only licensed applicators to be permitted to supervise. Commenters believed these requirements to be overly burdensome. Some comments misinterpreted the requirement for commercial applicators to be continuously physically present to apply to all licensed applicators. Several comments requested different supervision requirements for state-limited-use pesticides and restricted-use pesticides. Also, comments were received suggesting the limiting supervision of requirements to those requirements found on pesticide labels. Except for the actual mechanism to assure that unlicensed applicators are knowledgeable of the pesticide being used, all these comments pertain to matters of law and the department cannot change the law on these matters through regulation. Furthermore, the department believes that it is a prudent practice for licensed applicators to document that unlicensed persons working under their direct supervision are knowledgeable.

The amendments and new section are adopted under the Texas Agriculture Code, §76.003, which allows TDA to adopt lists of state-limited-use pesticides; §76.004 and §76.007, which provides TDA with the authority to adopt rules regarding the manner and methods of pesticide applications, and also authorizes TDA to adopt rules which provide for compliance with federal pesticide laws and regulations; and §§76.101-76.113 which provides TDA with the authority to establish requirements for the licensing and certification of pesticide applicators.

§7.1. Definitions. In addition to the definitions set out in Texas Agriculture Code, §76.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act–Texas Pesticide Control Act, codified at Texas Agriculture Code, Chapter 76 (1981).

Agricultural commodity–A plant or animal grown for sale, lease, barter, feed, or human consumption and animals raised for farm or ranch work.

Nurseryman–A person who possesses a current class 1, 2, 3, or 4 nursery and floral certificate issued by the department.

§7.8. Authorized Pesticide Users and Pesticide Dealers.

(a) Authorized pesticide users. A person may not use a restricted-use or state-limited-use pesticide unless the person is:

(1) licensed as a commercial applicator, noncommercial applicator, or private applicator and authorized by the license to use the restricted-use or state-limited-use pesticide in the license use categories covering the proposed pesticide use;

(2) an individual acting under the direct supervision of a licensed applicator; or

(3) a certified private applicator as defined in the Texas Agriculture Code, §76.112(j).

(b) Pesticide dealers. It shall be a violation for a pesticide dealer required to be licensed by the Act, Subchapter D (concerning licensing of dealers) to continue to distribute restricted-use or state-limited-use pesticides after December 31 of each year without first having renewed the pesticide dealer license in accordance with the Act.

(1) Application for a dealer's license shall be made on forms prescribed by the commissioner and shall include the following:

(A) the name of the business;

(B) the mailing address and location of the business; and

(C) the name and address of the applicant's manager or agent.

(2) All applicants must submit a license fee of $100 for each license requested. This fee will not be prorated. Dealers currently licensed under the Texas Herbicide Law, codified at the Texas Agriculture Code, Chapter 75 (1981), will not be required to pay an additional fee as long as the herbicide license covers only one outlet. If the herbicide dealer's license is for more than one outlet, a license will be issued to one such outlet at no charge. Each additional outlet licensed must pay the pesticide dealer's license fee.

(3) A pesticide dealer's license shall not be transferable. In case of a change in ownership of a licensee's business, outlet, or facilities, a new application and fee are required.

(4) The record-keeping requirements imposed on licensed pesticide dealers by the Texas Agriculture Code, §76.075, may be satisfied either by invoices or by records kept on a separate form provided that, if such invoices are used they are kept separate from the licensee's other sales records and regardless of form contain:

(A) the name, address, licensed or certified applicator number, or dealer license number of the person to whom the pesticide was sold or delivered;

(B) the date of sale;

(C) the brand name, registration number, and manufacturer of pesticide;

(D) the quantity of pesticide sold; and

(E) if the sale is made to a nonlicensed person acting under the direct supervision of a licensed applicator:

(i) the name of the nonlicensed person to whom the restricted-use or state-limited-use pesticides is made available, the address of the residence or principal place of business of that person as stated on a valid driver's license or other current state, county, or tribal identification document issued to the nonlicensed person; and

(ii) verification that the restricted-use or state-limited-use pesticide is made available to a nonlicensed person. This verification shall be accomplished by a statement signed by the licensed applicator that the nonlicensed person is the duly authorized representative of the licensed applicator and that the restricted-use or state-limited-use pesticide made available to the nonlicensed person will only be used by or under the direct supervision of the licensed applicator. This statement may be made on a form prescribed by the department.

(5) Except as provided by §7.32 and §7.33 of this title (relating to Sodium Fluoroacetate (Compound 1080), Livestock Protection Collar-State-Limited-Use Requirements and M-44 Sodium Cyanide-State-Limited-Use Requirements), restricted-use or state-limited-use pesticides may only be sold to licensed applicators, certified private applicators, persons acting under the direct supervision of a licensed applicator, or a licensed dealer. A dealer shall not sell or deliver a restricted-use or state-limited-use pesticide to a licensed applicator or certified private applicator unless the purchaser presents or provides proof of an unexpired license at the time of sale or delivery.

§7.10. Applicator Recertification.

(a) Except for licenses issued under §7.32 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited Use Requirements), each commercial, noncommercial, and private applicator must meet certain recertification requirements periodically, including continuing education.

(b) (No change.)

(c) Prior accreditation shall not be required for private applicator recertification courses of up to two continuing education credit units conducted by the Texas Agricultural Extension Service or right-to-know training pursuant to Texas Agriculture Code, Chapter 125, conducted by the Texas Agricultural Extension Service or the Texas Department of Agriculture provided that all other requirements for course content and records are met. In order for a recertification activity to be accredited by the department, the sponsor must:

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

(d)-(f) (No change.)

(g) Each licensed commercial or noncommercial applicator must:

(1) obtain at least five credits during the 12 months preceding December 31 in order to be allowed to renew for the following year. Any person who is issued a license on or after September 1 in any year and has not been licensed at any time during the preceding nine months, shall begin annual renewal requirements the following year and need not obtain any credits between September 1 and December 31 of that year. If credits are obtained during that period, they may be applied to the following year's requirements. An applicator who becomes unlicensed in any licensing year may not be relicensed for 12 months unless all recertification credits required for the last year of licensing are completed; and

(2) obtain 2 credits during the three-year period of continuing education requirements beginning on the first day of January in the year in which the applicator's license is issued; provided, however, if an applicator is licensed after September 1, the continuing education period shall begin on the following January 1. For all applicators licensed before September 1, 1989, the initial continuing education period shall end December 31, 1992. As part of the 20 credits, each applicator must have at least two credits on relevant laws and regulations and one credit in integrated pest management strategies.

(h) Private applicators must recertify as follows.

(1) Private applicators issued a certificate prior to January 10, 1989, may fulfill their recertification requirement on a one time only basis prior to December 31, 1995, by completing the Texas Agricultural Extension Service private applicator training program, attaining a passing score on the private applicator test, and obtaining a private applicator license. Certified private applicators who choose not to license but wish to maintain certification under a certificate issued prior to January

10, 1989, will be required to recertify through continuing education by December 31, 1995. Each applicator must obtain 15 continuing education credits including at least two credits in laws and regulations and one credit in integrated pest management in order to be recertified.

(2) All private applicators issued a certificate on or after January 10, 1989, must recertify by obtaining a private applicator license by December 31, 1994.

(3) Each licensed private applicator must obtain 15 credits prior to December 31 of the year preceding renewal of the private applicator license.

(4) Private applicators must obtain at least two credits in laws and regulations and one credit in integrated pest management within their five-year recertification period. Applicators licensed as both private and commercial or noncommercial applicators may satisfy requirements for private applicator recertification by meeting the recertification requirements for commercial and noncommercial applicators.

(i) The requirements for obtaining credit for an accredited continuing education activity include the following.

(1) Each licensed or certified applicator shall complete a TDA-approved activity report to be provided by the sponsor of the accredited activity and leave the report with the sponsor for submission to the department for inclusion in the applicator's record. Activity reports will not be accepted from individual applicators. The reports shall contain the following information:

(A) name, address, phone number, license number, social security number, and signature of the licensed or certified applicator;

(B)-(D) (No change.)

(2) Sponsors of accredited activities shall:

(A) (No change.)

(B) send the activity reports to the department within 14 days after the end of an activity, together with the results of each participant's comprehension evaluation for the activity except that governmental agencies may enter into an agreement with the department for annual submission of recertification records of agency employees attending a recertification program approved for the agency by the department.

(j) A licensed or certified applicator may seek credit for a continuing education activity that has not been submitted by the sponsor to the department, and the department will assign the number of credits for the activity where:

(1) the activity is held by an out-of-state sponsor and the following applies:

(A)-(B) (No change.)

(C) the licensed or certified applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of sponsor, instructor's name and address, proof of attendance, date, time, and place of the activity; and

(D) (No change.)

(2) the activity is a course approved by a university, college, or other institution of higher education for credit towards a bachelors degree, and is an area directly related to the activities of commercial or noncommercial applicators, and the following applies:

(A) the licensed or certified applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of sponsor, instructor's name and address, proof of attendance, date, time, and place of activity; and

(B) (No change.)

(k) A commercial or noncommercial applicator who fails to comply with the requirements for annual renewal or a private applicator who fails to comply with the five-year recertification requirements will:

(1)-(6) (No change.)

(l) Failure to comply with the three-year continuing education requirements for commercial and noncommercial applicators or the five-year requirements for private applicators will:

(1) result in nonrenewal of an applicator's license or certification until the necessary credits for continuing education are attained;

(2) require the applicator to take and pass comprehensive TDA examinations for general knowledge and for each category in which the applicator seeks certification; and

(3) require retraining of private applicators and retraining of commercial and noncommercial applicators for categories or subcategories requiring special training; and

(4) subject a noncompliant applicator to civil and criminal penalties.

(m) The department may deny, revoke, or refuse to renew accreditation for any or all courses of a sponsor if the sponsor fails to file a timely activity report, fails to provide the quality of activity approved by the department, or fails to comply with any other requirements that are a basis for accreditation or that are a part of these rules.

(n) A commercial or noncommercial applicator licensed in another state may purchase and apply restricted-use or state-limited-use pesticides in Texas only if the applicator:

(1)-(5) (No change.)

(o) The Texas Department of Agriculture may enter into a memorandum of agreement with another state or non-profit professional society or association to recognize the state's pesticide applicator recertification or the society's professional recertification for satisfaction of the requirements of this section for commercial, noncommercial, and private applicator recertification only if:

(1) the standards for recertification meet or exceed the standards for the three-year or five-year recertification periods as set out in this section;

(2) the licensed commercial or noncommercial applicator also acquires at least two credits in laws and regulations every three years and the licensed or certified private applicator acquires at least two credits in laws and regulations every five years; and

(3) the agreement reduces duplication of effort and does not increase the recordkeeping burden of the department.

(p) A licensed or certified applicator or sponsor may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension shall be granted by the department if the applicator sponsor files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause means extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.

§7.11. Applicator Certification.

(a) The Texas Department of Agriculture will certify commercial and noncommercial applicators in the following license use categories and subcategories:

(1) agricultural pest control:

(A)-(E) (No change.)

(F) fumigation;

(G) animal pest control including:

(i) (No change.)

(ii) fly control; and

(H) citrus pest control.

(2)-(6) (No change.)

(7) demonstration and research;

(8) regulatory pest control;

(9) aerial application; and

(10) Chemigation (effective March 1, 1991).

(b)-(d) (No change.)

(e) The Texas Department of Agriculture will only certify a commercial applicator in the ornamental and turf pest control and weed control subcategories if the applicant is a nurseryman as defined in §7.1 of this title (relating to Definitions), or if the applicator restricts application only to ornamental and turf plants at the production site.

(f) After completion of the training prescribed by §7.33 of this title (relating to M-44 Sodium Cyanide State-limited-use Requirements), the Texas Department of Agriculture will certify for use of M-44 sodium cyanide commercial applicators licensed in the predatory animal control subcategory and noncommercial applicators licensed in the predatory animal control subcategory, research and demonstration category, or the regulatory pest control category.

§7.14. Commercial Applicator Proof of Financial Responsibility.

(a) Bonds and liability insurance. The department will accept a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as a surety or a liability insurance policy as proof of financial responsibility. The bond or liability insurance policy must provide protection for persons who may suffer damages or injuries as a result of the operations of the applicant. The bond or liability insurance policy must meet the following conditions.

(1) Amount and type of coverage. Each bond or liability insurance policy must, at a minimum, provide for limits of liability of $100,000 per occurrence for bodily injury and $100,000 per occurrence for property damage. These limits apply to both ground and aerial applicators. The insurance policy or bond may be written to cover one or more licensed applicators and those applicators working under their supervision. Each licensed applicator and anyone who applies pesticides under his or her supervisor, however, must be covered by a form of financial responsibility that complies with this section and that provides financial responsibility for any occurrence of injury or damage resulting from the application of pesticides by such persons. Claims made liability insurance policies will not be accepted by the department.

(2) (No change.)

(3) Extent of coverage. The bond or liability insurance policy must protect persons who may suffer damages or injuries as a result of the operations of the applicant whether the damage or injuries are caused by the applicant or persons working under his or her supervision. The coverage must include damages or injuries to real or personal property, including crops, plants, soils, bodies of water, or structures on land not being worked on by the applicator; or persons regardless of their location on or off the land being worked. The bond or policy need not cover damages or injuries to agricultural crops, plants, or land being worked on by the applicant. Each insurance policy must contain a clear indication that such coverage is provided in the form of a pesticide and herbicide endorsement or similar chemical coverage endorsement or language acceptable to the department. If a bond or liability insurance policy specifically excludes a particular chemical from coverage, the applicator is not licensed to apply that chemical.

(4) (No change.)

(5) Abeyance of license. A commercial applicator license will automatically be held in abeyance and be invalid as a basis for operations if the full amount and extent of coverage required by this section is not maintained. If the bond or policy falls below the prescribed minimum limits of liability for any reason, the licenses of all licensed applicators relying on that bond or policy for proof of financial responsibility are automatically held in abeyance. A licensee may not operate as a commercial applicator during a period in which the minimum requirements for coverage are not maintained.

(6)-(7) (No change.)

(b) Certificates of deposit and letters of credit. The department will accept a certificate of deposit or a letter of credit from an applicant if the original instrument is submitted to the department and under the following conditions.

(1) Inability to obtain bond or liability insurance coverage. In order to be eligible to submit a certificate of deposit or letter of credit as proof of financial responsibility, an applicant must demonstrate annually to the department that the applicant cannot reasonably obtain the bond or liability insurance policy specified in subsection (a) of this section. The department requires:

(A)-(B) (No change.)

(C) if the Texas State Board of Insurance has made a determination that the liability insurance policy required by the Texas Agriculture Code, §76.111, subsection (a)(2), is not generally and reasonably available to commercial pesticide applicators, a certificate of deposit or letter of credit that otherwise meets the requirements of subsection (b) of this section will be accepted by the department as proof of financial responsibility for the applicator.

(2) Certificate of deposit. The department will accept a certificate of deposit in the amount of $200,000 issued by a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation. The certificate of deposit must be made payable to the Texas Department of Agriculture, and the original of the certificate must be filed with the department. The certificate of deposit may not be used as collateral or pledged for any purpose.

(3) Letter of credit. The department will accept a letter of credit in the amount of $200,000 issued by a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation. The letter of credit must be an irrevocable standby letter of credit made in favor of the Texas commissioner of agriculture for the account of the applicant. Draws must be able to be made by the commissioner or by his designated agent by a sight draft referencing the number of the letter of credit. The letter of credit must be irrevocable for at least one year. The department will provide any applicant with a form for the letter of credit which is acceptable to the department. All other letters of credit are subject to specific approval by the department.

(4) Payment of claims. If a claimant contacts the department for payment of a claim against a licensed applicator who has provided a certificate of deposit or letter of credit as proof of financial responsibility, the department will not disburse funds or release a certificate or letter except by consent of the applicator or pursuant to court order. Prior to payment of such a claim or the release of a certificate of deposit, the licensed applicator must furnish the department with a list of all outstanding claims for which the certificate of deposit or letter of credit might have to respond.

(5)-(7) (No change.)

§7.15. Noncommercial Applicator License.

(a) Except as specified on the application form, an application for an original or renewal noncommercial applicator license filed with a regulatory

agency pursuant to the Texas Agriculture Code, §76.109, shall contain the same information as required for a commercial applicator license application by §7.13 of this title (relating to Commercial Applicator License).

(b)-(d) (No change.)

(e) A fee exempt noncommercial license issued to an employee of a governmental entity shall be returned to the Texas Department of Agriculture within three days of termination of employment. A fee exempt noncommercial applicator who is eligible for recertification or annual license renewal and who is in good standing may convert to a fee paid commercial or noncommercial license in appropriate categories without retraining or retesting by submitting a complete application and license fee within six months of termination of public employment. A fee exempt noncommercial applicator who is eligible for license renewal or recertification and who is in good standing and transfers to another governmental entity may relicense in the appropriate categories within six months of the transfer without retraining or retesting.

(f) A fee paid noncommercial applicator who is eligible for recertification or annual license renewal and is not prohibited from receiving a license by the Texas Agriculture Code, §76.108(d), may convert the license to a commercial license by making application to the department, paying the required fee, and providing proof of financial responsibility.

§7.16. Private Applicators.

(a) The Texas Department of Agriculture will establish a program to license or certify private applicators as provided by the Texas Agriculture Code, §76.112. The program for licensing private applicators shall take effect no later than January 1, 1990. Producers of agricultural commodities that complete the Texas Agricultural Extension Service training program for private applicators and obtain a passing score on the private applicator test may be certified in the following categories and subcategories listed in §7.11(a)(1)-(4), (6), and (10) of this title (relating to Applicator Certification).

(b) A private applicator may be certified as an aerial applicator by obtaining a passing score on the aerial applicator category test. Private applicators will not be charged a test fee.

(c) An application for an original or renewal private applicator license shall be on a form prescribed by the Texas Department of Agriculture and accompanied by a license fee of $50. An application for renewal must be received by the department on or before the last day of February in the year in which license renewal is due. The application form shall contain the following information:

(1) the name, address, telephone number, and social security number of the applicant;

(2) the name, address, telephone number, and United States Department of Agriculture farm number of the farm or ranch, if any, that the applicant owns or by which the applicant is employed;

(3) an indication of whether the person is also applying for the aerial applicator category; and

(4) a statement of whether the applicant has ever had a previous license revoked, suspended, probated, or denied in this or any other state.

(d) All applicators issued a private applicator certification on or after January 10, 1989, must obtain a private applicator license by December 31, 1995, to continue purchase and use of restricted-use or state-limited-use pesticides.

(e) A private applicator certification or license may be revoked by the department if the applicator is not engaged in the production of an agricultural commodity.

(f) A licensed or certified private applicator must notify the Texas Department of Agriculture immediately of any change of information provided on the application for a license or certification. Failure to provide such information may be grounds for suspension or revocation of a certification or license.

(g) An employee that qualifies as a private applicator under the Texas Agriculture Code, §76.112(c), is not considered to be providing equipment or pesticide when the employer is identified on the private applicator's certification or license application or amendment thereof, and either:

(1) the pesticide or equipment is purchased by the private applicator using a check, cash, or account of the employer; or

(2) the applicator is reimbursed by the employer for the equipment or pesticide.

