

# Texas Register

Volume 15, Number 74, September 28, 1990

Pages 5627-5768

## In This Issue...

### **Emergency Sections**

Texas Department of Health

5641-Home Health Care Agencies

### **Proposed Sections**

Texas Real Estate Commission

5643-Rules Relating to the Provisions of the Residential Service Company Act

Texas Department of Health

5643-Hospital Licensing

5644-Emergency Medical Care

State Board of Insurance

5657-Property and Casualty Insurance

5660-Agents' Licensing

Texas Workers' Compensation Commission

5662-Benefits-Lifetime Income Benefits

Texas Parks and Wildlife Department

5664-Parks

5664-Wildlife

Comptroller of Public Accounts

5666-Tax Administration

Texas Commission on Law Enforcement Officer Standards and Education

5668-Administrative Division

Texas Commission on Alcohol and Drug Abuse

5669-General Provisions

### **Withdrawn Sections**

Texas Racing Commission

5671-Practice and Procedure

5671-Officials and Rules of Horse Races

5671-Veterinary Practices and Drug Testing

5672-Pari-Mutuel Wagering

### **Adopted Sections**

Texas State Library and Archives Commission

5673-Local Records

Texas Racing Commission

5680-Definitions

5681-Licenses for Pari-Mutuel Racing

5686-Practice and Procedure

5688-Operation of Racetracks

5694-Conduct and Duties of Individual Licensees

5698-Officials and Rules of Horse Races

5705-Officials and Rules of Greyhound Racing

5713-Veterinary Practices and Drug Testing

5715-Pari-Mutuel Wagering

Texas Board of Chiropractic Examiners

5718-Reciprocity

Board of Tax Professional Examiners

5718-Administration

5718-Registration and Certification

CONTENTS CONTINUED INSIDE

## Texas Register

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Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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## Texas Register Publications

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**Texas Department of Health**

5718–Maternal and Child Health Services

5730–Medical Radiologic Technologists

**Texas Water Commission**

5739–Water Hygiene

5743–Underground and Aboveground Storage Tanks

**Texas Department of Human Services**

5746–Disaster Assistance Program

5747–Family Self-support Services

5748–Intermediate Care Facilities for Mentally Retarded  
State Board of Insurance

5749–Notification Pursuant to the Texas Insurance Code,  
Chapter 5, Subchapter L

**Open Meetings**

5751–Texas Department of Agriculture

5751–State Board of Barber Examiners

5751–Texas Commission for the Blind

5751–Texas Education Agency

5752–Texas Employment Commission

5752–Texas Department of Health

5752–Texas Health and Human Services Coordinating  
Council

5752–State Board of Insurance

5752–Texas Commission on Jail Standards

5753–Texas Juvenile Probation Commission

5753–Lamar University System, Board of Regents

5753–Texas Commission on Law Enforcement Officer  
Standards and Education

5753–Mental Health and Mental Retardation Center of  
East Texas

5753–Board of Nurse Examiners

5753–Texas Department of Criminal Justice Board of Par-  
dons and Paroles

5753–Texas State Board of Public Accountancy

5753–Public Utility Commission of Texas

5753–Texas Racing Commission

5754–Railroad Commission of Texas

5754–House of Representatives

5754–Texas National Research Laboratory Commission

5755–School Land Board

5755–Board of Lease of State-owned Lands

5755–Sunset Advisory Commission

5755–Texas Tech University

5756–Texas Tech University Health Sciences Center

5757–The University of Texas at Austin

5757–Texas Board of Veterinary Medical Examiners

5757–Texas Water Commission

5758–Texas Workers' Compensation Commission

5758–Regional Meetings

**In Addition**

**Texas Department of Agriculture**

5761–Request for Proposals

**Office of Consumer Credit Commissioner**

5761–Notice of Rate Ceilings

**Texas Department of Criminal Justice-  
Institutional**

5762–Request for Proposals

**Texas Education Agency**

5762–Correction to Request for Proposals

5762–Request for Applications

**Texas Department of Health**

5763–Licensing Actions for Radioactive Materials

5766–Status of Minority Health Public Hearing

**Texas Department of Human Services**

5766–Public Notice Availability of Intended Use Report

**Texas Department of Mental Health and  
Mental Retardation**

5767–Request for Proposals

**State Preservation Board**

5767–Notice to Bidders

**Texas Water Commission**

5767–Enforcement Order

# Texas Boots



Name: Sujit Ravindran

Grade: 4

School: Stults Road Elementary, Richardson ISD

# TAC Titles Affected

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## TAC Titles Affected—September

The following is a list of the administrative rules that have been published this month.

### TITLE 1. ADMINISTRATION

#### **Part I. Office of the Governor**

1 TAC §5.301—5061

1 TAC §5.302—5061

1 TAC §5.303—5061

#### **Part III. Office of the Attorney General**

1 TAC §§53.181-53.184—5443

1 TAC §§53.193-53.200—5444

1 TAC §§53.211-53.217—5446

1 TAC §§53.227-53.233—5447

1 TAC §§53.244-53.250—5450

#### **Part V. State Purchasing and General Services Commission**

1 TAC §113.1—5091

1 TAC §113.2, §113.3—5103

#### **Part X. Texas Department of Information Resources**

1 TAC §201.1—5541, 5555

1 TAC §201.1, 201.3, 201.5, 201.7—5555

1 TAC §201.9—5541

1 TAC §203.1—5542, 5558

1 TAC §207.1—5542, 5559

#### **Part XII. Advisory Commission on State Emergency Communications**

1 TAC §255.6—5053

1 TAC §255.7—5053

#### **Part XIII. Texas Incentive and Productivity Commission**

1 TAC §273.1—5169

1 TAC §§273.1, 273.3, 273.5, 273.7, 273.9, 293.11, 273.13, 273.15, 273.17, 273.19, 273.21, 273.23, 273.25, 273.27, 273.29—5169

1 TAC §275.1—5172

1 TAC §277.1—5172

1 TAC §279.1—5173

1 TAC §§281.1, 281.3, 281.5—5173

1 TAC §§283.1, 283.3, 283.5—5173

1 TAC §285.1, 285.3—5173

1 TAC §287.1—5174

### TITLE 4. AGRICULTURE

#### **Part I. Texas Department of Agriculture**

4 TAC §§27.23-27.25, 27.50—5091

4 TAC §§27.23-27.25, 27.50-27.52—5089

#### **Part II. Animal Health Commission**

4 TAC §35.2—5357

4 TAC §35.6—5357

4 TAC §35.41—5357

4 TAC §35.43—5358

4 TAC §35.44—5358

4 TAC §35.45—5358

4 TAC §35.46—5359

4 TAC §35.47—5359

4 TAC §35.49—5359

4 TAC §35.60—5359

4 TAC §35.61—5359

4 TAC §36.1—5360

4 TAC §36.2—5360

4 TAC §43.10—5360

4 TAC §43.11—5360

4 TAC §51.1—5481, 5452

4 TAC §51.2—5481, 5452

4 TAC §55.5—5360

4 TAC §55.7—5361

4 TAC §55.8—5362

4 TAC §59.2—5361

4 TAC §59.4—5361

### TITLE 7. BANKING AND SECURITIES

#### **Part VII. Credit Union Department**

7 TAC §91.402—5054

7 TAC §91.503—5055

7 TAC §95.308—5055

## TITLE 13. CULTURAL RESOURCES

### ***Part I. Texas State Library and Archives Commission***

13 TAC §1.21—5453

13 TAC §1.23—5453

13 TAC §§7.21-7.33—5673

## TITLE 16. ECONOMIC REGULATION

### ***Part I. Railroad Commission of Texas***

16 TAC §3.22—5481

16 TAC §3.87—5167

16 TAC §5.318—5355

### ***Part II. Public Utility Commission of Texas***

16 TAC §23.54—5089

### ***Part IV. Texas Department of Licensing and Regulation***

16 TAC §60.75—5062

16 TAC §60.152—5062

16 TAC §§65.20, 65.50, 65.100—5056

16 TAC §§75.40, 75.70, 75.80—5062

### ***Part VII. Texas Racing Commission***

16 TAC §301.1—5542, 5559, 5680

16 TAC §303.41—5542, 5559

16 TAC §305.6—5681

16 TAC §305.35—5681

16 TAC §305.37—5685

16 TAC §305.42—5685

16 TAC §305.43—5685

16 TAC §305.44—5785

16 TAC §305.45—5685

16 TAC §305.49—5685

16 TAC §305.63—5686

16 TAC §307.55—5686

16 TAC §307.67—5686

16 TAC §307.201—5543, 5560, 5671

16 TAC §307.203—5687

16 TAC §307.206—5687

16 TAC §307.207—5687

16 TAC §307.208—5687

16 TAC §307.221—5687

16 TAC §307.222—5688

16 TAC §307.223—5688

16 TAC §307.224—5688

16 TAC §307.225—5688

16 TAC §307.271—5688

16 TAC §309.18—5688

16 TAC §309.25—5689

16 TAC §309.26—5689

16 TAC §309.28—5689

16 TAC §309.34—5689

16 TAC §309.35—5543, 5560

16 TAC §309.53—5689

16 TAC §309.55—5690

16 TAC §309.61—5690

16 TAC §309.63—5690

16 TAC §309.64—5690

16 TAC §309.68—5543, 5560

16 TAC §309.70—5543, 5560

16 TAC §309.71—5544, 5561

16 TAC §309.72—5544, 5561

16 TAC §309.109—5690

16 TAC §309.112—5544, 5561

16 TAC §309.115—5691

16 TAC §309.116—5691

16 TAC §309.198—5691

16 TAC §309.199—5691

16 TAC §309.200—5691

16 TAC §309.303—5691

16 TAC §309.305—5692

16 TAC §309.309—5692

|                            |                               |
|----------------------------|-------------------------------|
| 16 TAC §309.311—5692       | 16 TAC §313.45—5699           |
| 16 TAC §309.315—5692       | 16 TAC §313.50—5699           |
| 16 TAC §309.316—5692       | 16 TAC §313.56—5700           |
| 16 TAC §309.353—5693       | 16 TAC §313.101—5700          |
| 16 TAC §309.355—5693       | 16 TAC §313.103—5700          |
| 16 TAC §309.359—5693       | 16 TAC §313.107—5700          |
| 16 TAC §309.302—5544, 5561 | 16 TAC §313.108—5700          |
| 16 TAC §309.360—5562       | 16 TAC §313.110—5700          |
| 16 TAC §309.362—5693       | 16 TAC §313.111—5701          |
| 16 TAC §309.364—5694       | 16 TAC §313.132—5701          |
| 16 TAC §309.365—5694       | 16 TAC §313.161—5701          |
| 16 TAC §311.4—5694         | 16 TAC §313.166—5701          |
| 16 TAC §311.5—5694         | 16 TAC §313.167—5701          |
| 16 TAC §311.10—5695        | 16 TAC §313.301—5702          |
| 16 TAC §311.14—5695        | 16 TAC §313.302—5702          |
| 16 TAC §311.103—5695       | 16 TAC §313.303—5702          |
| 16 TAC §311.105—5695       | 16 TAC §313.305—5702          |
| 16 TAC §311.106—5695       | 16 TAC §313.306—5702          |
| 16 TAC §311.107—5545, 5562 | 16 TAC §313.311—5703          |
| 16 TAC §311.151—5696       | 16 TAC §313.312—5703          |
| 16 TAC §311.152—5696       | 16 TAC §313.314—5703          |
| 16 TAC §311.154—5696       | 16 TAC §313.401—5703          |
| 16 TAC §311.155—5696       | 16 TAC §313.402—5703          |
| 16 TAC §311.156—5697       | 16 TAC §313.403—5704          |
| 16 TAC §311.157—5697       | 16 TAC §313.404—5704          |
| 16 TAC §311.158—5697       | 16 TAC §313.405—5704          |
| 16 TAC §311.171—5697       | 16 TAC §313.406—5704          |
| 16 TAC §311.173—5698       | 16 TAC §313.407—5704          |
| 16 TAC §311.221—5698       | 16 TAC §313.408—5704          |
| 16 TAC §313.1—5698         | 16 TAC §313.409—5705          |
| 16 TAC §313.3—5709         | 16 TAC §313.410—5705          |
| 16 TAC §313.6—5699         | 16 TAC §313.411—5705          |
| 16 TAC §313.21—5699        | 16 TAC §313.421—5705          |
| 16 TAC §313.22—5671        | 16 TAC §§315.1-315.5—5705     |
| 16 TAC §313.24—5699        | 16 TAC §§315.31-315.42—5706   |
| 16 TAC §313.25—5699        | 16 TAC §§315.101-315.111—5708 |

16 TAC §§315.201-315.211—5710  
16 TAC §319.2—5545, 5562  
16 TAC §319.3—5545, 5563, 5671  
16 TAC §319.4—5546, 5563  
16 TAC §319.5—5713  
16 TAC §319.8—5546, 5563  
16 TAC §319.10—5546, 5563  
16 TAC §319.13—5547, 5564  
16 TAC §319.101—5713  
16 TAC §319.102—5713  
16 TAC §319.106—5713  
16 TAC §319.108—5713  
16 TAC §319.110—5713  
16 TAC §319.201—5714  
16 TAC §319.202—5714  
16 TAC §319.203—5714  
16 TAC §319.204—5714  
16 TAC §319.302—5715  
16 TAC §319.306—5547, 5564, 5671  
16 TAC §319.331—5547, 5564  
16 TAC §319.361—5715  
16 TAC §319.391—5715  
16 TAC §321.34—5715  
16 TAC §321.38—5716  
16 TAC §321.39—5716  
16 TAC §321.65—5716  
16 TAC §321.70—5716  
16 TAC §321.107—5716  
16 TAC §321.108—5717  
16 TAC §321.109—5717  
16 TAC §321.110—5717  
16 TAC §321.112—5547, 5564, 5672  
16 TAC §321.113—5549, 5565, 5672  
16 TAC §321.114—5717  
16 TAC §321.115—5550, 5565  
16 TAC §321.116—5551, 5565

16 TAC §321.117—5551, 5565  
TITLE 19. EDUCATION

**Part I. Texas Higher Education Coordinating Board**

19 TAC §21.55—5453  
19 TAC §§21.463, 21.467, 21.468, 21.472, 21.476-21.478, 21.483—5454  
19 TAC §§21.504, 21.505, 21.508, 21.511—5455  
19 TAC §§21.563, 21.566, 21.567, 21.570—5456  
19 TAC §§21.623, 21.624, 21.628, 21.631-21.637—5457  
TITLE 22. EXAMINING BOARDS

**Part I. Texas Board of Architectural Examiners**

22 TAC §§1.161-1.177—5174  
22 TAC §§1.161-1.179—5175

**Part III. Texas Board of Chiropractic Examiners**

22 TAC §§79.2, 79.3, 79.4—5718

**Part VI. Texas State Board of Registration for Professional Engineers**

22 TAC §131.134—5345  
22 TAC §131.155—5345

**Part XXI. State Board of Examiners of Psychologists**

22 TAC §471.4—5459  
22 TAC §473.1—5460  
22 TAC §473.3—5460

**Part XXIII. Texas Real Estate Commission**

22 TAC §535.164—5483  
22 TAC §535.165—5483  
22 TAC §537.11—5483  
22 TAC §539.51—5643  
22 TAC §§544.1-544.9—5484

**Part XXIV. Texas Board of Veterinary Medical Examiners**

22 TAC §573.60—5346

**Part XXVII. Board of Tax Professional Examiners**

22 TAC §621.1—5718  
22 TAC §§623.1-623.18—5718



## TITLE 25. HEALTH SERVICES

### *Part I. Texas Department of Health*

- 25 TAC §§31.2—5575
- 25 TAC §§37.83—5573, 5575
- 25 TAC §§37.90—5719
- 25 TAC §§98.1-98.8—5106
- 25 TAC §§98.21-98.30—5108
- 25 TAC §§98.41-98.44—5110
- 25 TAC §§115.9, §115.13—5641
- 25 TAC §§133.21—5643
- 25 TAC §§143.1-143.11, 143.15—5730
- 25 TAC §§145.12—5576
- 25 TAC §§145.91—5576
- 25 TAC §§145.111—5577
- 25 TAC §§145.321-145.335—5589
- 25 TAC §§151.3, §151.13—5573, 5602
- 25 TAC §§157.1—5644
- 25 TAC §§157.19—5644
- 25 TAC §§157.21-157.24—5645
- 25 TAC §§157.31—5645
- 25 TAC §§157.41-157.46, 157.51-157.53—5646
- 25 TAC §§157.51-157.53—
- 25 TAC §§157.61, 157.63, 157.64, 157.74, 157.78, 157.80-157.82, 157.84—5652
- 25 TAC §§157.61-157.65—5652
- 25 TAC §§181.1, 181.3-181.5, 181.10—5603
- 25 TAC §§241.23—5603
- 25 TAC §§325.641-325.643—5461
- 25 TAC §§325.925-325.927—5461
- 25 TAC §§325.1005-325.1008—5471
- 25 TAC §§337.4-337.7, 337.12—5740
- 25 TAC §§337.5, §337.6—5739
- 25 TAC §§337.18—5739
- 25 TAC §§401.341-401.350—5346
- 25 TAC §§408.1-408.10—5347
- 25 TAC §§500.1-500.10—5112

25 TAC §§621.21-621.29, 621.31, 621.34—5117

25 TAC §§621.21-621.31—5117

25 TAC §§621.41-621.44—5131

25 TAC §§621.41-621.44, 621.46, 621.48—5131

## TITLE 28. INSURANCE

### *Part I. State Board of Insurance*

- 28 TAC §§5.1301-5.1309—5136
- 28 TAC §§5.1401, §5.1402—5136
- 28 TAC §§5.1501-5.1503—5137
- 28 TAC §§5.6601-5.6603, 5.6605-5.6615—5657
- 28 TAC §§7.1414—5094
- 28 TAC §§15.27—5089, 5137
- 28 TAC §§19.201-19.1205—5660
- 28 TAC §§21.113—5355
- 28 TAC §§21.901-21.905—5095
- 28 TAC §§21.1001-21.1004—5094
- 28 TAC §§27.601-27.607—5138
- 28 TAC §§27.601-27.620—5137
- Part II. Texas Workers' Compensation Commission*
- 28 TAC §§102.2—5097
- 28 TAC §§110.102—5097
- 28 TAC §§110.103—5473
- 28 TAC §§122.1—5098, 5349, 5355
- 28 TAC §§131.1, 131.4—5662
- 28 TAC §§133.1, §133.2—5474
- 28 TAC §§133.100-133.106—5475
- 28 TAC §§156.1—5098
- 28 TAC §§166.1—5051

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### *Part II. Texas Parks and Wildlife Department*

- 31 TAC §§57.361-57.367—5349
- 31 TAC §§59.105—5664
- 31 TAC §§65.251-65.254—5664
- 31 TAC §§65.251-65.255—5664

**Part VII. Texas Water Well Drillers Board**

31 TAC §§231.37, 231.41, 231.45—5489

31 TAC §§287.94-287.99—5490

**Part IX. Texas Water Commission**

31 TAC §281.21, §281.25—5490

31 TAC §§291.1-291.14—5603

31 TAC §§291.21-291.32—5604

31 TAC §§291.41-291.44—5604

31 TAC §§291.71-291.75—5604

31 TAC §§291.81-291.89—5604

31 TAC §§291.91-291.95—5604

31 TAC §§291.101-291.117—5604

31 TAC §§291.121-291.126—5604

31 TAC §293.18—5059

31 TAC §§305.1-305.3—5494

31 TAC §§305.21-305.23—5495

31 TAC §§305.43, 305.44, 305.46, 305.48, 305.50—5495

31 TAC §305.62, §305.63—5495

31 TAC §§305.96, 305.100, 305.101, 305.106—5495

31 TAC §§305.121, 305.122, 305.125-305.129—5495

31 TAC §§305.531-305.538—5496

31 TAC §305.541—5498

31 TAC §308.1—5498

31 TAC §308.21—5499

31 TAC §308.31—5499

31 TAC §308.41—5499

31 TAC §308.71—5499

31 TAC §308.81—5499

31 TAC §308.101—5499

31 TAC §308.121—5500

31 TAC §308.141—5500

31 TAC §309.1—5500

31 TAC §309.13—5500

31 TAC §309.30—5500

31 TAC §314.1—5501

31 TAC §315.1—5501

31 TAC §319.5, §319.12—5501

31 TAC §321.141—5502

31 TAC §§334.301-334.322—5209

31 TAC §§334.412, 334.414-334.428—5739

31 TAC §337.6—5502

**TITLE 34. PUBLIC FINANCE**

**Part I. Comptroller of Public Accounts**

34 TAC §3.5—5666

34 TAC §3.299—5502

34 TAC §3.327—5062, 5343

34 TAC §3.346—5667

34 TAC §3.417—5502

**Part II. Texas State Treasurer**

34 TAC §§15.1-15.17—5355

34 TAC §§15.4-15.16—5355

**Part IV. Employees Retirement System of Texas**

34 TAC §63.3, §63.4—

34 TAC §181.3, §181.4—5362

34 TAC §81.7—5343, 5350, 5552

**Part IX. Texas Bond Review Board**

34 TAC §181.3, §181.4—5362

**TITLE 37. PUBLIC SAFETY AND  
CORRECTIONS**

**Part I. Texas Department of Public Safety**

37 TAC §1.32-1.34—5138

37 TAC §§13.71, 13.73-13.82, 13.84-13.88—5503

37 TAC §15.18—5138

37 TAC §§33.1-33.6—5503

**Part III. Texas Youth Commission**

37 TAC §118.1—5553

37 TAC §119.5—5605

**Part VI. Texas Board of Criminal Justice**

37 TAC §195.61—5605

37 TAC §197.21—5606

**Part VII. Texas Commission on Law Enforcement  
Officer Standards and Education**

37 TAC §§211.68, 211.85, 211.100—5668

**TITLE 40. SOCIAL SERVICES AND  
ASSISTANCE**

**Part I. Texas Department of Human Services**

40 TAC §§3.3901-3.3911—5362

40 TAC §6.1—5746

40 TAC §6.103—5747

40 TAC §10.3325—5747

40 TAC §10.3456—5747

40 TAC §10.3457—5747

40 TAC §14.1—5363

40 TAC §§14.101, 14.103, 14.104, 14.105, 14.109—5364

40 TAC §14.202-14.204—5364

40 TAC §16.901—5217

40 TAC §§16.1301-16.1305—5218

40 TAC §§16.1501, 16.1504-1509, 16.1511-16.1513—  
5218

40 TAC §§16.1901, 16.1903, 16.1904, 16.1906, 16.1907,  
16.1910-16.1912, 16.1914-16.1919—5218

40 TAC §§16.2901-16.2908—5218

40 TAC §§16.3001-16.3009, 16.3011-16.3017—5218

40 TAC §§16.3101-16.3107—5218

40 TAC §§16.3201-16.3212—5218

40 TAC §§16.3301-16.3304—5218

40 TAC §§16.3401-16.3404—5219

40 TAC §§16.3501-16.3507—5219

40 TAC §§16.3801-16.3805, 16.3807—5219

40 TAC §16.3806—5181

40 TAC §16.3901, §16.3902—5219

40 TAC §§16.4101-16.4103—5219

40 TAC §§16.4901-16.4913—5219

40 TAC §§16.5101-16.5102—5219

40 TAC §§16.5901-16.5903—5219

40 TAC §§16.6101-16.6111, 16.6113-16.6120—5220

40 TAC §§16.6112—5181

40 TAC §§16.7101-16.7102, 16.7104—5220

40 TAC §16.9802—5220

40 TAC §19.1—5233

40 TAC §19.101—5234

40 TAC §§19.201-19.219—5239

40 TAC §§19.301-19.305—5246

40 TAC §19.401—5248

40 TAC §§19.501-19.505—5248

40 TAC §§19.601-19.604—5250

40 TAC §§19.701—5255

40 TAC §§19.801-19.813—5256

40 TAC §§19.901-19.912—5261

40 TAC §§19.1001-19.1010—5263

40 TAC §§19.1101-19.1106—5265

40 TAC §§19.1201-19.1208—5267

40 TAC §§19.1301-19.1310—5268

40 TAC §§19.1401-19.1402—5271

40 TAC §§19.1501-19.1521—5273

40 TAC §§19.1601-19.1612—5284

40 TAC §§19.1701-19.1708—5288

40 TAC §§19.1801-19.1809—5291

40 TAC §§19.1901-19.1933—5302

40 TAC §§19.2001-19.2013—5315

40 TAC §§19.2101-19.2107—5326

40 TAC §23.101, 23.103—5327

40 TAC §§23.201-23.203, 23.205, 23.207, 23.209,  
23.210—5327

40 TAC §§23.801-23.803—5327

40 TAC §§23.1002, 23.1003, 23.1005—5327

40 TAC §§23.1102, 23.1104, 23.1107, 23.1109—5327

40 TAC §23.1201—5327

40 TAC §§23.1301, 23.1302, 23.1311, 23.1314—5328

40 TAC §§23.1401, 23.1404—5328

40 TAC §§23.1501, 23.1503-23.1507, 23.1509, 23.1510—  
5328

40 TAC §§23.1601, 23.1608, 23.1610, 23.1611,

23.1614-23.1616, 23.1618, 23.1619—5328  
40 TAC §23.1802—5328  
40 TAC §23.1908, §23.1909—5328  
40 TAC §23.2004—5328  
40 TAC §§23.9808-23.9809—5329  
40 TAC §24.102—5364  
40 TAC §27.203—5099  
40 TAC §27.9801—5350, 5748  
40 TAC §29.1001—5351  
40 TAC §§29.2501-29.2503—5352  
40 TAC §§45.101-45.122—5329  
40 TAC §§45.301-45.307—5329  
40 TAC §45.401—5329  
40 TAC §§45.501-45.504—5329  
40 TAC §§45.601-45.614—5329  
40 TAC §45.9801, §45.9802—5329  
40 TAC §46.7001—5365  
40 TAC §48.2902—5504  
40 TAC §§48.2903, 48.2904, 48.2922, 48.2924—5177  
  
40 TAC §48.3905—5477  
40 TAC §48.9801, §48.9805—5365  
40 TAC §49.511—5478  
40 TAC §52.502—5366  
40 TAC §53.502—5366  
40 TAC §72.901—5063

40 TAC §§72.902—5330

**Part II. Texas Rehabilitation Commission**

40 TAC §115.9—5607

40 TAC §340.19—

**Part III. Texas Commission on Alcohol and Drug Abuse**

40 TAC §141.71—5669

**Part IV. Texas Commission for the Blind**

40 TAC §171.3—5352

**Part X. Texas Employment Commission**

40 TAC §301.22—5344

**Part XV. Texas Veterans Commission**

40 TAC §§450.1, 450.3, 450.5—5100

**TITLE 43. TRANSPORTATION**

**Part I. State Department of Highways and Public Transportation**

43 TAC §§1.300-1.305—5089

43 TAC §21.601—5089, 5101

43 TAC §§25.901-25.912—5178

43 TAC §§25.901-25.920—5178

**Part III. Texas Department of Aviation**

43 TAC §§65.1-65.20—5366

43 TAC §§65.1-65.21—5366

**Part IV. Texas High-Speed Rail Authority**

43 TAC §83.101, §83.102—

◆ ◆ ◆



Name: Carissa Hullum

Grade: 8

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Name: Russell Holmes

Grade: 8

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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 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 115. Home Health Care Agencies

##### Licensing and Regulation

###### • 25 TAC §115.9, §115.13

The Texas Department of Health adopts on an emergency basis amendments to §115.9 and §115.13, concerning home health care agencies. The sections cover standards for Class A license, and home health aides, training course, and duties. The amendments cover the qualification requirements for home health aides working for Class A and B licensed agencies. Specifically, the medicare certified Class A licensed agencies will employ individuals as aides who meet the federal requirements. The non-medicare Class B licensed agencies will employ individuals as aides who meet the minimum state licensing standards.

The amendments are adopted on an emergency basis for the following reason. Federal regulations covering home health aides which were adopted under the Omnibus Budget Reconciliation Act, Public Law 100-360, as amended, became effective on August 14, 1990. In order for the department to have rules which are consistent with and not in conflict with the federal regulations concerning home health aides in Class A and B agencies, it is necessary for the department to adopt the amendments on an emergency basis.

The amendments are adopted on an emergency basis under the Health and Safety Code, §142.012, which provides the Texas Board of Health with authority to adopt rules concerning home health agencies; §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which provides the board with the authority to adopt rules on an emergency basis.