(h) Licensed or certified private applicators may not purchase or apply the state-limited-use pesticide sodium fluoroacetate (Compound 1080) for livestock predation control.

§7.17. Expiration and Renewal of Licenses.

(a) (No change.)

(b) Failure to file a timely and complete application for renewal by the license expiration date subjects an applicator to a late fee under the Texas Agriculture Code, Chapter 12, and the Act. Applications of restricted-use or state-limited-use pesticides by any commercial or noncommercial applicator after the expiration date of the license and when a complete application has not been filed with the Texas Department of Agriculture can subject the applicator to additional penalties and could also result in the department's refusal to issue a license for the rest of the licensing year under the Texas Agriculture Code, §76.108. Similarly, applications of such pesticides by a commercial applicator without having proper proof of financial responsibility shall subject the applicator to sanctions under the Act.

(c) If a complete application for renewal of a commercial or noncommercial applicator's license is not submitted within one year after the expiration of the license, the license will be deemed to be terminated voluntarily and a renewal application will not be accepted. Before being licensed again, the applicator must meet the requirements for a new license, including testing and any required training and continuing education units in the appropriate category.

(d) (No Change.)

§7.20. Complaint Investigation.

(a) Any person with cause to believe that any provision of the Act or this chapter has been violated may file a written or verbal complaint with the Texas Department of Agriculture.

(b) Any person who has experienced adverse effects or is alleging damages from a pesticide application may file a written complaint with the appropriate regulatory agency. Such complaint shall be subscribed by the complaining party and set forth in detail the facts of the alleged violation.

(c) The agency will investigate the complaint and make a full written report.

(1) -(2) (No change.)

(d) The investigating agency shall, as soon as possible, notify the applicator(s) believed to be responsible for the complaint and the owner or lessee of the land where the application occurred.

(e) The investigating agency will not estimate monetary losses sustained.

(f) No finding of violation by the agency will be premised solely on the uncorroborated statements of an anonymous or unidentified complainant, but all such complaints will be investigated routinely. For each such complaint, the agency will determine the extent of investigation which is appropriate to address the complaint.

§7.24. State-Limited-Use Pesticides.

(a) Because of their potential to cause adverse effect to nontargeted vegetation, all pesticide products containing the active ingredients as specified in this subsection, alone or in mixtures, shall be classified as state-limited-use pesticides when distributed in containers of a capacity

larger than one quart for liquid material or two pounds for dry or solid material. If the products are marketed using metric measures, the classification applies to containers larger than one liter or one kilogram, respectively; 2,4-Dichlorophenoxyacetic acid (2,4-D); 2, 4-Dichlorophenoxy butric acid (2,4-DB); 2,4-Dichlorophenoxy propionic acid (2, 4-DP); 2,4,5-Trichlorophenoxyacetic acid (2,4,5-T); 2-Methyl-4-Chlorophenoxyacetic acid (MCPA); 2-(2,4,5-Trichlorophenoxy propionic acid (silvex); 3,6-Dichloro-o-anisic acid (dicamba); 3,4-Dichloropropionanilide (propanil); orthoarsenic acid (arsenic acid); and effective January 1, 1991, 5-bromo-3-sec-butyl-6-methyluracil (bromacil); and 2,4-bis(isopropylamino) - 6-methoxy-s-triazine (prometon). Formulations containing the active ingredients previously listed in this subsection are exempt from being classified as state-limited-use pesticides if they meet one of the criteria listed in paragraphs (1) or (2) of this subsection.

(1)-(2) (No change.)

(b) -(c) (No change.)

(d)-(e) (No change.)

§7.32. Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar-State-Limited-Use Requirements.

(a) (No Change.)

(b) Definitions. In addition to the definitions set out in the Texas Agriculture Code, §76.001(1981), and §7.1 of this title (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings, unless indicated otherwise.

(1) LPC applicator–A person who has obtained a license from the department as a commercial or noncommercial certified livestock protection collar applicator for the use of the livestock protection collar. Private applicator authorization will not be given by the department for the use of the livestock protection collar. Persons desiring a license to use the livestock protection collar on property owned, leased, or rented by the person or the person's employer or under the person's general control should apply for a noncommercial LPC applicator license. Employees of government agencies who apply collars in administration of official duties may obtain a noncommercial LPC license. Persons operating a business or employed by a business to apply livestock protection collars on the property of another for hire should apply for a commercial LPC applicator license.

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

(c) Sale or transfer requirements. Registrants and agents selling or transferring livestock protection collars must meet the following requirements.

(1) Each registrant must obtain a license under the Texas Agriculture Code, §76.071, and comply with the provisions of §7.8 of this title (relating to Authorized Pesticide Users and Pesticide Dealers).

(2) -(7) (No change.)

(8) Registrants and agents may sell or transfer livestock protection collars only to LPC applicators for whom a site review and sales data report has been executed for each sale or transfer on a form prescribed by the department.

(9) (No change.)

(d) Licensing of LPC applicators.

(1) (No change.)

(2) In order to obtain a commercial LPC applicator license, a person shall comply with the licensing requirements of §7.13 and §7.14 of this title (relating to Commercial Applicator License and Commercial Applicator Proof of Financial Responsibility), complete training, pass a test prescribed by the department, and pay the fee prescribed by §7.13 of this title (relating to Commercial Applicator License). The license expiration and renewal requirements of §7.17 of this title (relating to Expiration and Renewal of License), apply to commercial LPC applicators.

(3) In order to obtain a noncommercial LPC applicator license, a person shall complete training, pass a test prescribed by the department, and submit an application prescribed by the department along with an initial annual license fee of $50 within 12 months of training. Retraining and retesting will be required if a license is not acquired within 12 months of initial training. Pursuant to §7.12 of this title (relating to Classification of Commercial and Noncommercial Licenses), a testing fee will be collected. No fee will be charged for a license issued to employees of a governmental entity for applying collars as part of their official duties. An annual renewal fee of $50 shall be paid prior to the time of the annual license renewal on March 1 of each year. Failure to renew a license by the due date will result in the assessment of late fees as required by the Texas Agriculture Code, §12.024. A person that fails to renew within one year of the due date is not eligible to renew a license and must retrain, retest, and reapply.

(4) All LPC applicators must recertify every three years. Each LPC applicator is responsible for giving written notice to the department of any change of address. Government employees who hold a current fee exempt noncommercial license must surrender the license within 30 days of termination of government employment and may convert to a fee paid license if the certification is in force by making application to the department within six months of the termination date. Retraining and retesting may be required by the department for any LPC applicator who fails to comply with the use, recordkeeping, or other requirements of the department.

(e)-(h) (No change.)

(i) Instructions to noncertified applicators working under the supervision of an LPC applicator. The LPC applicator shall give appropriate verifiable instructions on the use of the collar to a noncertified person before he/she may handle the collar without the direct physical supervision of the LPC applicator. At a minimum, such instruction shall include the reading of the label by the noncertified person. To verify that appropriate instructions have been given, the LPC applicator and the noncertified person shall sign and date a copy of the LPC label. The LPC applicator shall maintain the signed and dated label for at least two years after the last date of supervision.

§7.34. Supervision.

(a) If there is a discrepancy between supervision requirements between federal laws or regulations, state laws or regulations, or the pesticide label, the supervision requirement that requires the greatest degree of direct supervision by the licensed applicator must be practiced. Licensed applicators may only supervise application of pesticides for categories or subcategories in which they are certified.

(b) A business that applies a restricted-use or state-limited-use pesticide to the land of another for hire must be operated by or employ a licensed commercial applicator. An application of a restricted-use or state-limited-use pesticide can only be made by the licensed commercial applicator or by persons working under the licensee's direct supervision during which time the licensee must be continuously physically present. A person may apply a restricted-use or state-limited-use pesticide under the direct supervision of a licensed commercial applicator only if the person is under the instruction and control of the commercial applicator and the commercial applicator is on the site where the application of the pesticide is being made and can observe and converse with the person under supervision. A licensed commercial applicator is responsible for the actions of any person working under the licensee's direct supervision.

(c) A licensed noncommercial applicator or licensed private applicator is not required to be physically present at the time and place of a pesticide application to exercise direct supervision of application of a restricted-use or state-limited-use pesticide, but the licensed noncommercial or private applicator must always be available when and if needed. The licensed applicator is responsible for any person working under the licensee's direct supervision.

(d) All licensed applicators are responsible for assuring that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual. Working includes transporting a restricted use or state-limited-use pesticide in any type of distributing or transporting equipment ready for application; mixing, storing, and handling in packages or containers that have been opened; and applying and disposing of restricted-use or state-limited-use pesticides and cleaning equipment used to apply the pesticide. At a minimum, instructions shall include a review of appropriate sections of the Texas pesticide law and the Texas pesticide regulations, and reading of complete labeling information for the particular use of the pesticide product being applied. To verify that appropriate instructions have been given to a nonlicensed person, the licensed applicator and nonlicensed person shall either:

(1) sign and date a copy of the pesticide label or specimen label, or photocopy of the appropriate labeling document. The label or other labeling document shall be kept by the licensed applicator for at least two years after the last date of direct supervision; or

(2) complete a verification form prescribed by the department for each restricted-use or state-limited-use pesticide used. A copy shall be provided to the nonlicensed person, and the original shall be kept by the licensed applicator for at least two years after the last date of direct supervision.

(e) A private applicator may not supervise the use of restricted-use or state-limited-use pesticide by an unlicensed or noncertified applicator unless the private applicator has completed the Texas Agricultural Extension Service private applicator training program, obtained a passing score on the private applicator examination, and obtained a private applicator license from the department as specified in the Texas Agriculture Code, §76.112.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on February 16, 1990.

TRD-9001708 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Effective date: January 1, 1991

Proposal publication date: December 1, 1989

For further information, please call: (512) 463-7583

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• 4 TAC §7.41

The Texas Department of Agriculture adopts the repeal of §7.41, without changes to the proposed text as published in the December 1, 1989, issue of the *Texas Register* (14 TexReg 6231).

The section is being repealed in order to comply with Texas Attorney General's Opinion Number JM-1078 that determined that the Texas Department of Agriculture (the department) does not have authority to license, certify, and regulate applicators of termiticides who do not work for commercial pest control businesses, but who wish to apply restricted-use or state-limited-use pesticides in non-agricultural settings.

The repeal of the section will bring the department in compliance with Texas Attorney General's Opinion Number JM-1078.

Several comments were received both for and against the repeal. Two commentors stated general approval with the repeal. Two commentors were against the repeal with one commentor stating that people need to be informed on the use of termiticides in their homes. Both commentors against the repeal suggested that if the authority to license and regulate was transferred to the Texas Structural Pest Control Board (SPCB), then the repealed regulation should also be transferred for implementation by the SPCB. In addition, commentors felt that the department should work closely with the SPCB to regulate all of those who use termiticides.

Commenting in favor of the repeal of §7.41 were representatives of the Texas Pest Control Association and the Texas Structural Pest Control Board. Commenting against the repeal of §7.41 were representatives of the Chemical Connection and the Texas Consumers Union.

The repeal is adopted under the authority of Texas Agriculture Code, §76. 003 and §76.004, which provides the Texas Department of Agriculture with general rulemaking authority.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1990.

TRD-9001707 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Effective date: March 9, 1990

Proposal publication date: December 1, 1989

For further information, please call: (512) 463-7583

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TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 175. Schedule of Fees and Penalties

• 22 TAC §175.4

The Texas State Board of Medical Examiners adopts new §175.4, without changes to the proposed text as published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6855).

The new section allows June Federation Licensing Examination (FLEX) applicants who must file their licensure applications in February to receive refunds if the March National Matching Program results place them in out-of-state training programs starting in June or July.

The new section as adopted will allow the appropriate refunds for applicants in that position.

No comments were received regarding adoption of the next section.

The new section is adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 13, 1990.

TRD-9001575 G.V. Brindley, Jr., M.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: March 7, 1990

Proposal publication date: December 26, 1989

For further information, please call: (512) 452-1078

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter A. General Information

The Texas Department of Human Services adopts amendments to §§15.100, 15.415, and 15.455, without changes to the proposed text as published in the December 19, 1989, issue of the *Texas Register* (14 TexReg 6637).

The amendments are justified because people with excess resources will be ineligible for Medicaid.

The amendments will function by providing for distributions from Medicaid-qualifying trusts to be considered available to the client, regardless of whether payment was actually made.

No comments were received regarding adoption of the amendments.

• **40 TAC §15.100**

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001614 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: April 1, 1990

Proposal publication date: December 19, 1989

For further information, please call: (512) 450-3765

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Subchapter D. Resources

• **40 TAC §15.415**

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001615 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: April 1, 1990

Proposal publication date: December 19, 1989

For further information, please call: (512) 450-3765

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Subchapter E. Income

• **40 TAC §15.455**

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001616 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: April 1, 1990

Proposal publication date: December 19, 1989

For further information, please call: (512) 450-3765

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Chapter 16. Intermediate Care Facilities/Skilled Nursing Facilities (ICF/SNF)

Support Documents

• **40 TAC §16.9801**

The Texas Department of Human Services (DHS) adopts an amendment to §16. 9801, with changes to the proposed text as published in the December 12, 1990, issue of the *Texas Register* (14 TexReg 6473).

The amendment is justified to help contracted providers understand the department's process for setting general reimbursement rates for medical assistance programs, participate in public hearings on proposed rates, and understand and respond to the department's review of provider cost reports.

The amendment will function by incorporating two changes in policy. First, it cross-references the new general methodology for determining payment rates in all of the department's medical assistance programs. This general methodology is specified in new Chapter 24 of this title (relating to Reimbursement Methodology) , which is simultaneously published in this issue of the *Texas Register* for adoption effective March 15, 1990. The amendment adopted here eliminates requirements that the general methodology replaces and cross-references the general methodology. The department adopts these changes to comply with Senate Bill 487, enacting the Human Resources Code, §32.0281, as passed by the 71st Texas Legislature, which requires DHS to describe by rule the process the department uses to determine payment rates for its medical assistance programs.

Second, the amendment requires providers to pay the travel costs of DHS audit staff when the staff must travel out of state to review provider records that are unavailable in Texas; defines federal, state, and local income taxes, as well as the cost of preparing tax returns, as unallowable costs; limits the cap on certain facility and administration costs to the 90th percentile of reported costs and specifies what items and categories of cost may be capped; specifies that the incentive factor used to calculate the all-other-costs and average-patient-care rate components must not exceed 1.07; and revises the chart of accounts to match changes in the cost report.

The department received no comments regarding adoption of the amendment. On the basis of staff recommendations, however, the department has initiated a revision to the clause that authorizes DHS to place upper limits on certain facility and administration costs. The revision clarifies how the department applies caps on central-office overhead expenses and on salaries, wages, and benefits for the facility administrator, the assistant administrator, and the owners, partners, or stockholders.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§16.9801. Reimbursement Methodology for Intermediate Care Facilities and Skilled Nursing Facilities.

(a) General information. The Texas Department of Human Services (DHS) reimburses Texas Medicaid long-term care contracted providers for care provided to recipients in the skilled nursing facility (SNF), intermediate care facility (ICF), and ICF-II levels of care. The Texas Board of Human Services determines reimbursement rates that are statewide and uniform by class of service as specified in this section and in §24.101 and §24.102 of this title (relating to General Specifications and Methodology).

(1)-(2) (No change.)

(b) Cost reporting procedures. Each provider must submit financial and statistical information on cost report forms provided by DHS or on facsimiles which are formatted according to DHS specifications and preapproved by DHS staff.

(1)-(10) (No change.)

(11) Review of cost report. As specified in §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports), DHS staff review each cost report to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(12) On-site cost report audits.

(A)-(C) (No change.)

(D) In-state and out-of-state access to records. Whenever possible, the records specified in subparagraph (C) of this paragraph must be accessible to DHS audit staff in the State of Texas. When records are not available to DHS audit staff within the state, the provider must pay the costs for DHS staff to travel and review the records out-of-state.

(E) Reviews of cost report disallowances. A provider who disagrees with disallowances of the items in a cost report may request an informal review and, when necessary, an administrative hearing as specified in §24.601 of this title (relating to Reviews and Administrative Hearings).

(13) Notification of exclusions and adjustments. DHS notifies providers of exclusions and adjustments to reported expenses made during the department's desk reviews and on-site audits of cost reports, as specified in §24.401 of this title (relating to Notification).

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

(e) List of unallowable costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in subsection (c)(1) of this section.

(1)-(32) (No change.)

(33) federal, state, and local income taxes, and all expenses related to preparing and filing income tax forms.

(f) Cost finding methodology.

(1) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(A) (No change.)

(B) If there is reasonable doubt about the accuracy or allowability of a significant part of the information reported, DHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following.

(i) (No change.)

(ii) Fixed capital asset costs. DHS defines a historical base for fixed capital asset costs which consists of allowable buildings depreciation, mortgage interest, and buildings rental and lease expense. The initial values which constitute the starting point of the historical base are the allowable amounts of fixed capital asset costs as of July 18, 1984, as determined from cost report data. For newly-constructed facilities contracted after July 18, 1984, and for others where historical cost information is not available from DHS records, fixed capital asset expenses are based upon the historical cost to the first Medicaid provider of record after July 18, 1984. Annual increases in fixed capital asset costs to be included in the rate base will be limited consistent with current Medicaid regulations, the Deficit Reduction Act of 1984, and the Consolidated Omnibus Reconciliation Act of 1985, in the following manner.

(I) Increases in buildings depreciation and rental or lease expense for buildings rented or leased from a related party are allowed when facilities undergo changes in ownership, and are limited to the lesser of:

(-a-) (No change.)

(-b-) the previous allowable expense from the historical base adjusted by a capital-asset inflation index as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(II) If capital assets have undergone ownership changes since the previous reporting period, an increase in mortgage interest expense included in the rate base is limited to the lesser of:

(-a-) (No change.)

(-b-) an amount based upon allowable buildings depreciation and an appropriate index of interest rates pertaining to the year of the sale. DHS determines an interest-rate index appropriate for this purpose as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(III) Increases in rental or lease expense on buildings not rented or leased from related parties are limited to the lesser of:

(-a-) (No change.)

(-b-) the allowable expense from the historical base adjusted by a capital-asset inflation index as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(iii) Limits on other facility and administration costs. To ensure that the results of DHS's cost analyses accurately reflect the costs that an economic and efficient provider must incur, DHS may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. DHS sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate, for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(I) total buildings and equipment rental or lease expense;

(II) total other rental or lease expense for transportation, departmental, and other equipment;

(III) building depreciation;

(IV) building equipment depreciation;

(V) departmental equipment depreciation;

(VI) leasehold improvement amortization;

(VII) other amortization;

(VIII) total interest expense;

(IX) total insurance for buildings and equipment;

(X) facility-administrator salary, wages, and/or benefits, with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(XI) assistant administrator salary, wages, and/or benefits, with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(XII) facility-owner, partner, or stockholder salaries, wages, and/or benefits (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(XIII) other administrative expenses including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(XIV) total central-office overhead expenses or individual central-office line items. Individual line-item caps are based on an array of all corresponding line items.

(iv) (No change.)

(v) Cost projections. As specified in §24.301 of this title (relating to Determination of Inflation Indices) DHS projects certain expenses in the rate base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective rate applies.