##### *§115.9. Standards for a Class A License.*

(a) A Class A agency shall meet the conditions of participation as either a home health agency or a hospice in the insurance program for the aged within the meaning of the Social Security Act and the regulations adopted thereunder (42 Code of Federal Regulations, Part 484 or §418.1 et seq), which regulations are adopted by reference herein for all purposes. Copies of the regulations adopted by reference in this section are indexed and filed in the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

**(b) A Class A home health agency may use an individual as a home health aide if that individual has successfully completed a training and competency evaluation program or a competency evaluation program which meets the existing federal requirements. A home health aide working in a Class A agency may perform only the tasks set forth in §115.13(b) of this title (relating to Home Health Aides; Training Course; Duties).**

##### *§115.13. Home Health Aides; Training Course; Duties.*

(a) **This section shall apply only to a Class B home health agency.** A home health aide shall have a minimum of one year full-time experience in direct patient care in an institutional setting (hospital or nursing home); or shall have one year full time experience within the last five years in direct patient care in a home health agency setting; or shall have satisfactorily completed a home health aide training course that has been approved by the department[.] **; or shall have satisfactorily completed a training and competency evaluation program or a competency evaluation program approved for home health aides in a Class A agency.** In lieu of the requirement for completion of a home health aide training course, a nursing student may qualify as a home health aide by submitting documentation from the director of programs and/or the dean of a school of nursing that states that the nursing student has demonstrated competency in providing basic nursing care in accordance with the school's curriculum.

(b)-(g) (No change.)

Issued in Austin, Texas, on September 19, 1990.

TRD-9009730

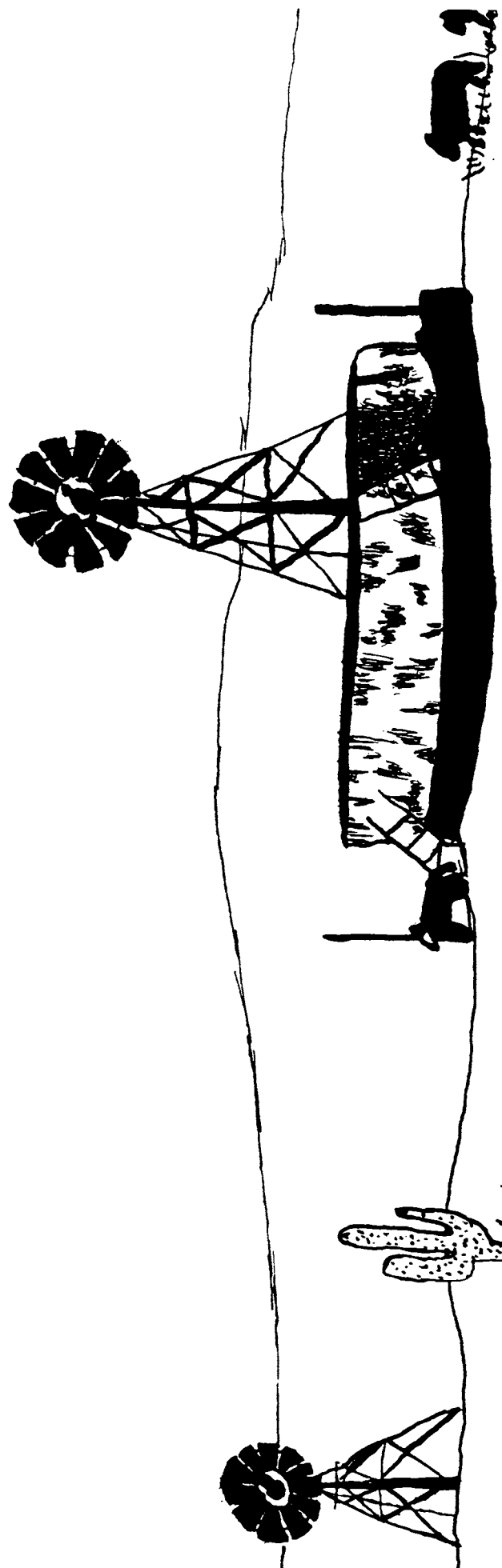
Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: September 19, 1990

Expiration date: January 17, 1991

For further information, please call: (512) 458-7245





Denise Stein

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# 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 22. EXAMINING BOARDS

### Part XXIII. Texas Real Estate Commission

#### Chapter 539. Rules Relating to the Provisions of the Residential Service Company Act.

##### Subchapter F. Authorized Per- sonnel

###### • 22 TAC §539.51

The Texas Real Estate Commission proposes an amendment to §539.51, concerning employees of residential service companies. The amendment clarifies the legal relationship that must exist between a residential service company and its employee for the employee to be authorized to sell service contracts.

Texas Civil Statutes, Article 6573b, §6(b), requires a person to be an employee of a licensed residential service company or be a licensed real estate salesman, real estate broker, mobile home dealer, or insurance agent in order to sell service contracts. Service contract obligate the issuing company to maintain, repair, or replace all or part of a home's structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems. Most service contracts are sold by real estate licensees.

The proposed amendment requires two conditions to be met for a person to be considered an employee of a resident service company. The company must have the right to direct and control the employee's work performance, and the company must accept responsibility for representations made by the employee within the scope of his employment. The two conditions are consistent with the common-law definition of employee. The proposed amendment is necessary to clarify the definition of the term "employee" as used in Article 6573b and to ensure that employees of residential service companies are subject to control.

Jack Morris, director of programs, 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. Morris also has determined that for each year of the first five years the sections is in effect the public benefit anticipated as a result of enforcing the section will be the clarifica-

tion of the legal relationship between a residential service company and its employees. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jack Morris, Director of Programs, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to adopt rules and regulations necessary to effectuate the intent and provisions of Article 6573b.

*§539.51. Employee Defined.* For the purposes of Texas Civil Statutes, Article 6573b, §6(b), the term "employee" means any person authorized by a licensed service company to sell, offer to sell, arrange or solicit the sale of, or receive applications for residential service contracts **subject to the following conditions:**

(1) **the residential service company must have the right to direct and control the employee's work performance;**

(2) **the residential service company must accept responsibility for representations made by the employee within the scope of his employment.**

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 September 21, 1990.

TRD-9009981

Mark A. Mosely  
General Counsel  
Texas Real Estate  
Commission

Earliest proposed date of adoption: October 29, 1990

For further information, please call: (512) 465-3960

## TITLE 25. HEALTH SER- VICES

### Part I. Texas Department of Health

#### Chapter 133. Hospital Licensing

## Standards

### • 25 TAC §133.21

The Texas Department of Health (department) proposes an amendment to §133.21, concerning the adoption by reference of the department's hospital licensing standards. The amendment incorporates §§1.131-1.137 of Title 25 (Health Services), Texas Administrative Code (relating to Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities) into the standards. The amendments to the standards add a definitions section; amend Chapter 1 concerning waste and waste disposal in existing facilities; amend Chapter 2 concerning waste and waste disposal in existing hospitals; amend Chapter 7 concerning general hospital standards; and amend Chapter 10 concerning codes and standards. The amendment to the section reflects the proposed effective date of the amendment. The proposed amendment was originally published in the February 20, 1990, issue of the *Texas Register* (15 TexReg 920) for public comment. The original proposed amendment was withdrawn and notice of the withdrawal was published in the August 24, 1990, issue of the *Texas Register*. The amendment is being repropounded due to significant proposed changes in the standards.

Stephen Seale, Chief Accountant III, 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 as proposed.

Mr. Seale 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 to assure that licensed hospitals will comply with the department's rules concerning the treatment and disposition of special waste. There will be no effect on small businesses; no anticipated economic cost to persons who are required to comply with the section; and no effect on local employment as a result of administering the section.

Comments on the proposal may be submitted to Maurice B. Shaw, Chief, Bureau of Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7538. Comments will be accepted for 30 days after publication of the section in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §241.026, which provides authorization for the Texas Board of Health to adopt minimum standards for staffing by physicians and nurses, hospital services relating to patient care, and fire

prevention, safety, and sanitary provisions of hospitals in Texas; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§133.21. *Adoption by Reference.*

(a) The Texas Department of Health adopts by reference the rules contained in the department publication effective September 1, 1985, entitled, "Hospital Licensing Standards," as amended through December 1990 [1989].

(b) (No change.)

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 September 19, 1990.

TRD-9009729

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: December 8, 1990

For further information, please call: (512) 458-7539



## Chapter 157. Emergency Medical Care

### Emergency Medical Services- Part A

The Texas Department of Health (department) proposes new §§157.1, 157.31, 157.41-157.46, 157.51-157.53, and 157.61-157.65; an amendment to existing §157.19; and the repeal of existing §§157.21-157.24, 157.61, 157.63, 157.64, 157.74, 157.78, 157.80-157.82, and 157.84, concerning emergency medical care.

The new sections cover the purpose of the chapter; automated external defibrillator training course; EMS personnel certification and recertification of registered nurses, and allied health personnel; certification of persons with criminal backgrounds; certification by reciprocity for EMS personnel; criteria for emergency suspension, suspension, probation, and decertification of EMS certificate; procedure for decertification and suspension of a certificate; criteria for the denial of certification or recertification; course coordinator, program instructor, and examiner certification; criteria for revocation, suspension, and probation of course coordinator, program instructor, and/or examiner certification; and procedure for revocation/suspension of course coordinator, program instructor, and/or examiner certificate.

The amendment covers emergency suspension, suspension, probation, and revocation of a license.

The repealed sections cover criteria for decertification, emergency suspension, suspension, and probation of certificates; procedures

for decertification and suspension of certificate; criteria for revocation/suspension of course coordinator, instructor, and/or examiner certification; procedure for revocation/suspension of coordinator, program instructor, and/or examiner certification; purpose of the chapter; certification and recertification of EMS personnel; certifying of persons with criminal backgrounds; certification of course coordinator, program instructor, and examiners; EMS personnel certification for the registered nurse (RN), the licensed vocational nurse (LVN), and firefighters; and certification by reciprocity.

The new and amended sections establish the purpose of this chapter; minimum standards for automated defibrillator course standards; minimum standards for certification and recertification of EMS personnel, registered nurses, allied health personnel, course coordinators, program instructors, and examiners; minimum standards for reciprocity; minimum standards for disciplinary action for EMS personnel, course coordinators, program instructors and examiners; guidelines and criteria for certifying persons with criminal backgrounds; and disciplinary action for an EMS provider license.

The repeals will allow for the adoption of the new sections which recodify, clarify, and update existing EMS rules to be consistent with current statutes.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated are the recodification, clarification, and update of current EMS rules to a more consistent manner with current statutes. There will be no effect on small or large businesses; no anticipated economic cost to persons; and there will be no impact on local employment.

Comments on the proposal may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Comments will be accepted for 90 days after publication of these rules in the *Texas Register*. In addition, a public hearing will be held at 10 a.m. on December 6, 1990, at the Texas Department of Health, 1100 West 49th Street, Austin.

#### • 25 TAC §157.1

The new section is proposed under the Health and Safety Code, Chapter 773, which provides the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; Texas Civil Statutes, Senate Bill 312, 71st Legislature, 1989, which require the department to update and clarify existing rules and to establish new requirements through rulemaking; and Texas Civil Statutes, Article 6252-13d, §4, which authorize the Texas Board of Health to adopt guidelines covering the eligibility of persons with criminal back-

grounds to be emergency medical services personnel.

#### §157.1. *Purpose.*

(a) The purpose of this chapter is to implement the Emergency Medical Services Act, Health and Safety Code, Chapter 773.

(b) This chapter will provide minimum requirements for emergency medical services (EMS) provider license; categorization of EMS vehicles; emergency suspension, suspension, probation, and revocation of an EMS provider license; EMS personnel certification; interstate reciprocity for EMS certification; EMS personnel recertification; course coordinator, program instructor, and examiner certification; disciplinary action for EMS personnel, course coordinators, program instructors, and examiners; EMS training courses and course approval; requests for emergency care attendant training; requests for variances; and fees.

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 September 19, 1990.

TRD-9009731

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: January 12, 1991

For further information, please call: (512) 458-7550



## Emergency Medical Services Provider Licenses

### • 25 TAC §157.19

The amended section is proposed under the Health and Safety Code, Chapter 773, which provides the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; Texas Civil Statutes, Senate Bill 312, 71st Legislature, 1989, which require the department to update and clarify existing rules and to establish new requirements through rulemaking; and Texas Civil Statutes, Article 6252-13d, §4, which authorize the Texas Board of Health to adopt guidelines covering the eligibility of persons with criminal backgrounds to be emergency medical services personnel.

§157.19. *Emergency Suspension, Suspension, Probation, and Revocation of a License.*

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

(d) Revocation.

(1) Reasons for revocation. An EMS provider license may be revoked for,

but not limited to, the following reasons:

(A)-(F) (No change.)

(G) a history of staff violations which result in disciplinary action as described in §157.51 [157.21] of this title (relating to Criteria for [Decertification,] Emergency Suspension, Suspension, [and] Probation, and Decertification of an EMS Certificate [Certificate]); or

(H) (No change.)

(2)-(4) (No change.)

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 September 19, 1990.

TRD-9009732

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: January 12, 1991

For further information, please call: (512) 458-7550

◆ ◆ ◆  
**Denial and Revocation of  
Emergency Medical Services  
Certificates and Certifica-  
tions.**

• 25 TAC §§157.21-157.24.

The repeals are proposed under the Health and Safety Code, Chapter 773, which provides the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; Texas Civil Statutes, Senate Bill 312, 71st Legislature, 1989, which require the department to update and clarify existing rules and to establish new requirements through rulemaking; and Texas Civil Statutes, Article 6252-13d, §4, which authorize the Texas Board of Health to adopt guidelines covering the eligibility of persons with criminal backgrounds to be emergency medical services personnel.

*§157.21. Criteria for Decertification, Emergency Suspension, Suspension, and Probation of Certificates.*

*§157.22. Procedures for Decertification and Suspension of Certificate.*

*§157.23. Criteria for Revocation Suspension, and Probation of Course Coordinator, Instructor, and/or Examiner Certification.*

*§157.24. Procedure for Revocation/Suspension of Coordinator, Program Instructor, and/or Examiner Certification.*

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 September 19, 1990.

TRD-9009733

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: January 12, 1991

For further information, please call: (512) 458-7550

◆ ◆ ◆  
**EMS Training and Course Ap-  
proval.**

• 25 TAC §157.31

The new section is proposed under the Health and Safety Code, Chapter 773, which provides the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; Texas Civil Statutes, Senate Bill 312, 71st Legislature, 1989, which require the department to update and clarify existing rules and to establish new requirements through rulemaking; and Texas Civil Statutes, Article 6252-13d, §4, which authorize the Texas Board of Health to adopt guidelines covering the eligibility of persons with criminal backgrounds to be emergency medical services personnel.

*§157.31. Automated External Defibrillator Training Course.*

(a) For the purposes of this section, an automated external defibrillator (AED) shall include only those automated defibrillators that are rendered not capable of manual override.

(b) A medical director of an emergency medical services (EMS) system that provides advanced life support may delegate the use of an AED to certified EMS personnel who successfully complete the AED training course. The medical director shall meet all the requirements of §157.79 of this title (relating to Medical Direction/Supervision of Prehospital Care).

(c) The minimum required curriculum for an AED training course shall consist of the following.

(1) Introduction (30 minutes). The student shall be provided with an overview of the development of prehospital emergency care and the automated defibrillator program. Cardiac arrest statistics shall be discussed, considering other defibrillator programs; ethical and legal responsibilities

shall be discussed; and the automated recording monitor/defibrillator concept shall be introduced.

(2) Defibrillator components and operation (30 minutes to one hour). The student shall learn the operation of the automated recording monitor/defibrillator chosen by the service program. The lesson shall include electrode placement, monitoring, and full operating protocol.

(3) Mini code (two hours). The student shall demonstrate steps in using the automated recording monitor/defibrillator in the classroom setting. The student must follow the appropriate procedures while performing airway control, chest compression, and defibrillator operation. It is vitally important that the student recognize if the patient is pulseless, then cardiopulmonary resuscitation (CPR) shall be performed.

(4) Summary (30 minutes). An oral review of the procedures taught shall be conducted with directed questions and answers. The review shall include procedures to be followed in troubleshooting the defibrillator, and what steps to take in the medical director's protocols.

(5) Written and skills evaluation. Based on a written and skills evaluation, the medical director shall determine whether the student is proficient in the use of the AED.

(d) A medical director of an EMS system that provides advanced life support shall notify the department in writing, on a form provided by the department, of intent to teach an AED training course and shall provide to the department the following information:

- (1) the name of the EMS system;
- (2) the name and social security number of each potential student;
- (3) name, address, telephone number, and medical license number of the medical director;
- (4) the medical director's protocols for automated defibrillation; and
- (5) the medical director's plan for continuing education.

(e) The medical director shall provide the department with the names and social security numbers of the students who have completed the training course and have been determined to be proficient in the use of an AED.

(f) Nothing in this section shall be construed to limit the ability of a physician to prescribe the use of an AED to a patient or other persons to provide for patient care.

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 September 19,

Proposed date of adoption: January 12, 1991  
For further information, please call: (512) 458-7550

## EMS Personnel Certification

### • 25 TAC §§157.41-157. 46, 157.51-157.53

The new sections are proposed under the Health and Safety Code, Chapter 773, which provides the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; Texas Civil Statutes, Senate Bill 312, 71st Legislature, 1989, which require the department to update and clarify existing rules and to establish new requirements through rulemaking; and Texas Civil Statutes, Article 6252-13d, §4, which authorize the Texas Board of Health to adopt guidelines covering the eligibility of persons with criminal backgrounds to be emergency medical services personnel.

#### §157.41. Certification.

(a) A candidate for certification shall:

- (1) be 18 years of age;
- (2) successfully complete a department approved course;
- (3) complete the application for examination;
- (4) submit to the department the application and the following applicable nonrefundable fee.

(A) An emergency medical technician-intermediate (EMT-I) and an emergency medical technician-paramedic (EMT-P) shall pay \$47 until September 1, 1991, and \$75 thereafter.

(B) An emergency care attendant (ECA) and an emergency medical technician (EMT) shall pay \$36 until September 1, 1991, and \$50 thereafter.

(C) An emergency medical services (EMS) volunteer shall pay no fee. However, if an individual receives compensation during the certification period, the exemption is inapplicable and the individual shall send to the department an application and prorated fee as follows:

(i) for an EMT-I and EMT-P:

(I) if the certificate has been in effect 12 months or less, the individual shall pay \$47 until September 1, 1991, and \$75 thereafter;

(II) if the certificate has been in effect 13 months to 24 months, the individual shall pay \$35.25 until September 1, 1991, and \$56.25 thereafter;

(III) if the certificate has been in effect 25 months to 36 months, the individual shall pay \$23.50 until September 1, 1991, and \$37.50 thereafter; or

(IV) if the certificate has been in effect 37 months to 48 months, the individual shall pay \$11.75 until September 1, 1991, and \$18.75 thereafter;

(ii) for an ECA or EMT:

(I) if the certificate has been in effect 12 months or less, the individual shall pay \$36 until September 1, 1991, and \$50 thereafter;

(II) if the certificate has been in effect 13 months to 24 months, the individual shall pay \$27 until September 1, 1991, and \$37.50 thereafter;

(III) if the certificate has been in effect 25 months to 36 months, the individual shall pay \$18 until September 1, 1991, and \$25 thereafter; or

(IV) if the certificate has been in effect 37 months to 48 months, the individual shall pay \$9.00 until September 1, 1991, and \$12.50 thereafter;

(5) achieve a passing grade on all the department's skills certification examinations as follows.

(A) The ECA and EMT skills certification examination stations shall consist of:

- (i) dressing and bandaging/splinting;
- (ii) traction splints;
- (iii) mechanical aids to breathing;
- (iv) patient assessment to include vital signs;
- (v) basic cardiopulmonary resuscitation; and
- (vi) spinal immobilization.

(B) A minimum of three randomly selected basic skills stations shall be assigned to each candidate.

(C) The EMT-I skills certification examination shall consist of the skills certification examination requirements for ECA and EMT in subparagraphs (A) and (B) of this paragraph. In addition, the following skills stations shall be required and a minimum of two shall be randomly assigned to each candidate:

- (i) intravenous fluid therapy administration;
- (ii) utilization of the antishock trousers; and
- (iii) utilization of the endotracheal tube and the esophageal intubation device for airway control.

(D) The EMT-P skills certification examination shall consist of the skills certification examination requirements for an ECA, EMT, and EMT-I in subparagraphs (A), (B), and (C) of this paragraph. In addition, the following skills stations shall be required and a minimum of two shall be randomly assigned to each candidate:

- (i) emergency drug administration;
- (ii) dysrhythmia recognition; and
- (iii) defibrillation and cardioversion;

(6) achieve a passing grade of 70 on the department's written certification examination and, in addition, achieve a passing grade of 70 on the critical components of the examination.

(b) The department has final authority for scheduling all written and skills certification examination sessions.

(c) A candidate shall take the examination for certification no later than 90 days after the course completion date. However, a candidate who fails either the skills certification examination or the written certification examination may retest on each examination one time provided a fee of \$25, if applicable, accompanies the request for written retest. All retests shall be completed no later than 90 days after the course completion date.

(d) The department shall administer examinations at regularly scheduled times. It is the responsibility of the candidate to make arrangements that are necessary to complete the examination requirements. The department is not required to set special examination schedules for those who request examination or re-examination.

(e) A candidate shall be eligible to reapply for certification for up to two years following the course completion date, if:

- (1) the candidate's name appears on a course completion certificate but the candidate has not completed the examinations within 90 days of the course com-

pletion date; or

(2) the candidate fails a retest; and

(3) the candidates described in this subsection shall complete a department approved refresher course and submit the application for certification with the applicable fee.

(f) A candidate who does not meet the requirements for certification within the two-year period following the course completion date shall be required to reapply after completing the EMS training course as required in §157.77 of this title (relating to EMS Training Program and Course Approval).

(g) After verification by the department of the information submitted by the candidate, a candidate who meets the requirements in these sections shall be certified for four years commencing on the date of issuance of a certificate and wallet-size certificate signed by department officials.

(h) A certificate is not transferable. The wallet size certificate shall be carried by personnel while on duty. A duplicate certificate may be issued following the submission of a request for duplicate certificate form and a fee of \$5.00.

(i) EMS personnel shall perform emergency care procedures only as authorized by the Medical Practices Act, Texas Civil Statutes, Article 4495b, and rules adopted thereunder in 22 TAC §§193.1-193.5 (relating to Standing Delegation Orders) and §§197.1-197.4 (relating to Emergency Medical Service). However, where conflicts may occur this chapter shall prevail.

(j) The completion of a course at a higher level of certification shall satisfy the course requirement for a lower level of certification, and the individual may apply for certification for up to two years following the course completion date by:

(1) submitting an application and applicable fee, if any, as required in subsection (a)(3) and (4) of this section;

(2) completing the requirements of §157.76 of this title (relating to Continuing Education) or a department approved refresher course; and

(3) meeting the examination requirements of this section.

(k) Individuals who successfully complete certification requirements for a higher level are deemed to be certified only at that level.

(l) An individual who is certified as an EMT-I or EMT-P may voluntarily be certified at an EMT level of certification by:

(1) submitting the application for certification and the applicable fee, if any, as required in subsection (a)(3) and (4)

of this section;

(2) completing the requirements of §157.76 of this title (relating to Continuing Education) or a department approved refresher course;

(3) achieving a passing grade on the department's written and skills certification examinations as required in subsection (a)(5) of this section; and (4) returning the wallet-size certificate for the EMT-I or EMT-P level of certification to the department.

*§157.42. Emergency Medical Services Personnel Certification for the Registered Nurse*

(a) Purpose. The purpose of this section is to establish the requirements for the emergency medical services (EMS) personnel certification of the registered nurse (RN) licensed to practice in the State of Texas. The requirements of this section are not intended to, and shall not be construed to, replace the requirements of the Nurse Practice Act, Texas Civil Statutes, Article 4513, or the rules promulgated under 22 TAC, Part XI (relating to Board of Nurse Examiners).

(b) Registered nurses covered. Registered nurses licensed to practice in the State of Texas and who staff an EMS vehicle on a regular basis shall obtain EMS personnel certification. Regular basis shall refer to those individuals whose routine responsibilities include staffing a ground or air EMS vehicle. Registered nurses not staffing a vehicle on a regular basis may apply for EMS certification under this section.

(c) Levels of EMS personnel certification authorized. An RN may be certified for any level of EMS personnel as described in §157.2 of this title (relating to Definitions). Emergency medical technician (EMT) certification shall be required for RNs requesting emergency medical technician-intermediate (EMT-I) or emergency medical technician-paramedic (EMT-P) certification.

(d) Certification requirements. The RN shall:

(1) complete the application for certification;

(2) submit to the department the application and the applicable nonrefundable fee as set out in §157.41(a)(4) of this title (relating to Certification);

(3) submit current RN license number;

(4) submit a copy of an American Heart Association (AHA) or American Red Cross (ARC) cardiopulmonary resuscitation (CPR) successful course completion as follows:

(A) for ECA and EMT certi-

fication, the "AHA Course C: Basic Life Support for Healthcare Providers" or the "ARC CPR Basic Life Support for the Professional Rescuer" course; and

(B) for EMT-I or EMT-P certification, the "AHA Advanced Cardiac Life Support (ACLS)" course;

(5) submit a copy of work history for the 36 months preceding the date of application, including positions held and place of employment and evidence of human intubation experience;

(6) complete extrication, clinical in-hospital, and EMS vehicle requirements for EMT certification; or complete clinical, in-hospital, and EMS vehicle requirements for EMT-I or EMT-P certification as required in §157.77 of this title (relating to EMS Training Program and Course Approval);

(A) The clinical, in hospital, and/or EMS vehicle requirements may be waived after evaluation by the department of the 36 month work history.

(B) The RN who has 12 months combined experience in an emergency department, operating/recovery department, or other critical care unit(s) or EMS vehicle experience, may have the requirements for like clinical experience waived for the level of certification requested.

(7) achieve a passing grade on all the department's written and skills certification examinations as described in §157.41(a)(5) and (6) of this title (relating to Certification).

(e) Examination scheduling. The department has final authority for scheduling all written and skills certification examination sessions.

(f) Examination failure. The RN shall take the examination for certification no later than 90-days after the acceptance of the application or course completion date, if applicable. However, the RN who fails either the skills certification examination or the written examination may retest on each examination one time provided a fee of \$25 accompanies the request for written retest. All retests shall be completed no later than 90-days after the initial examination date. The RN who fails the retest shall complete the EMS training course as required in §157.77 of this title (relating to EMS Training Program and Course Approval) prior to being eligible for EMS certification.

(g) Examination dates. The department shall administer examinations at regularly scheduled times. It is the responsibility of the RN to make arrangements that are necessary to complete the examination requirements. The department is not required to set special examination schedules for

those who request examination or re-examination.

(h) Certification period. After verification by the department of the information submitted by the RN, the RN who meets the requirements in these sections shall be certified for four years commencing on the date of issuance of a certificate and wallet-size certificate signed by department officials. A certificate is not transferable. The wallet size certificate shall be carried by personnel while on duty. A duplicate certificate may be issued following the submission of a request for duplicate certificate form and a fee of \$5.00.

(i) Recertification requirements. The RN who receives EMS personnel certification shall comply with the requirements of §157.45 of this title (relating to Recertification) and §157.76 of this title (relating to Continuing Education) to recertify.

(j) Other requirements. The following sections shall be applicable to this section: §157.51 of this title (relating to Criteria for Emergency Suspension, Suspension, Probation, and Decertification of an EMS Certificate); §157.52 of this title (relating to Procedure for Decertification and Suspension of a Certificate).

*§157.43. Emergency Medical Services Personnel Certification for Allied Health Personnel.*

(a) Purpose. The purpose of this section is to establish the requirements for emergency medical services (EMS) certification of allied health personnel licensed or certified to practice in the State of Texas. Allied health personnel are health care professionals who are not registered nurses or licensed physicians. The requirements of this section are not intended to, and shall not be construed to, replace the requirements of any other laws regarding the license or certification of allied health personnel.

(b) Allied health personnel covered. Allied health personnel licensed or certified to practice in the State of Texas who staff an EMS vehicle on a regular basis shall obtain EMS personnel certification. Regular basis shall refer to those individuals whose routine responsibilities include staffing an EMS vehicle. Allied health personnel not staffing a vehicle on a regular basis may apply for EMS personnel certification under this section.

(c) Levels of EMS personnel certification authorized. Allied health personnel may be certified as EMS personnel as described in §157.2 of this title (relating to Definitions).

(d) Certification requirements. Allied health personnel shall meet the requirements in §157.41 of this title (relating to Certification).

*§157.44. Certification of Persons With Criminal Backgrounds to be Emergency Medical Services Personnel.*

(a) Purpose. This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to be certified as emergency medical services (EMS) personnel. A felony or misdemeanor listed in this section relates to the duties and responsibilities of EMS personnel because these criminal offenses indicate an inability or a tendency to be unable to perform as certified EMS personnel.

(b) Criminal convictions which directly relate to the profession of EMS personnel.

(1) When a person's conviction of a felony or misdemeanor directly relates to the duties and responsibilities of EMS personnel, the department may:

(A) deny to a person the opportunity to be examined for a certificate;

(B) disqualify a person from receiving a certificate; or

(C) decertify or suspend an existing certification.