(C) (No change.)

(2) (No change.)

(g) Rate setting methodology.

(1) Case mix classes. DHS reimbursement rates for ICFs and SNFs vary according to the assessed characteristics of recipients. Rates are determined for 11 case-mix classes of service, plus a 12th, temporary classification assigned by default when assessment data are incomplete or in error.

(2) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 24 of this title (relating to Reimbursement Methodology). The Texas Board of Human Services determines particular reimbursement rates for each class of service in ICFs and SNFs based on consideration of DHS staff recommendations. To develop reimbursement rate recommendations for ICFs and SNFs, DHS staff apply the following procedures.

(A) Cost centers. The case-mix payment methodology derives rates from two components: the patient-care rate component and the all-other-costs rate component, which includes dietary, facility, and administration costs. The patient-care rate component varies according to the case-mix class of service. The all-other-costs component is constant across case-mix classes. The methodology for determining the all-other-costs rate component consists of the following two steps.

(i) (No change.)

(ii) This cost component is multiplied by an incentive factor, which yields the all-other-costs rate component. The Texas Board of Human Services determines the incentive factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.

(B) (No change.)

(C) Per diem rate methodology. Staff determine per diem rate recommendations for each of the 11 TILE groups and for the default group according to the following procedures:

(i) (No change.)

(ii) Average-patient-care rate component. To determine the average-patient-care rate component, adjust the raw sum of patient care costs in all Texas nursing facilities in the current cost report data base in order to account for disallowed costs and inflation, as specified in subsections (a)-(f) of this section. Then divide the adjusted total by the sum of patient-days of service in all facilities in the current cost report data base. Multiply the resulting weighted, average per diem cost of patient care by the incentive factor described in subparagraph (A)(ii) of this paragraph. The result is the average-patient-care rate component.

(iii)-(v) (No change.)

(D) -(H) (No change.)

(3)-(5) (No change.)

(h) Chart of accounts. A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items are:

(1)-(2) (No change.)

(3) revenue accounts:

(A)-(D) (No change.)

(E) other gross revenue:

(i) nurse aide training from Medicaid;

(ii) nurse aide training from Medicare and other sources;

(iii) gifts, grants, donations, endowments, and trusts:

(I)-(II) (No change.)

(iv) room, bed holds, and reservations;

(v) drugs and medications;

(vi) meals: employees and guests;

(vii) rentals: medical;

(viii) rentals: nonmedical;

(ix) interest sources;

(x) barber and beauty shop;

(xi) vending machines;

(xii) canteen and gift shop;

(xiii) social service and activity service;

(xiv) other revenues;

(F) (No change.)

(4) expense accounts:

(A)-(C) (No change.)

(D) training expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(E) social services expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(F) activity service expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(G) therapy service expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(H) laundry, linen, and housekeeping expense:

(i)-(v) (No change.)

(I) dietary expense:

(i)-(iii) (No change.)

(iv) special dietary supplements;

(v) supplies (dishes, flatware, napkins, utensils);

(vi) consultant service: dietician/nutritionist;

(vii) contract or outside services;

(viii) other services;

(J) operation and maintenance expense:

(i)-(xiii) (No change.)

(K) buildings, equipment, and other capital expense:

(i)-(xxii) (No change.)

(L) general administrative expense:

(i) -(xviii) (No change.)

(M) facility payroll tax and employee benefit expense:

(i)-(iv) (No change.)

(5)-(6) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001608 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: March 15, 1990

Proposal publication date: December 12, 1989

For further information, please call: (512) 450-3765

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Chapter 24. Reimbursement Methodology

Subchapter A. Determination of Payment Rates

The Texas Department of Human Services (DHS) adopts new §§24.101, 24.102, 24.201, 24.301, 24.401, 24.501, and 24.601 in its Reimbursement Methodology chapter. New §§24.102, 24.201, 24.301, 24.501, and 24.601 are adopted with changes to the proposed text as published in the December 1, 1989, issue of the *Texas Register* (14 TexReg 6244). New §§24.101 and 24.401 are adopted without changes and will not be republished.

The new sections are justified to help contracted Medicaid providers understand the department's process for setting reimbursement rates, participate in public hearings on proposed rates, and understand and respond to the department's review of provider cost reports.

The new sections will function by establishing a general methodology for determining payment rates in all of the department's medical assistance programs. This general methodology will replace certain portions of each medical assistance program's existing reimbursement policies. Each of these programs, however, will continue to apply particular reimbursement policies appropriate to its specific mission and operation, as specified in applicable program rules.

The department's adoption of this general methodology complies with the 71st Texas Legislature's enactment of the Human Resources Code, §32.0281, which requires DHS to describe by rule the process the department uses to determine payment rates in all of its medical assistance programs.

The department received nine written comments on the proposed new sections during the public comment period and four spoken comments at a public hearing on December 19, 1990. The commenters included representatives of the following organizations: B&W Development Centers, Inc.; Bethphage Community Services, Inc.; Educare Community Living Corporation–America; Martin Luther Homes, Inc.; Outreach Health Services; Rock House, Inc.; Sweetbriar Nursing Homes; the Texas Association of Home Health Agencies; the Texas Association of Private ICF-MR Providers; and the Texas Health Care Association. One comment was anonymous. A summary of the comments and the department's responses follows.

Five commenters expressed concerns about the computerized exclusions from and adjustments to the cost report data base described in §24.102(d). Three of these commenters objected to any exclusions and adjustments besides those made during desk reviews and on-site audits, arguing that the use of median costs already controls for the high costs of uneconomical and inefficient providers and that computerized adjustments distort cost arrays to the detriment of economical and efficient providers. Two of the three recommended that, at a minimum, the department should more clearly limit, describe, and justify the use of computerized adjustments; and the third commenter recommended that the department delete the sentence that cites specific types of costs subject to computerized adjustment.

The department disagrees with these comments and is not revising the proposed section in response to them. The department believes that appropriate computerized exclusions and adjustments refine the arrays of cost report data on which the department bases its rates, rather than distorting them. The department also believes that its existing rules governing reimbursement methodologies for medical assistance programs already clearly limit, describe, and justify the use of computerized adjustments. In addition, the department believes that its citation of particular types of costs subject to computerized exclusion and adjustment helps to specify when the department makes such adjustments.

Two of the commenters concerned about computerized exclusions and adjustments recommended that DHS notify providers of these actions. The department has revised §24.102 in response to this recommendation by stipulating that information about computerized exclusions and adjustments will be included in the material that the department furnishes to interested parties in advance of its public hearings on proposed rates.

One commenter recommended that the department allow providers to request informal reviews and administrative hearings to reconsider computerized adjustments to the data base. The department is not revising the proposed sections in response to this recommendation because the department's reasons for making computerized adjustments are adequately specified in its rules for medical assistance programs. Disagreements about the grounds for making computerized adjustments are appropriately handled through DHS's rule-making process.

Four commenters addressed the provision for determining an incentive factor above the projected cost per unit of service in §24,102(h). The commenters objected to describing the factor as an "incentive" factor and to limiting it to 7.0%. They stated that, because the factor represents the opportunity cost of capital, it is an essential element in the costs incurred by an economic and efficient provider. The commenters recommended that the factor be named and defined in a way that accurately reflects the opportunity cost of capital. There is, however, no generally accepted operational method of defining the opportunity cost of capital. The basic test of a rate of return to investors in a service industry is whether the rate of return is adequate to ensure availability of services. The determination of the adequacy of the incentive factor in this regard is up to the discretion of the DHS board. Accordingly, the department is not revising the proposed amendment in response to these comments.

Five commenters objected to the provision permitting the Board of Human Services to promulgate downward rate adjustments for budgetary reasons when adjustments are necessary for DHS to operate within the limits of appropriated funds. The commenters protested that reducing rates will jeopardize sound business operations and endanger client services. Three of these commenters also objected to limiting the maximum amount of any such downward adjustment to the amount of the incentive factor on the grounds that any reduction in the incentive factor is a reduction in the costs necessarily incurred by an economic and efficient provider. Two of the commenters recommended a requirement that any reduction in the incentive factor be applied equally to state school and community-based ICF-MR facilities. One commenter recommended that DHS's budgetary capabilities be eliminated as a factor in rate adjustments.

The department is not revising the proposed sections in response to these comments. The Board of Human Services must retain the discretion to adjust rates appropriately to ensure that DHS operates within the limits of available funds. The reference to the incentive factor is intended to protect providers by limiting the maximum possible scope of reductions.

One commenter recommended deleting two cross-referencing sentences in different subsections because they exactly repeat material that appears elsewhere. The department is not revising the proposed sections in response to this comment. The sentences are repeated for the convenience of the reader.

One commenter suggested that the minimum time frame for making materials available before a public hearing be extended from 10 days to 10 working days. The department agrees with this suggestion and has revised the section accordingly.

Two commenters recommended that more objective criteria than the professional opinion of DHS staff be required to base rates on a pro forma analysis. The commenters stated that a pro forma analysis should not replace a cost report data base and use of a pro forma method should require public notice. The department is not revising the sections in response to these suggestions. The rules already in place for the department's existing medical assistance programs specify in detail the methods used to establish rates. To begin using a pro forma method to establish rates in

any program in which a pro forma method is not currently in use would require that current rules be revised. This cannot be done without public notice.

One commenter suggested that the subsection on pro forma rate-setting be revised to refer to "a statistically insufficient number" of cost reports rather than to "an insufficient number." However, there are no generally recognized criteria for determining a statistically insufficient number of cost reports. DHS, therefore, must rely on the professional judgment of staff to determine if the number of cost reposts is insufficient to set accurate rates. The department is not revising the proposed amendment in response to this comment.

One commenter recommended that the desk review of provider cost reports include comparisons with key financial ratios in other industries. This comment alerted the department to an ambiguity in the proposed section. The department intended that desk-review comparisons of cost reports be confined to industry averages within the provider's own industry. Accordingly, the department has revised the section to eliminate the ambiguity.

One commenter recommended that the sections include the term "additions" whenever they refer to exclusions or adjustments in order to clarify that the department makes upward adjustments when a provider incorrectly understates or omits allowable costs. The department is not revising the sections in response to this comment, however, because the term "adjustments" already refers both to additions and deletions to the cost report.

Two commenters expressed different concerns about the factors used to determine inflation indices for wages. One commenter recommended specifying the factors or criteria used to select a specific index. The other recommended relying on other factors than wage surveys to set rates. One commenter recommended that provisions be made for special circumstances when the inflation factor result does not reflect the needs of the program, and the other commenter wanted no such provisions. In response to these comments, the department has revised the provisions concerning inflation projections for wages. The sections now require the use of pertinent survey data to determine wage and salary inflation factors when reliable survey data are available, and the use of alternative sources when reliable data are not available. In addition, to emphasize compliance with Senate Bill 487, the department has revised the sections to ensure that inflation factors take into account economic conditions and regulatory changes which may be reasonably anticipated for the rate period.

Three commenters recommended using the same inflation rates for state school and community-based ICF-MR facilities. The department is not revising the proposed amendment in response to this comment because inflation rates are determined for each program based on economic factors related to the program or its class of providers. Inflation rates for salaries in state schools are legislatively mandated and do not necessarily track the rates in community-based facilities.

One commenter requested clarification of the use of the CPI-U to inflate depreciation and lease costs. This inflation index applies only to facilities that have changed ownership since July 18, 1984. Federal regulations require DHS to use one-half of the all-item CPI-U as the inflation index to adjust these facilities' depreciated base in the ICF/SNF and ICF/MR programs. The department believes that the section is self-explanatory and requires no additional clarification.

Four commenters argued that rate adjustments required by federal or state laws, rules, regulations, policies, or guidelines should be made whenever necessary and should be effective with the effective date of the legislation or regulations. The department agrees with this comment and has revised the proposed section accordingly.

Four commenters protested the requirement that interim rate adjustments must increase or decrease reimbursement rates by more than 3.0%. One of these commenters recommended that the threshold be reduced to 1.0%; the others recommended eliminating it. The department believes a threshold is necessary in order to keep the rate-setting process manageable. At the same time, however, the department wants to be responsive to consequential changes in economic conditions. Accordingly, the department has reduced the threshold for interim rate adjustments from 3.0% to 2.0%.

One commenter recommended that Medicaid recipients and provider associations be given standing to file for informal reviews and administrative hearings. The department disagrees with this recommendation. Medicaid recipients already have an established mechanism for appeals, and provider associations are not contracted providers or otherwise parties with a direct interest to be resolved by an informal review or administrative hearing. The department, therefore, is not revising the section in response to this comment.

Four commenters expressed the view that the results of informal reviews and administrative hearings should be applied to the reimbursement rate either retroactively or immediately. The department is not revising the section in response to this comment. The reimbursement rate is determined prospectively and fixed for an established period of time. The Human Resources Code, §32.0281, specifically provides that a review or administrative hearing cannot stay the implementation of payment rates.

One commenter recommended a requirement that the DHS staff members conducting an informal review should not previously have been a part of the rate-setting process. The department disagrees with this comment. The department believes that persons knowledgeable about the rate-setting process and its requirements should preside over the first, informal stage of the appeals process. Accordingly, the department is not revising the sections in response to this comment.

One commenter recommended that the section governing reviews and administrative hearings include the address of the hearing division to which providers can write to request a review or hearing. The department has revised the section accordingly.

Two commenters requested a definition of the term "economic and efficient provider." The department has not defined this term because it does not function as a direct criterion in the rate-setting methodology. Instead, it functions as a general reference to clarify the overall purposes of the methodology. The department's use of the term is consistent with the Health Care Finance Administration's (HCFA's) usage.

One commenter objected to the department's exclusion or offsetting of gifts because it puts for-profit providers at a disadvantage. Because this comment applies to existing rules rather than to the proposed sections, the department is not revising the sections in response to it.

One commenter objected that the proposed sections were formulated without the involvement of the ICF-MR task force. The commenter recommended that many of the proposed changes, including the proposed inflation indices, be deferred until the task force can make recommendations. The ICF-MR task force, however, completed its work in 1989 and has not been reconvened. The department does not wish to delay implementing these sections and setting new rates until the task force can reconvene. Accordingly, the department is not deferring adoption of the proposed sections.

The department has initiated an additional revision to ensure that it has sufficient administrative flexibility to develop and apply accurate inflation indices. The revision consists of deleting the reference to two proprietary forecasting groups as sources of general inflation forecasts in order to ensure the availability of data if these sources cannot provide it.

- **40 TAC §24.101, §24.102**

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§24.102. Methodology.

(a) Except when otherwise specified under this title, the Texas Board of Human Services follows the requirements set forth in subsections (b)-(k) of this section to determine rates for reimbursing contracted providers for medical assistance to Medicaid recipients.

(b) All contracted providers must submit cost reports to the Texas Department of Human Services (DHS) in a manner prescribed by the department.

(c) As specified in §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports), DHS conducts desk reviews of all the cost reports that it receives. The department also conducts on-site audits of provider records and cost reports. Although the number of on-site audits performed each year may vary, the department seeks to maximize the number of on-site audited cost reports available for use in its cost projections. As specified in §24.401 of this title (relating to Notification), providers may ask to be

notified about exclusions and adjustments to reported expenses made during desk reviews and on-site audits.

(d) In addition to the exclusions and adjustments made during desk reviews and on-site audits, DHS may exclude or adjust certain expenses in the cost-report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur. These adjustments include, but are not necessarily limited to, revenue offsets, fixed-capital- asset cost limits, percentile cap limits on administration and facility costs, occupancy adjustments, and cost projections.

(e) DHS projects expenses in the cost-report data base to normalize or standardize costs in the reporting period and to account for cost inflation between the reporting period and the prospective rate period. The department's procedures for determining inflation indices to account for cost inflation between the reporting period and the prospective rate period are specified in §24.301 of this title (relating to Determination of Inflation Indices).

(f) DHS also adjusts rates when new legislation, regulations, or economic factors affect costs, as specified in §24.501 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs).

(g) After making appropriate exclusions and adjustments, DHS uses the adjusted cost-report data to project the cost per unit of service during the prospective rate period.

(h) Based on consideration of staff recommendations and input from interested parties, the Texas Board of Human Services determines an incentive factor above the projected cost per unit of service. The incentive factor may not exceed 7.0% of the projected cost per unit of service.

(i) As specified in §24.601 of this title (relating to Dispute Resolution), a provider is entitled to request an informal review and, if necessary, an administrative hearing to dispute certain actions taken by DHS under the provisions of this chapter. When a review or hearing does not resolve a dispute before the cost-report data base is closed for rate-setting purposes, the outcome of the review or hearing does not affect rates until the next rate setting cycle.

(j) DHS must hold a public hearing before the Texas Board of Human Services sets payment rates. The purpose of the hearing is to give interested persons an opportunity to comment on the department's proposed rates. The department must provide notice of the hearing to the public; and at least 10 working days before the hearing takes place, the department must make material pertinent to the proposed rates available to the public. At a minimum, this material must include the department's proposed rates, the inflation rates used to determine them, and the impact on rates of the major cost limits applied under the provisions of subsection (d) of this section. DHS must furnish this material to anyone who requests it from the DHS division responsible for rate recommendations. After the hearing, DHS must provide the Texas Board of Human Services with a written summary of the comments made during the public hearing.

(k) If, in the professional opinion of DHS staff, an insufficient number of accurate, full-year cost reports is submitted or there is information that causes doubt about the accuracy or applicability of the available data, the Texas Board of Human Services may promulgate payment rates based on a proforma analysis by DHS staff. A pro-forma analysis is defined as an item-by- item calculation of the essential expenses necessary for an economic and efficient provider to operate. The analysis may involve assumptions about the salary of the administrator, staff salaries, employee benefits and payroll taxes, facility depreciation, mortgage interest, dietary expenses, and other facility and administration expenses. To determine the cost per unit of service, DHS adds all the pro-forma expenses and divides the total by the estimated number of units of service that a fully operational provider is likely to provide. The pro-forma analysis must be based on all the information available, including valid cost-report data and survey data, in a way that ensures that the resultant rates are sufficient to support an economic and efficient provider. When DHS staff determine that sufficient and reliable cost-report data have become available, the Texas Board of Human Services may replace pro-forma rates with cost-report based rates.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

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For further information, please call: (512) 450-3765

Subchapter B. Desk Review of Cost Reports

• 40 TAC §24.201

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§24.201. Basic Objectives and Criteria for Desk Review of Cost Reports.

(a) The Texas Department of Human Services (DHS) conducts desk reviews of all provider cost reports to ensure that the financial and statistical information submitted in the cost reports conforms to all applicable rules and instructions.

(b) The basic objective of DHS desk reviews is to verify that each provider's cost reports:

(1) display financial and statistical information in the format required by DHS;

(2) report expenses in conformity with DHS's lists of allowable and unallowable costs; and

(3) follow generally accepted accounting principles except as otherwise specified in DHS's lists of allowable and unallowable costs, or as otherwise permitted in the case of governmental entities operating on a cash basis.