(2) In considering whether a crime directly relates to the occupation of EMS personnel, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a certificate. The following crimes relate to the certification of EMS personnel because these crimes directly relate to the ability to carry out the duties and responsibilities of EMS personnel:

(i) offenses under the Health and Safety Code, Chapter 773;

(ii) offenses under the Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, which are punishable by fines greater than \$200, or imprisonment, or both fine and imprisonment;

(iii) offenses under the intoxicated driver provisions of Texas Civil Statutes, Article 67011-1;

(iv) offenses under the Controlled Substances Act, Texas Civil Statutes, Article 4476-15;

(v) offenses under the Dangerous Drug Act, Texas Civil Statutes, Article 4476-14;

(vi) offenses under the following titles of the Texas Penal Code:

(I) Title 5-offenses against the person;

(II) Title 7-offenses against property;

(III) Title 9-offenses against public order and decency;

(IV) Title 10-offenses against public health, safety, and morals;

(V) Title 11-offenses involving organized crime; and

(VI) Title 4-offenses of attempting or conspiring to commit any of the offenses in this clause;

(VII) the offenses listed in clauses (i)-(vi) of this subparagraph which are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Emergency Medical Services Act and these sections;

(C) the extent to which a certificate might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of EMS personnel. In making this determination, the department will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7).

(c) Procedures for decertifying, suspending, or denying a certificate to persons with criminal backgrounds.

(1) If the department's Bureau of Emergency Management (bureau) proposes to decertify, suspend, or deny a certificate, based on the criteria in subsection (b) of this section, the bureau shall notify the individual at his or her last known address as shown in the bureau's records, by registered or certified mail. The notice shall specify the facts or conduct alleged to warrant the intended action. If the proposed action is to decertify or suspend a certificate, the procedural requirements of §157.52 of this title (relating to Procedures for Decertification and Suspension of a Certificate) shall be applicable.

(2) The individual may request a hearing within 15 days after the date of the notice. This request shall be submitted in writing to the bureau chief. A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a and §§1.21-

1.34 of this title (relating to Formal Hearing Procedures).

(3) If the individual does not request a hearing in writing after being sent the notice of the proposed action, the individual is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.

(4) If the department decertifies, suspends, or denies a certificate under these sections after a hearing, the bureau chief shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the department and its decision; and

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable.

#### *§157.45. Recertification*

##### (a) General.

(1) At least 180 days prior to the expiration of a certificate, the department's Bureau of Emergency Management (bureau) shall mail a notice of expiration by United States mail to the certificant at the address shown in the bureau's records. It is the responsibility of emergency medical services (EMS) personnel to notify the bureau of any change of address.

(2) If a certificant has not received notice of expiration from the bureau 45 days prior to the expiration, it is the duty of the certificant to notify the bureau and request an application for recertification. Failure to apply for recertification shall result in expiration of the certificate.

(3) The department has final authority for scheduling all written and skills certification examination sessions.

(4) The department shall administer examinations at regularly scheduled times. The department is not required to set special examination schedules for those who request examination or re-examination. If the certificant does not test within the prescribed time, the certificant shall meet the requirements of subsection (d) of this section.

(5) A certificate is not transferable. The wallet size certificate shall be carried by personnel while on duty. A duplicate certificate may be issued following the submission of a request for duplicate certificate form and a fee of \$5.00.

##### (b) Timely recertification.

(1) A certificant shall meet the following requirements for recertification. The certificant shall:

(A) complete the continuing education requirements for recertification as required in §157.76 of this title (relating to Continuing Education) or a department approved refresher course prior to the expiration of the certificate and prior to taking the required certification examinations;

(B) submit to the department the application for recertification and the nonrefundable fee as set out in §157.41(a)(4) of this title (relating to Certification);

(C) achieve a passing grade on the department's written and skills certification examinations as described in §157.41(a)(5) and (6) of this title (relating to Certification).

(2) A certificant who fails the skills certification examination or the written certification examination may retest on each examination one time provided a fee of \$25, if applicable, accompanies the request for written retest. A certificant shall complete all retests within 90 days of the expiration date of the certificate or the examination date, whichever is sooner. If a retest is failed prior to the expiration date of the certificate the certificant shall receive an emergency suspension of the certificate as required in §157.51 of this title (relating to Criteria for Emergency Suspension, Suspension, Probation, and Decertification of an EMS Certificate).

(3) A candidate who fails a retest shall be eligible to apply for recertification by:

(A) completing a department approved EMS refresher course for the certification level; and

(B) submitting an application for recertification with the applicable fee as described in subsection (b)(1)(B) of this section and meeting the certification examination requirements for the level of certification requested as described in subsection (b)(1)(C) of this section; or

(C) submitting an application for a lower level of certification with the applicable fee as described in subsection (b)(1)(B) of this section and meeting the certification examination requirements for the level of certification requested as described in subsection (b)(1)(C) of this section.

(4) After verification by the department of the information submitted by the certificant, a certificant who meets requirements of this subsection will be recer-

tified for four years commencing on the day following the expiration date of the most recent certificate. A new certificate and wallet-sized certificate signed by department officials shall be issued.

##### (c) Early recertification.

(1) If a certificant requests to recertify prior to the 180 day notice, the certificant shall meet all the requirements of subsection (b) of this section within 90-days of the application date.

(2) If the certificant fails the department's skills or written certification examination, the certificant may retest on each examination one time provided a fee of \$25, if applicable, accompanies the request for written retest and all retests are completed within the 90-day period. If the certificant fails the retest or chooses not to retest, the certificant shall be issued an emergency suspension and be decertified as required in §157.51 of this title (relating to Criteria for Emergency Suspension, Suspension, Probation, and Decertification, of an EMS Certificate).

(3) A candidate who fails a retest or chooses not to retest shall be eligible to apply for recertification by:

(A) completing a department approved EMS refresher course for the certification level within two years of the examination date; and

(B) submitting an application for recertification with applicable fee as described in subsection (b)(1)(B) of this section and meeting the certification examination requirements for the level of certification requested as described in subsection (b)(1)(C) of this section; or

(C) submitting an application for a lower level of certification with the applicable fee as described in subsection (b)(1)(B) of this section and meeting the certification examination requirements for the level of certification requested as described in subsection (b)(1)(C) of this section.

(4) A certificant who meets the requirements of this subsection shall be recertified for four years commencing on the date of issuance of a new certificate and wallet-size certificate signed by department officials.

##### (d) Late recertification.

(1) If the application and the non-refundable fee for recertification is received prior to the expiration date of the certificate, the certification shall continue for a period not to exceed 90-days from the expiration date. During the 90-day period, the certificant shall:

(A) complete the require-



ments of subsection (b)(1)(A) of this section; and

(B) successfully pass the department's written and skills certification examinations for the recertification level requested as described in subsection (b)(1)(C) of this section. However, a candidate who fails either the skills certification examination or the written certification examination may retest on each examination one time provided a fee of \$25, if applicable, accompanies the request for written retest. All retests shall be completed within the 90-day period.

(2) If an application for recertification is received after the expiration date of the certificate but within two years following the expiration date, the applicant shall submit in addition to the recertification fee, a late fee of \$25. The applicant is not certified during this period. If he represents himself as a certified EMS person, the applicant may be denied recertification and may be subject to the civil and criminal penalties under the Health and Safety Code, §773.063 and §773.064.

(A) All requirements of this paragraph including certification examinations and retests shall be completed no later than two years from the expiration date of the most recent certificate or within 90 days of the completion date of the EMS refresher course, whichever is sooner.

(B) The applicant shall qualify for recertification by:

(i) completing a department approved EMS refresher course for the level of recertification requested; and

(ii) achieving a passing grade on the department's written and skills certification examinations for the recertification level requested as described in subsection (b)(1)(C) of this section. However, a candidate who fails either the skills certification examination or the written certification examination may retest on each examination one time provided a fee of \$25, if applicable, accompanies the request for written retest.

(3) A candidate as described in paragraph (1) or (2) of this subsection who fails a retest may be eligible to apply for recertification by:

(A) completing a department approved EMS refresher course for the certification level within two years of the expiration date of the most recent certificate; and

(B) submitting an application for recertification with the applicable fee as described in subsection (b)(1)(B) of this section and meeting the certification exami-

nation requirements for the level of recertification requested as described in subsection (b)(1)(C) of this section; or

(C) submitting an application for a lower level of certification with the applicable fee as described in subsection (b)(1)(B) of this section and meeting the certification examination requirements for the level of certification requested as described in subsection (b)(1)(C) of this section.

(4) A candidate who does not successfully complete the recertification requirements under paragraph (3) of this subsection shall meet the requirements of §157.41 of this title (relating to Certification) prior to being eligible for certification.

(5) After verification by the department of the information submitted by the certificant, a certificant who meets requirements in paragraph (1) of this subsection shall be recertified for four years commencing on the day following the expiration date of the most recent certificate. A certificant who meets requirements in paragraph (2) of this subsection shall be recertified commencing on the issuance of a new certificate and wallet-size certificate signed by department officials.

#### *§157.46. Certification by Reciprocity for EMS Personnel.*

(a) An out-of-state certified emergency medical services (EMS) person or a national registry certified EMS person may apply for State of Texas certification by reciprocity.

(b) The candidate shall:

(1) submit proof of current out-of-state certification;

(2) complete the application for reciprocity; and

(3) submit to the department the application and the applicable nonrefundable fee as follows.

(A) An emergency medical technician-intermediate (EMT-I) and an emergency medical technician-paramedic (EMT-P) shall pay \$12 until September 1, 1991, and \$20 thereafter.

(B) An emergency medical technician (EMT) shall pay \$9.00 until September 1, 1991, and \$13 thereafter.

(c) After evaluation of the application and verification of certification by the department, the applicant may be certified for a period of one year.

(d) Prior to or within 90 days of the expiration of the one-year certificate, the certificant shall be required to:

(1) complete 25% of the continuing education hours required in §157.76

of this title (relating to Continuing Education) for the certification level, or complete a department approved refresher course;

(2) achieve a passing grade on all skills certification examinations as described in §157.41(a)(5) of this title (relating to Certification); and

(3) achieve a passing grade of 70 on the department's written certification examination, and in addition, achieve a passing grade of 70 on the critical components of the examination.

(e) A candidate who fails either the skills or the written certification examination may retest on each examination one time provided a fee of \$25, if applicable, accompanies the request for written retest and that all retests be completed no later than 90 days after the expiration of the certificate.

(f) The department shall administer examinations at regularly scheduled times. It is the responsibility of the candidate to make arrangements that are necessary to complete the examination requirements. The department is not required to set special examination schedules for those who request examination or re-examination.

(g) After verification by the department of the information submitted by the candidate, a candidate who meets the requirements in subsection (d) of this section shall be certified for four years commencing on the date of issuance of a certificate and wallet-size certificate signed by department officials.

(h) A certificate is not transferable. The wallet size certificate shall be carried by personnel while on duty. A duplicate certificate may be issued following the submission of the request for duplicate certificate form and a fee of \$5.00.

(i) EMS personnel shall perform emergency care procedures only as authorized by the Medical Practices Act, Texas Civil Statutes, Article 4495b, and rules adopted thereunder in 22 TAC §§193.1-193.5 (relating to Standing Delegation Orders and §§197.1-197.4 (relating to Emergency Medical Service). However, where conflicts may occur this chapter shall prevail.

(j) A candidate who does not complete the requirements for certification within 90 days after the expiration date of the one-year certificate shall meet the requirements of §157.45 of this title (relating to Recertification).

*§157.51. Criteria for Emergency Suspension, Suspension, Probation, and Decertification of an EMS Certificate.* Emergency medical services (EMS) personnel certified by the department may be subject to, but not limited to, the following disciplinary action.

(1) Emergency suspension.



(A) The department's Bureau of Emergency Management bureau chief shall issue an emergency order to suspend any certificate issued under the Emergency Medical Services Act if the bureau chief has reasonable cause to believe that the conduct of any certificate holder creates an imminent danger to the public health or safety.

(B) An emergency suspension shall be effective immediately without a hearing upon notice to the certificate holder. Notice must also be given to the sponsoring governmental entity if the holder is exempt from the payment of fees under the Health and Safety Code, §773.057.

(C) On written request of the certificate holder, the department shall conduct a hearing not earlier than the 10th day nor later than the 30th day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and appeal from a disciplinary action related to the hearing shall be in accordance with §§1. 21-1.34 of this title (relating to Formal Hearing Procedures) and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as amended.

(2) Suspension. The department may suspend an EMS personnel certificate of the holder for a period of not more than one year if the certificant:

(A) fails to follow the EMS standards of care in the management of a patient;

(B) fails to administer medications and/or treatments in a responsible manner in accordance with the medical director's orders or protocols;

(C) fails to maintain confidentiality of patient information obtained in the course of professional work;

(D) performs advanced level treatment without medical direction or supervision;

(E) fails to comply with the terms of the probation; or

(F) issues a check for application for examination for recertification which has been returned to the department for insufficient funds.

(3) Probation. For just and sufficient reasons presented by the certificant, the department may probate the suspension.

(A) Examples of just and sufficient cause may include:

(i) history of previous exemplary conduct;

(ii) extenuating circumstances which affected the action of the certificant; and

(iii) consideration of the needs of local service and/or area with regard to EMS personnel.

(B) The department may specify the terms of the probation which may include:

(i) that if the individual violates a standard or provision of the Health and Safety Code, Chapter 773 or rules adopted thereunder during the probation period, decertification may result;

(ii) any terms or conditions that the certificant maintain certification or recertification requirements during the probation;

(iii) the length of time of the probation.

(4) Decertification. The department may cancel the EMS certificate of the holder if the certificant:

(A) discriminates in the provision of services based on national origin, race, color, creed, religion, sex, age, physical or mental disability, or economic status;

(B) is under the influence of alcohol or is using a controlled substance, as defined by the Controlled Substances Act, Texas Civil Statutes, Article 4476-15, and/or the Dangerous Drug Act, Texas Civil Statutes, Article 4476-14, which affects the certificant's ability to render aid according to accepted procedures or protocol;

(C) represents that he or she is qualified at any level other than his or her current certification;

(D) abandons a patient;

(E) appropriates and/or possesses without authorization medications, supplies, equipment, or personal items of the patient or employer;

(F) materially alters any department EMS certificate, or uses and/or possesses any such altered certificate;

(G) repeats an offense which resulted in suspension and/or probation of the certificate or has a history of two or more offenses within a two-year period;

(H) cheats and/or assists another to cheat on the department's examinations for certification or recertification;

(I) attempts to obtain or obtains certification or recertification by fraud, forgery, deception, misrepresentation, or subterfuge; and/or assists or attempts to assist another to obtain certification by fraud, forgery, deception, misrepresentation, or subterfuge;

(J) has been convicted of a misdemeanor or felony in accordance with the provisions of §157.44 of this title (relating to Certification of Persons with Criminal Backgrounds to Be Emergency Medical Services Personnel);

(K) practices beyond the scope of certification without medical direction;

(L) illegally dispenses, administers, or distributes controlled substances as defined by the Controlled Substances Act, Texas Civil Statutes, Article 4476-15, and/or the Dangerous Drug Act, Texas Civil Statutes, Article 4476-14;

(M) performs medical acts beyond those permitted by the medical director;

(N) intentionally falsifies a patient record;

(O) has an EMS certificate or license suspended or revoked in another state while holding a Texas EMS certificate;

(P) obtains any fee in the course of the EMS occupation by fraud or misrepresentation;

(Q) fails to comply with Health and Safety Code, Chapter 773 and rules adopted thereunder;

(R) fails to give the department or its authorized representative true information, upon request, regarding an alleged or confirmed violation of Health and Safety Code, Chapter 773 or rules adopted thereunder;

(S) violates any rule or standard that would jeopardize the health or safety of a patient or that has a potential negative affect on the health or safety of a patient; or

(T) falsifies an application for certification or recertification.

(5) Reapplication. Two years after the revocation of a certificate or following parole or completion of probation whichever is longer, an individual may petition the bureau, in writing for reapplication for certification. The bureau shall evaluate the petition and may allow an application for certification to be submitted. However, the bureau may deny the application if the reason for decertification continues to exist. If the application is allowed, the individual may be eligible to apply for late recertification as described in §157.45 of this title (relating to Recertification); or if ineligible for late recertification, the applicant shall be required to meet the requirements for certification as described in §157.41 of this title (relating to Certification).

(6) Expiration of a certificate during suspension. An individual whose certificate expires during the period of suspension may apply for recertification on the day following the expiration of the suspension. The individual shall meet the requirements for late recertification as described in §157.45 of this title (relating to Recertification).

*§157.52. Procedure for Decertification and Suspension of a Certificate.*

(a) If the department's Bureau of Emergency Management (bureau) proposes to decertify or suspend a certificate, the bureau shall notify the certificant by registered or certified mail at his or her last known address as shown in the bureau's records. The notice shall state the alleged facts or conduct to warrant the action and state that the certificant has an opportunity to request a hearing.

(b) The certificant may request a hearing within 15 days after the date of the notice. This request shall be in writing and submitted to the bureau chief. If a hearing is requested, the hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

(c) If the certificant does not request a hearing in writing after being sent the notice of the proposed decertification or suspension, the certificant is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.

*§157.53. Criteria for Denial of Certification or Recertification.* A certificate may be denied to an applicant for, but not limited to, the following reasons:

- (1) failure to meet standards as required in §157.41 of this title (relating to Certification) and of §157.45 of this title (relating to Recertification);
- (2) previous conduct on the part of the applicant during the performance of duties relating to the responsibilities of

emergency medical services (EMS) personnel that is contrary to accepted standards of conduct for EMS personnel described in §157.51(1) and (3) of this title (relating to Criteria for Emergency Suspension, Suspension, Probation, and Decertification of an EMS Certificate);

(3) a conviction of a crime which directly relates to the profession of EMS personnel as described in §157.44 of this title (relating to Certification of Persons With Criminal Backgrounds to be Emergency Medical Services Personnel);

(4) disciplinary action relating to an EMS certificate issued in another state;

(5) issuing a check for application for examination for certification or recertification which has been returned to the department for insufficient funds;

(6) falsifying the application for certification; or

(7) misrepresenting any requirements for certification or recertification.

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 September 19, 1990.

TRD-9009735 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Proposed date of adoption: January 12, 1991  
For further information, please call: (512) 458-7550

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**Emergency Medical Services-  
Part B**

• 25 TAC §§157.61, 157.63, 157.64,  
157.74, 157.78, 157.80-157.82,  
157.84.

The repeals are proposed under the Health and Safety Code, Chapter 773, which provides the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; Texas Civil Statutes, Senate Bill 312, 71st Legislature, 1989, which require the department to update and clarify existing rules and to establish new requirements through rulemaking, and Texas Civil Statutes, Article 6252-13d, §4, which authorize the Texas Board of Health to adopt guidelines covering the eligibility of persons with criminal backgrounds to be emergency medical services personnel.

*§157.61. Purpose.*

*§157.63. Certification.*

*§157.64. Recertification.*

*§157.74. Certifying of Persons with Criminal Backgrounds to be Emergency Medical Services Personnel.*

*§157.78. Certification of Course Coordinator, Program Instructor, and Examiner.*

*§157.80. Emergency Medical Services Personnel Certification for the Registered Nurse.*

*§157.81. Emergency Medical Services Personnel Certification for the Licensed Vocational Nurse.*

*§157.82. Emergency Medical Services Personnel Certification for Firefighters.*

*§157.84. Certification by Reciprocity.*

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-9009745 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

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For further information, please call: (512) 458-7550

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**EMS Course Coordinator, Program Instructor, and Examiner Certification**

• 25 TAC §§157.61-157.65

The new sections are proposed under the Health and Safety Code, Chapter 773, which provides the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; Texas Civil Statutes, Senate Bill 312, 71st Legislature, 1989, which require the department to update and clarify existing rules and to establish new requirements through rulemaking; and Texas Civil Statutes, Article 6252-13d, §4, which authorize the Texas Board of Health to adopt guidelines covering the eligibility of persons with criminal backgrounds to be emergency medical services personnel.

*§157.61. Course Coordinator Certification.*

- (a) General. A course coordinator is

an individual who has the overall responsibility for conducting an emergency medical services (EMS) training course. A course coordinator may be certified as a basic course coordinator, an intermediate course coordinator, or as an advanced course coordinator. A basic course coordinator may coordinate an emergency care attendant (ECA) or emergency medical technician (EMT) training course. An intermediate course coordinator may coordinate an emergency medical technician-intermediate (EMT-I) training course, an ECA, or EMT training course. An advanced course coordinator may coordinate an emergency medical technician-paramedic (EMT-P) training course, an ECA, EMT, or an EMT-I training course.

(b) Certification. A course coordinator candidate shall:

(1) have a high school diploma or a general educational development certificate (GED);

(2) have EMS personnel certification as follows:

(A) be currently certified as at least an EMT and have achieved at least the state mean score for the applicant's most recent certification examination to be a basic course coordinator;

(B) be currently certified as at least an EMT-I and have achieved at least the state mean score for the applicant's most recent EMT-I or EMT-P certification examination to be an intermediate coordinator;

(C) be currently certified as an EMT-P and have achieved at least the state mean score for the most recent EMT-P certification examination to be an advanced course coordinator; or

(D) in lieu of EMS personnel certification, be a physician licensed to practice in the State of Texas or a registered nurse (RN) licensed to practice in the State of Texas; and

(E) be currently certified as a program instructor for at least one year;

(3) complete the application for course coordinator certification and include the following:

(A) a nonrefundable fee of \$25; except a fee shall not be required if compensation is not received for coordinating the training course or program;

(B) a letter of endorsement by an EMS entity which sponsors EMS or EMS training, i.e. a medical director, a county judge or city manager/mayor, educa-

tional institution, or hospital; and

(C) letters of intent from potential providers of clinical and EMS vehicle experience based on the requirements of the national DOT curricula standards as adopted by reference in §157.77 of this title (relating to EMS Training Program and Course Approval). A letter of intent from the potential course medical director shall be required for advanced level course coordinator applicants;

(4) complete the department approved EMS course coordinator training program;

(5) achieve a passing grade which shall be determined by the department for the course coordinator certification examination. A course coordinator candidate who fails the course coordinator certification examination may retest one time provided that the retest is completed within 90 days of the initial examination;

(c) Period of certification. After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of subsection (b) of this section shall be certified as a course coordinator for two years commencing on the date of issuance of the certificate.

(d) Responsibilities. A course coordinator shall have the following responsibilities:

(1) plan for and evaluate the overall operation of the course;

(2) select the classroom, clinical, and EMS provider training facilities conducive to meet the Department of Transportation (DOT) curricula requirements for the level of course to be conducted;

(3) process student applications and select students;

(4) maintain an adequate inventory of training equipment including audio-visual resources;

(5) schedule classes and assign program instructors and guest lecturers. A guest lecturer is an individual who, upon the request of the course coordinator, conducts specific classroom lectures based upon an expertise in a given subject area;

(6) assure that training equipment is available and operational for each practice session;

(7) coordinate examinations and evaluate students;

(8) evaluate the effectiveness of the program instructors and guest lecturers;

(9) act as liaison between the students, program instructors, the EMS entity, and the department;

(10) supervise and evaluate the effectiveness of the clinical and EMS vehi-

cle training;

(11) verify the instructional hours for each certified program instructor;

(12) make appointments for space available for students to sit for the department's certification examinations at least 24 hours in advance. This responsibility may be met by instructing the students that each student has the responsibility for making the appointment for space availability for the certification examinations; and

(13) attest to the successful course completion by the students as evidenced by the course completion certificate (CCC). The CCC form shall be completed after all components of the course have been completed including any required clinical and EMS vehicle experience. The CCC shall be received by the department's public health region EMS offices prior to conduction of the certification examination.

(e) Exception. If an urgent situation for an EMS training program exists and cannot be met by the area's training resources, an individual may request the department's Bureau of Emergency Management (bureau) to grant an exception for coordinator certification.

(1) The request shall be in writing and shall include the following:

(A) reason for the need;

(B) letter of endorsement from an EMS entity (public or private) which sponsors EMS or EMS training, i.e. a medical director, a county judge or city manager/mayor, educational institution, or hospital; and

(C) letters of intent from providers of clinical and EMS vehicle experience based on the requirements of the training curricula standards as described in §157.77 of this title (relating to EMS Training Program and Course Approval). A letter of intent from the potential course medical director shall be required for advanced level course coordinator applicants.

(2) The request shall be reviewed and the evaluation shall be based on, but not limited to, the following:

(A) resignation of a previous course coordinator or the inability of a course coordinator to complete a current training course;

(B) need for training and no certified course coordinator available;

(C) the individual requesting the exception is an ECA and the need for an ECA training course exists;

(D) the individual requesting the exception does not meet the requirements of subsection (b)(1), (4), or (5) of this section.

(3) After evaluation by the department's bureau the individual shall be notified, in writing, of the approval or denial of the request.

(4) An individual who is approved shall be considered a temporary course coordinator and may coordinate one training program at the level requested. The individual shall meet the requirements of subsection (d) of this section. The individual has one year from the time of the temporary approval to complete the requirements for course coordinator certification.

(f) **Recertification.**

(1) To be eligible for recertification the course coordinator shall:

(A) maintain EMS certification as required in subsection (b) of this section or professional licensure;

(B) maintain affiliation with entities which provide clinical and EMS vehicle experience;

(C) attend regional EMS updates for course coordinators;

(D) coordinate a minimum of one department approved course as described in §157.77 of this title (relating to EMS Training Program and Course Approval) or conduct one refresher course per two years or conduct an ongoing continuing education program as described in §157.76 of this title (relating to Continuing Education);

(E) submit the application for recertification and a nonrefundable fee of \$25; except a fee shall not be required if compensation is not received for coordinating the training course or program;

(F) maintain a rate of 80% of all students passing the department's written certification examination during the two-year course coordinator certification period. However, an exception to this requirement may be granted for extenuating circumstances; and

(G) maintain adherence to standards for course content as required in §157.77 of this title (relating to EMS Training Program and Course Approval) as evidenced by site visit evaluation of training courses.

(2) After verification by the department of the information submitted by the course coordinator certificant, the

course coordinator who meets the requirements of paragraph (1) of this subsection shall be recertified for two years commencing on the day following the expiration of the certificate.

§157.62. *Program Instructor Certification.*

(a) **General.**

(1) The curriculum shall be the United States Department of Transportation (DOT) document titled "EMS Instructor Training Program-National Standard Curriculum."

(2) A program instructor is an individual who is responsible to the course coordinator and shall conduct the skills and/or didactic portion of an emergency medical services (EMS) training course. A program instructor may be certified as a basic program instructor, as an intermediate program instructor, or as an advanced program instructor. A basic program instructor may teach the skills and/or didactic content required in the emergency care attendant (ECA) or emergency medical technician (EMT) training course and may teach the basic skills required in the emergency medical technician-intermediate (EMT-I) or emergency medical technician-paramedic (EMT-P) training course. An intermediate program instructor may teach the skills and/or didactic content required in the EMT-I training course but may teach the skills and/or didactic content required in the ECA or EMT training course. An advanced program instructor may teach the skills and/or didactic content required in the EMT-P training but may teach the skills and/or didactic content required in the ECA, EMT, or EMT-I training course.

(b) **Certification.** A program instructor candidate shall:

(1) have a high school diploma or a general educational development degree (GED);

(2) have EMS personnel certification as follows:

(A) be currently certified at least as an EMT and have achieved at least the state mean score for the applicant's most recent certification examination to be a basic program instructor;

(B) be currently certified at least as an EMT-I and have achieved at least the state mean score for the applicant's most recent EMT-I or EMT-P certification examination to be an intermediate program instructor;

(C) be currently certified as an EMT-P and have achieved at least the state mean score for the applicant's most recent EMT-P certification examination to be an advanced program instructor; or

(D) in lieu of EMS personnel certification, be a physician licensed to practice in the State of Texas or a registered nurse (RN) licensed to practice in the State of Texas; and

(3) complete the application for program instructor certification and include the following:

(A) a nonrefundable fee of \$25, except a fee shall not be required if compensation is not received for instructing in the training course or program; and

(B) a letter of endorsement by a course coordinator;

(4) complete the department approved EMS instructor training program;

(5) achieve a passing grade which shall be determined by the department for the written and skills program instructor certification examination. A program instructor candidate who fails the program instructor certification examination may retest one time provided that the retest is completed within 90 days of the initial examination;

(c) **Period of certification.** After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of subsection (b) of this section shall be certified as a program instructor for two years commencing on the date of issuance of the certificate.

(d) **Responsibility.** A program instructor shall have the following responsibilities:

(1) prepare and present the lecture/demonstration lessons assigned in accordance with the lesson objectives as required in the EMS training curricula as required in §157.77 of this title (relating to EMS Training Programs and Course Approval); and

(2) prepare for and evaluate student performance at each skills practice session and/or lecture sessions in accordance with the lesson objectives.

(e) **Exception.** If an urgent situation for an EMS training program exists and cannot be met by the area's training resources, a course coordinator may request the department's Bureau of Emergency Management (bureau) to grant an exception for program instructor certification.

(1) The request shall be in writing and shall include the following:

(A) reason for the need; and

(B) letter of endorsement from a course coordinator or medical director.

(2) The request shall be re-

viewed and the evaluation shall be based on, but not limited to, the following:

(A) resignation of a previous program instructor or the inability of a program instructor to complete a current training course;

(B) need for training and no certified program instructor available, or there is not an adequate number of certified program instructors to assist in the skills portion of the training program;

(C) the individual requesting the exception is an ECA and the need for an ECA training course exists;

(D) the individual requesting the exception does not meet the requirements of subsection (b)(1), (4), or (5) of this section.