(c) DHS verifies the information specified in subsection (b) of this section by:

(1) comparing each provider's reported costs to:

(A) past patterns of expenditures for similar services;

(B) the results of previous on-site audits;

(C) normal operating cost relationships; and

(D) industry average costs;

(2) reviewing each provider's reported costs to search for:

(A) reported unallowable costs;

(B) omitted allowable costs; and

(C) overstated or understated allowable costs;

(3) checking for completion of required information;

(4) checking the format for proper cost classification;

(5) checking for mathematical accuracy; and

(6) adjusting improperly prepared reports.

(d) DHS may conduct on-site audits of cost reports that show unusual fluctuations or trends in costs or statistics. DHS may also conduct on-site audits when desk reviews are insufficient to verify the accuracy of reported costs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Agency liaison, Policy Communication Services
Texas Department of Human Services

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Subchapter C. Inflation Indices

• 40 TAC §24.301

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§24.301. Determination of Inflation Indices.

(a) Function and types of indices. To account for cost inflation between the reporting period and the prospective rate period as specified in §24.102 of this title (relating to Reimbursement Methodology), the Texas Department of Human Services (DHS) uses a general cost inflation index and several item-specific and program-specific inflation indices.

(b) general cost inflation index.

(1) For all medical assistance programs except the Vendor Drug Program, DHS uses the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) as its general cost inflation index. The IPD-PCE is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the United States Department of Commerce. The IPD-PCE inflator is applied to allowable-cost items in the rate base for which more specific inflation indices are not readily obtainable. To project or inflate costs from the reporting period to the prospective rate period, DHS uses the lowest feasible IPD-PCE forecast consistent with the forecasts of nationally recognized sources available to DHS at the time rates are prepared for public dissemination and comment.

(2) To project general program costs from the reporting period to the prospective rate period, the Vendor Drug Program uses the lowest feasible forecast of the general cost inflation index (IPD-PCE) or the Consumer Price Index for All Urban Consumers (CPI-U) for Medical Services which is consistent with nationally recognized sources available to DHS at the time rates are prepared for public dissemination and comment.

(c) Item-specific and program-specific inflation indices. When DHS can obtain item-specific or program-specific inflation indices for cost-report line items such as payroll taxes, professional and non-professional wages, facility depreciation, and lease appreciation, the department uses these specific indices in place of the general cost inflation index specified in subsection (b) of this section. The specific indices that the department uses include the following.

(1) Federal Insurance Contributions Act (FICA) or Social Security payroll taxes are set by federal statute. The FICA or Social Security tax inflation index is the average tax rate per wage dollar earned during the prospective reimbursement rate period divided by the average tax rate per wage dollar earned during the facility/entity reporting period. If tax rates for the prospective reimbursement rate period are not known, DHS bases its projection on the compounded annual rate of change in FICA or Social Security tax rates from the most recent consecutive two year period for which data are available at the time reimbursement rates are determined.

(2) Workers' compensation insurance tax (WCI) rates are determined annually per job classification by the Texas State Board of Insurance. The WCI-tax inflation index is the average tax rate per wage dollar earned during the prospective reimbursement rate period divided by the average tax rate per wage dollar earned per reporting period. If tax rates for the prospective rate period are not known, DHS bases its projection on the compounded annual rate of change in WCI tax rates from the most recent consecutive two-year period for which data are available at the time reimbursement rates are determined.

(3) For all medical assistance programs except the Primary Home Care Program, DHS bases its unemployment-tax inflation index on federal and state Unemployment tax (FUTA/SUTA) rates obtained from the Texas Employment Commission (TEC). Because the SUTA component of the tax rate can be provider-specific, DHS obtains the average effective rates for the lowest available standard industrial classification (SIC) code. The unemployment-tax inflation index is the average tax rate per wage dollar earned during the prospective reimbursement rate period divided by the average tax rate per wage dollar earned per reporting period. If tax rates for the prospective rate period are not known, DHS bases its projection on the compounded annual rate of change in FUTA/SUTA tax rates from the most recent consecutive two-year period for which data are available at the time reimbursement rates are determined. When appropriate, DHS may qualify its projections to reflect changes in covered wage limits determined by the TEC.

(4) DHS bases its unemployment-tax inflation index for the Primary Home Care Program on Texas Employment Commission tax-rate notices (TEC Form C-22) submitted by providers. To calculate this index, the department establishes a provider factor by dividing the present tax rate shown on the TEC tax-rate notice by the tax rate shown on the notice two years previously. These factors are then arrayed in a distribution from lowest to highest. The inflation index is the provider factor from the distribution array that corresponds to the median of accumulated hours of service for all contracted providers.

(5) DHS bases inflation factors for professional staff wages and salaries on wage and salary survey data pertaining to specific types of professional staff in Texas when reliable data of this kind are available. Projections from the cost reporting period to the rate period are based on discernible trends in the most recent reliable data available at the time rates are prepared for public dissemination and comment, and take into consideration economic conditions and regulatory changes which may be reasonably anticipated for the rate period.

(6) When reliable wage and salary data pertaining to specific types of staff in Texas are unavailable to DHS, the department bases inflation factors for professional staff on the lowest feasible forecast of the general cost inflation index (IPD-PCE). Professional wage and benefit inflation rates for state school ICF-MR employees are determined by the Texas Legislature.

(7) For all medical assistance programs except the Vendor Drug Program, DHS projects nonprofessional wages based upon the most recent reliable survey data available at the time rates are prepared for public dissemination and comment. Projections from the cost reporting period to the prospective rate period are based on discernible recent trends and take into consideration economic conditions and regulatory changes which may be reasonably anticipated for the rate period. When reliable wage and salary data pertaining to specific types of staff in Texas are unavailable to DHS, the department bases inflation factors for nonprofessional staff on the lowest feasible forecast of the general cost inflation index (IPD-PCE). Nonprofessional wage and benefit inflation rates for state school ICF-MR employees are determined by the Texas Legislature.

(8) Nonprofessional wage projections for the Vendor Drug Program are based on average retail-trade hourly earnings as reported by the Texas Employment Commission. The Vendor

Drug Program nonprofessional-wage inflation index is the compounded annual rate of change in average retail-trade hourly earnings from the most recent consecutive two year period for which data are available at the time reimbursement rates are determined.

(9) Determination of the inflation index for facility depreciation and lease appreciation is conditioned by federal regulations (OBRA 1984, COBRA 1985) that require the use of one half of the all-item CPI-U for depreciated intermediate care facilities and skilled nursing facilities (ICFs/SNFs) and ICF-MR facilities that change ownership after July 18, 1984. All leased ICF/SNF and ICF-MR facilities are inflated by one half of the CPI-U compounded annual rate of change for the most recent consecutive two-year period for which information is available at the time reimbursement rates are determined. Other medical assistance programs use the IPD-PCE inflation index to project facility lease costs.

(10) The state school ICF-MR program uses the medical services CPI-U as the inflation index for the program's comprehensive medical cost center. To projects costs from the reporting period to the prospective rate period, DHS uses the lower of the two medical services CPI-U forecasts reported by Data Resources Incorporated and Wharton Econometric Forecasting Associates.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Human Services

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Subchapter D. Notification of Exclusions and Adjustments

• 40 TAC §24.401

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Adjustments that Result from New Legislation, Regulations, or Economic Factors

• 40 TAC §24.501

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§24.501. Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs.

(a) The Texas Department of Human Services (DHS) must adjust medical assistance reimbursement rates when federal or state laws, rules, regulations, policies, or guidelines are adopted, promulgated, judicially interpreted, or otherwise changed in ways that can reasonably be expected to affect allowable costs or alter the rates of change in allowable costs. DHS must propose adjustments to the rates for these reasons at the nearest feasible meeting of the Texas Board of Human Services to become effective on the effective date of the federal or state laws, rules, regulations, policies, or guidelines or at the beginning of the nearest calendar quarter for which federal financial participation is available. These adjustments must result in increases or decreases in the department's reimbursement rates.

(b) DHS may also adjust reimbursement rates when changes in economic factors significantly affect allowable costs or alter the rates of change in allowable costs. Such changes in economic factors include, but are not limited to, substantial changes in the rate of wage and price inflation that are not discernible in cost report data, increases in the number of participating providers with significantly different costs, increases in the number of clients with significantly different costs, and changes in DHS's budgetary capabilities. Except for downward rate adjustments for budgetary reasons, DHS may make mid-year rate adjustments only when the necessary adjustments increase or decrease reimbursement rates by more than 2.0%.

(c) DHS must consider all known changes in laws, rules, regulations, policies, guidelines, or economic factors at the time of the Texas Board of Human Services' regular, annual determination of reimbursement rates.

(d) The Texas Board of Human Services may promulgate downward rate adjustments for budgetary reasons whenever such adjustments are necessary for DHS to operate within the limits of appropriated funds. However, downward rate adjustments for budgetary reasons may not exceed the amount of the incentive factor applied to projected costs as specified in §24.102(h) of this title (relating to Methodology). DHS must ensure that downward rate adjustments do not reduce reimbursement rates below the amount necessary for an economic and efficient provider to operate.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter F. Dispute Resolution

• 40 TAC 24.601

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§24.601. Reviews and Administrative Hearings.

(a) General requirements. A provider who disagrees with the Texas Department of Human Services' (DHS's) desk-review or on-site audit exclusions or adjustments, determination of inflation indices, or rate adjustments in response to new legislation, regulations, or economic factors under the provisions of §§24. 201, 24.301, 24.401, or 24.501 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports; Determination of Inflation Indices; Notification; and Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs) must follow the procedures for informal reviews and administrative hearings set forth in this section to resolve the disagreement. Only contracted providers have standing to file for informal reviews and administrative hearings. Providers may be represented in

these reviews and hearings by attorneys who are currently licensed to practice law in Texas.

(b) Separation of reviews and hearings from the rate-setting process. The filing of a review or administrative hearing under the provisions of this section cannot stay the implementation of reimbursement rates adopted by DHS in accordance with the requirements of this chapter. As specified in §24.102(i) of this title (relating to Methodology), when a review or administrative hearing does not reach a final decision before the cost-report data base is closed for rate-setting purposes, the results of the final decision are not applied until the next rate setting cycle.

(c) Informal review. A provider who disagrees with a DHS decision or action under the sections specified in subsection (a) of this section is entitled to an informal review with DHS staff. The review is an informal meeting, rather than a formal administrative hearing. It is intended to encourage open discussion between the provider and the staff, and to promote resolution of the matters in dispute. DHS conducts the review according to the following procedures.

(1) If the provider disagrees with DHS desk-review or on-site audit exclusions or adjustments, the provider must contact the commissioner of DHS in writing within 30 calendar days of receiving DHS's written notification of the exclusions or adjustments, and request a review.

(2) If the provider disagrees with DHS's determination of inflation indices or with rate adjustments that have resulted from new legislation, regulations, or economic factors, the provider must contact the commissioner of DHS in writing within 30 calendar days of the setting of rates by the Texas Board of Human Services, and request a review. Reviews of inflation indices and rate adjustments may only consider whether the department followed the requirements of this chapter in developing its rates.

(3) On receipt of a request for review, the commissioner or his designee appoints three DHS staff members as the review panel. The panel members must be knowledgeable in cost-report auditing or rate-setting issues, as appropriate. The commissioner designates one of the three panel members as the lead reviewer. The lead reviewer arranges a meeting at the earliest possible date convenient to both the provider and DHS staff. The lead reviewer is in charge of the meeting for purposes of maintaining order and structure. At the meeting, the provider may present all the information he considers pertinent to his position. The review panel considers the provider's information and all the DHS information it deems necessary to reach a decision. Within 30 days of the review, the panel must send the provider its written decision by certified mail, return receipt requested.

(d) Administrative hearings. If a provider disagrees with the result of an informal review, the provider may request a formal administrative hearing. The provider must file a written request for a hearing with the Hearing Division, Texas Department of Human Services, MC 113-E, P.O. Box 149030, Austin, Texas, 78714-9030, within 15 days after receiving the review panel's decision. A provider may not request an administrative hearing before receiving DHS's written review decision as specified in subsection (c) of this section. The administrative hearing is limited to the issues that were considered in the informal review process. DHS conducts administrative hearings according to the provisions of §§79.1605-79.1614 of this title (relating to Request for a Hearing; Effective Dates of Adverse Actions; Administrative Law Judge; Hearing Guidelines; Withdrawal of Hearing Request and Informal Disposition; Conduct of Hearings–General Requirements; Prehearing Procedure; Evidence and Depositions; Deliberationl and Decisions). If there is a conflict between the applicable sections of Chapter 79 and the provisions of this chapter, the provisions of this chapter prevail.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 27. Intermediate Care Facility for the Mentally Retarded (ICF-MR)

Subchapter UUUU. Support Documents

• 40 TAC §27.9801

The Texas Department of Human Services (DHS) adopts an amendment to §27. 9801, with changes to the proposed text as published in the December 12, 1989, issue of the *Texas Register* (14 TexReg 6477).

The amendment is justified to provide for reimbursement of ICF-MR/RC care for persons with related conditions who do not have mental retardation, and to help contracted providers understand the department's process for setting general reimbursement rates for medical assistance programs, participate in public hearings on proposed rates, and understand and respond to the department's review of provider cost reports.

The amendment will function by incorporating three changes in policy. First, it cross-references the new general methodology for determining payment rates in all of the department's medical assistance programs. The general methodology is specified in new 40 TAC Chapter 24, concerning reimbursement methodology, which is simultaneously published in this issue of the *Texas Register* for adoption effective March 15, 1990. The amendment adopted here eliminates requirements that the general methodology replaces and cross-references the general methodology. The department adopts these changes to comply with Senate Bill 487, enacting the Human Resources Code, §32.0281, as passed by the 71st Texas Legislature, which requires DHS to describe by rule the process the department uses to determine payment rates for its medical assistance programs.

Second, the amendment creates a reimbursement methodology for a new level of care for an experimental class of facilities (ICFs-MR/RC) serving persons who do not have mental retardation, but who have related conditions as described in federal regulations. "Related conditions" is the term used in federal regulations to describe severe, chronic disabilities that are similar to mental retardation because they result in significant, lifelong impairment. The department has not yet established the new level of care, although it is considering a proposed set of amendments and new sections that will do so, if adopted. These proposed amendments and new sections appeared in the January 12, 1990, issue of the *Texas Register* (15 TexReg 203). When the new level of care is established, DHS will determine and annually revise reimbursement rates for it on a pro forma basis until enough Medicaid cost-report data become available to determine rates on the basis of cost reports.

Third, in addition to cross-referencing the newly proposed general methodology and creating a reimbursement methodology for a new level of care, the amendment also requires providers to pay the travel costs of DHS audit staff when the staff must travel out of state to review provider records that are unavailable in Texas; defines federal, state, and local income taxes, as well as the cost of preparing tax returns, as unallowable costs; limits the cap on certain facility and administration costs to the 90th percentile of reported costs and specifies what items and categories of cost may be capped; specifies that the incentive factor used to calculate ICF-MR reimbursement rates must not exceed 1.07; and revises the chart of accounts to match changes in the cost report.

The department received four written comments on the proposed amendment during the public comment period and no additional spoken comments at a public hearing on December 19, 1989. The commenters included representatives of the following organizations: B&W Development Centers, Inc.; Educare Community Living Corporation–America; the Texas Association of Private ICF-MR Providers; and Rock

House, Inc. A summary of the comments and the department's responses follows.

Three commenters objected to amending the clause that authorizes DHS to place upper limits on certain facility and administration costs. The commenters stated that placing upper limits on certain costs is an arbitrary action that distorts the cost arrays on which payment is based. They recommended either that the clause be deleted or that it include more specific criteria to define the circumstances in which limits may be applied.

The department is not revising the proposed amendment in response to these comments. The authority to place upper limits on facility and administration costs was already stated in this clause before the amendment was proposed, and the amendment does not expand this authority. Instead, the amendment narrows and defines the department's authority by clarifying the line items that are subject to upper limits and by raising the upper limit from the 85th percentile to the 90th percentile.

On the basis of staff recommendations, however, the department has initiated a revision to this clause in order to clarify how the department applies caps on central-office overhead expenses and on salaries, wages, and benefits for the facility administrator, the assistant administrator, and the owners, partners, or stockholders.

One commenter suggested some modifications to the clause pertaining to use of fraud referrals in the data base for rate setting. The commenter objected to limiting expense figures to the costs associated with the median day of service from the previous year's rate base. The amendment, however, eliminates this clause entirely. The department, accordingly, is not revising the clause in response to this comment.

The same commenter opposed revising the pro forma methodology for adjusting small facility rates until an appropriate cost-report-based methodology is developed to replace it. The purpose of the amendment, however, is to match the requirements submitted in the state plan amendment to the Health Care Financing Administration. The department plans to amend the clause again when it has enough cost-report data to develop a new reimbursement determination system for small facilities.

All four commenters objected to listing income taxes and the cost of income-tax preparation as unallowable costs. They expressed the view that these are legitimate costs that private providers must pay when providing ICF- MR services. The department is not revising the proposed amendment in response to this comment. DHS does not consider income taxes and the cost of income tax preparation to be directly related to client care. The department has excluded these costs in its desk reviews of cost reports for some time; the amendment simply formalizes a long-standing desk-audit exception.

All four commenters also objected to the subparagraph regarding the Texas Board of Human Services' determination of an incentive factor. This subparagraph cross-references and partially repeats material that is developed at greater length in the general reimbursement methodology which was published as proposed new Chapter 24 in the December 1, 1989, issue of the *Texas Register* (14 TexReg 6244). In commenting on the proposed subparagraph in the ICF-MR methodology, the commenters repeated their written comments on the general methodology. Accordingly, the department has responded to these comments in its preamble to the adoption of Chapter 24, which appears in this issue of the *Texas Register*.

One commenter recommended delaying adoption of those portions of the amendment that are not directly related to cross-referencing the general methodology or to the new level of care until the ICF-MR task force can make recommendations. The ICF-MR task force, however, has not been reconvened since completing its work in 1989. The department does not want to delay implementing these rules and setting new rates until the task force is reconvened. Accordingly, the department is not deferring adoption of the proposed sections in response to this comment.

One commenter recommended that the department use the same methods of cost-finding and rate determination for state schools and community-based ICFs-MR. The commenter's recommendation, however, did not involve any specific suggestions for changing the proposed amendment; and the department has not revised the amendment in response to this comment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§27.9801. Reimbursement Methodology for Intermediate Care Facilities for the Mentally Retarded.

(a) General information. The Texas Department of Human Services (DHS) reimburses Texas Medicaid contracted providers for care provided to clients in intermediate care facilities for the mentally retarded (ICFs-MR) receiving ICF-MR I, ICF-MR V, ICF-MR VI, and ICF-MR/RC VII levels of care. The Texas Board of Human Services determines reimbursement rates that are statewide and uniform by class of service as specified in §24.101 and §24. 102 of this title (relating to General Specifications and Methodology).

(1)-(2) (No change.)

(b) Cost reporting procedures. Each provider must submit financial and statistical information on cost report forms provided by DHS or on facsimiles which are formatted according to DHS specifications and preapproved by DHS staff.

(1)-(10) (No change.)

(11) Review of cost report. As specified in §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports), DHS staff review each cost report to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(12) On-site cost report audits.

(A)-(C) (No change.)

(D) In-state and out-of-state access to records. Whenever possible, the records specified in subparagraph (C) of this paragraph must be accessible to DHS audit staff in the State of Texas. When records are not available to DHS audit staff within the state, the provider must pay the costs for DHS staff to travel and review the records out-of-state.