(3) After evaluation by the bureau, the individual shall be notified, in writing, of the approval or denial of the request.

(4) An individual who is approved shall be considered a temporary program instructor and may teach in one training program at the level requested. The individual shall meet the requirements of subsection (d) of this section. The individual has one year from the time of the temporary approval to complete the requirements for program instructor certification.

(f) Recertification.

(1) To be eligible for recertification, the program instructor shall:

(A) maintain EMS certification or professional licensure as required in subsection (b) of this section;

(B) maintain affiliation with entity which provides EMS training;

(C) attend seminars and regional EMS updates as required for program instructors;

(D) submit the application for recertification and a nonrefundable fee of \$25, except a fee shall not be required if compensation is not received for instructing in the training course or program;

(E) be evaluated on teaching effectiveness by the course coordinator and recommendation of the course coordinator;

(F) be evaluated on performance of students on the department's skills examination and/or written examination dependent on the program instructor's

teaching responsibility as defined by the course coordinator;

(G) maintain adherence to standards for course content as required in §157.77 of this title (relating to EMS Training Program and Course Approval) as evidenced by site visit evaluation of the teaching sessions; and

(H) instruct a minimum of 16 hours per two years.

(2) After verification by the department of the information submitted by the certified program instructor, the program instructor who meets the requirements of paragraph (1) of this subsection shall be recertified for two years commencing on the day following the expiration of the certificate.

#### §157.63. Examiner Certification.

(a) General. An examiner is an individual who conducts the skills examination required for emergency medical services (EMS) personnel certification under the direction of the department. An examiner may be certified as a basic examiner, as an intermediate examiner, or as an advanced examiner. A basic examiner shall conduct the basic skills examinations for the emergency care attendant (ECA) and the emergency medical technician (EMT) level of certification and may conduct the basic skills examination for the emergency medical technician-intermediate (EMT-I) and the emergency medical technician-paramedic (EMT-P) level of certification. An intermediate examiner shall conduct the advanced skills examinations required for EMT-I level of certification but may conduct the basic skills examinations for the ECA or EMT level of certification. An advanced examiner shall conduct the advanced skills examinations required for EMT-P level of certification and may conduct the advanced skills examinations required for EMT-I level of certification or the basic skills examinations for the ECA or EMT level of certification.

(b) Certification. An examiner candidate shall:

(1) have a high school diploma or a general educational development certificate (GED);

(2) have EMS personnel certification as follows:

(A) be currently certified as at least an EMT and have achieved at least the state mean score for the applicant's most recent certification examination to be a basic examiner;

(B) be currently certified as at least an EMT-I and have achieved at least the state mean score for the applicant's

most recent EMT-I or EMT-P certification examination to be an intermediate examiner;

(C) be currently certified as a EMT-P and have achieved at least the state mean score for the applicant's most recent EMT-P certification examination to be an advanced examiner; or

(D) in lieu of EMS personnel certification, be a physician licensed to practice in the State of Texas or a registered nurse (RN) licensed to practice in the State of Texas;

(3) complete the application for examiner certification and include a nonrefundable fee of \$25 except a fee shall not be required if compensation is not received for examining students in the training course or program;

(4) complete the department approved EMS examiner training program;

(5) achieve a passing grade on the department's examiner examination. An examiner candidate who fails the examiner certification examination may retest one time provided that the retest is completed within 90 days of the initial examination;

(6) conduct a minimum of one examination session under the supervision of the department's designated evaluator after which time the candidate will be evaluated on his ability to administer and evaluate the department's skills examinations.

(c) Period of certification. After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of this subsection shall be certified as an examiner for two years commencing on the date of issuance of the certificate.

(d) Responsibilities.

(1) An examiner shall have the following responsibilities:

(A) conduct the examination in an objective manner according to the criteria and standards established by the department for each skill examined;

(B) validate the examination results on form(s) prescribed by the department; and

(C) submit prescribed form(s) and reports.

(2) An examiner shall not examine those candidates who may present a conflict of interest, e.g. candidates which the examiner prepared for the examination, relationship by blood or marriage, individual reciprocal relationship, or supervisor to employee relationship.

(e) Recertification.

(1) To be eligible for recertification the examiner shall:

(A) maintain EMS certification as required in subsection (b) of this section or professional licensure;

(B) attend seminars and regional EMS updates as required for examiners;

(C) conduct a minimum of 20 individual skills examinations per two years;

(D) have a satisfactory evaluation of the examination session(s) by a department designated evaluator;

(E) submit the application for recertification and a nonrefundable fee of \$25 except a fee shall not be required if compensation is not received for examining students in the training course or program; and

(F) maintain adherence to criteria and standards for objective conduction of the department's skills examinations required in §157.41 of this title (relating to Certification) and §157.45 of this title (relating to Recertification).

(2) After verification by the department of the information submitted by the examiner certificant, the examiner who meets the requirements of paragraph (1) of this subsection shall be recertified for two years commencing on the day following the expiration of the certificate.

*§157.64. Criteria for Revocation, Suspension, and Probation of Course Coordinator, Program Instructor, and/or Examiner Certification.*

(a) Course coordinator.

(1) Revocation. The department may revoke a course coordinator certificate for, but not limited to, the following reasons: if it finds that the course coordinator:

(A) fails to maintain emergency medical services (EMS) personnel certification at the appropriate level or professional licensure;

(B) fails to maintain recertification requirements as described in §157.61(f) of this title (relating to Course Coordinator Certification);

(C) falsifies the application for course coordinator certification;

(D) falsifies the course coordinator completion documents;

(E) repeats an offense which resulted in suspension and/or probation of the certificate as in paragraphs (2) and (3) of this subsection;

(F) cheats on the department's course coordinator examination;

(G) compromises the department approved course's examination process;

(H) fails to maintain the integrity of the course;

(I) falsifies the course approval application; or

(J) fails to maintain sponsorship with an EMS or EMS training entity.

(2) Suspension. The department may suspend a course coordinator certificate for, but not limited to, the following reasons: if it finds that the course coordinator:

(A) allows the use of inadequate equipment and/or inadequate class presentation;

(B) demonstrates a lack of supervision of program instructors and/or guest instructors;

(C) fails to process the course application and student documents within the time frames established in §157.77 of this title (relating to EMS Training Program and Course Approval);

(D) fails to maintain professionalism in the department approved course;

(E) issues a check for course coordinator certification which has been returned to the department for insufficient funds; or

(F) fails to make appointments for certification examination as required in §157.61(d)(12) of this title (relating to Course Coordinator Certification).

(3) Probation. For just and sufficient reasons presented by the certificant, the department may probate the suspension. Examples of just and sufficient cause may include:

(A) history of previous out-

standing courses;

(B) extenuating circumstances which affected the action of the certificant; and

(C) consideration of the needs of local service and/or area with regard to EMS personnel training.

(b) Program instructor.

(1) Revocation. The department may revoke a program instructor certificate for, but not limited to, the following reasons: if it finds that the program instructor:

(A) fails to maintain EMS personnel certification at the appropriate level;

(B) fails to maintain recertification requirements as described in §157.62(f) of this title (relating to Program Instructor Certification);

(C) falsifies the application for certification;

(D) compromises the department approved course's examination process;

(E) repeats an offense which resulted in suspension and/or probation of the certificate as described in paragraphs (2) and (3) of this subsection; or

(F) cheats on the department's program instructor examination.

(2) Suspension. The department may suspend a program instructor certification for, but not limited to, the following reasons: if it finds that the program instructor:

(A) fails to maintain professionalism in the course;

(B) fails to attend scheduled classes;

(C) fails to adhere to the knowledge objectives of the curricula required in §157.77 of this title (relating to EMS Training Program and Course Approval); or

(D) issues a check for program instructor certification which has been returned to the department for insufficient funds.

(3) Probation. For just and sufficient reasons presented by the certificant, the department may probate the suspension. Examples of just and sufficient cause may

include:

(A) history of previous outstanding course conduct;

(B) extenuating circumstances which affected the action of the certificant; and

(C) consideration of the needs of local service and/or area with regard to EMS personnel training.

(c) Examiner.

(1) Revocation. The department may revoke an examiner certification for, but not limited to, the following reasons; if it finds that the examiner:

(A) fails to maintain EMS personnel certification at the appropriate level;

(B) compromises the department's skills examination standards;

(C) fails to conduct the department skills examinations in an objective manner;

(D) fails to complete the department's skills examination forms;

(E) fails to maintain recertification as required in §157.63(e) of this title (relating to Examiner Certification);

(F) repeats an offense which resulted in suspension and/or probation of the certificate as described in paragraphs (2) and (3) of this subsection.

(2) Suspension. The department may suspend an examiner's certification for, but not limited to, the following reasons; if it finds that the examiner:

(A) fails to attend assigned department examination sessions;

(B) fails to maintain professionalism in the department's examination process;

(C) issues a check for examiner certification which has been returned to the department for insufficient funds; or

(D) tests a candidate who represents a conflict of interest.

(3) Probation. For just and sufficient reasons presented by the certificant, the department may probate the suspension. Examples of just and sufficient cause may include:

(A) history of previous outstanding performance on the conduction of the department's skills examinations;

(B) extenuating circumstances which affected the action of the certificant; and

(C) consideration of the needs of local service and/or area with regards to EMS personnel certification or recertification examinations.

*§157.65. Procedure for Revocation/Suspension of Course Coordinator, Program Instructor, and/or Examiner Certification.*

(a) If the department's Bureau of Emergency Management (bureau) proposes to revoke, suspend, and/or place on probation a course coordinator, program instructor, or examiner, the bureau shall notify the course coordinator, program instructor, or examiner by registered or certified mail at his or her last known address as shown in the bureau's records. The notice must state the alleged facts or conduct to warrant the action and state that the course coordinator, program instructor, or examiner has an opportunity to request a hearing.

(b) The course coordinator, program instructor, or examiner may request a hearing within 15 days after the date of notice. This request shall be in writing and submitted to the bureau chief. A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

(c) If the course coordinator, program instructor, or examiner does not request a hearing in writing after being sent the notice of the proposed action, the course coordinator, program instructor, or examiner is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.

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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Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

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For further information, please call: (512) 458-7550

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**TITLE 28. INSURANCE**  
**Part I. State Board of Insurance**

**Chapter 5. Property and Casualty Insurance**

**Subchapter G. Workers' Compensation Insurance**

**Plan of Operation of the Texas Market Assistance Program (MAP) for Workers' Compensation Insurance**

• **28 TAC §§5.6601-5.6603, 5.6605-5.6615**

The State Board of Insurance proposes new §§5.6601-5.6603 and §§5.6605-5.6615, concerning the plan of operation of the market assistance program for workers' compensation insurance. The new sections are necessary to implement the program mandated by the Insurance Code, Article 5.76-2, §5.01. The Texas Market Assistance Program (MAP) is a voluntary mechanism to be created by the State Board of Insurance for the purposes of assisting qualified businesses in obtaining workers' compensation insurance in the voluntary market; reducing the number of risks insured by the Texas Workers' Compensation Insurance Facility Employers' Rejected Risk Fund (formerly the Texas Workers' Compensation Assigned Risk Pool); and collecting statistical data to be used in determining program effectiveness and in making recommendations regarding the availability of workers' compensation insurance in Texas. The MAP will be constituted as a market assistance program, not as a carrier capable of assuming insurance risks. While it is anticipated that the MAP will be able to reduce problems of voluntary workers' compensation insurance availability in Texas, it is assumed that a percentage of risks utilizing the MAP will be unable to obtain coverage in the voluntary market. These risks will be assigned through the Texas Workers' Compensation Insurance Facility. The proposed sections set forth the authority for this plan to operation, provide definitions of applicable terms, set forth the effective date and eligibility requirements, indicate the review fee, set forth and detail the review process, set forth the duties of the market assistance program coordinator, and detail the procedures under which data will be collected and maintained. In §5.6614 the board would adopt by reference request for market search forms to be used by eligible participants. The board has filed with the Office of the Secretary of State, Texas Register Section, copies of the forms proposed for adoption by reference. Other copies may be obtained from the Texas Workers' Compensation Market Assistance Program, State Board of Insurance, Attention: MAP Coordinator, P.O. Box 149092, Austin, Texas 78714-9092.

W. R. "Dusty" Rhodes, MAP project officer, has determined that, for the first five-year period the proposed sections are in effect, there will be no fiscal implication for local government as a result of enforcing or administering these sections. There will be a fiscal implication for state government because of an increase in staff and related administrative costs for the State Board of Insurance. Administering the program will also require the initial purchase and continuing maintenance of necessary automation. The expected cost

for the first five-year period the proposed sections are in effect is \$749,980. There will be no effect on local employment or local economy.

Mr. Rhodes also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be a reduction in the number of Texas businesses unable to obtain workers' compensation insurance in the voluntary market, along with a reduction in the number of risks insured by the Texas Workers' Compensation Employers' Rejected Risk Fund. It is also anticipated that the collection and maintenance of data will enable the program to make future recommendations regarding the market availability of workers' compensation insurance in Texas. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than as statutorily created.

Comments on the proposal may be submitted to W. R. "Dusty" Rhodes, MAP Project Officer, State Board of Insurance, Mail Code 012-2, P.O. Box 149092, Austin, Texas 78714-9092.

The new sections are proposed under the Insurance Code, Article 5.76-2, §5.01, which directs the State Board of Insurance to establish a voluntary market assistance program and to adopt rules as necessary to implement the statute.

**§5.6601. Definitions.** The following words and terms, when used in §5.6603 and §§5.6605-5.6615 of this title (relating to Processing Fee; Data Collection Responsibilities of the MAP Coordinator; Additional Responsibilities of the MAP Coordinator; Types of Statistical Information Maintained; Use of Data; Eligibility; Review Process; Participating Insurers; Confidentiality; Policy Forms and Terms; Request for Market Search Forms; and Agents) shall have the following meanings, unless the context clearly indicates otherwise:

**Automated market consultation program**—A screening process using artificial intelligence software maintained on the automated system; data contained in the program includes the risk acceptance criteria for participating insurers.

**Board**—The State Board of Insurance.

**Eligible participants**—Those risks which have been unable to secure coverage except through the Texas Workers' Compensation Insurance Facility Employers' Rejected Risk Fund.

**MAP**—The market assistance program for workers' compensation insurance mandated by the Insurance Code, Article 5.76-2, §5.01, and implemented within the Workers' Compensation Division of the State Board of Insurance.

**MAP coordinator**—The person directing the daily operation of the MAP.

**Originating agent**—A local recording agent who does not hold an appointment to represent the ultimate insurer, as specified by the Insurance Code, Article 21.14, or a salaried representative.

**Participating insurer**—Any insurance company admitted to do business in Texas and currently writing workers' compensation insurance in the voluntary market in Texas.

**Request for market search**—A form submitted to the MAP containing risk information for input into the automated market consultation program.

**Risk acceptance criteria**—Requirements established by each participating insurer that are used to determine whether the insurer will accept a submitted risk.

**TWCIF—Texas Workers' Compensation Insurance Facility.**

**§5.6602. Effective Date.** This plan of operation shall take effect on January 1, 1991.

**§5.6603. Application Fee.**

(a) MAP operations shall be at least partially self-supporting. Each submission to the program shall be accompanied by a processing fee assessed as follows:

(1) risks developing estimated annual premiums up to \$10,000 = \$50; and

(2) risks developing annual premiums in excess of \$10,000 = \$100.

(b) Standard premium is defined as the state premium on the basis of authorized rates, any experience rating modification, loss constants, and minimum premiums. The expense constant shall be excluded from determination of the standard premium.

(c) The board may adjust the amount of such fees if the board determines they are excessive or inadequate.

(d) Fees required by this section shall be paid by cash, money order, or check. Money orders and checks shall be made payable to the State Board of Insurance. The MAP coordinator shall have the following duties with respect to data collection:

(1) maintaining the automated market consultation program to ensure that each participating insurer's risk acceptance criteria are maintained and updated as required;

(2) obtaining and maintaining information on any type of risk experiencing voluntary workers' compensation insurance availability problems and reporting these problems to the board; and

(3) compiling and reporting information.

**§5.6606. Additional Responsibilities of the MAP Coordinator.** The MAP coordinator shall have the following responsibilities in relation to the processing of requests for market search:

(1) receiving, reviewing, pro-

cessing, and maintaining files of requests for market search submitted to the MAP;

(2) ensuring that risk acceptance criteria for all participating insurers are current;

(3) analyzing each request for market search and maintaining file information on the following:

(A) source of each submission (agent, insured, etc.);

(B) length of time required for placement;

(C) participating insurers who accept or decline submitted risks;

(D) limits or modifications in insurance required for placement (e.g., deductible required);

(E) nature of the risk; and

(F) reasons the risk was unable to secure voluntary coverage initially, including names of companies that declined;

(4) compiling and reporting information from each submission to assist in the data collection required by this section and §5.6607 of this title (relating to Types of Statistical Information Maintained);

(5) maintaining confidentiality required under §5.6612 of this title (relating to confidentiality); and

(6) answering questions from insureds, insurers, the board, the legislature, and the general public concerning the operation of the MAP.

**§5.6607. Types of Statistical Information Maintained.** Reports containing the following statistical information will be generated on a monthly, quarterly, and annual basis for the purpose of maintaining program efficiency:

(1) number of requests for market search;

(2) number of initial matches made;

(3) breakdown of matches made including, but not limited to:

(A) governing class code;

(B) loss ratio;

(C) premium;

(D) geographical location;



(E) new/existing business;  
and

(F) company;

(4) number of risks written in the voluntary market as a result of the program (listed by company);

(5) number of risks meeting criteria, but declined by company for other reasons (e.g., capacity);

(6) number of participants ultimately referred to TWCIF (new business only);

(7) number of risks written, but with restrictions (employer liability amount, deductible requirement, etc.); and

(8) number of insurers participating in the MAP, including number of new companies and number of companies withdrawing from the program.

**§5.6608. Use of Data.** Data collected and maintained in connection with this program will be used to monitor the operation of the program with the object of reducing the number of risks insured by the TWCIF Employers' Rejected Risk Fund.

**§5.6609. Eligibility.** The MAP shall accept requests for market search only from risks unable to secure coverage in the voluntary market, including risks initially assigned to, or currently insured by, the TWCIF. Any Texas-domiciled business that has been declined workers' compensation insurance coverage by an insurer in the voluntary market may request MAP assistance. A risk that has received a quote through the voluntary market is not eligible to utilize the MAP, since the program is designed to assist availability rather than affordability of coverage.

**§5.6610. Review Process.**

(a) To provide adequate time for the MAP screening process and company underwriting, requests for market search should be submitted at least 30 days prior to current policy expiration.

(b) If submission is within 30 days of the expiration date of current coverage, an eligible participant should also be prepared to submit an application and required deposit premium to the TWCIF. This will avoid a lapse in coverage, should the MAP market search extend past the policy expiration date. If a voluntary insurer is found after the TWCIF policy becomes effective, an eligible participant has the option to continue the TWCIF policy or accept coverage through the voluntary participating insurer. If voluntary coverage is selected, the TWCIF policy will be cancelled on a pro-rata basis.

(c) An eligible participant desiring market assistance shall submit a request for

market search, along with appropriate fee, to the MAP for review and possible placement. Eligible participants currently being insured through the Texas Workers' Compensation Assigned Risk Pool will receive an informational brochure, with their annual request for continuous coverage notice, detailing the procedure for requesting MAP assistance. Risks currently insured through the TWCIF who are seeking voluntary coverage through the MAP are required to furnish a copy of the expiring policy along with the request for market search. Risks who are pending initial assignment to the request for market search. Risks who are pending initial assignment to the fund must furnish to the MAP a copy of the non-renewal notice must and identify those companies that have declined coverage. Risks who have not had previous coverage shall indicate this fact on the request for market search form. Each submission will be reviewed for accuracy and completeness of information. Submission data will be verified against current file information maintained by the Classification Section of the Workers' Compensation Division of the State Board of Insurance.

(b) An initial risk acceptance criteria survey will be sent to each participating insurer. The insurer shall provide information to be entered into the automated market consultation program knowledge base. A potential match between an eligible participant and a participating insurer will be accomplished by utilizing corresponding specific data within the criteria. If it is acknowledged that risks passing the initial screening do not bind a participating insurer, and any final determination will have to come from the participating insurer. Participating insurers whose criteria match information on a request for market search will appear on the message report with their respective rankings. This will enable MAP personnel to identify participating insurers to which submissions should be forwarded for further review. Additional surveys will be sent periodically to insure that current information is maintained. Each participating insurer may also notify the MAP independently as their requirements change.

(c) When potential participating insurers have been identified, a copy of the request for market search will be forwarded to each insurer so identified for further underwriting review. Each such insurer shall be required to advise the MAP as to whether or not the insurer will accept the risk.

(f) If a suitable insurer is located, all further negotiations shall be between the eligible participant and the participating insurer. When a participating insurer accepts a risk, the insurer shall notify the MAP.

**§5.6611. Participating Insurers.**

(a) If it is the responsibility of a participating insurer to evaluate each request

for market search submitted to the insurer and to provide a written response to the MAP coordinator. Each participating insurer has the right to individually evaluate a risk and to decline coverage if a determination is made that such risk does not satisfactorily meet the participating insurer's underwriting guidelines.

(b) If a participating insurer declines to write a submitted risk which meets general guidelines, the participating insurer may provide reasons to the MAP coordinator on the appropriate form. These reasons for declination are for statistical purposes and to assist the MAP coordinator in adjusting the automated market consultation program to reflect changing requirements.

**§5.6612. Confidentiality.**

(a) Subject to the provisions of the Texas Open Records Act (Texas Civil Statutes, Article 6252-17a), the MAP coordinator shall maintain as confidential all requests for market search files and related documents of the MAP, as may be required by law.

(b) Access to individual MAP files shall be allowed only to the affected participant, to such participant's agent, or to a participating insurer requested to review the risk.

**§5.6613. Policy Forms and Terms.**

(a) Policies written as a result of the MAP review shall be on forms normally used by a participating insurer and shall be subject to such limits and terms as the insurer offers. Each participating insurer is allowed, for statistical purposes, to code policies accepted through the MAP. All policies, including limits and terms, must comply with rules of the State Board of Insurance and any applicable statute.

(b) Insurers' questions should be directed to the MAP Coordinator, State Board of Insurance, P.O. Box 149092, Austin, Texas 78714-9092.

**§5.6614. Request for Market Search Forms.**

(a) All requests for market search must be submitted on MAP forms which the board adopts by reference. All submissions must be completed in their entirety. Incomplete and/or incorrect requests will be returned without action. These submissions may be resubmitted with the requested information included.

(b) All properly executed requests for market search must be addressed to Texas Workers' Compensation Market Assistance Program, State Board of Insurance, Attention: MAP coordinator, P.O. Box 149092, Austin, Texas 78714-9092.

**§5.6615. Agents.** An originating agent may complete a request for market search

on behalf of an eligible participant for submission to the MAP; however, a licensed local recording agent need not be appointed by an insurer willing to accept business offered by the agent for review by the MAP. Direct or indirect payment of commission must be in strict compliance with the Insurance Code, Article 21.07, §1(b). Commissions paid to non-appointed agents shall be consistent with commissions paid to appointed agents.

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 September 21, 1990.

TRD-9010007  
Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Earliest possible date of adoption: October 29, 1990

For further information, please call: (512) 463-6327

## Chapter 19. Agents' Licensing

### Subchapter M. Licensing and Regulation of Managing General Agents

#### • 28 TAC §§19.1201-19.1205

The State Board of Insurance proposes new §§19.1201-19.1205, concerning licensing and regulation of managing general agents. The new sections are necessary to effectively regulate the activities of managing general agents in compliance with the mandates of the Managing General Agents' Licensing Act (the Insurance Code, Article 21.07-3). New §19.1201 sets forth general provisions concerning these new sections and concerning regulation of managing general agents under these new sections. New §19.1202 defines the terms "Act," "board," "carrier," "commissioner," "company," "insurer," "MGA," and "managing general agent." The definitions are generally consistent with definitions in the Managing General Agents' Licensing Act (the Act) and include a clarification of the definition of managing general agent (MGA) in the Act. This clarification is necessary to assure that it is clear that a non-resident agent cannot act as an MGA. New §19.1203 adopts and incorporates by reference certain forms to be utilized in fulfilling regulatory filing requirements. The board has filed copies of these forms with the Secretary of State's Office, Texas Register Division. Persons desiring copies of the forms can obtain copies from the Agents' Licensing Division, Mail Code 014-3, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. New §19.1204 sets forth mandatory provisions to be included in each contract between an MGA and an insurer. New §19.1205 sets forth requirements for utilization of escrow accounts for the placement of fiduciary monies and other monies. This proposed section sets forth methods of accounting for these funds to the State Board of Insurance and to the insurer that the MGA represents.

Jack Evins, deputy insurance commissioner for licensing, has determined that, for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government or for small businesses as a result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Mr. Evins also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be more effective regulation of the activities of managing general agents, in accordance with the Managing General Agents' Licensing Act. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Jack Evins, Deputy Insurance Commissioner for Licensing, Mail Code 014-1, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new sections are proposed under the Insurance Code, Article 21.07-3, §3A and §21, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 21.07-3, §3A, provides that the State Board of Insurance may promulgate rules providing requirements for contracts between managing general agents and insurers. The Insurance Code, Article 21.07-3, §21, provides that the State Board of Insurance may establish and amend reasonable rules and regulations for administration of the Managing General Agents' Licensing Act. Texas Civil Statutes, Articles 6252-13a, §4 and §5, require and authorize each state administrative agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribe the procedure for adoption of rules by state administrative agencies.

#### §19.1201. General Provisions.

(a) Statutory basis and purpose. This subchapter implements the Managing General Agents' Licensing Act, (the Insurance Code, Article 21.07-3). The Managing General Agents' Licensing Act (the Act) was first enacted in 1967 as Chapter 757 at page 2048 of the Acts of the Sixtieth Legislature and first became effective on August 28, 1967.

(b) Severability. Where any terms or sections of this subchapter are determined by a court of competent jurisdiction to be inconsistent with the Managing General Agents' Licensing Act, as identified by this subchapter, the Act will apply and the remaining terms and provisions of this subchapter shall continue in effect.

(c) Effect of rules. The sections set in this subchapter are prescribed to govern the performance of appropriate statutory and regulatory functions and are not to be construed as limitations upon the exercise of statutory authority by the State Board of Insurance (the board) or the Commissioner of Insurance (the commissioner).

(d) Violation. A violation of any lawful rule, regulation, or order of the Com-

missioner or Board made pursuant to this subchapter constitutes a violation of the Managing General Agents' Licensing Act.

(e) Effective date. This subchapter becomes effective at 12:01 a.m. on February 1, 1991.

§19.1202. Definitions Concerning Licensing and Regulations of Managing General Agents. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act—The Managing General Agents' Licensing Act (the Insurance Code, Article 21.07-3).

Board—The State Board of Insurance.

Carrier—A company, as defined in this section.

Commissioner—The Commissioner of Insurance.

Company—Any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, county mutual insurance company, Lloyds, or other insurance carrier licensed to transact business in the State of Texas, excepting, however, those which write only life, health and accident insurance and variable life insurance and variable annuity contracts.

Insurer—A company, as defined in this section.

MGA—A managing general agent, as defined in this section.

Managing general agent—Any person, firm, or corporation who has supervisory responsibility for the local agency and field operations of an insurance company or carrier within this state, or any part thereof, or who is authorized by a company or carrier to accept or process in its behalf insurance policies produced and sold by other agents. The term does not include an agent licensed under the Insurance Code, Article 1.14-2, 21.11, or 21.14, unless that agent accepts 50% or more of that agent's total annual business or does more than \$500,000 of total annual business, whichever amount is less, as measured by premium volume from insurance policies produced and sold by other agents. An agent licensed under the Insurance Code, Article 21.11, who does business in conformance with the Insurance Code, Article 21.11, is not considered to derive any income from policies produced by other agents, as that term is used in the Managing General Agents' Licensing Act, §2(a); however, the agent is considered to derive its income from policies sold by such other agents. A managing general agent may perform any of the following acts for a company or carrier: receive and pass upon daily reports and monthly accounts; receive and be responsible for agency balances; handle the adjustment of losses; or, appoint or direct local recording agents, state agents, or special agents within this state, or any part thereof.

*§19.1203. Relating to Licensing and Regulation of Managing General Agents.* The State Board of Insurance adopts and incorporates herein by reference forms for use in administrative licensing and regulation of managing general agents. These forms are published by the State Board of Insurance and may be obtained from the Agents' Licensing Division, Mail Code 014-3, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The forms adopted by reference are specifically identified in paragraphs (1)-(3) of this section as follows:

(1) Appointment Application for Licensing of Managing General Agents;

(2) Notice to State Board of Insurance by Managing General Agents or Surplus Lines Agents; and

(3) Notice to State Board of Insurance by Insurance Companies Licensed under Authority of the Insurance Code, Chapters 5, 6, 7, 8, 15, 16, 17, 18, or 19.

*§19.1204. Contract Provisions.* The provisions required by paragraphs (1)-(21) of this section are mandatory and must be included in each contract between a managing general agent and an insurer. These provisions are mandated not in order to limit the negotiation process between an MGA and an insurer, but in order to assure that minimum standards are utilized in each contract. Each MGA contract may contain provisions in addition to those listed in this section.

(1) Every oral contract between an MGA and an insurer in effect prior to the effective date of this subchapter must be reduced to writing and must comply with the Act and with the provisions of this subchapter within 90 days following the effective date of this subchapter, regardless of the intended renewal date of the contract.

(2) The contract must state that all amendments and changes to the contract must be in writing and specify the effective date.

(3) The contract shall specify the party that is responsible for carrying out each particular function; and if both parties share responsibility for a particular function, the contract shall specify the extent of each party's responsibility.

(4) The contract shall include a provision for termination of the contract; may define events of default; may specify cures for events of default; and may define the rights and obligations of parties during a period of default. The contract must state that the insurer may suspend the authority of the MGA during the pendency of any dispute regarding any event of default.

(5) The contract must specify the frequency with which the MGA must remit funds due to the insurer. In no event may this period of time exceed 90 days from that and of the month in which the

coverage is effective.

(6) The contract must state that, on not less than a quarterly basis, the MGA shall submit an account report to the insurer detailing all transactions as set out in the Insurance Code, Article 21.07-3, §3C(a). The contract must provide that the MGA may satisfy this requirement by confirming the insurer's rendering of such account.

(7) The contract must specify whether or not the MGA may appoint or terminate the appointment of agents.

(8) The contract must state that an MGA cannot bind reinsurance or retrocessions on behalf of the insurer, cannot commit the insurer to participation in insurance or reinsurance syndicates, and cannot collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer without the prior written approval of the insurer. The contract must state that, if prior approval is given, the MGA must promptly forward a report to the insurer.

(9) The contract must state that the MGA cannot assign the contract directly or indirectly in whole or in part without prior written approval of the insurer.

(10) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(11) The contract must include, if applicable, appropriate underwriting guidelines including the maximum annual premium volume; the basis of the rates to be charged; the lines of insurance which may be written; maximum limits of liability; applicable exclusions; territorial limitations; policy cancellation provisions; the maximum policy period; and control of policy issuance.

(12) The contract shall prohibit the MGA from ceding reinsurance on behalf of the insurer to a company that would not qualify for reinsurance credit under the Insurance Code, Article 3.10 or Article 5.75-1. The contract must specify the conditions under which the MGA may place reinsurance and must comply with all provisions of the Insurance Code, including Article 21.07-3, §3B.

(13) The contract must provide that the MGA shall not be required to return, as commission or return commission, monies greater than:

(A) the total commission paid or otherwise payable to the MGA; or

(B) the amount of ultimate net loss the insurer retains net of all reinsurance on the policies subject to the contract.

(14) The contract must provide that, if a provision or agreement allows for payment of profit sharing before all claims are closed, including payment of all losses

and loss adjustment expenses, then no payment shall be made before:

(A) one year from the expiration, anniversary, or closing date on which premiums are based for property, inland marine, or auto physical damage; or

(B) three years from such date for automobile liability;

(C) five years from such date for liability other than automobile; or

(D) two years from such date for any other non-liability lines.

(15) The contract must provide that, if the MGA has claim settlement authority including the setting of loss reserves, the insurer must review and verify every open reserve prior to calculation and payment of such profit sharing under paragraph (14) of this section.

(16) The contract must provide that, if the MGA has claim settlement authority including the setting of loss reserve, the insurer may elect to:

(A) make no payment of the profit sharing under paragraph (14) of this section until all claims are closed; or

(B) pay a portion of the profit sharing on the dates shown in paragraph (14) of this section and the remaining portion(s) on future anniversaries of such dates until all claims are closed.

(17) The contract must specify that the records to be maintained separately for each insurer as specified in the Insurance Code, Article 21.07-3, §3C(b), include underwriting files and that the separate records of business for each insurer must be maintained for at least five years or until the completion of a financial examination by the insurance department of the state in which the insurer is domiciled, whichever is longer.

(18) The contract must state whether or not the MGA has claims settlement authority and, if so, must state the dollar amount, net of reinsurance, which in no event shall exceed 1.0% of the insurer's policyholder surplus as reported in the latest Annual Statement on file with the State Board of Insurance.

(19) If a contract permits the managing general agent to settle claims on behalf of the insurer, the contract shall state that the managing general agent must send a copy of the claim file to the insurer within 30 days of determination that:

(A) the claim potentially involves a reinsurer;

(B) the claim involves a coverage dispute.

(20) The contract must specify that the insurer shall conduct and have on file an annual examination of each MGA with which it has done business during the previous year; provided, however, that periodic examinations shall be conducted as required by paragraph (21) of this subsection. The examination must be in a form adequate to provide the Commissioner with the information required under subparagraphs (A)-(E) of this paragraph; must be made available to the Commissioner for review; and must, at a minimum, contain the following information required by subparagraphs (A)-(E) of this paragraph:

(A) claims control procedures;

(B) timeliness of claims payments, i.e., lag time between date claim is reported and date claim is paid;

(C) timeliness of premium reporting and collection;

(D) compliance with underwriting guidelines; and

(E) reconciliation of policy inventory.

(21) The contract must specify that the insurer shall conduct a periodic examination of each MGA within 90 days of the date on which the MGA's gross premium volume written since the date of the last examination exceeds \$1,000,000 or 25% of the insurer's Texas gross premium volume as shown on the last Annual Statement filed with the State Board of Insurance.

(22) The contract must state that the MGA must notify the insurer in writing within 30 days if there is a change in:

(A) ownership of 10% or more of the outstanding stock of the MGA;

(B) any principal officer of the MGA; or

(C) any director of the MGA.

#### §19.1205. Escrow Accounts.

(a) Separate and identifiable escrow accounts are allowed if such accounts meet all requirements of the Insurance Code, Article 21.07-3, and this subchapter.

(b) The managing general agent shall place fiduciary monies from or in any escrow account into accounts in a bank that is a member of the Federal Reserve System

and that has all accounts insured by the Federal Deposit Insurance Corporation. Such accounts may consist of any one or all of the following vehicles listed in paragraphs (1)-(10) of this subsection.

(1) checking accounts;

(2) pass book savings accounts;

(3) money market accounts;

(4) certificates of deposit;

(5) United States Treasury bills, notes, or bonds;

(6) real estate purchase order agreements for which the underlying collateral is United States government securities;

(7) non-assessable money market mutual funds which are primarily invested in United States government securities;

(8) non-assessable insured mutual funds which are primarily invested in short-term debt obligation;

(9) short-term tax-exempt notes which are rated no less than MIGI by Moody's or SP-1+ by Standard & Poor's and which are collateralized by insurance, by letters of credit, or by direct government obligations;

(10) any other investment vehicle with the prior written consent of the insurer.

(c) The MGA shall not place fiduciary monies from or in any escrow account into accounts:

(1) that consist of common or preferred stock or so-called junk bonds, or

(2) that are primarily invested in common or preferred stock or so-called junk bonds.

(d) Monies due a company and monies held for claims settlement are payable into the escrow account required by the Insurance Code, Article 21.07-3, §3C(c). Monies due a company are gross premiums received less local recording agents' commissions payable and managing general agents' commissions payable.

(e) All withdrawals from the escrow account required by the Insurance Code, Article 21.07-3, §3C(c), must be evidenced by general ledger accounts. Funds may be withdrawn from the escrow account only for the following purposes listed in paragraphs (1)-(5) of this subsection:

(1) accounts due companies;

(2) commissions, including expenses, such as fees for inspections premium audits, and motor vehicle reports, specified within the terms of the MGA contract;

(3) return premiums;

(4) claim settlement expenses;

(5) money deposited in error.

(f) If a contract allows an MGA to use or take as an offset any money that is or should have been deposited in an escrow account, the contract must be submitted to the commissioner so that the information therein will remain on file available to the commissioner's staff. The contract must specify what uses and/or offsets are allowed.

(g) Ownership of the interest on the escrow account required by the Insurance Code, Article 21.07-3, §3C(c), belongs to the MGA unless otherwise specified in the contract.

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 September 24, 1990

TRD-9010012

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Earliest possible date of adoption: October 29, 1990

For further information, please call: (512) 463-6327

## Part II. Texas Workers' Compensation Commission

### Chapter 131. Benefits-Lifetime Income Benefits

#### • 28 TAC §§131.1-131.4

The Texas Workers' Compensation Commission proposes new §§131.1-131.4, concerning lifetime income benefits.

Section 131.1 indicates when lifetime income benefits begin to accrue and provides that payment of lifetime income benefits ceases on the death of the employee; indicates when an insurance carrier is required to begin payment of the benefits or to notify the commission of the reasons the employee is not considered eligible; provides that a medical report from a licensed doctor constitutes notice; indicates that temporary, impairment or supplemental benefits cease when lifetime income benefits begin to accrue; and allows an employee to petition for a benefit review conference upon the denial of the benefits. The new section also allows the commission to require the employee to submit to a medical examination. Section 131.2 provides the method of calculating lifetime income benefits and provides that the lifetime income benefits payable shall not exceed the weekly maximum benefit under the Act, §4. 11. The new section also provides for an annual 3.0% increase in the benefits without regard to the maximum weekly benefit limit and without further action by the commission.

Section 131.3 requires an insurance carrier to petition the commission for payment of lifetime income benefits from the subsequent injury fund when a claimant may be eligible for those benefits from the fund; sets forth the information required to be included in the

petition and the grounds on which the commission must order payment of lifetime income benefits from the subsequent injury fund; requires the insurance carrier to pay all of the benefits to which the employee would have been entitled had only the subsequent and not the previous injury existed; and requires the subsequent injury fund to pay the remaining lifetime income benefits for which the insurance carrier is not liable. Section 131.4 sets forth the requirements that must be met for the termination of lifetime income benefits for a change in the claimant's condition. The new section prohibits the insurance carrier from contacting the employee about the cessation of benefits or from stopping payment without commission approval; describes the procedure an insurance carrier must follow in requesting the cessation of benefits based on a change in condition and the standard of proof that must be met. The new section permits review only if the lifetime income benefits were awarded based on the existence of a condition listed in the Act, §4.31(a)(1), (5), (6) or (b). The section requires review of the request by the commission; provides for termination of benefits based on a proven change of condition, and for the time period in which the carrier must terminate lifetime benefits after receipt of an order from the commission; and provides for the commission to order the payment of any other income benefits to which the claimant may be entitled in the order granting termination of the lifetime income benefits.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on employment, locally or statewide, as a result of implementing the sections.

Mr. Looney also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. There will be no effect on small businesses. There is no anticipated additional economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1267. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act.

#### *§131.1. Initiation of Lifetime Income Benefits.*

(a) Lifetime income benefits begin to accrue the day after the employee has met one of the conditions listed in the Workers' Compensation Act (Act), §4.31(a) or (b).

(b) Not later than seven days after the date the insurance carrier receives writ-

ten notice that the employee is eligible for lifetime income benefits, the insurance carrier shall begin payment of those benefits or shall notify the commission and the employee in writing of the reasons why the carrier contends that the employee is not eligible for lifetime income benefits.

(c) A medical report from a licensed doctor that indicates that the employee has met one of the conditions listed in the Act, §4.31(a) or (b) shall be considered written notice under this section.

(d) An employee eligible to receive lifetime income benefits shall accrue no more temporary, impairment, or supplemental income benefits as of the date lifetime income benefits begin to accrue.

(e) Payment of the lifetime income benefits shall be made until the death of the employee, except as provided in §131.4 of this title (relating to Termination of Lifetime Income Benefits For Change in Condition).

(f) An employee who has been denied lifetime income benefits may petition the commission for a benefit review conference under the Act, §6.12. After receiving the petition, the commission may require an employee to submit to a medical examination under the Act, §4.16.

#### *§131.2. Calculation of Lifetime Income Benefits.*

(a) Lifetime income benefits shall be calculated by multiplying the employee's average weekly wage by .75. The lifetime income benefit payable each week under this formula shall not exceed the weekly maximum benefit under the Workers' Compensation Act, §4.11.

(b) Each year on the anniversary date of the day lifetime income benefits began to accrue, the amount of those benefits shall be increased by 3.0%. The employee is entitled to the annual increase without regard to the limits imposed by the maximum weekly benefit. The increase shall be paid without further action by the commission.

#### *§131.3. Carrier's Petition For Payment Of Benefits By The Subsequent Injury Fund.*

(a) When a claimant may be eligible for lifetime benefits from the subsequent injury fund, the insurance carrier shall petition the commission for payment of lifetime income benefits from the subsequent injury fund. The petition shall be in writing and contain the following:

(1) the employee's name and social security number;

(2) the date of each injury;

(3) the workers' compensation number assigned to the claim (if any) for each injury;

(4) the name and address of the employer for whom the employee was working at the time of each injury; and

(5) any information upon which the carrier bases its request.

(b) The commission shall order the payment of lifetime income benefits from the subsequent injury fund if it finds that the effects of the two injuries combined entitle the employee to lifetime income benefits.

(c) The insurance carrier shall pay to the employee all of the benefits to which the employee would have been entitled had only the subsequent and not the previous injury existed.

(d) The subsequent injury fund shall compensate the employee for the remaining lifetime income benefits for which the insurance carrier is not liable.

#### *§131.4. Termination Of Lifetime Income Benefits For Change In Condition.*

(a) After lifetime income benefits have been awarded, the insurance carrier shall not contact an employee regarding cessation of benefits, or shall not cease payment of those benefits, without the approval of the commission.

(b) If the insurance carrier believes a change in condition has occurred and the medical conditions in the Workers' Compensation Act, §4.31(a)(1), (5), (6), or (b), no longer exist, the carrier may request the commission to order cessation of payment of lifetime income benefits. A copy of the request shall be mailed to the injured employee. The request shall describe in detail the factual basis for the contention that the condition of the injured employee has changed.

(c) The insurance carrier must present clear and convincing evidence to the commission that the employee's medical condition has changed and a medical evaluation is warranted.

(d) The commission shall review each request and if a change in the condition has occurred, the commission shall order termination of lifetime income benefits.

(e) The carrier shall terminate payment of lifetime income benefits not later than the seventh day after the date on which the commission provides a copy of the order to the carrier's representative.

(f) If, when lifetime income benefits are terminated, the injured employee is still eligible for other income benefits based on the injury, the commission shall order the carrier to pay the benefits as part of the order granting termination.

(g) A request for review may be made only if lifetime income benefits were awarded based on the existence of a condition in the Act, §4.31(a)(1), (5), (6), or (b).

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 September 24, 1990

TRD-9010017

Susan M. Kelley  
General Counsel  
Texas Workers'  
Compensation  
Commission

Earliest possible date of adoption: October 29, 1990

For further information, please call: (512) 440-3973

◆ ◆ ◆  
**TITLE 31. NATURAL RE-  
SOURCES AND CON-  
SERVATION**

**Part II. Parks and Wildlife  
Department**

**Chapter 59. Parks**

**Operation and Leasing of Park  
Concessions**

• 31 TAC §59.105

The Texas Parks and Wildlife Commission proposes an amendment to §59.105, concerning the types of concession contracts. This amendment will permit the executive director, rather than the commission, to approve all contracts and their renewal, termination, amendment, transfer or assignment.

Robert C. Hauser, director, Park Operations, 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.

Mr. Hauser 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 not be applicable, as the public is relatively unaffected by this particular proposed section. 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 to Robert Hauser, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4889.

The amendment is proposed under the Texas Parks and Wildlife Code, §13.015, and Texas Civil Statutes, Article 6252-13a, which provides the Texas Parks and Wildlife Commission with the authority to make regulations governing the granting of park concessions.

*§59.105. Types of Concession Contracts.*

(a) A standard form contract, approved and adopted by the commission and made a part of its policy shall be used to grant major concession rights and privileges when the concessioner is required to make

sizable investments in merchandise inventories, furnishings or equipment, and maintenance or repair of state-owned buildings and structures. [Such contracts may be granted only by the commission, unless otherwise provided in its policy. The contract cannot be renewed, terminated, amended, transferred, or assigned except by the approval of the commission. The enforcement of all other contract requirements and provisions is delegated to the executive director or his duly authorized representative.]

(b) A revocable concession permit form, approved and adopted by the commission and made a part of its policy, shall be used to grant minor concession privileges when only small, temporary, and removable equipment and facilities are required. The executive director or his designee is authorized to execute this type permit to provide visitor services which would include merchandise vending machines, miscellaneous coin-operated machines, recreational rental equipment, and other miscellaneous services or accommodations the public has a right to expect and the executive director deems appropriate. A prospectus announcing the availability of this type of concession will not be issued.

(c) **The granting, renewal, termination, amendment, transfer, assignment, and enforcement of all concession contract requirements and provisions of such contracts is delegated to the executive director.**

(d) **The director, at his or her option, may terminate a contract if he or she determines that a material breach of the contract has occurred.**

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 September 20, 1990.

TRD-9009784

Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: October 29, 1990

For further information, please call: 1-800-792-1112, ext. 4505 or (512) 389-4505

◆ ◆ ◆  
**Chapter 65. Wildlife**

• 31 TAC §§65.251-65.254

The Texas Parks and Wildlife Commission proposes the repeal of §§65.251-65.254, concerning transporting, shipping, and exporting of bobcat pelts. New rules are proposed that will provide fees for bobcat pelt tags, bobcat dealer permits, and provide a labeling system for bobcat pelts that are taken for purposes other than commercial pelt sale.

Robin Riechers, staff economist, also has determined that for each year of the first five

years the repeals are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the repeals.

Mr. Riechers, staff economist, has determined that for the each year of the first five-years the repeals the public benefit anticipated as a result of enforcing the repeals will be to permit new rules to be adopted. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Dr. Brent Ortego, Nongame Resources Program Director, Texas Park and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4772 or (512) 389-4772.

The repeals are proposed under the Texas Parks and Wildlife Code, Chapter 67, which provides the Texas Parks and Wildlife Commission with the authority to establish by regulation limitations of the taking, possession, transportation, exportation, sale, and offering for sale of nongame fish and wildlife that the department consider's necessary to manage these species.

*§65.251. Definitions*

*§65.252. Limitations.*

*§65.253. Report Requirements.*

*§65.254. Penalties.*

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 September 20, 1990.

TRD-9009783

Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest proposal date of adoption: October 29, 1990

For further information, please call: (512) 389-4772

◆ ◆ ◆  
**Subchapter J. Transporting,  
Shipping, and Exporting  
Bobcat Pelts**

• 31 TAC §§65.251-65.255

The Texas Parks and Wildlife Commission proposes new 31 TAC §§65.251-65.255, concerning transporting, shipping, and exporting of bobcat pelts which will supplant existing rules on the subject. The new proposed rules differ from the existing rules by providing: a fee for bobcat pelt tags and bobcat pelt dealer permits, a labeling system for bobcat pelts that are taken for purposes other than commercial pelt sale, and for the elimination of a monthly reporting requirement by bobcat dealers.

Robin Riechers, staff economist, has deter-

mined that the first five years the rules are in effect there will be fiscal implications to the state government. The proposed fee structure will reduce administrative costs to state government. There will be no fiscal implications to local government as a result of enforcing or administering the new sections.

Small businesses who act as dealers for bobcat pelts will be required to pay for bobcat dealer permits (\$5.00) and persons who take bobcats for their pelts will be required to pay a fee for the bobcat pelt tag (\$1.00) which permits exportation.

Robin Riechers, staff economist, has determined that for each of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will permit bobcats to be taken for non-pelt purposes and allow the department to recoup administrative fees for issuance of bobcat dealer permits. Based on 10 years harvest data it is estimated that the department would generate from \$6,500 to \$22,000 per year. The economic cost to persons who take bobcat pelts will be \$1.00 per pelt and \$5.00 per bobcat dealer permit. Since the rules as proposed are based upon wildlife resource management and administrative costs for operating the program, it is anticipated that the net value of economic effects to the state will be positive. The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, and has received correspondence indicating the proposed rules will have no significant impact on overall employment.

Comments on the proposed new sections may be submitted to Dr. Brent Ortego, Nongame Resources Program Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4772 or (512) 389-4772.

The new sections are proposed under the Texas Parks and Wildlife Code, Chapter 67, which provides the Texas Parks and Wildlife Commission with authority to establish by regulation limitations of the taking, possession, transportation, exportation, sale, and offering for sale of nongame fish and wildlife that the department considers necessary to manage these species.

**§65.251. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Commission**—The Texas Parks and Wildlife Commission.

**Dealer**—Any individual permitted by the department to accept bobcat pelts for money or other considerations and to tag bobcat pelts.

**Department**—The Texas Parks and Wildlife Department.

**Label**—A numbered marker issued by the department for identifying legally taken bobcat pelts not for sale and not for transport out of the United States.

**Person**—The individual who takes or possesses the pelts of bobcats for the purpose of sale or export.

**Possess**—The act of having control of

a bobcat pelt, but does not include take.

**State office**—Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744.

**Tag**—A permanent, numbered marker issued by the department for identifying bobcat pelts taken for the purpose of sale or transport out of Texas or the United States.

**Take**—The pursuing, shooting, killing, or capturing by any means bobcat for the purpose of sale or export of the pelt.

**Taking and tagging period**—A specified time that is legal to take a bobcat for its pelt and present for tagging for purpose of sale or export.

#### **§65.252. Licenses, Permits, and Fees.**

(a) The permits and fees required for activities authorized by this subchapter are prescribed under provisions of the Texas Parks and Wildlife Code, Chapter 67, or as prescribed in this subsection, and are:

(1) \$5.00 for a bobcat pelt dealer permit; and

(2) \$1.00 for each bobcat pelt tag.

(b) A valid resident or nonresident hunting license as provided by Texas Parks and Wildlife Code, Chapter 42, is required of any person who takes a bobcat at any time including the taking and tagging period specified in §65.253 of this title (relating to Limitations).

#### **§65.253. Limitations.**

(a) The taking and tagging season for bobcats is November 15 of one year through February 15 of the following year.

(b) The number of tags issued for the tagging period by the department will be limited to that authorized by the United States Fish and Wildlife Service.

(c) Except as provided by subsection (b), bobcat pelts taken in this state must be permanently tagged prior to purchase, sale, or transport outside the boundaries of this state, and no dealer may possess pelts of bobcats taken in this state unless the pelt is permanently tagged. Each untagged bobcat pelt legally obtained in another state or country must be supported by documented proof of origin.

(d) Labels may be requested from the department on prescribed forms to identify legally-taken bobcat pelts that are possessed for purposes other than for sale and to authorize their transportation outside the boundaries of Texas. The applicant must provide sufficient evidence, including a notarized statement, to the department on forms provided by the department to substantiate the fact that the pelt were legally taken by a properly licensed hunter, have not been bartered, purchased or sold, and that they are for personal use and will not be sold, bartered, or transported outside of the United States. Such label(s) shall con-

tain the permanently inscribed wording "Legal Texas Bobcat—Not for Sale or Export from United States" and shall be securely attached to bobcat pelt(s) prior to export from this state. Application may be made for identification label(s) regardless of time of year the bobcat(s) was legally taken and issuance shall be considered by the department only on an as needed basis. Any identification label issued by the department and not used for the purpose intended shall be returned to the department in Austin not later than 30 days after date of issuance by the department.

(e) No individual may tag and/or purchase bobcat pelts in this state unless he is permitted by the department. Upon payment of fees, a permit will be issued authorizing the individual to tag or purchase bobcat pelts. Individuals may obtain permits at the state office or any law enforcement field office of the Texas Parks and Wildlife Department according to published department procedures.

(f) Persons may have a pelt tagged by any dealer upon presentation of the pelt and payment of the fee assessed by the dealer not to exceed the bobcat pelt tag fee for each pelt tagged. No dealer may refuse to tag a bobcat pelt presented as being legally taken in this state. This is not construed to mean the person must sell to the dealer who tags the pelt.

(g) Dealers may obtain pelt tags from any law enforcement field office or the state office according to published department procedures upon presentation of proof of permitting.

(h) No dealer may sell, trade, barter, or attempt to sell, trade, or barter any bobcat pelt tags.

(i) No dealer may transfer tags issued to him/her to any other dealer nor may a dealer use tags issued to another dealer.

(j) Dealer pelt tag inventory plus associated records shall be available for inspection by any law enforcement officer(s) of the state at all times.

(k) No tags will be issued by the department prior to November 1 of each year or after February 15 of the following year.

(l) All unused tags issued to dealers by the department must be returned to the state office so as to arrive not later than February 25 of each year.

(m) Tags issued each year by the department may not be placed on the pelts of bobcats taken during a period other than the current specified taking and tagging period.

#### **§65.254. Report Requirements.**

(a) A report form provided by the department to the dealer must be completed by the person presenting each bobcat pelt at



the time of tagging. Information shall include, but not be limited to: date taken, county where taken, county where tagged, name and address of the person, tag number, date of tagging, and the permit number of the dealer performing the tagging. The original copy of the form must be submitted by the dealer to the state office not later than the 10th day of the following month. A copy must remain with the dealer or person possessing the pelt until shipped or sold out of state, at which time the copy will also be submitted to the state office.

(b) The use of any tags by dealers must be recorded at the time of use on forms furnished by the department showing tag number(s), name and address of the person presenting the pelt for tagging, and date of tagging. The report must be received in the state office with all unused tags no later than February 25 of each year.

(c) Persons shipping or selling bobcat pelts out of state must report on forms provided by the department the pelt tag numbers of each pelt shipped, date shipped, and the name and address of the consignee of those pelts within 20 days following shipment.

(d) An individual permitted as a bobcat pelt dealer shall not be eligible for renewal of the permit unless all unused tags are returned and report requirements contained in these rules have been met during the previous season.

**§65.255. Penalties.** Penalties for violation of any of these sections are as prescribed in the Texas Parks and Wildlife Code, §67.005.

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 September 20, 1990.

TRD-9009782      Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: October 29, 1990

For further information, please call: 1-800-792-1112, ext. 4505 or (512) 389-4505

◆      ◆      ◆  
**TITLE 34. PUBLIC FI-  
NANCE**  
**Part I. Comptroller of  
Public Accounts**  
**Chapter 3. Tax Administration**  
**Subchapter A. General Rules**  
• **34 TAC §3.5**

The Comptroller of Public Accounts proposes an amendment to §3.5, concerning settlement of tax, penalty, or interest. The purpose

of the amendment is to provide a procedure for requesting penalty and interest waiver in non-audit situations, in particular where there is a concurrent hearing on tax liability.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Mr. Lock 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 in providing for more efficient tax administration. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lucy Glover, Director, Taxability, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed 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.

**§3.5. Settlement of Tax, Penalty, or Interest.**

(a) Procedure for requesting settlement, audits.

(1) The imposition of penalty or interest on an audit liability may be settled if the taxpayer exercised reasonable diligence to comply with the tax laws. A request to settle penalty or interest will be presumed in all cases except those set out in subsection (b) of this section [hereafter]. The comptroller has delegated to the audit manager the authority to settle penalty and interest in appropriate cases. At the exit conference, the taxpayer will be told if any penalty or interest will be settled.

(2) Should the taxpayer's request for settlement be denied, written notice of the denial will be sent to the taxpayer at the address maintained in the comptroller's records. Within seven working days from the postmark date of the [such written] notice of denial, the taxpayer may request in writing a meeting with the audit manager to present reasons in support of the position that penalty or interest should be settled.

(3) (No change.)

(b) Procedure for requesting settlement, non-audit. **The Comptroller has delegated to the Revenue Accounting Division the authority to settle penalty and interest in appropriate cases** [The procedure for settlement of penalty or interest in situations other than audits shall be handled in the same manner as outlined in subsection (a) of this section, except that a written request should be directed to the Tax Administration Division in Austin no later than 10 days from a notice of assessment].

(1) **Penalty or interest on a non-audit liability may be waived if the taxpayer exercised reasonable diligence to comply with the tax laws of this state. In order for a request for waiver of penalty and interest to be considered, the taxpayer's account must be current in the filing of all returns and the payment of all taxes and fees due to the state. However, if the taxpayer has asked for a hearing on the tax due on a return, the request for waiver should be made to the hearings attorney in the Legal Division handling the case. The hearings attorney shall get a decision from the Revenue Accounting Division and convey it to the administrative law judge hearing the case before the hearing is final. Waiver of penalty and interest is not a contested case, except as provided in §1.3 of this title (relating to Contested Cases). The purpose of this subsection is to consolidate the Revenue Accounting Division's decision on penalty waiver with any hearings decision on the tax liability.**

(2) **A written request stating the reasons penalty and interest should be waived must be sent to the comptroller (Revenue Accounting Division or the Legal Division, as provided in subsection (b)(1) of this section) accompanied by supporting documentation. The comptroller shall have the right to require the production of any additional documentation necessary to evaluate a request.**

(3) **A taxpayer may request an administrative appeal of a denial of a waiver request within 10 calendar days from the date of written notification of the denial. Such a request for an administrative appeal must be in writing and contain all new or additional documentation upon which the taxpayer relies.**

(4) **The taxpayer shall receive written notification of the disposition of his appeal within 30 days of either the comptroller's receipt of the request for an appeal or the comptroller's receipt of all additional information requested from the taxpayer in relation to the appeal.**

(c) **Availability of the hearings process. The settlement of penalty or interest is not a contested case, is not subject to the hearings process, and may not be raised during either a redetermination or refund hearing, except as provided in subsection (b)(1) of this section and §1.3 of this title (relating to Contested Cases).**

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 September 20, 1990.