(E) Reviews of cost report disallowances. A provider who disagrees with disallowances of items in a cost report may request an informal review and, when necessary, an administrative hearing as specified in §24.601 of this title (relating to Reviews and Administrative Hearings).

(13) Notification of exclusions and adjustments. DHS notifies providers of exclusions and adjustments to reported expenses made during the department's desk reviews and on-site audits of cost reports, as specified in §24.401 of this title (relating to Notification).

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

(e) List of unallowable costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in subsection (c)(1) of this section.

(1)-(34) (No change.)

(35) federal, state, and local income taxes, and all expenses related to preparing and filing income tax forms.

(f) Cost finding methodology.

(1) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(A) (No change.)

(B) If there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported, DHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following.

(i) (No change.)

(ii) Fixed capital asset

costs. DHS defines a historical base for fixed capital asset costs which consists of allowable buildings depreciation, mortgage interest, and buildings rental and lease expense. The initial values which constitute the starting point of the historical base are the allowable amounts of fixed capital asset costs as of July 18, 1984, as determined from pertinent cost report data. For newly constructed facilities contracted after July 18, 1984, and for others where historical cost information is not available from DHS records, fixed capital asset expenses are based upon the historical cost to the first Medicaid provider of record after July 18, 1984. Annual increases in fixed capital asset costs to be included in the rate base are limited consistent with current Medicaid regulations, the Deficit Reduction Act of 1984, and the Consolidated Omnibus Reconciliation Act of 1985, in the following manner.

(I) Increases in buildings depreciation and rental or lease expense for buildings rented or leased from a related party are allowed when facilities undergo changes in ownership, and are limited to the lesser of:

(-a-) (No change.)

(-b-) the previous allowable expense from the historical base adjusted by a capital-asset inflation index as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(II) If capital assets have undergone ownership changes since the previous reporting period, an increase in mortgage interest expense included in the rate base is limited to the lesser of:

(-a-) (No change.)

(-b-) an amount based upon allowable buildings depreciation and an appropriate index of interest rates pertaining to the year of sale. DHS determines an interest rate index appropriate for this purpose as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(III) Increases in rental or lease expense on buildings not rented or leased from related parties are limited to the lesser of:

(-a-) (No change.)

(-b-) the allowable expense from the historical base adjusted by a capital-asset inflation index as specified in §24.301 of this title (relating to Determination of Inflation Indices).

(iii) Limits on other facility and administration costs. To ensure that the results of DHS's cost analyses accurately reflect the costs that an economic and efficient provider must incur, DHS may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. DHS sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate, for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(I) total buildings and equipment rental or lease expense;

(II) total other rental or lease expense for transportation, departmental, and other equipment;

(III) building depreciation;

(IV) building equipment depreciation;

(V) departmental equipment depreciation;

(VI) leasehold improvement amortization;

(VII) other amortization;

(VIII) total interest expense;

(IX) total insurance for buildings and equipment;

(X) facility-administrator salary, wages, and/or benefits, with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(XI) assistant administrator salary, wages, and/or benefits, with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(XII) facility-owner, partner, or stockholder salaries, wages, and/or benefits (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(XIII) other administrative expenses, including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(XIV) total central office overhead expenses or individual central office line items. Individual line-item caps are based on an array of all corresponding line items.

(iv) Occupancy adjustments. DHS adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(I)-(II) (No change.)

(v) Cost projections. As specified in §24.301 of this title (relating to Determination of Inflation Indices), DHS projects certain expenses in the rate base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective rate apply.

(2)-(4) (No change.)

(g) Rate setting methodology.

(1) Classes of providers. Reimbursement rates are determined separately for each of two classes of ICF-MR providers: community-based providers and state schools.

(2) Classes of service. A separate set of reimbursement rates corresponding to classes of service is determined within each provider class. The classes of service are ICF-MR I, ICF-MR V, ICF-MR VI, and ICF-MR/RC VII.

(3) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 24 of this title (relating to Reimbursement Methodology). The Texas Board of Human Services determines particular reimbursement rates for each class of ICF-MR provider by class of service based on consideration of DHS staff recommendations. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, DHS staff apply the following procedures.

(A) (No change.)

(B) The cost component for each cost center is multiplied by an incentive factor, and the resulting rate components are summed by level of care to calculate the recommended total reimbursement rates. The Texas Board of Human Services determines the incentive

factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.

(4) Experimental class. DHS may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Board of Human Services and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(A)-(M) (No change.)

(N) Small-facility rates. DHS defines community-based ICFs-MR certified for Levels V or VI and having no more than six Medicaid-contracted beds as an experimental class.

(i) (No change.)

(ii) The Board of Human Services revises small-facility rates at least annually based on anticipated cost increases. The board continues to set small-facility rates in this manner until enough Medicaid cost-report data become available to determine rates on the basis of cost reports. Cost reports for small-facility providers are not included in the data base for determining rates for community-based providers.

(O) ICF-MR/RC VII rates. DHS defines community-based facilities that are certified as intermediate care facilities for the mentally retarded/ related conditions (ICF-MR/RC) VII and that have no more than six Medicaidcontracted beds as an experimental class.

(i) Effective January 1, 1990, facilities in the ICF-MR/RC VII class receive per diem rates based on pro forma budgets for operation of facilities in this class. DHS staff develop rates for this class of providers on a pro forma basis because of a lack of cost-report information about the cost of client care by this class of providers. DHS staff develop pro forma budgets based on the number of facility staff necessary to comply with Medicaid program standards and based on reasonable costs for employee compensation, contracted services, capital equipment, and supplies. DHS estimates of reasonable cost are derived from relevant Medicaid cost-report data for other levels of care, sample surveys, consultations with service providers and other professionals knowledgeable about the care needed by these clients, and other sources.

(ii) The Board of Human Services revises ICF-MR/RC VII rates at least annually based on anticipated cost increases. The board continues to set rates for this class in this manner until enough Medicaid cost-report data become available to determine rates on the basis of cost reports. Cost reports for ICF-MR/RC VII providers are not included in the data base for determining rates for small-facility or community-based providers.

(5)-(6) (No change.)

(h) Chart of accounts. A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items are:

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

(4) expense accounts:

(A)-(C) (No change.)

(D) training expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(E) social services expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(F) activity service expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(G) therapy service expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(H) laundry, linen, and housekeeping expense:

(i)-(v) (No change.)

(I) dietary expense:

(i)-(iii) (No change.)

(iv) special dietary supplements;

(v) supplies (dishes, flatware, napkins, utensils);

(vi) consultant service: dietician/nutritionist;

(vii) contract or outside services;

(viii) other services;

(J) operation and maintenance expense:

(i)-(xiii) (No change.)

(K) buildings, equipment, and other capital expense:

(i)-(xxii) (No change.)

(L) general administrative expense:

(i)-(xviii) (No change.)

(M) facility payroll tax and employee benefit expense:

(i)-(iv) (No change.)

(5)-(6) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001609 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: March 15, 1990

Proposal publication date: December 12, 1989

For further information, please call: (512) 450-3765

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Chapter 31. Case Management for Persons with Mental Retardation or Related Condition

Program Requirements

• 40 TAC §31.11

The Texas Department of Human Services adopts an amendment to §31.11 without changes to the proposed text as published in the December 12, 1989, issue of the *Texas Register* (14 TexReg 6480).

The amendment is justified because contracted providers will be able to better understand the department's process for setting general reimbursement rates for medical assistance programs, participate in public hearings concerning proposed rates, and understand and respond to the department's review of provider cost reports.

The amendment will function by cross-referencing the general reimbursement methodology for determining payment rates in all of the department's medical assistance programs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001613 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: March 15, 1990

Proposal publication date: December 12, 1989

For further information, please call: (512) 450-3765

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Chapter 35. Pharmacy Services

Subchapter U. Support Documents

• 40 TAC §35.9001

The Texas Department of Human Services adopts an amendment to §35.9001 without changes to the proposed text as published in the December 12, 1989, issue of the *Texas Register* (14 TexReg 6482).

The amendment is justified because contracted providers will be able to better understand the department's process for setting general reimbursement rates for medical assistance programs, participate in public hearings concerning proposed rates, and understand and respond to the department's review of provider cost reports.

The amendment will function by cross-referencing the general reimbursement methodology for determining payment rates in all of the department's medical assistance programs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001612 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: March 15, 1990

Proposal publication date: December 8, 1989

For further information, please call: (512) 450-3765

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Chapter 47. Primary Home Care

Support Documents

• 40 TAC §47.5901

The Texas Department of Human Services (DHS) adopts an amendment to §47. 5901, without changes to the proposed text as published in the December 8, 1989, issue of the *Texas Register* (14 Tex Reg 6412).

The justification for the amendment is to cross-reference the newly proposed general methodology for determining payment rates in all of the department's medical assistance programs. The adopted general methodology replaces certain portions of the PHC Program's existing reimbursement methodology. The PHC Program, however, will continue to apply particular reimbursement policies appropriate to its specific mission and operation. The amendment cross-references the proposed general methodology and eliminates requirements that the general methodology replaces. The amendment complies with Senate Bill 487, enacting the Human Resources Code, §32.0281, as passed by the 71st Texas Legislature, which requires DHS to describe by rule the process the department uses to determine payment rates for its medical assistance programs.

The amendment will function by helping contracted providers understand the department's process for setting general reimbursement rates for medical assistance programs, participate in public hearings on proposed rates, and understand and respond to the department's review of provider cost reports.

During the public comment period, the department received one written comment from the Texas Association of Home Health Agencies. A summary of the comment and the department's response follows.

The commenter requested revision of the methodology to include fair treatment of workers' compensation costs. The commenter also requested the removal of the provision that allows the choosing of the lower of the sum of the medians or the median of the sums. The department is not revising the proposed amendment in response to these comments, because the amendment does not address these issues. The department, however, will take the commenter's recommendations under advisement in future considerations of PHC reimbursement methodology.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorize the department to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001610 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: March 15, 1990

Proposal publication date: December 8, 1989

For further information, please call: (512) 450-3765

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Chapter 48. Community Care for Aged and Disabled

Support Documents

• 40 TAC §48.9802

The Texas Department of Human Services (DHS) adopts an amendment to §48. 9802, without changes to the proposed text as published in the December 12, 1989, issue of the *Texas Register* (14 Tex Reg 6484).

The justification for the amendment is to cross-reference the newly proposed general methodology for determining payment rates in all of the department's medical assistance programs. The adopted general methodology will replace certain portions of the HCS program's existing reimbursement methodology. The HCS program, however, will continue to apply particular reimbursement policies appropriate to its specific mission and operation. The amendment cross-references the proposed general methodology and eliminate requirements that the general methodology replaces. The amendment complies with Senate Bill 487, enacting the Human Resources Code §32.0281, as passed by the 71st Texas Legislature, which requires DHS to describe by rule the process the department uses to determine payment rates for its medical assistance programs.

The amendment will function by helping contracted providers understand the department's process for setting general reimbursement rates for medical assistance programs, participate in public hearings on proposed rates, and understand and respond to the department's review of provider cost reports.

The department received no comments regarding adoption of the amendment.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001611 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: March 15, 1990

Proposal publication date: December 8, 1989

For further information, please call: (512) 450-3765

Support Documents

• 40 TAC §48.9808

The Texas Department of Human Services (DHS) proposes new §48.9808, concerning reimbursement methodology for the Social Security Act, §1915(c) Medicaid home and community- based waiver services for persons with related conditions, in its Community Care for Aged and Disabled chapter. The purpose of the new section is to comply with state legislation by providing new home and community-based services as cost-effective alternatives to placement in intermediate care facilities for persons with mental retardation/related conditions (ICF-MR/RC VII). The department is developing a §1915(c) Medicaid waiver to request approval from the Health Care Financing Administration to provide the services. The notice concerning the filing of the waiver appears in the "In Addition" section of this issue of the *Texas Register.*

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be alternatives to ICF-MR/RC institutional services through a fee-for-service reimbursement methodology for home and community- based services for persons with related conditions. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Questions about the content of this proposal may be directed to Anita Anderson at (512) 450-3195 in DHS's Health Policy Initiatives Section. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-064, Texas Department of Human Services 181-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.9808. Reimbursement Methodology for the Social Security Act, 1915(c) Medicaid Home and Community Based Waiver Services for Persons With Related Conditions.

(a) General. The Texas Department of Human Services (DHS) will reimburse qualified providers for waiver services provided to Medicaid-eligible persons with related conditions (waiver services). "Persons with related conditions" is defined according to §27.102 of this title (relating to Definitions for Level-of-Care Criteria). The DHS board determines, for Medicaid waiver services, reimbursement rates that are uniform, prospective, and cost related. The DHS board determines reimbursement rates according to §24.101 and §24.102 of this title (relating to General Specifications and Methodology). DHS staff submit rate recommendations to the DHS board.

(b) Frequency of rate determination. DHS determines rates at least annually. Rates may be determined more often than annually if the DHS board determines that it is necessary.

(c) Initial rate analysis. For the initial rate period, providers will be reimbursed on a fee-for-service basis using a method based upon pro forma projected expenses. Until an adequate cost report data base becomes available, the pro forma expenses are developed for each separate delivered service by specifying a list of staff, supplies, and administrative overhead expenses required to provide services in compliance with state standards, and by costing out those requirements at estimated current year prices. Costs will be developed by using data from surveys; cost report data from other similar programs; consultation with other service providers, associations, professionals experienced in delivering services to persons with related conditions; and other sources.

(d) Reporting of cost.

(1) Cost report. Each provider must submit financial and statistical information on a cost report or in a survey format designated by DHS. The cost report must capture the expenses of the waiver services provider, including salaries and benefits, administration, building and equipment, utilities, supplies, travel, and indirect overhead expenses related to the waiver services program.

(A) Accounting requirements. All information submitted on the cost reports must be based upon the accrual method of accounting unless the provider is a governmental entity operating on a cash basis. The provider must complete the cost report according to the prescribed statement in subsection (f) of this section, concerning allowable and unallowable costs. Cost reporting should be consistent with generally accepted accounting principles (GAAP). In cases where cost reporting rules conflict with GAAP, Internal Revenue Service (IRS), or other authorities, the rules specified in this section take precedence for Medicaid provider cost reporting purposes.

(B) Reporting period. The provider must prepare the cost report to reflect activities during the provider's fiscal year. The cost report is due 90 days after the end of the provider's fiscal year. DHS may require cost reports or other information for other periods. Failure to file an acceptable cost report or complete required additional information will result in a hold being placed on the vendor payments until the cost report information or additional information is provided. The provider must certify the accuracy of his cost report or additional information.

(C) Allowable and unallowable costs. Providers must complete the cost report according to DHS's statement of allowable and unallowable costs in subsection (f) of this section.

(D) Cost report certification. Providers must certify the accuracy of cost reports submitted to DHS in the format specified by DHS. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to DHS requirements.

(E) Extension of due date. DHS may grant extensions of due dates for good cause. A good cause is defined as a cause that the provider could not reasonably be expected to control. Providers must submit requests for extensions in writing to DHS before the cost report due date. DHS staff will respond to requests within 10 working days of their receipt.

(F) Amended cost reports. DHS accepts amended cost reports until the completion of the rate determination process. Amended cost reports filed after the actual rate determination have no effect on the rate and are not accepted.

(G) Cost report supplements. DHS may require additional financial and other statistical information to ensure the fiscal integrity of the program.

(H) Failure to file an acceptable cost report. If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, DHS may withhold vendor payments to that provider until the deficiencies are corrected.

(I) Record keeping requirements. Each provider must maintain records according to the requirements stated in §51.50 of this title (relating to Record Retention Reguirements). The provider must ensure that the records are accurate and sufficiently detailed to support the financial and statistical information reported in the cost report. If a provider does not

maintain records which support the financial and statistical information submitted on the cost report, the provider will be given 90 days to correct his record keeping. A hold of the vendor payments to the provider will be made if the deficiency is not corrected within 90 days from the date the provider is notified.

(J) Audit and review of cost reports.

(i) Review of cost reports. DHS reviews each cost report or survey to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. Desk reviews are performed on all cost reports according to §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports). Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(ii) On-site audit of cost reports. DHS staff perform a sufficient number of audits each year to ensure the fiscal integrity of the waiver services reimbursement rates. The number of on-site audits actually performed each year may vary. Adjustments consistent with the results of on-site audits are made to the rate base until closure before the final rate analysis. During either desk audits or on-site audits according to §24.401 of this title (relating to Notification), DHS notifies providers of the exclusions and adjustments to reported expenses made.

(iii) Access to records. The provider must allow DHS or its designated agents access to all records necessary to verify information on the cost report. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. If a provider does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold will be placed on the vendor payments until access to the records is allowed.

(iv) Reviews of cost report disallowances. Under §24.601 of this title (relating to Reviews and Administrative Hearings), providers may request an informal review and, if necessary, an administrative hearing to dispute any action taken by the department.

(2) Other sources of cost information. In the absence of reliable cost report data from which to set rates, rates will be developed by using data from surveys; cost report data from other similar programs; consultation with other service providers, associations, professionals experienced in delivering services to persons with related conditions; and other sources.

(e) Rate setting methodology.

(1) Rates by unit of service. Reimbursement rates for related-conditions waiver services will be determined on a fee-for-service basis for each of the services provided under the Social Security Act, §1915(c) Medicaid waiver for persons with related conditions.

(2) Exclusion or adjustment of expenses. Providers must eliminate unallowable expenses from the cost report. DHS excludes from the rate base any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses reported by providers; the purpose is to ensure that the rate base reflects costs which are consistent with efficiency, economy, and quality of care; are necessary for the provision of waiver services; and are consistent with federal and state Medicaid regulations. If there is doubt as to the accuracy or allowableness of a significant part of the information reported, individual cost reports may be eliminated from the rate base.

(3) Rate determination process. The DHS board determines, for each service, fee-for-service reimbursement rates which will reasonably reimburse the costs of an economic and efficient provider. DHS staff submit recommendations for reimbursement rates. Recommended rates are determined in the following manner.

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(B) Each provider's total allowable costs are projected from the historical cost reporting period to the prospective rate period as described in §24.301 of this title (relating to Determination of Inflation Indices).

(C) An allowable cost per unit of service is calculated for each service. The allowable costs per unit of service are arrayed and weighted by the number of units of service and the median point is calculated.

(D) The median cost component is multiplied by an appropriate percentage incentive factor, determined by the DHS board, to calculate the recommended reimbursement rates which, in the board's opinion, will be

(i) within budgetary constraints;

(ii) adequate to reimburse the cost of operations for an efficient and economic provider; and

(iii) justifiable given current economic conditions.

(E) The department also adjusts rates according to §24.501 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs) if new legislation, regulations, or economic factors affect costs.

(f) Allowable and unallowable costs.

(1) General. Allowable and unallowable costs are defined to identify expenses which are and are not reasonable and necessary to provide waiver services to clients by an economic and efficient provider. Only allowable cost information is used to compile the rate base. Cost reporting by providers should be consistent with GAAP. In cases where DHS cost reporting rules conflict with GAAP, IRS, or other authorities, DHS rules take precedence for cost reporting purposes.

(2) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise. Allowable costs–Those expenses that are reasonable and necessary in the normal conduct of operations relating to the provision of waiver services.

(A) The term "Reasonable" refers to the amount expended. The test of reasonableness is that the amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.

(B) The term "Necessary" refers to the relationship of the cost to provision of waiver services. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of waiver services and must meet the following requirements.

(i) The expenditure was not for personal or other activity not specifically related to the provision of waiver services.

(ii) The cost does not appear on the list of specific unallowable costs and is not unallowable under other federal, state, or local laws or regulations.

(iii) The cost bears a significant relationship to the provision of waiver services. The test of significance is whether elimination of the expenditure would adversely affect the delivery of waiver services.

(iv) The expense was incurred in the purchase of materials, supplies, or services provided directly to the clients or staff of the program in the conduct of normal business operations.

(C) Normal conduct of operations relating to waiver services includes, but is not limited to, the following.

(i) expenses not used solely for the provision of waiver services. Whenever allowable costs are attributable partially to personal or other business interests not related to the provision of waiver services and partially to waiver services, the latter portion may be allowed on a pro rata basis if the proportion of use by the waiver services is well-documented;

(ii) related-party transaction. Allowable costs must result from arms-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the waiver services program is the cost to the related party. Allowable costs in this regard are limited to the lesser of the actual purchase price to the related party, or usual and customary charges for comparable goods or services. A related party is a natural person or organization related to the provider entity by blood/marriage, or common ownership, or any association which permits either entity to exert power or influence, either directly or indirectly, over the other. Unallowable costs–Those expenses that are not reasonable or necessary for the provision of waiver services. Unallowable costs are not included in the rate base used to determine recommended rates.

(3) List of allowable costs. The following list of allowable costs is not comprehensive, but rather serves as a general guide and identifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost:

(A) compensation of waiver services staff. Compensation will be given only to those staff who provide waiver services directly to the clients or in support of staff of the waiver services in the normal conduct of operations relating to the provision of waiver services. This includes:

(i) wages and salaries;

(ii) payroll taxes and insurance. Federal Insurance Contributions Act (FICA or social security), unemployment compensation insurance, workman's compensation insurance;

(iii) employee benefits. Employer-paid health, life, accident, liability, and disability insurance for employees; contributions to employee retirement fund; and deferred compensation limited to the dollar amount the employer contributes. The expense:

(I) must represent a clearly enumerated liability of the employer to individual employees;

(II) must not be incurred as a benefit to employees who do not provide services directly to the clients or staff of the waiver services program;

(III) must not represent any form of profit sharing;

(B) compensation of staff outside of the waiver program who provide services directly to the clients or in support of staff of the program. Allowable compensation is limited to the pro rata portion of the actual working time spent on behalf of the program;

(C) compensation of outside consultants providing services directly to the clients or in support of staff of the program;

(D) materials and supplies. Includes office supplies, housekeeping supplies, medical, and other supplies;

(E) utilities. Includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph;

(F) buildings, equipment, and capital expenses. Buildings, equipment, and capital used by the waiver provider or in support of the waiver services staff, and not for personal business. If these costs are shared with other program operations, the portion of the costs relating directly to waiver services may be allowed on a pro rata basis if the proportion of use for waiver services is documented;

(G) depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased, or rented property used by the waiver provider that are valued at more than $500 at the time of purchase must be depreciated or amortized using the straight line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows:

(i) buildings: 30 years, with a minimum salvage value of 10%; and

(ii) transportation equipment used for the transport of clients, materials, and supplies, or staff providing waiver services: a minimum of three years for passenger automobiles and five years for light trucks and vans, all with a minimum salvage value of 10%;

(H) provider-owned property. Property owned by the provider entity and improvements to property owned, leased, or rented by the provider that are valued at less than $500 at the time of purchase may be treated as ordinary expenses;

(I) rental and lease expense. This includes rental and lease expenses for buildings, building equipment, transportation equipment, and other equipment, and related materials, and supplies used by the waiver provider. Rental or lease expense paid to a related party is limited to the actual allowable cost incurred by the related party;

(J) transportation expense. This includes the cost of public transportation or mileage claimed at the allowable reimbursement per mile set by the state legislature for state employees;

(K) interest expense. Interest expense is allowable on loans for the acquisition of allowable items, subject to:

(i) all of the requirements for allowable costs;

(ii) written evidence of the loan; and

(iii) the provider entity being named as maker or comaker of the note. Allowable interest is limited to the lesser of the cost to the related party or the prevailing national average prime interest rate for the year in which the loan contract was executed;

(L) tax expense. This includes real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees;

(M) insurance expense. This includes facility fire and casualty, professional liability and malpractice, and transportation insurance;

(N) contract waiver services provided by outside vendors to persons with related conditions;

(O) business and professional association dues limited to associations devoted primarily to the issues of related conditions;

(P) outside training costs. Limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the clients or staff of the waiver provider. The training must be directly related to issues concerning related conditions and located within the continental United States.

(4) List of unallowable costs. Unallowable costs are those expenses that are not reasonable or necessary for the provision of waiver services. Unallowable costs are not included in the rate base used

to determine recommended rates. The following list is not intended to be comprehensive, but rather to serve as a general guide and identify certain key expense areas that are not allowable. The absence of a particular cost does not necessarily mean that it is an allowable cost:

(A) compensation in the form of salaries, benefits, or any form of compensation given to individuals who do not provide waiver services either directly to clients or in support of staff;

(B) personal expenses not directly related to the provision of waiver services;

(C) client room and board expenses, except for those related to respite care;

(D) management fees paid to a related party that are not derived from the actual cost of materials, supplies, or services provided directly to the program;

(E) advertising expenses other than those for yellow pages advertising, advertising for employee recruitment, and advertising to meet any statutory or regulatory requirement;

(F) business expenses not directly related to the provision of waiver services;

(G) political contributions;

(H) depreciation and amortization of unallowable costs. This includes amounts in excess of those resulting from the straight line depreciation method, capitalized lease expenses in excess of the actual lease payment, and goodwill or any excess above the actual value of the physical assets at the time of purchase;

(I) trade discounts of all types. Returns, allowances, and refunds;

(J) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers;

(K) dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with the provision of waiver services;

(L) entertainment expenses except those incurred for entertainment provided to the staff of the waiver provider as an employee benefit;

(M) boards of directors' fees;

(N) fines and penalties for violations of regulations, statutes, and ordinances of all types;

(O) fund raising and promotional expenses;

(P) expenses incurred in the purchase of goods and services with revenues from gifts, donations, endowments, and trusts;

(Q) interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income;

(R) insurance premiums pertaining to items of unallowable cost;

(S) accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount. This includes any form of profit sharing and the accrued liabilities of deferred compensation plans;

(T) planning and evaluation expenses for the purchase of depreciable assets, except where purchases are actually made and the assets are put into service in providing waiver services;

(U) mileage expense which exceeds the current reimbursement rate set by the Texas Legislature for state employee travel or expenses exceeding actual cost of public transportation;

(V) costs of purchases from a related party which exceed the original cost to the related party;

(W) out-of-state travel expenses, except for provision of waiver services that may include training and quality assurance functions;

(X) legal and other costs associated with litigation between a provider and state or federal agencies, unless the litigation is decided in the provider's favor;

(Y) contributions to self-insurance funds which do not represent payments based on current liabilities;

(Z) any expense incurred because of imprudent business practices;

(AA) expenses which cannot be adequately documented;

(BB) expenses not reported according to the instructions on the cost report;

(CC) expenses not allowable under other pertinent federal, state, or local laws and regulations;

(DD) federal, state, and local income taxes and any expenses related to preparing and filing income tax forms;

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

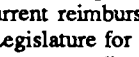
Issued in Austin, Texas, on February 15, 1990.

TRD-9001617

Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Proposed date of adoption: May 1, 1990

For further information, please call: (512) 450-3765



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Animal Health Commission

Friday, March 2, 1990, 9 a.m. The Texas Animal Health Commission will meet at 210 Barton Springs Road, First Floor Conference Room, Austin. According to the agenda summary, the commission will discuss approval of minutes of previous meeting and actions of executive director; authorize specific employees to sign vouchers; report on tuberculosis; discussion on bonded Mexican cattle in Texas quarantined feedlots; consideration for adopting amendments to the Brucellosis regulations; consideration for proposing amendments to the following regulations: Brucellosis (cattle and swine); swine, interstate, general practice and procedures; discussion on S. pullorum; post hearing review and final decision of commission on John Mattingly, administrative hearing; authorization to include provisions for sick leave pool to TAHC personnel manual pursuant to Senate Bill 357 enacted during the 71st Legislative Session, Regular Session; public comment.

Contact: Jo Anne Conner, 210 Barton Springs Road, Austin, Texas 78704, (512) 479-6697.

Filed: February 16, 1990, 10:46 a.m.

TRD-9001723

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Employees Retirement System of Texas

Tuesday, February 27, 1990, 8:30 a.m. The Board of Trustees of the Employees Retirement System of Texas will meet at the ERS Auditorium, ERS Building, 18th and Brazos Streets, Austin. According to the agenda summary, the board will review/approve trustee minutes; appeals of contested cases; consider/act on final adoption of amended trustee rule 81.3; consider/act on proposed adoption of new trustee rule 77.9; consider/act on proposed adoption of new trustee rule 77.11; consider/act on group insurance advisory committee election calendar; consider/act on adoption of proposed amendments to trustee rules 81.3(d)(2)(B), 81.5(j), 81.7(i)(11)(B), and 81.7(i)(11)(C); discuss utilization/cost data for health maintenance organizations reapplying for Texas employees uniform group insurance program participation in fiscal year 1991; first quarter internal auditing status report for fiscal year 1990; retirement issues at federal level; consider/act on proposed legislation; consider/act on proposed amendment to board of trustees personnel policy/procedures; executive director's report; executive session; action resulting from executive session; set date of next meeting.

Contact: Clayton T. Garrison, P.O. Box 13207, Austin, Texas 78711-3207, (512) 476-6431.

Filed: February 16, 1990, 9:03 a.m.

TRD-9001704

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Office of the Governor

Friday, March 9, 1990, 9:15 a.m. The Educational Excellent Committee-Subcommittee of the Office of Governor will meet at 1701 North Congress Avenue, Room 8.101, Austin. According to the complete agenda, the committee-subcommittee will hold a work session from 9:15-10:30 am., and a public hearing from 10:30-6 p.m.

Contact: Sheila W. Beckett, Sam Houston Building, Suite 700, Austin, Texas 78711, (512) 463-1817.

Filed: February 16, 1990, 9:58 a.m.

TRD-9001710

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Texas Department of Health

Saturday, February 24, 1990, 12:30 p.m. The Strategic Planning Committee of the Texas Board of Health, Texas Department of Health will meet at the Foothills Restaurant (17th Floor), Hyatt Regency Austin, 208 Barton Springs Road, Austin. According to the agenda summary, the committee will discuss its goals and objectives and advisory committees to the Board of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 16, 1990, 2:45 p.m.

TRD-9001748

Saturday, February 24, 1990, 1 p.m. The Nursing Homes Committee of the Texas Board of Health, Texas Department of Health will meet in the Panhandle Room (First Floor), Hyatt Regency Austin, 208 Barton Springs Road, Austin. According to the agenda summary, the committee will consider rules concerning intermediate care facilities for the mentally retarded and comments received concerning the proposed rule to amend the administrative penalties for nursing homes.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 16, 1990, 2:36 p.m.

TRD-9001746

Saturday, February 24, 1990, 1:30 p.m. The Alternate Care Committee of the Texas Board of Health, Texas Department of Health will meet in the Panhandle Room (First Floor), Hyatt Regency Austin, 208 Barton Springs Road, Austin. According to the agenda summary, the committee will consider proposed amendments to the respiratory care practitioner certification rules.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 16, 1990, 2:32 p.m.

TRD-9001745

Saturday, February 24, 1990, 2 p.m. The Personnel Committee of the Texas Board of Health, Texas Department of Health will meet in the Foothills Restaurant (17th Floor), Hyatt Regency Austin, 208 Barton Springs Road, Austin. According to the agenda summary, the committee will discuss and recommend appointments to advisory committees concerning massage therapy; chronically ill and disabled

children's services; HIV education, prevention and risk reduction; vision screening; and discuss composition and appointment procedures of the Kidney Health Program Advisory Committee.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 16, 1990, 2:46 p.m.

TRD-9001750

Saturday, February 24, 1990, 3 p.m. The Environmental Health Committee of the Texas Board of Health, Texas Department of Health will meet in the Panhandle Room (First Floor), Hyatt Regency Austin, 208 Barton Springs Road, Austin. According to the agenda summary, the committee will discuss rules concerning solid waste management planning grants; transporters of sludge and septic waste; used and scrap tires; bottled water; youth camp licenses; licensing of uranium recovery facilities; tanning facilities; public water systems; on-site sewerage facilities on the recharge zone of the Edwards Aquifer; special waste from health care related facilities; municipal solid waste management; Texas Air Control Board review of permit applications for municipal solid waste facilities.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 16, 1990, 2:36 p.m.

TRD-9001749

Saturday, February 24, 1990, 5 p.m. The Chronically Ill and Disabled Children's Services and Maternal and Child Health Committee of the Texas Board of Health, Texas Department of Health will meet in the Panhandle Room, Hyatt Regency Austin, 208 Barton Springs Road, Austin. According to the agenda summary, the committee will consider appointments to the committee and a fiscal update on the chronically ill and disabled children's services program.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 16, 1990, 2:38 p.m.

TRD-9001747

Sunday, February 25, 1990, 9 a.m. The Texas Board of Health of the Texas Department of Health will meet in the Hill Country Room (First Floor), Hyatt Regency, 208 Barton Springs Road, Austin. According to the agenda summary, the board will approve minutes of previous meeting; hear message from Texas Public Health Association; commissioner's report; AIDS update; present 1990 community health promotion awards; approve resolution; consider committee reports and appointments; approve purchase of laboratory equipment; consider rules (respiratory care practitioner certification; solid waste management planning grants; transporters of sludge and septic waste; used and scrap tires; bottled water; sick leave pooling; youth camp licenses; licensing of uranium recovery facilities; intermediate care facilities for the mentally retarded); extend emergency rules on model health education program/resource guide for HIV/AIDS education of school-age children; approve purchase of laboratory equipment; elect board secretary; announcements and comments.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 16, 1990, 2:29 p.m.

TRD-9001744

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State Department of Highways and Public Transportation

Tuesday, February 27, 1990, 9:30 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation will meet at the Dewitt C. Greer Building, 11th and Brazos Streets, Room 101-A, First Floor, Austin. According to the agenda summary, the commission will meet to execute contract awards and routine minute orders and memos; consider authorization and related matters on public transportation, presentation by Maryland Club Coffee, sign improvement and reflective pavement marker programs, highway and road projects, project authorization, funding and overruns, report on highway programs, mobility plan, staff reports/recommendation on public hearing matters, proposed rule relating to certain oil well related vehicles, sign policy statement and creation of business routes, contract with High Speed Rail Authority, resolutions. Executive session to be counseled on Save Barton Creek Association et al v. FHWA et al, and the transfer of full fee title to TDC land to this department.

Contact: Myrna Klipple, Dewitt C. Greer Building, Room 203, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: February 16, 1990, 2:04 p.m.

TRD-9001738

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State Board of Insurance

Tuesday, February 27, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Hubert Lee Pye, San Antonio, who holds A group I, legal reserve life insurance agent's license issued by the board. Docket Number 10704.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 16, 1990, 2:48 p.m.

TRD-9001751

Tuesday, February 27, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Frances Tarlton Gordon, Houston/Austin, who holds a group I, legal reserve life insurance agent's license, a local recording agent's license and a surplus lines agent's license issued by the board; and to consider the application of Frances Tarlton Gordon for renewal of her local recording agent's license. Docket Number 10531.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 16, 1990, 2:51 p.m.

TRD-9001753

Tuesday, February 27, 1990, 10 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will discuss approval of plan for audit of Texas Workers' Compensation Assigned Risk Pool. Appointment of members to Texas Key Rate Advisory Committee. Amendments to the automobile manual concerning garage insurance. Final action on new 28 TAC §§1.901-1.911, 7.58, and 21.122, and amendments to 28 TAC §19.901 and §19.907. Board orders on several different matters as itemized on the complete agenda. Motion for dismissal in the appeal of Samuel Baron from action of the Texas Catastrophe Property Insurance Association. Personnel matters. Litigation. Solvency matters. Appointments to Health Maintenance Organization Solvency Surveillance Committee.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: February 16, 1990, 2:09 p.m.

TRD-9001739

Tuesday, February 27, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against David Alan Faulkner, Mansfield, who holds a group I, legal reserve life insurance agent's license and a

local recording agent's license issued by the board. Docket Number 10721.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 16, 1990, 2:53 p.m.

TRD-9001755

Tuesday, February 27, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Abundio Rodriguez, El Paso, for a group I, legal reserve life insurance agent's license to be issued by the board. Docket Number 10725.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 16, 1990, 2:50 p.m.

TRD-9001752

Tuesday, February 27, 1990, 2 p.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will conduct a meeting with the attorney general's office concerning pending and contemplated litigation.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: February 16, 1990, 2:11 p.m.

TRD-9001740

Wednesday, February 28, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Jim Dan Webb, Dallas, who holds a group I, legal reserve life insurance agent's license issued by the board. Docket Number 10680.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 16, 1990, 2:52 p.m.

TRD-9001754

Wednesday, February 28, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Harry Lynn Bryan, Houston, who holds a local recording agent's license issued by the board. Docket Number 10720.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 16, 1990, 2:53 p.m.

TRD-9001769

Monday, March 5, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Roy Weldon Parrish, Quinlan, for a group II, insurance agent's license.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 16, 1990, 2:53 p.m.

TRD-9001768

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Texas Commission on Law Enforcement Officer Standards and Education

Wednesday, March 7, 1990, 1:30 p.m. The Texas Peace Officers' Memorial Advisory Committee of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, Dover Room, 6505 North IH 35, Austin. According to the complete agenda, the committee will recognize visitors; introduce committee members; discuss election of vice-chairman and secretary; staff report; discussion and approval of implementation procedure to solicit designs for memorial; establish dates for future meetings.

Contact: Tommy Honeycutt, 1606 Headway Circle, Suite 100, Austin, Texas 78754, (512) 834-9222.

Filed: February 20, 1990, 9:19 a.m.

TRD-9001811

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Board of Law Examiners

Sunday-Tuesday, February 25-27, 1990, 1:30 p.m., 8:15 a.m. and 8:15 a.m. respectively. The Board of Law Examiners will meet at the Four Seasons Hotel, 99 San Jacinto Street, Austin on Sunday, and on Monday and Tuesday at the Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the board will discuss minutes of the January 1990 meeting; budget-current status fiscal year 1990; discuss February, 1990 and July 1990 bar exams; policy re: Forty five day reapps character and fitness; policy re: debts of applicants; questions of eligibility and special request; and hearings on moral character and fitness.

Contact: Wayne E. Denton, Suite 116, 510 South Congress Avenue, Austin, Texas 78704, (512) 463-1621.

Filed: February 16, 1990, 1:04 p.m.