TRD-9009776      Bob Bullock  
Comptroller of Public  
Accounts



Earliest possible date of adoption: October 29, 1990

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

◆ ◆ ◆  
Subchapter O. State Sales and Use Tax

◆ 34 TAC §3.346

The Comptroller of Public Accounts proposes an amendment to §3.346, concerning use

tax. The amendment implements recent legislation and follows a decision in which the United States Supreme Court upheld use tax assessed by the State of Louisiana against a purchaser doing business in Louisiana on purchases of catalogs that were shipped from outside Louisiana to Louisiana residents. The court held that the purchaser had sufficient business presence in Louisiana to warrant the tax assessment and the assessment did not violate the commerce clause of the federal constitution.

Ben Lock, associate deputy comptroller for

fiscal management, has determined that for the first five-year period the proposed section is in effect the impact on the state or local government will be as follows.

Estimated Gain to the State Government

| Fiscal Year | Gain to General Revenue Fund |
|-------------|------------------------------|
| 1991        | \$4,418,000                  |
| 1992        | 4,638,000                    |
| 1993        | 4,870,000                    |
| 1994        | 5,114,000                    |
| 1995        | 5,370,000                    |

Estimated Gain to Local Governments

| Fiscal Year | Gain to Cities, Counties, and MTA's |
|-------------|-------------------------------------|
| 1991        | \$ 923,000                          |
| 1992        | 969,000                             |
| 1993        | 1,017,000                           |
| 1994        | 1,068,000                           |
| 1995        | 1,121,000                           |

The estimated gains in revenue are a result of conforming the section to the supreme court decision. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock 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 from a more precise definition of use tax and from the revenue provided by this change. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lucy Glover, Director, Taxability, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed 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.

§3.346. Use Tax.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless

the context clearly indicates otherwise.

(1) Storage—Any keeping or retention of **tangible personal property in Texas for any purpose, except as provided in subsection (c) of this section** [taxable items in Texas for any purpose, except for the purpose of sale, lease, or rental in the regular course of business or for subsequent use solely outside Texas].

(2) Use—The exercise of any right or power over **tangible personal property, except as provided in subsection (c) of this section. With respect to a taxable service, use means the derivation in this state of direct or indirect benefit from the service** [taxable items except the sale, lease, or rental of taxable items in the regular course of business or the holding of the taxable item for the purpose of subsequently transporting it outside Texas for use solely outside Texas].

(3) Use tax—A nonrecurring tax, complementary to the sales tax, which is imposed on the exercise or enjoyment of any right or power over taxable items incident to the ownership, possession, or custody of that item.

(b) Imposition of the use tax.

(1) Out-of-state purchases and direct payment permit purchases.

(A)-(B) (No change.)

(C) If storage facilities contain [are maintained containing] property purchased out of state or under a direct payment permit and it is not known when the property is stored whether the property will be used in Texas or will be removed from the state [which may, or may not be removed from Texas and at the time of storage it is not known whether the property will be used in Texas], then the taxpayer may elect to report the use tax either when the property is first stored in Texas or is first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. If use tax is paid on stored property which is subsequently removed from Texas, the tax may be recouped in accordance with the refund and credit provisions in §3.325 of this title (relating to Refunds, Interest and Payments Under Protest) and §3.338 of this title (re-

lating to Allowance of Credit for Tax Paid to Suppliers).

(2) (No change.)

(3) Shipments of taxable items from out-of-state suppliers to purchaser's designees.

(A) Use tax is due on taxable items purchased outside this state by a person engaged in business in this state if the taxable items are delivered at the direction of the purchaser to recipients in Texas designated by the purchaser. The purchaser owes use tax based on the purchase price of the items delivered to Texas.

(B) For the purposes of this section, a person is engaged in business in Texas if the person is required to collect sales or use tax under the Tax Code, Chapter 151. If the purchaser is not a seller of taxable items, the person is engaged in business in Texas if the person has some physical presence in Texas in connection with a commercial enterprise.

(C) Local use taxes (city, county, MTA, CTD) are also due but only to the extent the purchaser is engaged in business in the local taxing jurisdictions into which deliveries are made.

(c) Exceptions.

(1) Use tax is not applicable to, and the terms "use" or "storage" do not include:

(A) the sale, lease, or rental of tangible personal property in the regular course of business;

(B) the holding of tangible personal property for the purpose of subsequently transporting it outside Texas for use solely outside Texas; or

(C) the processing, fabricating, or manufacturing of tangible personal property into other property or attaching the tangible personal property to or incorporating the property into other property to be transported outside Texas for use solely outside Texas.

(2) [(1)] Use tax is not applicable if the purchaser paid sales tax to a Texas retailer or owes sales tax to a Texas retailer who failed to collect it. The comptroller may proceed against the seller or the purchaser for the sales tax owed by either.

(3)[(2)] Use tax is not applicable to the storage, use, or other consumption of taxable items in this state if the sale, lease, or rental of the taxable items would be exempt from the sales tax were it purchased within this state.

(4)[(3)] Credit will be allowed against the use tax liability to the extent a similar sales or use tax is legally due and paid to another state under the conditions provided in the Tax Code, Chapter 141 and Chapter 151, §151.303. See §3.340 of this title (relating to Multistate Tax Credits).

[(4)] If taxable items are purchased out of state, temporarily stored in Texas, but subsequently removed and used solely outside Texas, use tax does not apply.]

(5) (No change.)

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 September 20, 1990

TRD-9009775

Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption: October 29, 1990

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part VII. Texas Commission on Law Enforcement Officer Standards and Education

#### Chapter 211. Administrative Division

##### Substantive Rules

- 37 TAC §§211.68, 211.85, 211.100

The Texas Commission on Law Enforcement Officer Standards and Education proposes amendments to §§211.68, 211.85, and 211.100, concerning instructor license, proficiency certificates, and in-service training requirements for officers. Section 211.68 will be amended to add a specialized instructor license in the area of standardized field sobriety testing. Section 211.85 will be amended to add the required hours for certain specialized courses and specialized certification for standardized field sobriety testing, emergency telecommunications operators, and technician certificates. Section 211.100 will be amended to add the requirement of continual in-service training for officers in the recognition and investigation of child abuse, neglect, family violence, and sexual assault.

Johanna McCully-Bonner, general counsel, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Ms. McCully-Bonner also has determined that for each year of the first five years the sec-

tions are in effect the public benefit anticipated as a result of enforcing these sections will be increased training in various specialized areas for law enforcement officers and telecommunications. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Austin, Texas 78752.

The amendments are proposed under the Texas Government Code, §§415.010, 415.031, 415.032, 415.034, and 415.062, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and establish the procedures for specialized instructor licenses, training certification, and in-service training requirements for law enforcement officers.

#### §211.68. Instructor License.

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

(g) The commission may issue [a] specialized instructor licenses [license] to a person who meets the training, testing, certification, recertification, or other standards that may be required by the commission in the discretion of the executive director to qualify as a drug recognition expert (DRE) instructor or a standardized field sobriety testing (SFST) instructor.

(h) The effective date of this section is February 1, 1989; the effective date for subsections (f) and (g) is February 1, 1990; the effective date for subsection (g) as amended is February 1, 1991.

#### §211.85. Proficiency Certificates.

(a) A permanent peace officer license holder who is reported to the commission as currently appointed as a peace officer may, if qualified, be issued one of the following proficiency certificates:

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

(5) investigative hypnotist; [or]

(6) drug recognition expert; or

[.]

(7) standardized field sobriety testing.

(b)-(f) (No change.)

(g) To qualify for an intermediate peace officer certificate, the applicant:

(1) (No change.)

(2) if the basic peace officer license certificate was issued or qualified for on or after January 1, 1987, must also complete an intermediate proficiency course which must:

(A) (No change.)

(B) be taught in conformity with the instructor guides and minimum training hours prescribed [provided] by the commission;

(C) (No change.)

(D) consist of the following subjects [, each credited with three points upon successful completion]: child abuse prevention and investigation (40 hours), crime scene investigation (32 hours), use of force (24 hours), and arrest, search, and seizure (40 hours).

(h)-(l) (No change.)

(m) To qualify for a drug recognition expert (DRE) certificate or standardized field sobriety testing (SFST) certificate, the applicant must meet any training, testing, certification, recertification, or other standards that may be required by the commission in the discretion of the executive director.

(n) Any person, if qualified, may be issued an emergency telecommunications operator's certificate or emergency telecommunications technician certificate. The applicant must meet any training, testing, certification, recertification, or other standards that may be required by the commission in the discretion of the executive director.

(o)(n) To qualify for the issuance of a certificate, the commission may require submission of an application by an individual or agency on a completed commission form, including any documentation requested.

(p)(o) A license holder must return any cancelled certificate to the commission. The commission may cancel any certificate if the recipient was not qualified for its issue and it was issued:

(1)-(2) (No change.)

(q)(p) In this section, the term "experience" means the actual number of months served in the appropriate capacity in law enforcement, the term "points" means training or education points, and the term "post-graduate degree" means either a master's degree, a doctoral degree, or other similar degree above the level of a bachelor's degree.

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

(r)(q) The effective date of this section is February 1, 1989; the effective date of subsections (a)(6) and (m) is February 1, 1990; the effective date of subsections (a), (g), (m), and (n) as amended, is February 1, 1991.

*§211.100. In-service Training Requirements for Agencies that Appoint Peace Officers or Reserves.*

(a) An agency which appoints of-

icers shall provide continuous in-house training and instruction in the recognition and investigation of cases involving child abuse, neglect, family violence, and sexual assault.

(b)(a) Any agency which appoints a peace officer shall provide to each peace officer at least, the in-service training program required by this section. The program shall consist of one or more in-service courses, that total at least 40 hours during each 24-month period and must include training in the recognition and investigation of cases involving child abuse, [or] neglect, family violence, and sexual assault. The first 24-month period shall commence for each peace officer on that officer's date of appointment or on the effective date of this section, whichever is later.

(c)(b) An agency may voluntarily require of or provide to, any peace officer or other person employed or appointed by that agency, any additional training that exceeds this required peace officer in-service program.

(d)(c) An agency provides a program or course, for purposes of this section if:

(1)-(2) (No change.)

(e)(d) The in-service training program shall consist of one or more separate courses, each of which shall have a final examination or skills test, as appropriate, which must be passed before course completion credit will be awarded. Any such course shall be reasonably related to the current or prospective duties of each peace officer who attends; and at least one such course provided by each agency should include some instruction in recent changes in criminal or civil law.

(f)(e) Unless otherwise provided by law, rule, or agreement, an agency or advisory board responsible for any in-service course shall, within its discretion:

(1)-(2) (No change.)

(g)(f) The effective date of this section is February 1, 1989; the effective date for subsection (a) of this section as amended, is February 1, 1990; the effective date for subsections (a) and (b) as amended, is February 1, 1991.

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 September 20, 1990.

TRD-9009959

Johanna McCully-Bonner  
General Counsel  
Texas Commission on Law  
Enforcement Officer  
Standards and  
Education

Proposed date of adoption: February 1, 1991

For further information, please call: (512) 450-0198

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part III. Texas Commission on Alcohol and Drug Abuse

#### Chapter 141. General Provisions

##### • 40 TAC §141.71

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §141.71, concerning resolution of complaints. The section describes the function of the commission for review of client complaints and sets out the commission's requirements for review of client complaints in regard to an entity licensed or funded by the commission. The section is proposed in an effort to more clearly reflect the method in which the commission reviews, investigates and seeks to resolve complaints made against funded or licensed programs.

John Hopkins, director, fiscal and support services, 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.

Mr. Hopkins, 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 that chemically dependent clients and other persons will have notice of procedures for resolution of complaints over which the commission has legal authority. 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 to Denise F. Mosel, Operations Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos Street, Suite 403, Austin, Texas 78701.

The amendment is proposed under the Texas Health and Safety Code, Chapter 462, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to prescribe the rules and procedures which a person who operates a chemical dependency treatment facility must follow to obtain a license issued under this Act and to meet minimal standards established by the commission.

*§141.71. Resolution of Complaints.* The [Board of Inquiry of the] commission receives and investigates [written] complaints over which the commission has jurisdiction. Any entity funded or licensed by the commission shall have written policies and procedures for investigating and remedying complaints by its clients, and shall prominently display a sign stating its policy and

procedures on client complaints. The sign shall also notify clients of the commission's telephone number and [Board of Inquiry and its] mailing address. The governing authority of the entity or its designee shall document all [any] complaints [, the results of the investigation of each complaint,] and subsequent actions taken to resolve the complaint. This documentation shall be maintained at the facility and shall be available for inspection by the commission. If the governing authority cannot resolve the complaint, it shall forward the complaint to the commission for resolution [through the Board of Inquiry procedures]. In all other cases, persons with a complaint shall contact the Investigation Department of the [write to the Board of Inquiry,] Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, [1705 Guadalupe], Austin, Texas 78701 at (512) 876-8700, and request an investigation.

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 September 21, 1990

TRD-9009871

Bob Dickson  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Earliest possible date of adoption: October 29, 1990

For further information, please call: (512) 867-8700

◆ ◆ ◆

# Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

## TITLE 16. ECONOMIC REGULATION

### Part VII. Texas Racing Commission

#### Chapter 307. Practice and Procedure

##### Subchapter C. Proceedings by Stewards and Racing Judges

###### General Provisions

###### • 16 TAC §307.201

The Texas Racing Commission has withdrawn the emergency effectiveness of amendment to §307.201, concerning the Practice and Procedure. The text of the emergency amendment appeared in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3051). The effective date of this withdrawal is September 19, 1990.

Issued in Austin, Texas, on September 19, 1990

TRD-9009739 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: September 19, 1990

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

The Texas Racing Commission has withdrawn from consideration for permanent adoption a proposed amendment to §307.201 which appeared in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3129). The effective date of this withdrawal is September 19, 1990.

Issued in Austin, Texas, on September 19, 1990

TRD-9009749 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: September 19, 1990

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

#### Chapter 313. Officials and Rules of Horse Races

##### Subchapter A. Officials

###### Duties of Stewards

The Texas Racing Commission has withdrawn the emergency effectiveness of amendment to §313.22, concerning the Officials and Rules of Horse Races. The text of

the emergency amendment appeared in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3061). The effective date of this withdrawal is September 19, 1990.

Issued in Austin, Texas, on September 19, 1990

TRD-9009748 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: September 19, 1990

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

The Texas Racing Commission has withdrawn from consideration for permanent adoption a proposed amendment to §313.22 which appeared in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3138). The effective date of this withdrawal is September 19, 1990.

Issued in Austin, Texas, on September 19, 1990

TRD-9009738 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: September 19, 1990

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

#### Chapter 319. Veterinary Practices and Drug Testing

##### Subchapter A. General Provisions

###### • 16 TAC §319.3

The Texas Racing Commission has withdrawn the emergency effectiveness of amendment to §319.3, concerning the Officials and Rules of Horse Races. The text of the emergency amendment appeared in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3070). The effective date of this withdrawal is September 19, 1990.

Issued in Austin, Texas, on September 19, 1990

TRD-9009750 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: September 19, 1990

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

The Texas Racing Commission has withdrawn from consideration for permanent adoption a proposed amendment to §319.3

which appeared in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3147). The effective date of this withdrawal is September 19, 1990.

Issued in Austin, Texas, on September 19, 1990

TRD-9009740 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: September 19, 1990

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

##### Subchapter D. Drug Testing

###### General Provisions

###### • 16 TAC §319.306

The Texas Racing Commission has withdrawn the emergency effectiveness of amendment to §319.306, concerning the Veterinary Practices and Drug Testing. The text of the emergency amendment appeared in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3149). The effective date of this withdrawal is September 19, 1990.

Issued in Austin, Texas, on September 19, 1990

TRD-9009747 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: September 19, 1990

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

The Texas Racing Commission has withdrawn from consideration for permanent adoption a proposed amendment to §319.306 which appeared in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3071). The effective date of this withdrawal is September 19, 1990.

Issued in Austin, Texas, on September 19, 1990

TRD-9009737 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: September 19, 1990

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

Chapter 321. Pari-Mutuel  
Wagering

Subchapter B. Distribution of  
Pari-Mutuel Pools

• 16 TAC §321.112

The Texas Racing Commission has with-  
drawn the emergency effectiveness of  
amendment to §321.112, concerning pari-  
mutuel wagering. The text of the emergency  
amendment appeared in the June 5, 1990,  
issue of the *Texas Register* (15 TexReg  
3073). The effective date of this withdrawal is  
September 19, 1990.

Issued in Austin, Texas, on September 19,  
1990

TRD-9009742      Paula Cochran Carter  
                            General Counsel  
                            Texas Racing Commission

Effective date: September 19, 1990

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



The Texas Racing Commission has with-  
drawn from consideration for permanent  
adoption a proposed amendment to §321.112  
which appeared in the June 5, 1990, issue of  
the *Texas Register* (15 TexReg 3151). The  
effective date of this withdrawal is September  
19, 1990.

Issued in Austin, Texas, on September 19,  
1990

TRD-9009752      Paula Cochran Carter  
                            General Counsel  
                            Texas Racing Commission

Effective date: September 19, 1990

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



• 16 TAC §321.113

The Texas Racing Commission has with-  
drawn the emergency effectiveness of  
amendment to §321.113, concerning the pari-  
mutuel wagering. The text of the emergency  
amendment appeared in the June 5, 1990,  
issue of the *Texas Register* (15 TexReg  
3074). The effective date of this withdrawal is  
September 19, 1990.

Issued in Austin, Texas, on September 19,  
1990

TRD-9009741      Paula Cochran Carter  
                            General Counsel  
                            Texas Racing Commission

Effective date: September 19, 1990

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



The Texas Racing Commission has with-  
drawn from consideration for permanent  
adoption a proposed amendment to §321.113  
which appeared in the June 5, 1990, issue of  
the *Texas Register* (15 TexReg 3152). The  
effective date of this withdrawal is September  
19, 1990.

Issued in Austin, Texas, on September 19,  
1990

TRD-9009751      Paula Cochran Carter  
                            General Counsel  
                            Texas Racing Commission

Effective date: September 19, 1990

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



# 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 13. CULTURAL RESOURCES

### Part I. Texas State Library and Archives Commission

#### Chapter 7. Local Records

##### Microfilming Standards for Local Governments

###### • 13 TAC §§7.21-7.33

The Texas State Library and Archives Commission adopts new §§7.21-7.33, with changes to the proposed text as published in the April 13, 1990, issue of the *Texas Register* (15 TexReg 2077).

The new sections are adopted in order to provide local governments with a consistent foundation upon which to base microfilming programs that ensure the physical protection and informational integrity of public records and to enable local governments to comply with Texas statutes regarding retention and microfilming of local government records.

The changes from the proposed text were to: §7.21. Definitions. Added language to clarify location of ANSI/AIIM terms. Added definitions of batch, convenience film, permanent film, permanent record, records retention schedule, second-generation microfilm, short-term film, and short-term record. Reworded definitions of long-term film, long-term record, master negative, medium-term film, and medium-term record to clarify meanings. Section 7.22. General. Added language to subsection (c) to clarify that the rules do not apply to convenience filming. Added language to subsection (h) to specify expungement of information from all applicable media. Reworded (c), (d), (f), and (h) to clarify the sections. In subsection (d) deleted some required log information. In subsection (g) deleted reference to second-generation film. Section 7.23. Standards For Film Quality, Resolution, Density, Definition, and Chemical Stability. The section number has been changed to §7.27 to improve the flow of the document. Deleted (a)(5), (6), (7), and (17), (c)(1) and (5), (d) and (f). Combined (a)(3) and (4) to reduce the number of targets required. Added language to allow some combination of targets and any order of the targets on film. Added an option of a declaration of intent to (a) (16). Reworded subsection (b) to clarify that it applies to all film. Added a new section on short-term film. Section 7.24. Tests And Other Methods Of Inspection And Verification Of Accuracy. The section number has been changed to 7.23 to improve the flow of the document. Deleted reference to thermally processed film in subsection (b). De-

leted subsection (g), (h), and (i). Added exception clause to subsection (a). Added reference to silver film in subsection (b). Added sections on short-term film, reference to ANSI/AIIM MS23-1983, and the calibration of a densitometer. Section 7.25. Certification and Declaration Of Intent. The section number has been changed to §7.24 to improve the flow of the document. Reorganized subsection (b) to improve the arrangement of information. Deleted reference to roll film in subsection (b)(E). Deleted requirements concerning who performs tests and when tests are conducted in subsections (b)(1)(B), (2)(A), (3)(A), and (4)(A). Reworded to allow exceptions to subsection (a)(1). Changed wording in (a)(1) to reflect different film types. Reworded subsection (b)(1)(C), (D), and (E) to clarify methylene blue testing requirements. Added text to identify different film types. Reworded subsection (d), (e)(2), (5), (6), and (6)(A) to clarify text. Section 7.26. Use of Editorial And Technical Targets. The section number has been changed to §7.25 to improve the flow of the document. Subsections have been added to allow off film certification and the option to use a declaration of intent. Subsections (a) (1) and (b) have been reworded to clarify the statement and to explain the declaration of intent. Section 7.27. Image Sequence. The section number has been changed to §7.26 to improve the flow of the document. Deleted reference to fiche in subsection (a) and to specific wording in subsection (e). Reworded subsection (a) to include other microforms, bibliographic information, and restrictive information. Added reference to declaration of intent to subsection (c). Added wording "When possible" in subsection (d) to allow greater flexibility in target usage. Section 7.28. Master Microfilms. Deleted references in subsection (c)(14), (16), and (23)(B) to slip sheets and location to urban or industrial areas. Added text to reference short-term film to elaborate difference between film handling techniques. Reworded subsection (a), (23)(G), and (H) to specific film retention requirements. Reworded subsection (c)(2), (7), (9), (11), (17), (21), (23)(C), and (F) to specify the end result, rather than the means to that result. Section 7.29. Labelling And Indexing. Changed word "typed" to "legible" in subsection (a) to allow options. Deleted reference to title in records series and date information in subsections (b), (c), and (d). Reworded subsection (e) to clarify meaning of indexing method. Section 7.30. Computer Output Microfilm (COM). Reorganized within the section to improve the flow of the information. Deleted subsections (b)(4), (d)(4), (f)(1)-(5) and referenced the ANSI/AIIM standards instead. Reworded subsection (b) to identify the specific retention periods of the film. Added exact wording for off film certification in subsection (c) and combined and reworded information in subsections (c)(1)-(3) and

(d)(5)(A)-(E). Added text on methylene blue testing and visual inspection of COM. Added allowance for exceptions on target information and image sequence. Added information to obtain the end results of tests on COM. Section 7.31. Jacketing. Deleted subsections (b) and (c). Added section that requires all first-generation silver film to be maintained in roll form and states that only duplicates may be spliced and inserted into jackets. Section 7.32. Expungement Of Records. Changed the wording of "frame number" to "image location." Section 7.33. Public Access To Information. Added sentence to specify that if microfilm is the only medium the master microfilm must be copied and the copy be accessible to the public.

The sections establish standards and procedures concerning the production, processing, testing, certification, and storage of microfilmed local government records for local government offices and local government records custodians to follow if they microfilm public records.

One commenter believed that additional vendors should be invited to review the rules; two commenters suggested that silver film should be specifically allowed as an option for duplicate copies; several commenters expressed concern that environmental standards for chemical by-products of filming were not included in the rules; several commenters requested overall clarification of wording throughout the rules; several commenters questioned whether all targets required in the rules were necessary and suggested deleting some and combining some; several commenters stated that some of the information required on targets was unnecessarily detailed and wordy; several commenters criticized the reduction ratio chart as not taking in all possible reduction ratios; several commenters were concerned that the allowable margin for resolution was too narrow; several commenters expressed concern that the required frequency of methylene blue testing would be too costly; three commenters suggested that the commission substitute a monitoring and certification program for administrative rules; several commenters were critical of the logs as requiring too much information; four commenters thought the required leaders were too short and one thought them too long; three commenters believed that only specific types of splices should be allowed and one believed splices should not be allowed; several commenters questioned whether existing facilities in Texas could meet the storage requirements and whether the cost would be reasonable; several commenters questioned whether the fiscal impact estimates included all possible costs; five commenters advocated permitting off-film certification; three commenters suggested that the rules should identify essential records

and establish more stringent requirements for their filming; several commenters expressed concern at the cost and frequency of quality control requirements; four commenters questioned whether the slip sheet requirements were necessary and in conformity with actual practice; several commenters observed that the rules governing density were confusing; several commenters requested that the rules be broadened to cover film other than roll film; several commenters suggested that additional definitions be included; several commenters believed that the indexing requirements were confusing and unnecessarily costly; three commenters objected to the COM requirements as too stringent, and specifically objected to the requirement that the individual who handles the production be identified; one commenter questioned whether CAD should not be addressed in the rules; and three commenters suggested that the standards allow first generation film to be loaded into jackets; five commenters suggested reference to convenience filming; several commenters suggested that the combining of some targets be allowed; several commenters suggested the deletion of some required targets and the rewording of others.

A group or association commenting against adoption of the sections as proposed was the Austin Chapter, Association of Records Managers and Administrators.

The commission agreed with many of the comments and has made the previously mentioned changes to comply with these comments. The commission disagreed, however, with several comments because they were judged to be incompatible with established national standards or contrary to Texas law or because their adoption would endanger the integrity or durability of information on film. The new sections are adopted under the Local Government Code, Title 4, Chapter 204, which requires the commission to adopt rules establishing standards and procedures for the microfilming of local government records.

**§7.21. Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these rules shall have the meanings defined in the Local Government Code, Title 6, Subtitle C, Chapter 201, or the standards of the Association for Image and Information Management according to "Technical Report for Glossary of Micrographics" (TR2-1980 or latest revision).

**AIIM**—The Association for Information and Image Management.

**ANSI**—The American National Standards Institute.

**Archival record**—A record having a permanent retention period.

**Archival film**—Photographic film that is suitable for preservation of records having a permanent retention period when stored under archival conditions.

**Archival storage conditions**—Environmental conditions suitable for preserving photographic film that is to be retained permanently.

**Batch**—A quantity of chemicals or film which has been prepared at one time,

and which has been identified through labeling or through other means by the manufacturer as a batch or lot.

**Convenience film**—Microfilm copies of records created only for convenience of use and considered nonrecords under the Local Government Code, §201.003(8)(A).

**Custodian**—The appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

**Diazo**—Coated film containing sensitized layers composed of diazonium salts that react with couplers to form azo dye images.

**Dmax**—Measurement of maximum obtainable density taken from a completely exposed area of conventionally processed silver-gelatin film (i.e. leader or trailer).

**Essential record**—Any local government record necessary to the resumption or continuation of government operations in an emergency or disaster, to the re-creation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the state.

**Film**—Microfilm.

**First generation film**—Film produced directly from a subject.

**Legible**—The quality of a letter or numeral which enables the observer to identify it positively and quickly to the exclusion of all other letters and numerals.

**Local government record**—Any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business, except for materials excluded under the Local Government Code, Title 6, Subtitle C, Chapter 201.

**Long-term film**—Film suitable for the preservation of records for a minimum of 100 years when stored under proper conditions, providing the original film was processed correctly.

**Long-term record**—A record for which the retention period on a records retention schedule is 100 years but less than permanent.

**Master negative**—The copy of microfilm stored offsite for security and used only for generating use copies.

**Medium-term film**—Film suitable for the preservation of records for more than 10 years but less than 100 years when stored under proper conditions, providing the original film was processed correctly.

**Medium-term record**—A record for which the retention period on a records retention schedule is more than 10 years but less than 100 years.

**Medium-term storage conditions**—Storage conditions meeting

ANSI/AIIM standards to ensure a life of 100 years for medium-term film.

**Microfilm**—Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

**Microfilming**—The methods, procedures, and processes used to produce microfilm.

**Permanent film**—Film that is suitable for the preservation of records having permanent value when the film is properly processed and stored under archival storage conditions, provided that the original images are of suitable quality.

**Permanent record**—A record for which the retention period on a records retention schedule is permanent.

**Readable**—The quality of a group of letters or numerals which makes them recognizable as words or whole numbers.

**Records retention schedule**—A document issued by the Texas State Library and Archives Commission under authority of the Government Code, Chapter 441, Subchapter J, establishing mandatory retention periods for local government records.

**Records management officer**—The person designated to act as a records management officer pursuant to the Local Government Code, Title 6, Chapter 201.

**Records series**—File unit(s) or document(s) arranged in accordance with a filing system or maintained as a unit because they relate to a particular subject or function, result from the same activity, have a particular form, or because of some other relationship arising out of their creation, receipt, or use.

**Retention period**—The minimum time that must pass after the creation, recording, receipt of a record, or the fulfillment of certain actions associated with a record before it is eligible for destruction.