TRD-9001735

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Texas Department of Mental Health and Mental Retardation

Thursday, March 8, 1990, 10 a.m. The Interagency Council on ICE/MR Facilities of the Texas Department of Mental Health and Mental Retardation will meet at 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the council in accordance with Senate Bill 1426, Section 3, the council will convene to consider for approval an amendment to the annual plan for the development of new beds in the ICF/MR program for fiscal year 1990 as adopted into rule by TDMHMR. The council will additionally address: selection of a chairperson and vice-chairperson; adoption of statement of purpose; adoption of policies governing council conduct; and review of council report requirements. If interpreters for the deaf are required, notify TDMHMR (512) 323-3261, Carole Smith, 72 hours prior to the meeting.

Contact: Carole Smith, P.O. Box 12668, Austin, Texas 78711, (512) 323-3261.

Filed: February 16, 1990, 2:54 p.m.

TRD-9001756

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Board of Nurse Examiners

Friday, March 2, 1990, 9:30 a.m. The Advisory Committee on Advanced Nurse Practitioners of the Board of Nurse Examiners will meet at 9101 Burnet Road, Suite 104, Austin. According to the complete agenda, the committee will discuss the minutes of the December 13, 1989 meeting; receive updates on the board's decision regarding the request for a family planning nurse practitioner category; update on the publication of emergency and proposed rules for prescriptive authority for ANPs; review data collected on certification requirements; consider input to the BNE's advisory committee on CE; and set the next meeting date. An open forum is scheduled from 10-11 a.m. for anyone to address the committee directly.

Contact: Kathy Thomas, P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: February 16, 1990, 10:54 a.m.

TRD-9001724

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Texas Department of Criminal Justice Board of Pardons and Paroles

Monday-Friday, February 26-28, and March 1-2, 1990, 10 a.m. The Texas Department of Criminal Justice Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, a panel (composed of three board members) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Karin Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: February 16, 1990, 10:42 a.m.

TRD-9001722

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State Preservation Board

Tuesday, February 20, 1990, 2 p.m. The Permanent Advisory Committee to the State Preservation Board held an emergency meeting in Room 314, Library and Archives Building, 1201 Brazos Street, Austin. According to the complete agenda, the committee discussed approval of minutes; old business; new business: listing of change requests, GLBO, exterior asbestos contract approval, approval of gas line relocation, tree relocation update and approval of contract award, approval of design development documents, authorization of construction documents for capitol and extension, approval to solicit construction bids for extension excavation, asbestos consultant selection approval-capitol, and approval of capitol emergency evacuation plan. The emergency status was necessary because the agenda was not finalized before deadline for normal filing had expired; meeting could not be rescheduled.

Contact: Michael Schneider, P.O. Box 1328, Austin, Texas 78711, (512) 463-5495.

Filed: February 15, 1990, 10:16 a.m.

TRD-9001598

Wednesday, February 21, 1990, 2 p.m. The State Preservation Board held an emergency meeting in Room 314, Library and Archives Building, Austin. According to the complete agenda, the board discussed approval of minutes; old business; new business: listing of change requests, GLOB, exterior asbestos contract approval, approval of gas line relocation, tree relocation update and approval of contract award, approval of design development documents, authorization of construction documents for capitol and extension, approval to solicit construction bids for extension excavation, asbestos consultant selection approval-capitol, and approval of capitol emergency evacuation plan. The emergency status was necessary because the agenda was not finalized before deadline for normal filing had expired, meeting could not be rescheduled.

Contact: Michael Schneider, P.O. Box 1328, Austin, Texas 78711, (512) 463-5495.

Filed: February 15, 1990, 10:16 a.m.

TRD-9001597

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Public Utility Commission of Texas

Wednesday, April 25, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference for Docket Number 9300-application of Texas Utilities Electric Company for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 16, 1990, 3:16 p.m.

TRD-9001779

Thursday, April 26, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits on Docket Number 9300-application of Texas Utilities Electric Company for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 16, 1990, 3:17 p.m.

TRD-9001778

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State Purchasing and General Services Commission

Tuesday, February 27, 1990, 9 a.m. The State Purchasing and General Services Commission will meet at 1711 San Jacinto Street, Central Services Building, Conference Room 402, Austin. According to the agenda summary, the commission will overview presentation regarding Sunset review; authorization for emergency repairs to the Winters complex; status of pending claims of Meyerson Construction Company and Jessen Associates; executive director's authority over operating budget; monthly 3.09 report; monthly operating budget report; status report of ADP audit; monthly construction project report; approval of a revised sick leave policy; monthly division activity report; executive session to consider the status of the potential purchase of real property; executive session to receive a report from counsel regarding pending litigation.

Contact: John R. Neel, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: February 16, 1990, 11:14 a.m.

TRD-9001709

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Railroad Commission of Texas

Monday, February 26, 1990, 9 a.m. The Railroad Commission of Texas will meet in William B. Travis Building, the 12th Floor Conference Room, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: February 16, 1990, 10:50 a.m.

TRD-9001730

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: February 16, 1990, 10:52 a.m.

TRD-9001728

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Cril Payne, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: February 16, 1990, 10:51 a.m.

TRD-9001732

The commission will consider and act on the Investigation Division director's report on division administration, investigations,

budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: February 16, 1990, 10:51 a.m.

TRD-9001729

The commission will consider various matters within the jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session to receive legal advice regarding pending and/or contemplated litigation.

Contact: Cue D. Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: February 16, 1990, 10:52 a.m.

TRD-9001726

The commission will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: February 16, 1990, 10:52 a.m.

TRD-9001727

The commission will consider and act on the Personnel Division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline, and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: February 16, 1990, 10:50 a.m.

TRD-9001731

The commission will consider and act on the OIS director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6710.

Filed: February 16, 1990, 10:51 a.m.

TRD-9001733

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Texas Rehabilitation Commission

Thursday, March 1, 1990, 8:45 a.m. The Texas Planning Council for Developmental Disabilities Nominating Committee of the Texas Rehabilitation Commission will meet at the Doubletree Hotel, Allen Center, 400 Dallas, Houston. According to the complete agenda, the the council will discuss nominations for council vice-chairman; and nominations for consumer member-at-large to executive committee.

Contact: Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4081.

Filed: February 20, 1990, 8:25 a.m.

TRD-9001806

Thursday, March 1, 1990, 9 a.m. The Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will meet at the Doubletree Hotel, Allen Center, 400 Dallas, Granger Ballroom, Houston. According to the complete agenda, the council will hear public comments; discuss approval of minutes, November 30-December 1, 1989; chairman's report; nominating committee report; planning and evaluation committee report; advocacy and public information committee report; executive director's report; public comments; and announcement.

Contact: Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4081.

Filed: February 20, 1990, 8:25 a.m.

TRD-9001807

Friday, March 2, 1990, 8:30 a.m. The Texas Planning Council for Developmental Disabilities Executive Committee of the Texas Rehabilitation Commission will meet at the Doubletree Hotel, Allen Center, 400 Dallas, Houston. According to the complete agenda, the committee will discuss approval of summary report of November 30, 1989; review of stipends RFP applications; executive director's report; draft DD program fiscal year 1992-1993 LAR; and chairman's report.

Contact: Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4081.

Filed: February 20, 1990, 8:25 a.m.

TRD-9001808

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Rural Economic Development Commission

Wednesday, February 21, 1990, 1 p.m. The Rural Economic Development Commission met at the Civic Center, 1500 South Highway 285, Pecos. According to the complete emergency revised agenda, the commission discussed overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:22 a.m.

TRD-9001711

Monday, February 26, 1990, 1 p.m. The Rural Economic Development Commission will meet at the South Plains Association of Governments, 1323 58th Street, Lubbock. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:39 a.m.

TRD-9001721

Tuesday, February 27, 1990, 1 p.m. The Rural Economic Development Commission will meet at the Panhandle Regional Planning Commission, 2736 West 10th, Amarillo. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:39 a.m.

TRD-9001720

Friday, March 2, 1990, 1 p.m. The Rural Economic Development Commission will meet at the Texas Agricultural Extension Service Wichita County Office, Large Conference Room, 1626 Midwestern Parkway, Wichita Falls. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:37 a.m.

TRD-9001719

Monday, March 5, 1990, 10 a.m. The Rural Economic Development Commission

will meet at the Paris Junior College, Main Ballroom, J.R. McLemore Student Center, Paris. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:36 a.m.

TRD-9001718

Tuesday, March 6, 1990, 10 a.m. The Rural Economic Development Commission will meet at the TAMU Agricultural Research and Extension Center, US Highway 281 and FM 8, Stephenville. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:35 a.m.

TRD-9001717

Wednesday, March 7, 1990, 10 a.m. The Rural Economic Development Commission will meet at the TAMU Agricultural Extension and Research Center, FM 3053, Overton. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:33 a.m.

TRD-9001715

Wednesday, March 7, 1990, 1 p.m. The Rural Economic Development Commission will meet at the Hoblitzel Auditorium, Texas Agricultural Extension Service, 2401 East Highway 83, Weslaco. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:34 a.m.

TRD-9001716

Thursday, March 8, 1990, 10 a.m. The Rural Economic Development Commission will meet at Prairie View A & M University, John B. Coleman Library, Public Events Room 108, Prairie View. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:31 a.m.

TRD-9001714

Wednesday, March 14, 1990, 1 p.m. The Rural Economic Development Commission will meet at the Civic Center, 300 East Main, Uvalde. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:32 a.m.

TRD-9001713

Tuesday, March 20, 1990, 1 p.m. The Rural Economic Development Commission will meet at the Civic Center, 500 Rio Concho, San Angelo. According to the complete agenda, the commission will discuss overview of the mandate of the commission; the role of the regional task force; the commission process and timetable; opening comments by task force members; public testimony; concluding comments and discussion.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: February 16, 1990, 10:25 a.m.

TRD-9001712

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Senate of the State of Texas

Wednesday, February 28, 1990, 9 a.m. The Select Committee on Legislative Redistricting of the Senate of the State of Texas will meet in the Senate Chamber, State Capitol Building, Austin. According to the agenda summary, the committee will take testimony, written or oral on congressional, legislative, and State Board of Education redistricting topics of general or statewide interest to provide an overview of issues before the Senate and House committees start the regional hearings. It will also be an organizational meeting to finalize plans for joint activities of the Senate Select Committee on Legislative Redistricting and the House Redistricting Committee.

Contact: Doris Boedeker, P.O. Box 12068, Austin, Texas 78711, (512) 463-0395.

Filed: February 15, 1990, 4:12 p.m.

TRD-9001666

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State Soil and Water Conservation Board

Thursday, March 1, 1990, 1 p.m. The State Soil and Water Conservation Board will meet at 4250 Ridgemont Drive, Abilene. According to the complete agenda, the board will review and take appropriate action on the following: district director appointments; develop long range goals and objectives for the board; and state board travel.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250.

Filed: February 16, 1990, 4:07 p.m.

TRD-9001761

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Texas A&M University System, Board of Regents

Wednesday, February 28, 1990, 1 p.m. The Committee for Academic Campuses of the Texas A&M University System, Board of Regents will meet in the Board of Regents Meeting Room, College Station. According to the complete agenda, the committee will be meeting jointly with the advisory panel to discuss undergraduate education at Texas A&M University.

Contact: Vickie Running, Texas A&M University System, College Station, Texas 77843-1122, (409) 845-9603.

Filed: February 16, 1990, 2:58 p.m.

TRD-9001760

Tuesday, March 6, 1990, 9 a.m. The Committee for Strategic Objectives of the Texas A&M University System, Board of Regents will meet in the Board of Regents Meeting Room, College Station. According to the complete agenda, the committee will receive a status report from consultants.

Contact: Vickie Running, Texas A&M University System, College Station, Texas 77843-1122, (409) 845-9603.

Filed: February 16, 1990, 2:58 p.m.

TRD-9001757

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Texas Growth Fund

Wednesday, February 28, 1990, 9:30 a.m. The Texas Growth Fund will meet in the Crescent Office Building, 100 Crescent Court, Suite 1000, Dallas. According to the complete agenda, the fund will conduct an organizational meeting and discuss long-term schedule.

Contact: Christine Mangiantini, Room 205-A, Sam Houston Building, 201 East 14th Street, Austin, Texas 78711, (512) 463-1814.

Filed: February 20, 1990, 9:08 a.m.

TRD-9001809

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University of Texas System, M.D. Anderson Cancer Center

Tuesday, February 20, 1990, 9 a.m. The Institutional Animal Care and Use Committee of the University of Texas System, M.D. Anderson Cancer Center will meet at the M.D. Anderson Cancer Center Conference Room AW7.707, Seventh Floor, 1515 Holcombe Boulevard, Houston. According to the agenda summary, the committee will review protocols for animal care and use and modifications thereof.

Contact: Anthony Mastromarino, 1515 Holcombe Boulevard, Houston, Texas 77030, (713) 792-3391.

Filed: February 15, 1990, 4:47 p.m.

TRD-9001695

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University of Houston System

Wednesday, February 21, 1990, 8 a.m. The Board of Regents of the University of Houston System met in the South Ballroom, Conrad Hilton College Building, University of Houston, Houston. According to the agenda summary, the board discussed and/or acted on the following: Minutes, consent docket, appreciation resolution, board policy 09.01, sick leave, College of Optometry, personnel recommendations, faculty Emeriti appointment, memorial resolution, dual employment, construction change orders, athletic facility, central plant building extension, appointment of consultant, Hofheinz Pavilion, property acquisition, student housing, software for Human Resources System, consulting contract, replacement of computer, update of computing project, project changes for telecommunications system, banking resolution, revenue system bonds, appointment of financial advisor, various reports, fiscal year 1990 budget development, license plate, naming facilities and endowments and feasibility study.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7440.

Filed: February 16, 1990, 8:47 a.m.

TRD-9001770

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University Interscholastic League

Tuesday, February 20, 1990, 10 a.m. The Assignment Appeals Committee of the University Interscholastic League met at the Red Lion Hotel, Salon A, IH 35 and Highway 290, Austin. According to the agenda summary, the committee met to hear appeals of conference assignment.

Contact: Barbara Jones, P.O. Box 8028, UT Station, Austin, Texas 78713-8023, (512) 471-5883.

Filed: February 15, 1990, 3:32 p.m.

TRD-9001635

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University of North Texas/Texas College of Osteopathic Medicine

Thursday, February 22, 1990, 1 p.m. The Role and Scope Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met at 201 Administration Building, University of North Texas, Denton. According to the complete agenda, the committee discussed TCOM: sick leave pooling policy; scholarly misconduct: policy and procedures; UNT: routine academic reports; personnel; master of science and doctor of philosophy with major in neuroscience; master of arts with major in philosophy; scholarly misconduct: policy and procedures; University of North Texas table of programs; appointments to North Texas Research Institute Board; sick leave pooling policy; coordinating board issues.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 16, 1990, 4:02 p.m.

TRD-9001766

Thursday, February 22, 1990, 1 p.m. The Role and Scope Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met at 201 Administration Building, University of North Texas, Denton. According to the complete revised agenda, the committee discussed athletics update. The emergency status was necessary because new topics for discussion arose since submission on February 14, 1990. This was telefaxed in order to get to the *Texas Register* on time, since the office was closed on Monday, February 19, 1990.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 16, 1990, 11:15 a.m.

TRD-9001734

Thursday, February 22, 1990, 2 p.m. The Budget and Finance Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met at 213 Administration Building, University of North Texas, Denton. According to the complete agenda, the committee discussed TCOM: gift report; student fees for 1990-1991; interest earnings; proposition II transactions. UNT: gift report; sale of surplus equipment; signature authority; investment report. Proposition II transactions.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 16, 1990, 4:02 p.m.

TRD-9001765

Thursday, February 22, 1990, 3 p.m. The Facilities Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met in the Conference Room, Administration Building, University of North Texas, Denton. According to the complete agenda, the committee discussed TCOM: project status report; facilities planning. UNT: renovation of historical building; construct machine shop; project status report; space matters-UNT and TWU; foreign language building repairs; Sheraton Hotel status report; briefing on campus security.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 16, 1990, at 4:03 p.m.

TRD-9001764

Thursday, February 22, 1990, at 4 p.m. The Advancement Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met at the University of North Texas, Denton. According to the complete agenda, the committee discussed TCOM: development update. UNT: advancement update; funding efforts toward capital campaign goals; presentation on capital campaign.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 16, 1990, 4:03 p.m.

TRD-9001763

Friday, February 23, 1990, at 8 a.m. The Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine will meet at the Diamond Eagle Suite, University Union, University of North Texas, Denton. According to the complete agenda, the board will discuss TCOM: approval of minutes; executive session (legislative update; coordinating board issues; security at UNT; liability insurance; John Peter Smith Hospital; vice

president search; internal medicine issue; admission office; Clarke vs. UNT, Maxicare vs. UNT; Sheraton Hotel; dean search, College of Business; specific personnel appointments; copyright issue; resident hall employee; student sexual assault; faculty termination issue); sick leave pooling policy; scholarly misconduct policy and procedures; gift report; student fees, 1990-1991; project status report; personnel update; research update. UNT: academic reports; personnel; MS and Ph.D. with major in neuroscience, MA with major in philosophy; scholarly misconduct policy and procedures; table of programs; Board of Directors, North Texas Research Institute; sick leave pooling policy; Professional Development Institute; gift report; sale of surplus equipment; signature authority; renovation of historical building; construct machine shop; project status report; centennial.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 16, 1990, 4:03 p.m.

TRD-9001762

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Texas Water Commission

Wednesday, February 28, 1990, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: February 16, 1990, 3:55 p.m.

TRD-9001773

Thursday, March 1, 1990, 10 a.m. The Texas Water Commission will meet in Room 1149B, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase of Arrowhead Water System, Docket Number 8242-G.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898

Filed: February 16, 1990, 3:46 p.m.

TRD-9001776

Thursday, March 1, 1990, 10 a.m. The Texas Water Commission will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase for City of Fort Worth. City of Arlington is appealing this rate increase. Docket Number 8291-A.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 16, 1990, 3:47 p.m.

TRD-9001775

Thursday, March 1, 1990, 10 a.m. The Office of Hearing Examiners of the Texas Water Commission will meet in Room 101, Fifth Floor, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the examiners will conduct a public hearing on an application by Tolbert and Suzanne Wilkinson, Application Number 19-2121A, to amend Certificate Number 19-2121.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 15, 1990, 3:33 p.m.

TRD-9001781

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Regional Meetings

Meetings Filed February 15, 1990

The Brazos River Authority Board of Directors met at 4300 South Shore Boulevard, League City, February 21, 1990, at 11 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Jack County Appraisal District Board of Directors met at the JISD Agriculture Science and Technology Building, 819 West Belknap, Jacksboro, February 20, 1990, at 6:30 p.m. Information may be obtained from Gary L. Zeitler or Donna E. Hartzell, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Texas Rural Communities Board of Directors will meet at 314 Highland Mall Boulevard, Austin, March 1, 1990, at 9 a.m. Information may be obtained from Leland Beatty, 314 Highland Mall Boulevard, Austin, Texas 78752, (512) 458-1016.

TRD-9001596

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Meetings Filed February 16, 1990

The Angelina and Neches River Authority Board of Directors met in the Angelina Room at the Fredonia Hotel, 200 North Fredonia Street, Nacogdoches, February 20, 1990, at 10 a.m. Information may be obtained from Gary L. Neighbors, ANRA P.O. Box 387, Lufkin, Texas 75902-0387, (409) 632-7795.