**Second-generation microfilm**—A microfilm copy made from the master negative.

**Short-term film**—Film suitable for the preservation of records for 10 years when stored under proper conditions, providing the original film was processed correctly.

**Short-term record**—A record for which the retention period on a records retention schedule is 10 years or less.

**Vesicular**—Film in which the light-sensitive component is suspended in a plastic layer in which optical vesicles are created on exposure to form the image.

## §7.22. General.

(a) Where these rules do not specify a standard or procedure, ANSI/AIIM standards are the minimum requirements for all microfilming of local government records.

(b) The originals of records that have been microfilmed may not be destroyed prior to the expiration of their retention period.



tion periods unless the microfilm has met minimum standards of the tests required under these rules.

(c) These rules apply to the microfilming of any local government record, including court case papers, which is to be maintained solely in microfilm format and to all microfilm which is created or maintained as a back-up or security copy of short-term, medium-term, long-term, or permanent records. These rules do not apply to convenience filming.

(d) Custodians must maintain, or require to be maintained, documentation identifying titles of records filmed; quality control tests conducted; the results of quality control tests; dates records filmed; disposition of records after filming; dates film processed; disposition of film; reduction ratio used; records series contained on each microfilm; and equipment on which each microfilm was filmed and processed. The documentation must be retained until final disposition of all microfilm documented in the log or equivalent.

(e) Chemicals, film, and processor used in processing must be compatible.

(f) The records custodian, records management officer, or other authorized representative of the governing body of a local government may make unannounced inspections of the microfilm facilities in which the master microfilm of the local government is, filmed, processed, and/or stored.

(g) Master microfilm produced for a local government shall be the property of the local government and the local government shall have the same responsibilities for ensuring its management and preservation as it would have for the records under the Local Government Code, Title 6, Subtitle 6, if they were not microfilmed. If the master microfilm is to be stored by a service provider, the local government may demand and receive delivery of the master microfilm upon five working days' notice.

(h) If microfilmed records contain information to which access by the public is restricted or confidential, such information must be expunged from any microfilm copies or hard copies made available to the public.

#### §7.23. Standards for Film Quality, Resolution, Density, Definition, and Chemical Stability.

(a) Master microfilm must meet the specifications in *American National Standard for Image Media (Film) Silver Gelatin Type Specifications for Stability* (ANSI IT9.1-1989 or latest revision), except where these standards specifically state otherwise.

(b) Duplicate film must be diazo film conforming to specifications in *American National Standard for Image Media (Film) Ammonia Processed Diazo Films*

*Specifications for Stability* (ANSI IT9.5-1988 or latest revision), vesicular film conforming to *American National Standard for Photography (film) Processed Vesicular Film Specifications for Stability* (ANSI PH1. 67-1985 or latest revision), or silver film conforming to *American National Standard for Image Media (Film)-Silver-Gelatin Type-Specifications for Stability* (ANSI IT9.1-1989 or latest revision). Duplicate film must meet the specifications in *Standard for Information and Image Management-Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM* (ANSI/AIIM MS43-1988 or latest revision) .

(c) Any film type may be used for short-term film, provided a duplicate is made immediately after filming that will last for the designated retention period. The original and duplicate film must be maintained for the retention of the film.

(d) All microfilm must comply with the standard *American National Standard for Photography (Film) Micrographic Sheet and Roll Films Dimensions* (ANSI PH1.51-1983 or latest revision).

(e) The following ANSI standards must be complied with in the processing and filming of records: *Standard for Information and Image Management-Specifications for 16 mm and 35 mm Roll Microfilm* (ANSI/AIIM MS14-1988 or latest revision); *American National Standard for Information and Image Management Microfiche* (ANSI/AIIM MS5-1985 or latest revision); *Information on Microfiche Headings* (ANSI Z39.32-1981 or latest revision) , *Method for Measuring Thickness of Buildup Area on Unitized Microfilm Carriers (Aperture, Camera, Copy, and Image Cards)* (ANSI/AIIM MS9-1987 or latest revision); and *Standard for Information and Image Management for Method for Determining Adhesion of Protection Sheet to Aperture Adhesive of Unitized Microfilm Carrier (Aperture Card)* (ANSI/AIIM MS10-1987 or latest revision).

(f) Images of documents must be uniformly placed on the film and must be free of any obstructions, shadows, glare, fog, overlap of records, scratches, overexposure, underexposure, water spots, or foreign objects in filming area that would interfere with the document being read.

(g) All silver-gelatin film tested must have a residual thiosulphate content greater than zero but not exceeding 0.014 gram per meter squared.

(h) The quality-index graph in *Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents* (ANSI/AIIM MS23-1983 or latest revision) must be followed as the minimum acceptable range of performance readings for all film. All microfilm of essential and permanent records must meet a

minimum quality index level of 5.0. Microfilm of short-term, medium-term, and long-term records must meet a minimum quality index level of 3.6.

(i) Densitometer used must be calibrated daily, when in use.

#### §7.24. Tests and Other Methods of Inspection and verification of Accuracy.

(a) General.

(1) With the exception of re-takes, if a defect is found on any microfilm, the microfilm immediately preceding and following the sample of microfilm on which the defect was found must be inspected. If a defect is found on those microfilms, the microfilm preceding and following those microfilms must be inspected image by image until all defective film has been identified.

(2) Water used in microfilm processing must meet the requirements in *National Micrographics Association's Practice for Operational Procedures/Inspection and Quality Control of First Generation Silver-Gelatin Microfilm of Documents* (ANSI/AIIM MS23-1983 or latest revision).

(b) The following tests must be utilized in the production of all film.

(1) Methylene blue test.

(A) Methylene blue test for conventionally processed silver-gelatin film as specified in *American National Standard for Photography (chemicals) Residual Thiosulfate and Other Chemicals in Films, Plates, and Papers Determination and Measurement* (ANSI/ASC PH4.8-1985 or latest revision) must be followed.

(B) A test must be performed at least once each week during which processing is done on a test strip of approximately six inches from a master microfilm or on a process control strip. If processing is performed by a service bureau a test performed for one local government agency may satisfy this requirement for more than one local government agency.

(C) A test must also be performed whenever a batch of fixer or developer is changed, or when changes in processing such as replacement or addition of filter, water softener, or replenishing system are made, or when water is changed.

(D) The test results must be obtained on a scheduled basis within 10 days of processing. If film fails to meet the standards established by these rules, it must be rewashed and retested within the 14 days of initial processing.

(E) Once a year, two test

strips must be taken from the same microfilm; one must be sent to an independent testing laboratory and the other to the laboratory which performs the weekly test, for verification of test results.

(F) If either test result is greater than 0.014 gram per meter squared, the records custodian must identify and remedy the cause of the deviation from the required standard.

(2) Density test.

(A) The density test must be performed on all master microfilm.

(B) Testing procedures as specified in *National Micrographics Association's Practice for Operational Procedures/Inspection and Quality Control of First Generation Silver-Gelatin Microfilm of Documents* (ANSI/AIIM MS23-1983 or latest revision) must be performed by the film processor.

(C) Background density must be in accordance with *National Micrographics Association's Practice for Operational Procedures/Inspection and Quality Control of First Generation Silver-Gelatin Microfilm of Documents* (ANSI/AIIM MS23-1983 or latest revision).

(3) Resolution test.

(A) The resolution test must be performed on all master microfilm.

(B) The resolution test must be conducted in accordance with *National Micrographics Association's Practice for Operational Procedures/Inspection and Quality Control of First Generation Silver-Gelatin Microfilm of Documents* (ANSI/AIIM MS23-1983 or latest revision).

(C) The resolution target must meet the *American National Standard Microcopying ISO Test Chart No. 2-Description and Use in Photographic Documentary Reproduction* (ANSI/ISO 3334-1979 or latest revision) and/or *American National Standard Test Chart for Rotary Microfilm Cameras* (ANSI/AIIM MS17-1983 or latest revision) and/or *Standard for Information and Image Management-Recommended Practice for Identification of Microforms* (ANSI/AIIM MS19-1987 or latest revision). Photocopies must not be used.

(4) Visual inspection.

(A) Inspection must be completed within two weeks of completion of the methylene blue test.

(B) All film of records hav-

ing medium-term, long-term, or permanent retention periods, or which are designated as essential records must be inspected image by image, by the records custodian or records management officer, or local government office, or independent testing facility under contract with the local government or custodian.

(C) Short-term film of non-essential records must be inspected at least every three meters (10 feet) of each third roll or every third fiche.

(c) If film processing is done by a service bureau, the local government must obtain a certified statement of the results of density, methylene blue, and visual inspection tests from the service bureau.

(d) If microfilm is not to be stored by the service bureau which processed the film, the local government must obtain test results at the same time it obtains the microfilm. If the microfilm is stored by the service bureau which processed the film, the local government must receive the test results within 10 days of completion of the test(s). The custodian or records management officer or local government office, or independent testing facility under contract with the local government or custodian, must inspect the microfilm to verify the results reported by the processor.

(e) An inspection of stored master microfilm must be conducted in accordance with *American National Standard for Photography (film)-Processed Safety Film-Storage* (ANSI PH1.43-1985 or latest revision).

(1) A minimum of 1.0% of the total volume of microfilm of each local government office comprising a cross section of all microfilm (roll, jacket, microfiche, aperture card, COM, etc.) must be inspected for deterioration such as peeling emulsion, brittleness, film curl, discoloration, molding, and blemishes on the film.

(2) Of the microfilm selected, 70% shall never before have been inspected, 20% shall have been inspected during the immediately previous inspection, and 10% shall be samples of the oldest and newest film.

(3) An inspection of stored master microfilm must be conducted every two years, except if the microfilm has been stored under temperature and/or humidity conditions other than those required under these rules, it must be inspected yearly.

(4) Cans, boxes, and reels used to store the film must be inspected for evidence of rust, corrosion, and other deterioration.

(5) Master microfilm must not be inspected on a reader printer. Master microfilm must be inspected on a light box with rewinds or comparable equipment which will not scratch the film.

(6) The following information must be recorded for each inspection.

(A) the quantity and identification of microfilm inspected;

(B) the condition of the microfilm, including description of any deterioration such as peeling emulsion, brittleness, firm curl, discoloration, molding, and blemishes on the film;

(C) the corrective action required (if necessary);

(D) the date(s) of inspection and signed certification of inspector;

(E) the date corrective action was completed.

(7) The inspection log must be maintained by year and within each year numerically according to microfilm identifier or number.

(8) If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

(9) Any deteriorating film must immediately be removed from the storage area and a new master microfilm created.

*§7.25. Certification and Declaration of Intent.*

(a) The records custodian may maintain a certificate of legality and authenticity off film stating: "This is to certify that the official records appearing on (identifier) microfilm are accurate and complete reproductions in strict accordance with Local Government Code, Chapter 204; of the records series entitled (records series title), for the (name of department). These records were created in the normal course of business and microfilmed as part of a planned records management program; no addition, deletion, or alteration has been made."

(b) The records custodian may maintain a certificate of legality and authenticity on film stating:

(1) "I (name of records custodian) state that the microfilming of the images between the title page and this certificate of legality and authenticity has been in strict accordance with Local Government Code, Chapter 204 and rules adopted under that chapter; that the page or pages of the identified instruments of writing, legal documents, papers, or records created by or received in the identified office in the normal course of that office's official business; and are the complete files identified on the title page, except where an omission is specifically identified; and that no alteration has been made to any page nor has any splice been made in the original microfilm between the title page and this

certificate." or

(2) "The microfilming of the images between the title page and the certificate of legality and authenticity has been in strict accordance with Local Government Code, Chapter 204; each image is a true, correct, and exact copy of the page or pages of the identified instrument of writing, legal document, paper, or record which had been filed for record on the date and at the time stamped on each; and no splice was made in the original microfilm between the title page and this certificate."

(c) Declaration of intent must be on all microfilm that does not have the certificate of legality and authenticity on the microfilm and must state: "I (name of records custodian) acting for the (name of agency), a local government in the State of Texas, do hereby declare that I am a custodian of the (name of department) department records, and that the records microfilmed between the title page and the declaration of intent are the official records of the department created in the normal course of business, and that the records series is entitled, (records series title). The microfilming of these records is part of a planned records management program determined by the policy established by the records custodian, according to Local Government Code, Chapter 204."

(d) The certificate of legality and authenticity and declaration of intent must contain the printed or typed name of government, name of office, the name and title of the records custodian or deputy, and the date and place certified, and must be signed by the custodian or, if the camera operator is a deputy of the custodian, it may be signed by the deputy.

#### §7.26. Use of Editorial and Technical Targets.

(a) A title page target must be included on each roll of microfilm and must identify the local government and subordinate organizational unit(s), the records which are included on the microfilm; title of the records (with identification of contents if not obvious from series titles); restriction or classification (if necessary); bibliographic information (if any); roll number; and date(s) of records being filmed.

(b) Restriction or classification targets, if used, must identify the office or agency authorizing the classification or restriction; the statutory or administrative authorization for the restriction or classification; the beginning record and ending record of the records series of which the classified or restricted items are a part; the date of filming; and the nature of the restriction or classification.

(c) A declaration by camera operator or certificate of legality and authenticity or declaration of intent must state where,

when, and by whom records were filmed, signature and title of camera operator, the camera, and the reduction ratio used.

(d) Whenever possible, targets must all face the same direction as the records being microfilmed. Whenever possible, the letters on the target title must be readable to the naked eye without magnification and the image on the film must be at least two millimeters (0.08 inch) high.

(e) If the condition of the original record is of poor quality and it is anticipated the images will not be legible and readable when displayed on a microfilm reader or when reproduced in paper copy, a target or stamp stating the reason for the poor image quality must be placed before or directly on the image(s).

#### §7.27. Image Sequence.

(a) The image sequence on roll microfilm must be:

(1) leader (minimum of 700 millimeters (28 inches) of blank film);

(2) retakes according to required sequence of subsection (c) of this section (if any);

(3) density target and resolution target, in any order or combination;

(4) title page target;

(5) records being microfilmed;

(6) declaration by camera operator target (if information is not contained on the certificate of legality and authenticity or declaration of intent);

(7) certificate of legality and authenticity or declaration of intent;

(8) density target and resolution target, in any order or combination;

(9) retakes according to required sequence of subsection (c) of this section (if any);

(10) trailer (minimum of 700 millimeters (28 inches) of blank film).

(b) For non-essential and short-term microfilm, if the image sequence required in subsection (a) of this section is not used the following must be used.

(1) Density target and resolution target, in any order or combination, must be on the microfilm or a test strip of the microfilm.

(2) A title page target must be on the film prior to the first image of the records being microfilmed stating: "I declare that the document(s) on this (image, card, roll, strip, fiche, etc.) is/are (records series) of (name of agency) and was/were filmed in accordance with Local Government Code, Chapter 204; and rules adopted under it." and must contain the signature, printed name, and title of the custodian or deputy of the custodian, and date of micro-

filming.

(3) If film is updated, the title page target must be Prior to the first image of the records being microfilmed.

(c) All microfilm produced for a local government office must bear a unique number within the generating department.

(d) The filming sequence for retakes on all microfilm must be:

(1) title target identifying the retake records;

(2) the retake records;

(3) certificate of legality and authenticity or declaration of intent.

#### §7.28. Master Microfilms.

(a) Master microfilm, containing essential, short-term, medium-term, long-term, or permanent records, must be stored in a separate building from that in which duplicate copies, if any, or the original records are housed, and under conditions that meet the requirements of this section.

(b) For master microfilm, containing short-term records, not meeting the specifications in *American National Standard for Image Media (Film)-Silver-Gelatin Type-Specifications for Stability* (ANSI IT9.1-1989 or latest revision) and silver film that is not included in the testing program required by §7.24(b)(1) of this title (relating to Tests and Other Methods of Inspection and Verification of Accuracy) a duplicate security copy must be made in accordance with *Standard for Information and Image Management-Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM* (ANSI/AIIM MS43-1988 or latest revision).

(1) The master microfilm and security copy must not be used for routine reference.

(2) If film is needed for reference, a use copy must be made from the master microfilm or security copy.

(3) Cameras and ancillary equipment must be calibrated, tested, or otherwise inspected and adjusted at least twice annually or more often if required to comply with manufacturer's specifications or recommended operating and maintenance procedures.

(4) If short-term film is updated or changed in any way, a new security copy must be made. The destruction of any security copy previously produced must comply with the statutes and rules which govern destruction of documents.

(c) Clean, lint-free cotton or nylon gloves must be used to handle silver-gelatin film.

(d) Storage requirements.

(1) Storage containers and reels

must be made from a noncombustible and noncorrosive material such as anodized aluminum, plastic, and must conform to *American National Standard for Photography (film)—16-mm 100-foot, 16-mm 200-foot, 35-mm 100-foot, and 70-mm 100-foot Spools for Recording Instruments, Microfilms, and Still-Picture Cameras—Dimensions* (ANSI PH1.33-1986 or latest revision) and *American National Standard for Imaging Media Photographic Processed Films, Plates, and Papers Filing Enclosures and Storage Containers* (ANSI IT9.2-1988 or latest revision).

(2) Containers must be labelled to indicate that they contain master microfilm and the identifying information or number, records series, and office of origin.

(3) Containers must be fully enclosed and composed of inert material such as metal, plastic, or acid-free paper.

(4) No printed material, except information on the label, may be inside a microfilm storage container.

(5) Inks used on the outside of the container and on the label must not bleed, spread, or transfer, nor be a source of products that may damage the photograph or the enclosure itself.

(6) Containers must be stored in a closed housing such as a drawer, or on shelves and racks that are enclosed by a door and free from all contaminants that may harm the film.

(7) Film must be wound firmly, but not tightly, and must allow room for proper operation when installed in a reader and/or a reader/printer.

(8) Rubber bands, paper clips, tape, and other foreign objects harmful to film may not be used to secure film.

(9) Adhesives that may have a harmful effect on microfilm must not be used. Adhesives used to secure microfilm must pass the photographic activity test as outlined in *American National Standard for Imaging Media Photographic Processed Films, Plates, and Papers Filing Enclosures and Storage Containers* (ANSI IT9.2-1988 or latest revision).

(10) Paper may be used to secure rolls, if it conforms to the specifications contained in *American National Standard for Image Media-Photographic Processed Films, Plates, and Papers-Filing Enclosures and Storage Containers* (ANSI IT9.2-1988 or latest revision).

(A) Paper in direct contact with film must have a pH of 7.5 to 9.5, over 87% alpha cellulose content, over 2.0% alkali reserve, and matte surface for the paper in accordance with *American National Standard for Imaging Media Photographic Processed Films, Plates, and Papers Filing Enclosures and Storage Containers* (ANSI IT9.2-1988 or latest revision).

(B) Paper not in direct contact with film must have a pH between 7.2 and 9.5 and alkali reserve must be the molar equivalent to at least 2.0% calcium carbonate.

(11) Films of different generic types must not be interfiled or be in physical contact with each other.

(12) Short-term microfilm, not meeting the specifications in *American National Standard for Image Media (Film)-Silver-Gelatin Type-Specifications for Stability* (ANSI IT9.1-1989 or latest revision), must not be stored in the same room or a room sharing common ventilation with that in which essential, long-term, and permanent microfilm is stored.

(13) Film must be handled by the edges.

(14) Microfilm must be enclosed in a way that does not cause abrasion.

(15) COM and microfiche of permanent records must be in acid-free envelopes.

(16) Film must be stored above the floor of the storage area to avoid water damage.

(17) Film must be stored out of direct exposure to fluorescent light, sunlight, and other strong lights.

(18) Routine housekeeping procedures must be maintained to minimize mold, dust, dirt, rodents, insects, and chemical vapors.

(19) No flammable materials, or materials that develop reactive fumes or vapors, or chemicals may be stored near microfilm.

(20) Temperature and humidity must be checked frequently with a reliable hygrometer, such as a sling psychrometer.

(21) Smoking, food, and drink must be kept away from the microfilm equipment and microfilm.

(22) Storage rooms and vaults must meet the following standards:

(A) be separate from temporary storage facilities, offices, or work areas and must offer protection from unauthorized access, fire, water, steam, structural collapse, and other potential hazards;

(B) Be equipped with a fire alarm system and be capable of withstanding temperatures to 150 Degrees Celcius (302 Degree Fahrenheit) for four hours, and if constructed or readapted after 1991 to serve as a microfilm storage facility, be equipped with a fire suppression system and with automatic fire control dampers in ducts carrying air to or from the vault or storage

room;

(C) be equipped with a system capable of removing those gaseous impurities in the surrounding environment such as sulfur dioxide, nitrous oxide, ammonia, peroxide, and hydrogen sulfide as specified in *American National Standard for Photography (Film) Processed Safety Film Storage* (ANSI PH1.43-1985 or latest revision);

(D) if subject to invasion of solid particles that can abrade film or react on the images, have mechanical filters or electrostatic precipitators installed having a cleaning efficiency of at least 80% when tested with atmospheric air in accordance with *American National Standard for Photography (Film) Processed Safety Film Storage* (ANSI PH1.43-1985 or latest revision);

(E) have approximately 0.05 inch of pressure above atmospheric pressure;

(F) for the microfilm of essential, medium-term, long-term, and permanent records, maintain a constant relative humidity range between 30% and 40% and a temperature not exceeding 21 Degrees Celcius (70 Degrees Celcius), with fluctuations limited to -15 Degrees Celcius (5 Degrees Fahrenheit) and +/- 5.0% relative humidity in a 24-hour period;

(G) for storage of the microfilm of short-term records maintain a constant relative humidity range between 30% and 60% and a temperature between 20 Degrees Celcius (68 Degrees Fahrenheit) and 25 Degrees Celcius (77 Degrees Fahrenheit) and maximum variation of +/- 5.0% relative humidity in a 24-hour period;

(H) these requirements do not apply to the storage of convenience film.

(e) All splices must be made on clear portions of film and must not cover any images.

(f) All splices must be in accordance with *Standard for Information and Image Management-Splices for Imaged Film Dimensions and Operational Constraints* (ANSI/AIIM MS18-1987 or latest revision).

#### §7.29. Labelling and Indexing.

(a) All container information must be legible and on a self-adhesive label.

(b) Container label information must include the roll number, name of government, office of origin, records series, volume number (if any), and retakes (if any).

(c) Microfiche and jacket labelling must comply with *American National Standards for Information on Microfiche Headings* (ANSI Z39.32-1981 or latest revision) and *Technical Report for Information and Image Management-Microfilm Jacket Formatting and Loading Techniques* (AIIM TR11-1987 or latest revision) and must have the following information on the heading of each fiche: name of government, office of origin, records series, and description of content if less than full records series.

(d) Aperture cards must have the following label heading information: name of government, office of origin, records series, and/or record locator number.

(e) Location aids must be employed to ensure that microfilmed images can be readily located. Such location aids may include: detailed container labeling, an external index of the documents on microfilm, flash targets placed on the microfilm, an index placed upon the microfilm, image marking on the microfilm, or sequential numbering on the microfilm. In those instances where records are not self-indexing (i.e. not in a readily identifiable numeric or alphabetic sequence), an index must be maintained. Any use of image marking must comply with *Standard for Information and Image Management-Image Mark (Blip) Used in Image Mark Retrieval Systems* (ANSI/AIIM MS8-1988 or latest revision).

(f) If bar coding is used it must meet standards of *Technical Report for Information and Image Management-Bar Coding on Microfiche Production and Dynamic Distribution Control* (AIIM TR12-1988 or latest revision).

#### §7.30. Computer Output Microfilm (COM).

(a) Standards for production, processing, testing, and storage of computer output microfilm are the same as those established in these rules for other microfilm formats, except as stated in this section.

(b) COM master microfilms must be wet processed silver-gelatin film for essential, medium-term, long-term, and permanent records. If silver-gelatin film is not used for the master of non-essential and short-term records, thermally processed silver film must be produced in accordance with *Technical Report for Thermally Processed Silver Microfilm* (AIIM TR3-1981 or latest revision) and a duplicate must be made on diazo, vesicular, or silver-gelatin film.

(c) Off-film certification must be maintained by the records custodian and must contain the following:

(1) "This is to certify that the official records appearing on (identifier) microfilm are accurate and complete reproductions in strict accordance with Local Government Code, Chapter 204; of the records series entitled (records series title), for the (name of department). These records were created in the normal course of business and microfilmed as part of a planned records management program; no addition, deletion, or alteration has been made."

(2) The off-film certificate of legality and authenticity must contain the printed or typed name of government, name of office, the name and title of the records custodian or deputy, and the date and place certified, and must be signed by the custodian or, if the camera operator is a deputy of the custodian, it may be signed by the deputy, and the authorized representative and printed name of the service bureau (if any).

(d) The following standards must be met:

(1) specifications in *Standard for Information and Image Management-Recommended Practice for Alphanumeric Computer-Output Microforms-Operational Practices for Inspection and Quality Control* (ANSI/AIIM MS1-1988 or latest revision);

(2) *Standard for Information and Image Management-Alphanumeric COM Quality Test Slide* (ANSI/AIIM MS28-1987 or latest revision);

(3) *Standard for Information and Image Management-Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM* (ANSI/AIIM MS43-1988 or latest revision).

(e) The following eye-readable titling information must appear:

(1) name of organization or custodian of the records;

(2) name of report or record;

(3) date; and

(4) starting and/or ending indexing information.

(f) A reduction ratio not exceeding 48:1 must be used.

(g) Required testing and methods of inspection are as follows.

(1) COM must use the alphanumeric COM quality test form slide as specified in *Standard for Information and Image Management-Alphanumeric COM Quality Test Slide* (ANSI/AIIM MS28-1987 or latest revision).

(2) Methylene blue tests must be performed according to §7.24 of this chapter (relating to Tests and Other Methods of Inspection and Verification of Accuracy).

(3) Density must be in accord-

ance with *Standard for Information and Image Management-Recommended Practice for Alphanumeric Computer-Output Microforms-Operational Practices for Inspection and Quality Control* (ANSI/AIIM MS1-1988 or latest revision).

(4) Resolution must be in accordance with *Standard for Information and Image Management Alphanumeric COM Quality Test Slide* (ANSI/AIIM MS28-1987 or latest revision).

(5) Resolution target images must be evaluated under a microscope to determine if resolution loss from duplicating is acceptable. A maximum acceptable loss is one pattern per generation.

(6) A visual inspection must be conducted on all film to verify legibility and readability. COM of permanent records must be visually inspected every 10 feet.

(7) Offline processors must be monitored on a scheduled basis with process control strips (sensitometric strips) at a minimum at the start of processing each day and whenever a batch of fixer or developer is changed, or when changes in processing such as replacement or addition of filter, water softener, or replenishing system are made, or when water is changed.

(h) Section 7.26 of this title (relating to Use of Editorial and Technical Targets) and §7.27 of this title (relating to Image Sequence) do not apply to COM.

#### §7.31. Jacketing.

(a) Standards for production, processing, testing, and storage of jackets are the same as those established in these rules for other microfilm formats, except as stated in this section.

(b) For short-term, medium-term, long-term, and permanent records the first generation silver-gelatin microfilm in roll form must be used for storage.

(c) A duplicate of a first generation film must have a resolution loss of no more than one test pattern of the test objects as described in *American National Standard Microcopying ISO Test Chart No. 2 Description and Use in Photographic Documentary Reproduction* (ANSI/ISO 3334-1979 or latest revision).

(d) The jacket heading must be right reading and upright and the microimages must be right reading.

(e) Heading information must be created with a black carbon-type ribbon or other ink that will not bleed, spread, or transfer.

(f) All jacketed film must comply with *Technical Report for Information and Image Management-Microfilm Jacket Formatting and Loading Techniques* (AIIM TR11-1987 or latest revision) and *Standard for Information and Image Management-Microfilm Jackets* (ANSI/AIIM MS11-1987 or latest revision).

§7.32. Expungement of Records.

(a) Expungement of records must comply with statutory law and *Standard for Information and Image Management-Recommended Practice for the Expungement, Deletion, Correction, or Amendment of Records on Microforms* (ANSI/AIIM MS42-1989 or latest revision).

(b) If the film is spliced the following information must be inserted in place of the expunged record(s):

(1) a start of expungement target;

(2) replacement documents for documents that were expunged (if necessary) :

(3) an expungement certificate containing the following information:

(A) order of the district court or other authorizing agency or, if the order shows information to be expunged, the number of the order;

(B) the image location that has been expunged;

(C) the signature, printed name, and title of the custodian of expunged records;

(D) the date of expungement.

(c) If the abrasion method is used, an expungement certificate containing the following information must be maintained and preserved until the microfilm's final disposition:

(1) order of the district court or other authorizing agency or, if the order shows information to be expunged, the number of the order;

(2) the image location that has been expunged;

(3) the signature, printed name, and title of the custodian of expunged records;

(4) the date of expungement.

(d) Images on film may not be expunged by punching holes through film, by using opaque, by blotting images with ink-type pen, or by using chemical means such as potassium dichromate (bleach) on film emulsion.

§7.33. Public Access to Information. Local governments must adopt procedures to ensure that the public has the same access to information on microfilm as they would be entitled to if the information were recorded in another medium. Where microfilm is the only storage medium for a record, a microfilm, paper, or other type of copy other than the master microfilm must

be available for public use; the custodian shall not be required to make available for public access the master microfilm.