The Archer County Appraisal District Board of Directors held an emergency meeting at the Appraisal District Office, 211 South Center, Archer City, February 21, 1990, at 5 p.m. The emergency status was necessary because an inadequate number of directors were present for a quorum for February 7, 1990 meeting and a new meeting was requested. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Atacosa County Appraisal District Board of Directors will meet at 1010 Zanderson, Jourdanton, February 23, 1990, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas 78026, (512) 769-2730.

The Austin-Travis County Mental Health Mental Retardation Center Finance and Control Committee met at 1430 Collier Street, Board Room, Austin, February 21, 1990, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141.

The Austin-Travis County Mental Health Mental Retardation Center Executive Committee met at 1430 Collier Street, Austin, February 22, 1990, at 7 a.m. Information may be obtained from Sharon Taylor, 1430 Collier, Austin, Texas 78704, (512) 447-4141.

The Austin-Travis County Mental Health Mental Retardation Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, February 22, 1990, at 7 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031.

The Brazos River Authority Board of Directors met at 4300 South Shore Boulevard, League City, February 21, 1990, at 11 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Central Appraisal District of Taylor County Board of Directors met at 1534 South Treadaway, Abilene, February 21, 1990, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

The Coastal Bend Council of Governments Membership will meet at 901 Leopard Street, Room 302, Third Floor, Nueces County Courthouse, Corpus Christi, February 23, 1990, at 2 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743.

The Dallas Area Rapid Transit Procurement Ad Hoc Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, February 20, 1990, at 11 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Budget and Finance Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, February 20, 1990, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Mobility Impaired Committee met at 601 Pacific Avenue, Board Room, Dallas, February 20, 1990, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Arts Committee met at 601 Pacific Avenue, Conference Room 7A, Dallas, February 20, 1990, at 1:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Planning and Development Committee met at 601 Pacific Avenue, Board Room, Dallas, February 20, 1990, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-5237.

The Dallas Area Rapid Transit Board of Directors met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, February 20, 1990, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Education Service Center Region XV Board of Directors met at ESC Region XV, 612 South Irene Street, Conference Room 1, San Angelo, February 22, 1990, at 1:30 p.m. Information may be obtained from Clyde Warren, 612 South Irene Street, San Angelo, Texas 76902, (915) 658-6571.

The Education Service Center, Region 20 Board of Directors will meet at 1314 Hines Avenue, San Antonio, February 28, 1990, at 2 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 299-2400.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 5102 North Navarro, Victoria, February 21, 1990, at 6:30 p.m. Information may be obtained from Sandy Heiermann, P.O. Box 164, Victoria, Texas 77902, (512) 578-0341.

The Heart of Texas Council of Governments Executive Committee met at 300 Franklin Avenue, HOTCOG Conference Room, Waco, February 22, 1990, at 10 a. m. Information may be obtained from Mary McDow, 300 Franklin, Waco, Texas 76701, (817) 756-7822.

The Lower Colorado River Authority Energy Operations Committee met at 3700 Lake Austin Boulevard, Austin, February 21, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority Natural Resources Committee met at 3700 Lake Austin Boulevard, Austin, February 21, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority Planning and Public Policy Committee met at 3700 Lake Austin Boulevard, Austin, February 21, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority Audit and Budget Committee met at 3700 Lake Austin Boulevard, Austin, February 21, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority Finance and Administration Committee met at 3700 Lake Austin Boulevard, Austin, February 21, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority Energy Operations and Planning and Public Policy Committees met at 3700 Lake Austin Boulevard, Austin, February 21, 1990 at 3 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority Board of Directors met at 3700 Lake Austin Boulevard, Austin, February 22, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The Lower Rio Grande Valley Development Council Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, February 22, 1990, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (512) 682-3481.

The Mental Health Mental Retardation Authority of Brazos Valley Board of Trustees met at the Brazos Center, 3232 Briarcrest Drive, Bryan, February 22, 1990, at 1:30 p.m. Information may be obtained from Leon Bawcom, P. O. Box 4588, Bryan, Texas 77805, (409) 822-6467.

The Middle Rio Grande Development Council Private Industry Council met at JJ's Restaurant, I-35 at 468, Cotulla, February 21, 1990, at 1 p.m. Information may be obtained from Michael M. Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The North Central Texas Council of Governments Executive Board met at Centerpoint Two, Second Floor, 616 Six Flags Drive, Arlington, February 22, 1990, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

The Texas Municipal Power Agency (TMPA) Board of Directors held a special meeting at the Garland Quality Inn, Board Room, 13700 LBJ Freeway, Garland, February 21, 1990, at 5:30 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

The Texas Municipal Power Agency (TMPA) Board of Directors held a special meeting at the Garland Quality Inn, Board Room, 13700 LBJ Freeway, Garland, February 21, 1990, at 7:30 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

The Texas Municipal Power Agency (TMPA) Board of Directors held a special meeting at the Garland Quality Inn, Board Room, 13700 LBJ Freeway, Garland, February 22, 1990, at 5 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

TRD-9001703

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Meetings Filed February 20, 1990

The Central Texas Mental Health Mental Retardation Center Board of Trustees will meet at 408 Mulberry Drive, Brownwood, February 26, 1990, at 5 p.m. Information may be obtained from Danny Armstrong, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574.

The Greater Austin-San Antonio Corridor Council, Inc. Executive Committee will meet at Aquarena Springs Restaurant, San Marcos, February 23, 1990, at 8:30 a.m. Information may be obtained from Dana Douglass, P.O. Box 1618, San Marcos, Texas 78667-1618.

The Greater Austin-San Antonio Corridor Council, Inc. Board of Directors will meet at Aquarena Springs Restaurant, San Marcos, February 23, 1990, at 10 a.m. Information may be obtained from Dana Douglass, P.O. Box 1618, San Marcos, Texas 78667-1618.

The Gulf Bend Mental Health Mental Retardation Center Board of Trustees held an emergency meeting at 1404 Village Drive, Victoria, February 22, 1990, at noon. The emergency status was necessary because it was the only time a quorum could meet. Information may be obtained from Bill Dillard, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611.

The Hunt County Appraisal District Board of Directors will hold an emergency meeting at the Hunt County Appraisal

District Board Room, 4801 King Street, Greenville, February 23, 1990, at 9 a.m. The emergency status was necessary because financial reasons. Information may be obtained from Joe P. Davis or Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Mental Health Mental Retardation Center of East Texas Board of Trustees held an emergency meeting at 2323 West Front, Board Room, Tyler, February 22, 1990, at 4 p.m. The emergency status was necessary because of progress report on "The Beginning" of substance abuse services. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250, South, Hughes Springs, February 26, 1990, at 10 a.m. Information may be obtained from J. W. Dean, Box 955, Hughes Springs, Texas 75656, (214) 639-7538.

The San Antonio-Bexar County Metro Planning Orginazation Steering Committee will meet at the San Antonio City Hall, Basement Conference Room, San Antonio, February 26, 1990, at 1:30 p.m. Information may be obtained from Rose Mesa, Room 101, Bexar County Courthouse, San Antonio, Texas 78205-3002, (512) 227-8651.

The West Central Texas Council of Governments Executive Committee will meet at 1025 E.N. 10th Street, Abilene, February 28, 1990, at 12:45 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544

TRD-9001810

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board

Correction of Error

The Texas Air Control Board submitted adopted sections under Chapter 115, Volatile Organic Compounds, which contained an error as published in the February 2, 1990, issue of the *Texas Register* (15 TexReg 562).

In §115.115, paragraph (6) contained a typographic error in the citation. The paragraph should read as follows. "(6) test method described in 40 *Code of Federal Regulations* §60.113(a)(ii) for measurement of storage tank seal gap."

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Texas Department of Banking

Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On February 13, 1990, the banking commissioner received an application to acquire control of Enterprise Bank-Houston, Houston by Howard T. Tellepsen, Jr., George R. Speaks and Eagle Management and Trust Company, Trustee, by Cole Thomson, all of Houston.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on February 13, 1990.

TRD-9001579 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: February 14, 1990

For further information, please call: (512) 479-1200

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer(3)/Agricultural/Commercial(4) thru $250,000	Commercial(4) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	02/19/90-02/25/90	18.00%	18.00%
Monthly Rate(1) Art. 1.04(c)	02/01/90-02/28/90	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	01/01/90-03/31/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11(3)	01/01/90-03/31/90	18.00%	N.A.

Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)	01/01/90-03/31/90	15.19%	N.A.
Standard Annual Rate - Art. 1.04(a)(2)(2)	01/01/90-03/31/90	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11(3)	01/01/90-03/31/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	01/01/90-03/31/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	02/01/90-02/28/90	10.00%	10.00%

(1) For variable rate commercial transactions only.

(2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.

(3) Credit for personal, family or household use.

(4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on February 12, 1990.

TRD-9001574 Al Endsley
Consumer Credit Commissioner

Filed: February 14, 1990

For further information, please call: (512) 479-1280

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Credit Union Department

Amended Notice of Hearing

The Credit Union Department will conduct a consolidated hearing to determine whether the applications for amendment to the bylaws for expansions of fields of membership by the following credit unions should be approved or disapproved: Dallas Teachers Credit Union, Dallas; Community Credit Union, Plano; City Employees Credit Union, Dallas; FFE Operators Credit Union, Lancaster; Gifford-Hill Credit Union, Dallas; and Texas Industries Employees Credit Union, Arlington.

Time and Place of Hearing. The hearing will be held on March 20, 1990, at 1 p.m. at the William B. Travis Building, 1701 North Congress Avenue (Room 1-111), Austin.

Authority. Texas Civil Statutes, Articles 6252-13(a), 2461-2.06(b), and 2461-12.01 (Vernon Supplement 1989); 7 Texas Administrative Code, §93.221.

Names and Addresses of Parties. Applicants–S. E. Hale, President, Dallas Teachers Credit Union, P.O. Box 64728, Dallas Texas 75206. *Represented by:* Jerry Nugent, Rinehart and Nugent, 1000 MBank Tower, Austin, Texas 78701; M. H. Hearon President, Gifford-Hill Employees Credit Union, P.O. Box 210628, Dallas, Texas 75211. *Represented by:* Bogdan Rentea, Cowless and Thompson, 100 Congress Avenue, Suite 310, Austin, Texas 78701; Davis W. Marr, President, City Employees Credit Union, 7474 Ferguson Road, Dallas, Texas 75228. *Represented by:* H. Louis Nichols, Sallinger, Nichols, Jackson, Kirk and Dillard, 1800 Lincoln Plaza, 500 North Akard Street, Dallas, Texas 75201; Gregg R. Bynum, President, FFE Operators Credit Union, P.O. Box 444, Lancaster, Texas 75146; Gerald L. Dunn, President, Texas Industries Employees Credit Union, P.O. Box 400, Arlington, Texas 76004; Garold (Gary) Base, President, Community Credit Union, P.O. Box 867119, Plano, Texas 75086.

Represented by: Duncan C. Norton, Winstead McGuire Sechrest and Minick, 100 Congress Avenue, Suite 800, Austin, Texas 78701; Credit Union Department–Robert W. Rogers, Deputy Commissioner, 914 East Anderson Lane, Austin, Texas 78752. *Represented by:* Everette Jobe, Assistant Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Other Admitted Parties–Pamela L. Stephens, Chief Executive Officer, Security One Federal Credit Union, Box 5583, Arlington, Texas 76011; Harry G. Hall, President, Denton Area Teachers Credit Union, P.O. Box 827, Denton, Texas 76202; Sherry L. O'Bryant, President, Garland Credit Union, 626 Austin, Garland, Texas 75040; Larry R. Cole, Chief Executive Officer, Garland Federal Credit Union, 703 West Avenue D, Garland, Texas 75040-7001; Jo Johnston, Chairman, Las Colinas Federal Credit Union, P.O. Box 152072, Irving, Texas 75015; Leo Edwards, Chairman, Employees Federal Credit Union, 7800 Stemmons, Suite 100, Dallas, Texas 75247; Charles B. Campbell, Jr., Chairman, Fort Worth City Credit Union, P.O. Box 100099, Fort Worth, Texas 76185-0099.

Nature of Hearing. This hearing is a contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. Each applicant must demonstrate the exact geographic boundaries expressed by city, county, or radius from the credit union's principal or branch office; whether its proposed expansion overlaps the field of membership of another credit union; the nature and degree of the overlap; whether the new group proposed to be served by the expansion has requested the expansion; whether any efforts have been taken to resolve the overlap, if any; the applicant's ability to adequately serve the proposed expanded field of membership. Each applicant shall also be required to provide the information requested in the Application to Amend Article of Incorporation or Bylaws filed with the Credit Union Department. The hearing officer shall consider this and other information necessary to comply with the provisions of the Texas Civil Statutes, Articles 2461-1.05, and 2.06(b). The Credit Union Commission may decide not to hold an additional hearing on the application.

Deadline for Requesting to be a Party. At the hearing, only those persons admitted as parties by October 9, 1989 and their witnesses will be allowed to participate. The Commissioner made a determination on party status at the prehearing conference held on October 16, 1989. The listing of parties is presented herein. Witnesses for the parties were designated prior to November 3, 1989. The hearing officer cannot grant additional party status unless there is good cause for the request arriving late.

Hearing Officer. Mrs. Nancy Ricketts (2003 Cypress Point East, Austin, Texas 78746) was appointed on November 7, 1989, to serve as hearing officer.

Public Attendance and Testimony. Members of the general public may attend any conference or hearing. Those who plan to attend are encouraged to telephone the Credit Union Department Office in Austin at (512) 837-9236, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted. Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Credit Union Department Office at (512) 837-9236, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Information About the Application. Information about the applications is available at the Credit Union Department Office located 914 East Anderson Lane, Austin, Texas 78752 or from Hearing Officer Nancy Ricketts, (512) 327-3360.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001619 Nancy Ricketts
Hearing Officer
Credit Union Department

Filed: February 15, 1990

For further information, please call: (512) 837-0236

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Texas Department of Health

Radioactive Material License Amendment

Notice is hereby given by the Texas Department of Health that it has granted an amendment to the following radioactive material license.

Radioactive Material License Number L04015, issued to Mallinckrodt, Incorporated for their facility located in Houston, (mailing address: Mallinckrodt, Incorporated, 8078 El Rio, Houston, Texas 77054).

The amendment to this license changes the Radiation Safety Officer at the Houston facility from Lloyd W. Nye to Lori Lynn DeVos.

The Division of Licensing, Registration, and Standards has determined that the licensee has met the standard(s) appropriate to this amendment: the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the requirements of the *Texas Regulations for Control of Radiation* (TRCR) in such a manner as to minimize danger to public health and safety or property; the licensee's equipment, facilities and procedures are adequate to minimize danger to public health and safety or property; the issuance of the license amendment will not be inimical to the health and safety of the public; and the licensee satisfies any applicable special requirements of the TRCR.

This notice affords the opportunity for a public hearing upon written request within thirty days of the date of publication of this notice by a person affected as required by the Health and Safety Code, §401.116, and as set out in TRCR, §13.6. A person affected is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on February 14, 1990.

TRD-9001588 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: February 14, 1990

For further information, please call: (512) 835-7000

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Texas Department of Human Services

Public Notice

The Texas Department of Human Services (DHS) is developing a Medicaid waiver under the Social Security Act, §1915(c)to request approval from the Health Care Financing Administration to provide home and community-based services as cost-effective alternatives to placement in intermediate care facilities for persons with mental retardation/related conditions. If additional information is needed, contact Anita Anderson, (512) 450-3195.

Issued in Austin, Texas, on February 15, 1990.

TRD-9001601 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Filed: February 15, 1990

For further information, please call: (512) 450-3765

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Public Notice Open Solicitations

Pursuant to 40 TAC §16.1513, as amended in the September 29, 1989, issue of the *Texas Register* (14 TexReg 5099), and Title 2, Chapters 22 and 32 of the Human Resources Code, the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for the county identified below, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of five months in the continuous July-December 1989, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the county identified in this public notice must submit a written reply (as described in 40 TAC §16.1513) to TDHS, Long Term Care Department, Provider Services Section, Mail Code 646-E, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m. March 26, 1990, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order in which the Texas Department of Health originally licensed the beds that are being proposed for Medicaid participation. The primary selection process will be completed on April 6, 1990. If there are insufficient available beds after the primary selection to reduce occupancy rates to less that 80%, TDHS will place a public notice in the Texas Register announcing an additional open solicitation period for those individuals wishing to construct a facility.

County Number	County Name	Number of Months Over	July	Aug	Sept	Oct	Nov	Dec
240	Webb	5	92.5	92.7	95.0	92.5	88.2	90.7

Issued in Austin, Texas, on February 16, 1990.

TRD-9001705 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Filed: February 16, 1990

For further information, please call: (512) 450-3765

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Pursuant to 40 TAC §16.1513, as amended in the September 29, 1989, issue of the *Texas Register* (14 TexReg. 5099), and Title 2, Chapters 22 and 32 of the Human Resources Code, the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for Hartley County, County Number 103, and Sutton County, County Number 218 identified in the January 12, 1990 issue of the *Texas Register* (15 TexReg 235). Potential contractors desiring to construct a 90-bed nursing facility in the above referenced areas must submit a written reply (as described in 40 TAC §16.1513 (1)) to TDHS, Long Term Care Department, Provider Services Section, Mail Code 646-E, P.O. Box 149030, Austin, Texas 78714-9030. Upon receipt of a reply from a potential contractor, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

Issued in Austin, Texas, on February 16, 1990.

TRD-09001706 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Filed: February 16, 1990

For further information, please call: (512) 450-3765

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Texas State Board of Examiners of Professional Counselors

Correction of Error

The Texas State Board of Examiners of Professional Counselors submitted adopted sections which contained errors as submitted by the department and as published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6760).

Section 681.7(a) contains duplicate wording and should

read as follows. "(a) The executive secretary shall prepare and submit an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chairperson."

In §681.163(5), the two accents after the word "hearing" are typographic errors.

In §681.219(g)(3)(D), the word "conclusion[s]" should be "conclusion",

In §681.219(g)(4), the second and third sentence should read as follows: "The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his/or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part."

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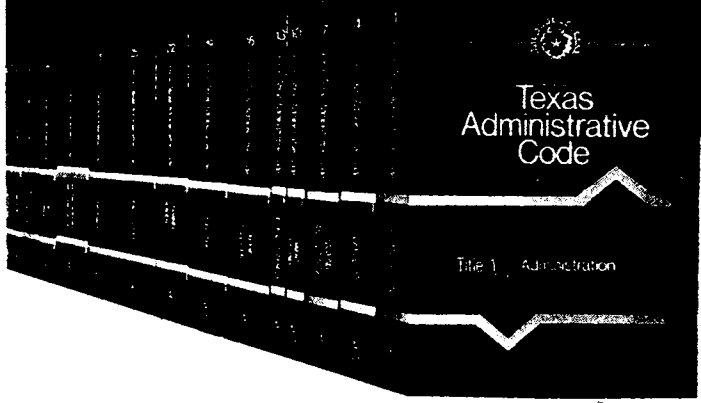

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