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 September 20, 1990

TRD-9009961

Raymond Hitt  
Assistant State Librarian  
Texas State Library and  
Archives Commission

Effective date: October 12, 1990

Proposal publication date: April 13, 1990

For further information, please call: (512) 463-5440

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**TITLE 16. ECONOMIC  
REGULATIONS**  
**Part VIII. Texas Racing  
Commission**

**Chapter 301. Definitions**

• 16 TAC §301.1

The Texas Racing Commission adopts an amendment to §301.1, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3127).

The amendment is adopted to ensure that pari-mutuel racing in Texas is consistent with racing in other racing jurisdictions.

The amendment amends the definitions of coupled entry, false start, foul, purse or overnight race, in today horse, jockey, minus pool, mutuel field, no race, and outstanding ticket. The change from the proposed text clarifies the definition of an overnight race.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing Act.

§301.1. Definitions. The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

Coupled entry—Two or more horses entered in a race that, because of common ties of ownership are joined to be a single betting interest in that race.

False start—Failure of the starting gate or box to open simultaneously.

Foul—An action by a horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

Horse race—A running contest between horses for entry fees, purse, prize, or other reward, including the following:

(1)-(9) (No change.)

(10) Purse or overnight race—A race for which owners of horses entered are

not required by its conditions to contribute money toward its purse.

(11)-(14) (No change.)

In today horse—A horse that is in the body of a race program which is entered into a race on the next consecutive race day.

Jockey or apprentice—A professional rider licensed by the commission to ride race horses.

Minus pool—A pool in which there are insufficient net proceeds to pay the minimum price to holders of the winning tickets.

Mutuel field—A group of horses joined as a single betting interest in a race due to the limited numbering capacity of the totalisator.

No race—A race that is cancelled after being run due to a malfunction at the starting gate or box or any other applicable reason as determined by the rules of the commission.

Outstanding ticket—A pari-mutuel ticket that is not presented for payment before the end of the race day for which the ticket was purchased.

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 September 19, 1990.

TRD-9009878

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

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• 16 TAC §301.1

The Texas Racing Commission adopts an amendment to §301.1, with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4525).

The amendment is adopted to ensure that pari-mutuel racing in Texas is consistent with racing in other racing jurisdictions and the rules of the commission will be easily understood.

The amendment adds definitions for age of a greyhound, booking, branding, double entry, lure, weighing in weight, and weighing out weight. The change from the proposed text eliminates the requirement that the decoy on a lure be approved by the commission.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing Act.

§301.1. Definitions. The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

Age of a greyhound—Determined as beginning on the day the greyhound is whelped.

Booking—A contract between an association and a kennel owner for the kennel owner to provide greyhounds to the association for a race meeting and for the association to provide kennel buildings to house the greyhounds.

Branding—The act of a totalisator system imprinting a mutuel ticket with information that identifies the ticket as cancelled or cashed and automatically making the appropriate notation in the system's memories.

Double entry—An entry of two or more greyhounds in the same race that have either common ownership or the same trainer and are separate wagering interests.

Lure—A mechanical apparatus at a greyhound racetrack consisting of a stationary rail installed around the track, a motorized mechanism that travels on the rail, and a pole that is attached to the mechanism and extends over the track, and to which a decoy is attached.

Weighing in weight—The weight of a greyhound on weighing in to the lockout kennel.

Weighing out weight—The weight of a greyhound on weighing out of the lockout kennel immediately before post time for the race in which the greyhound is entered.

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 September 19, 1990.

TRD-9009877

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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

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**Chapter 305. Licenses for  
Pari-Mutuel Racing**

**Subchapter A. General Provisions**

• **16 TAC §305.6**

The Texas Racing Commission adopts an amendment to §305.6, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3953).

The amendment is adopted to ensure that the licensing procedure for individuals at racetracks will be simplified and less costly to the applicants.

The amendment authorizes the payment of license fees by personal check.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.

TRD-9009876

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: July 13, 1990

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

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**Subchapter B. Individual Licenses**

**General Provisions**

• **16 TAC §305.35**

The Texas Racing Commission adopts an amendment to §305.35, with changes to the proposed text as published in the April 27, 1990, issue of the *Texas Register* (15 TexReg 2400).

The amendment is adopted to ensure the occupational licensing function of the commission is administered efficiently and in accordance with applicable state law.

The amendment eliminates several categories of licenses, adds some categories of licenses, raises certain license fees, and lowers some licence fees. The changes from the proposed text are the elimination of the category for equine dentist and the addition of association staff category.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §5.02, and §7.05, which provide the commission with the authority to adopt rules setting fees for occupational licenses.

§305.35. *License fees.* The annual fee for an individual license is as follows.

| Type of License           | Fee  |
|---------------------------|------|
| Owner                     | \$50 |
| Kennel Owner              | \$50 |
| Trainer                   | \$50 |
| Asst. Trainer             | \$50 |
| Jockey                    | \$50 |
| Apprentice Jockey         | \$50 |
| Exercise Rider            | \$20 |
| Groom                     | \$20 |
| Stable Foreman            | \$20 |
| Veterinarian              | \$50 |
| Veterinarian Asst.        | \$20 |
| Jockey Agent              | \$50 |
| Farrier/Plater/Blacksmith | \$40 |
| Tattooer                  | \$40 |
| Cool-out                  | \$20 |
| Pony Person               | \$20 |
| Valet                     | \$20 |
| Kennel Helper             | \$20 |
| Owner-trainer             | \$50 |
| Official                  | \$50 |
| Asst. Starter             | \$20 |
| Association-Other         | \$50 |



|  |      |
|--|------|
| Admissions person  | \$20 |
| Entry clerk  | \$20 |
| Parking attendant  | \$20 |
| Maintenance  | \$20 |
| Leadout  | \$20 |
| Food Service   | \$20 |
| Chart-writer   | \$20 |
| Announcer  | \$20 |
| Outriders  | \$20 |
| Security Guard   | \$20 |
| Test Barn Technician                                       | \$20 |
| Mutuel Clerk   | \$20 |
| Mutuel-other   | \$20 |
| Vendor/concessionaire                                      | \$50 |
| Vendor/concessionaire employee                             | \$20 |
| Association Officer/Director                               | \$50 |
| Association-office staff                                   | \$20 |
| Multiple owner   | \$20 |
| Authorized Agent (must be<br>licensed as owner or trainer) | \$20 |
| Replacement Badge  | \$10 |
| Stable/Kennel Name   | \$50 |
| Medical Staff  | \$20 |
| Association Chaplain                                       | \$20 |

*15 TexReg 5684    September 28, 1990    Texas Register   ♦*

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 September 19, 1990.

TRD-9009858 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: April 27, 1990

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

## General Provisions

### • 16 TAC §305.37

The Texas Racing Commission adopts new §305.37, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3127).

The new section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new section describes the types of occupational licenses that the commission has determined are incompatible.

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.

TRD-9009856 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

### • 16 TAC §305.42

The Texas Racing Commission adopts an amendment to §305.42, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3127).

The amendment is adopted to ensure that pari-mutuel racing in Texas is consistent with racing in other pari-mutuel states.

The amendment clarifies that an owner must obtain an owner's license before his or her horse may start in a race.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide

the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.

TRD-9009859 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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Proposal publication date: June 5, 1990

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

### • 16 TAC §305.43

The Texas Racing Commission adopts an amendment to §305.43, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3127).

The amendment is adopted to ensure that the participants in pari-mutuel racing in Texas are qualified and are of the highest integrity.

The amendment clarifies the requirements for a lessee's license.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.

TRD-9009860 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

### • 16 TAC §305.44

The Texas Racing Commission adopts an amendment to §305.44, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3128).

The amendment is adopted to ensure that the participants in pari-mutuel racing in Texas are qualified and are of the highest integrity.

The amendment includes a practical examination for licensure as a trainer, and clarifies the procedure for taking the written examination.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.

TRD-9009861 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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Proposal publication date: June 5, 1990

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

### • 16 TAC §305.45

The Texas Racing Commission adopts an amendment to §305.45, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3128).

The amendment is adopted to ensure that the participants in pari-mutuel racing in Texas are qualified and are of the highest integrity.

The amendment clarifies the requirements for appointing and revoking the appointment of an authorized agent, as well as the term of such an appointment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.

TRD-9009866 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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Proposal publication date: June 5, 1990

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

### • 16 TAC §305.49

The Texas Racing Commission adopts new §305.49, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3128).

The new section is adopted to ensure that the participants in pari-mutuel racing in Texas are qualified and are of the highest integrity.

The new section establishes a procedure for obtaining an emergency owner's license if the owner is unavailable. The change from the proposed clarifies the disciplinary action that may be taken for a violation of the section.

No comments were received regarding adoption of the new section.

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

§305.49. Emergency License.

(a) If an owner is unable to complete an application for an owner's license because of absence or illness, the licensed trainer desiring to enter a horse or greyhound in a race may apply for an emergency owner's license on behalf of the absent owner.

(b) The trainer applying for an emergency owner's license on behalf of an absent owner must submit a written statement with the license application specifying the reasons the owner is unable to complete the application.

(c) The trainer applying for an emergency owner's license must submit at least the following information: the owner's full name, home or business address, telephone number, and social security number. At the time of application, the appropriate licensing fee must be paid to the commission. Failure to provide all of the foregoing information is grounds for denial of an emergency owner's license.

(d) Not later than the 21st day after the date an emergency owner's license issued, the owner must submit a properly completed owner's application, fingerprint card, and fingerprint fee, if applicable. Failure to provide the foregoing information is grounds for suspension of the emergency owner's license and other disciplinary action against the owner or trainer. In addition, if the required information is not submitted due to an act or omission on the part of the trainer, the trainer may also be subject to disciplinary action.

(e) An owner granted an emergency license is prohibited from withdrawing any funds from his/her horseman's bookkeeper account until the owner complies with all licensing procedures provided by §305.42 of this title (relating to Owners).

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 September 19, 1990.

TRD-9009867 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

Subchapter C. Racetrack Licenses

General Provisions

• 16 TAC §305.63

The Texas Racing Commission adopts an amendment to §305.63, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3128).

The amendment is adopted to ensure that the issuance of racetrack licenses is consistent with the applicable state laws.

The amendment clarifies the deadline for the commission to issue license certificate, as well as the information to be included on the certificate. The change from the proposed text corrects a typographical error.

No comments were received regarding adoption of the amendment.

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

§305.63. License Certificate.

(a) Not later than 30 days after the commission order granting a license to operate a racetrack is final and unappealable, the commission shall issue a license certificate to the association.

(b) The license certificate must include:

- (1) the name of the association;
  - (2) the type or class of racetrack;
  - (3) the date of issuance;
  - (4) the seal of the commission;
- and

(5) the signatures of the members of the section of the commission that granted the license.

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 September 19, 1990.

TRD-9009855 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

Chapter 307. Practice and Procedure

Subchapter B. Adjudicative Procedures

General Provisions

• 16 TAC §307.55

The Texas Racing Commission adopts the repeal of §307.55, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3465).

The section is repealed because it has proven to unduly restrict the options of the commission on racetrack applications; the repeal of the section will expedite the commission's application proceedings.

The section prohibits the commission from acting on a racetrack application if the applicant has instituted legal action against the commission.

No comments were received regarding repeal of the section.

The repeal is adopted 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 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 September 19, 1990.

TRD-9009822 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: July 15, 1990

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

Operations

• 16 TAC §307.67

The Texas Racing Commission adopts the repeal of §307.67, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3953).

The section is repealed because it has proven to be overly burdensome to the commission's licensees and is not necessary.

The section required an association to sell money orders at all times that the commission licensing office is open for licensing. Because the commission's rules now authorize payment for occupational licenses with personal checks, the section is not necessary.

The repeal is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009812 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: July 13, 1990

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

## General Provisions

### • 16 TAC §307.203

The Texas Racing Commission adopts the repeal of §307.203, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3465).

The section is repealed to ensure that the commission's rules are internally consistent and nonrepetitive.

The section requires stewards and racing judges to file certain reports; this requirement is redundant of requirements contained in other rules of the commission.

No comments were received regarding repeal of the section.

The repeal is adopted 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 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 September 19, 1990.

TRD-9009821 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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

### • 16 TAC §307.206

The Texas Racing Commission adopts the repeal of §307.206, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3129).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies that rulings against an individual licensee apply to another person if the person is liable for the conduct of the licensee or the person benefited from the licensee's conduct.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting for adopting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009854 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

### • 16 TAC §307.207

The Texas Racing Commission adopts the repeal of §307.207, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3129).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment removes the 60-day deadline for the commission to increase a penalty imposed by the stewards or judges. The change from the proposed text eliminates an unnecessary subdivision letter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and to for administering the Texas Racing Act.

*§307.207. Action by Commission.* The commission may, on its own motion, modify a penalty imposed by the stewards or racing judges or reinstate a person's license and rescind the penalty.

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 September 19, 1990.

TRD-9009853 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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Proposal publication date: June 5, 1990

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

### • 16 TAC §307.208

The Texas Racing Commission adopts the amendment of §307.208, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3130).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies that the stewards and racing judges honor the rulings issued by other pari-mutuel racing commissions. The change from the proposed text corrected a typographical error.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

*§307.208. Reciprocity.* The stewards and racing judges shall honor the rulings issued by other pari-mutuel racing commissions.

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 September 19, 1990.

TRD-9009852 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

## Subchapter C. Proceedings by Stewards and Racing Judges Objections and Protests

### • 16 TAC §307.221

The Texas Racing Commission adopts an amendment to §307.221, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3130).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the circumstances under which stewards and racing judges shall conduct inquiries.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009851 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

• 16 TAC §307.222

The Texas Racing Commission adopts an amendment to §307.222, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3130).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedure for objecting to the entry of a race animal.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009850 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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



• 16 TAC §307.223

The Texas Racing Commission adopts the repeal of §307.223, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3465).

The section is repealed because it is redundant of requirements contained in other rules of the commission; the repeal of the section will ensure that the commission's rules will be internally consistent and nonrepetitive.

The section outlines the requirements for protesting the start of a horse or greyhound.

No comments were received regarding repeal of the section.

The repeal is adopted 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 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 September 19, 1990.

TRD-9009820 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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



• 16 TAC §307.224

The Texas Racing Commission adopts the repeal of §307.224, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3466).

The section is repealed because it is redundant of requirements contained in other rules of the commission; the repeal of the section will ensure that the commission's rules will be internally consistent and nonrepetitive.

The section outlines the effect of the disqualification of a horse or greyhound.

No comments were received regarding repeal of the section.

The repeal is adopted 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 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 September 19, 1990.

TRD-9009819 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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



• 16 TAC §307.225

The Texas Racing Commission adopts the repeal of §307.225, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3466).

The section is repealed because it is redundant of requirements contained in other rules of the commission; the repeal of the section will ensure that the commission's rules will be internally consistent and nonrepetitive.

The section outlines the persons who may file an objection or protest.

No comments were received regarding repeal of the section.

The repeal is adopted 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 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 September 19, 1990.

TRD-9009818 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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



Exclusion and Ejection

• 16 TAC §307.271

The Texas Racing Commission adopts an amendment to §307.271, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3953).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity and will be fair to all participants.

The amendment clarifies the grounds for excluding or ejecting an individual from an association's grounds and authorizes the executive secretary of the commission to order an individual excluded or ejected.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009849 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: July 13, 1990

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



Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Facilities and Equipment

• 16 TAC §309.18

The Texas Racing Commission adopts an amendment to §309.18, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3130).

The amendment is adopted to ensure that pari-mutuel racing in Texas is safe for the patrons and the participants.

The amendment authorizes a licensed racetrack to provide a licensed vocational nurse, in lieu of a registered nurse.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009848 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §309.25

The Texas Racing Commission adopts an amendment to §309.25, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3131).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedures of limiting external communication during racing hours.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009847 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §309.26

The Texas Racing Commission adopts an amendment to §309.26, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3131).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment authorizes the use of hand held radios in certain circumstances in lieu of an internal communication system. The change from the proposed text authorizes the executive secretary to approve the hand held radios, instead of the commission itself.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

§309.26. *Internal Communication System.*

(a) An association shall provide an internal telephone communication system with outlets in:

- (1) the stewards' or judges' stand;
- (2) the racing office;
- (3) the tote room;
- (4) the jockey room;
- (5) the paddock or lockout kennel;
- (6) the entrance to the kennel compound;
- (7) the pre-race holding area;
- (8) the commission veterinarian's office;
- (9) the test barn;
- (10) the starting gate or boxes;
- (11) the finish line;
- (12) the video camera locations;
- (13) the clocker's stand;
- (14) the location of the ambulance; and
- (15) other locations designated by the commission.

(b) The executive secretary may approve hand held radio communication as an alternative to internal telephone communication in areas within the enclosure for which the executive secretary has determined telephone communication is impractical.

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 September 19, 1990.

TRD-9009846 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §309.28

The Texas Racing Commission adopts an amendment to §309.28, without changes to the proposed text as published in the June 13, 1990, issue of the *Texas Register* (15 TexReg 3953).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity and will be fair to all participants.

The amendment clarifies the types of photographs the association must post for viewing by the public.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009845 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: July 13, 1990

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

◆ ◆ ◆  
• 16 TAC §309.34

The Texas Racing Commission adopts an amendment to §309.34, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3131).

The section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment requires an association to provide a breathalyzer machine.

No comments were received regarding adoption of the section.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009844 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
Subchapter A. General Provisions

Operations

• 16 TAC §309.53

The Texas Racing Commission adopts an amendment to §309.53, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3131).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the type of financial records the commission may require an association to submit. The change from the proposed text authorizes the executive secretary to require the submission of the documents.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

#### §309.53. Records.

(a)-(d) (No change.)

(e) The executive secretary may require an association to submit, not later than five business days after making such a request, a balance sheet and profit and loss statements, to determine whether the association continues to be financially viable and capable of performing the duties of an association.

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 September 19, 1990.

TRD-9009868 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

#### • 16 TAC §309.55

The Texas Racing Commission adopts an amendment to §309.55, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3132).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the security service an association shall provide in the stable or kennel area.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009869 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

#### • 16 TAC §309.61

The Texas Racing Commission adopts an amendment to §309.61, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3132).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment requires vendors of food, animal feed, medication, or equipment in the stable or kennel area to provide proof of liability insurance at the time of licensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009843 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

#### • 16 TAC §309.63

The Texas Racing Commission adopts the repeal of §309.63, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3466).

The section is repealed because it is redundant of requirements contained in other rules of the commission; the repeal of the section will ensure that the commission's rules will be internally consistent and nonrepetitive.

The section describes the persons who are prohibited from racing an animal at a particular association.

No comments were received regarding repeal of the section.

The repeal is adopted under Texas Civil Statutes, Article 179e, §3.02, which provides the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.

TRD-9009817 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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

#### • 16 TAC §309.64

The Texas Racing Commission adopts the repeal of §309.64, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3466).

The section is repealed because it has proven to unduly burden the licensing capabilities of the commission; the repeal of the section will ensure that the commission's licensing procedures operate smoothly and are not unduly restrictive.

The section prohibits an association from selling an item on association grounds unless the item has been approved by the commission.

No comments were received regarding repeal of the section.

The repeal is adopted under Texas Civil Statutes, Article 179e, §3.02, which provides the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.

TRD-9009816 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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

### Subchapter B. Horse Race- tracks

#### Racetracks

#### • 16 TAC §309.109

The Texas Racing Commission adopts repeal of §309.109, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3467).

The section is repealed because it has proven to be overly restrictive to licensed racetracks.

The section requires an association to provide particular types of fencing.

No comments were received regarding repeal of the section.

The repeal is adopted 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 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 September 19, 1990.

TRD-9009815 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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

◆ ◆ ◆  
• 16 TAC §309.115

The Texas Racing Commission adopts an amendment to §309.115, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3132).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment requires an association to make at least one starting gate and qualified starting gate personnel available for schooling as often as necessary to accommodate the number of horses requiring schooling from the gate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009842 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §309.116

The Texas Racing Commission adopts an amendment to §309.116, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3133).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment eliminates the 1/2 mile distance marker.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009890 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
Operations

• 16 TAC §309.198

The Texas Racing Commission adopts an amendment to §309.198, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3133).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the information the official program must contain for each race day.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009891 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §309.199

The Texas Racing Commission adopts an amendment to §309.199, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3954).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the persons to whom the bookkeeper may release funds from an account and the time at which the purse money must be released.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009892 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: July 13, 1990

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

◆ ◆ ◆  
• 16 TAC §309.200

The Texas Racing Commission adopts the repeal of §309.200, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3467).

The section is repealed because it is redundant of requirements contained in other rules of the commission; the repeal of the section will ensure the commission's rules are internally consistent and nonrepetitive.

The section prohibited an association from permitting the sale of published racing selections or tip sheets on association grounds without approval of the commission.

No comments were received regarding repeal of the section.

The repeal is adopted 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 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 September 19, 1990.

TRD-9009814 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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

◆ ◆ ◆  
Subchapter C. Greyhound  
Racetracks

Facilities and Equipment

• 16 TAC §309.303

The Texas Racing Commission adopts an amendment to §309.303, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4525).

The amendment is adopted to ensure that pari-mutuel racing in Texas is safe and humane for the greyhounds.

The amendment requires an association to maintain the track surface and banking in a uniform condition to foster the safety of the greyhounds.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009893 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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



• 16 TAC §309.305

The Texas Racing Commission adopts an amendment to §309.305, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4525).

The amendment is adopted to ensure that pari-mutuel racing in Texas is safe and humane for the greyhounds.

The amendment requires an association to provide and maintain at least two starting boxes of a particular design and to inspect the boxes regularly to ensure the boxes are in proper working condition. The amendment also requires an association to provide qualified personnel to maintain the starting boxes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009894 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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



• 16 TAC §309.309

The Texas Racing Commission adopts an amendment to §309.309, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 5264).

The amendment is adopted to ensure that pari-mutuel racing in Texas is safe and humane for the greyhounds.

The amendment requires an association to provide a disinfected dipping vat approved by the commission in the cool-out area adjacent to the lockout kennel.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009895 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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



• 16 TAC §309.311

The Texas Racing Commission adopts an amendment to §309.311, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4526).

The amendment is adopted to ensure that pari-mutuel racing in Texas is safe and humane for the greyhounds.

The amendment requires the security system for the kennel compound to include floodlights.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009896 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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



• 16 TAC §309.315

The Texas Racing Commission adopts new §309.315, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4526).

The section is adopted to ensure that pari-mutuel racing in Texas is of the highest integrity.

The section requires an association to provide an area for obtaining specimens from greyhounds to test for prohibited medications and other substances.

No comments were received regarding adoption of the section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009897 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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



• 16 TAC §309.316

The Texas Racing Commission adopts new §309.316, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4527).

The section is adopted to ensure that pari-mutuel racing in Texas is safe and humane for the greyhounds.

The section requires an association to provide a facility for providing emergency veterinary care to greyhounds.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009898 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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



• 16 TAC §309.353

The Texas Racing Commission adopts an amendment to §309.353, with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4527).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment authorizes an association to dismiss a kennel for repeated violations of the Act or a rule of the commission. The change from the proposed text eliminates the ability of the association to terminate a kennel contract after the revocation of a trainer's license.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

§309.353. Dismissal of Kennel.

(a) An association may dismiss a kennel only:

- (1) on revocation by the commission of the kennel owner's license;
- (2) for repeated violations of the Act or a rule of the commission; or
- (3) for poor performance, as provided by subsection (b) of this section.

(b) A contract between an association and a kennel owner must provide a uniform dismissal clause. The clause must state that:

- (1) (No change.)
  - (2) the association may place a kennel on probation by written notice if the kennel's win record is in the lowest three positions during each of the three preceding months; and
  - (3) (No change.)
- (c) (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 September 19, 1990.

TRD-9009899 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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



• 16 TAC §309.355

The Texas Racing Commission adopts an amendment to §309.355, with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4527).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

the amendment clarifies the requirements for the grading of juvenile and maiden greyhounds. The change from the proposed text clarifies that if a Grade J greyhound is lowered one grade, the greyhound is lowered to Grande D.

Comments were received regarding adoption of the amendment from a greyhound breeders organization and from one licensed greyhound racetrack. The racetrack expressed concern that the grading system is not entirely consistent with grading systems used in some other states. The commission noted that although not all states use the grading system adopted in this section, it is the grading system recommended by the National Greyhound Association.

The breeders organization requested clarification as to the method by which a greyhound is lowered one grade, and the commission's changes encompass this comment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.  
§309.355. Grading System.

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

(d) The racing secretary shall lower a greyhound to the next lower grade, including lowering a Grade J to a Grade D, if the greyhound:

- (1) (No change.)
- (2) fails to finish better than third at least once in four consecutive starts; or
- (3) fails to finish better than third at least twice in five consecutive starts.

(e) (No change.)

(f) The racing secretary shall advance a greyhound that wins a maiden race to Grade J. The racing secretary shall advance a greyhound that wins a Grade J race to Grade C. On request by a kennel owner or trainer, the racing secretary may advance a greyhound that finishes second, third, or fourth in a maiden race to Grade C. For a greyhound regraded on request under this subsection, an association shall place the letter "M" or "J" after the greyhound's name in the racing program.

(g)-(o) (No change.)

(p) If a maiden fails to finish in the top three positions in six consecutive starts, the maiden may not race again at the race meeting until it requalifies. If the maiden fails to finish in the top three positions in the two starts after requalifying, the maiden may not race again at the race meeting.

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 September 19, 1990.

TRD-9009900 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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



• 16 TAC §309.359

The Texas Racing Commission adopts new §309.359, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3133).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity and that greyhounds are trained in humane ways.

The amendment restricts the ability of a greyhound to race in Texas if the greyhound was trained in a state that does not prohibit the use of live lures.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009901 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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Proposal publication date: June 5, 1990

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



• 16 TAC §309.362

The Texas Racing Commission adopts an amendment to §309.362, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4528).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment requires an association to maintain a kennel account and employ a bookkeeper to maintain the records of the account.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009902 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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Proposal publication date: August 10, 1990

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

◆ ◆ ◆  
• 16 TAC §309.364

The Texas Racing Commission adopts new §309.364, with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4528).

The section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The section requires an association to prepare and print an official program for each race day. The change from the proposed text corrects a typographical error.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

§309.364. Official Program.

(a) For each race day, an association shall prepare and print an official program. The official program must contain the order of the races on that day, the distance and track record for each race, and the names of the greyhounds scheduled to run in each race, in order of their post positions. The post positions must be designated by numbers placed at the left and in line with the names of the greyhounds.

(b) The official program must contain at least two past performances for each greyhound scheduled to race. The program must also contain, for each greyhound scheduled to race:

- (1) the name;
- (2) color;
- (3) sex;
- (4) date of whelping;
- (5) breeding;
- (6) established racing weight;
- (7) number of starts in official races;
- (8) number of times finishing first, second, and third;
- (9) name of owner and lessee, if applicable;

- (10) name of trainer; and
- (11) other information to enable the public to properly judge the greyhound's ability.

(c) If the name of a greyhound is changed, the new name, together with the former name, shall be published in the official entries and program until after the greyhound has started six times under the new name.

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 September 19, 1990.

TRD-9009903 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
• 16 TAC §309.365

The Texas Racing Commission adopts new §309.365, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4529).

The section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The section requires an association to maintain a card index system of identification for the greyhounds registered to race at the race-track.

No comments were received regarding adoption of the section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorizes the commission to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009904 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective Date: October 11, 1990:

Proposal publication date: October 10, 1990

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

## Chapter 311. Conduct and Duties of Individual Licensees

### Subchapter A. General Provisions

◆ ◆ ◆  
• 16 TAC §311.4

The Texas Racing Commission adopts an amendment to §311.4, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3134).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment prohibits a licensee to offer, give, solicit, or accept a bribe to purchase a cash or mutuel ticket for another person.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009905 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
• 16 TAC §311.5

The Texas Racing Commission adopts an amendment to §311.5, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3134).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies which licensees are prohibited from wagering in Texas during the term of their license.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

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For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §311.10

The Texas Racing Commission adopts an amendment to §311.10, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3134).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment states that a license may not use offensive, obscene, or threatening language or gestures to a racetrack or association official, representatives of the racing commission, another licensee, or a patron. The change from the proposed text included the reference to patrons.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

## §311.10. Conduct.

(a) (No change.)

(b) A license may not use offensive, obscene, or threatening language or gestures to a racetrack or association official, representative of the racing commission, another licensee, or a patron.

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 September 19, 1990.

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Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §311.14

The Texas Racing Commission adopts new §311.14, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3467).

The new section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new section clarifies how an injury to a person on association grounds or a race animal shall be reported.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
Subchapter B. Specific Licenses

## General Provisions

## • 16 TAC §311.103

The Texas Racing Commission adopts an amendment to §311.103, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3134).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the persons to whom a trainer must report the illness of a horse under the trainer's care and custody.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

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Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §311.105

The Texas Racing Commission adopts the repeal of §311.105, without changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3468).

The section is repealed because the section is redundant of requirements contained in other rules of the commission; the repeal of the section will ensure the commission's rules are internally consistent and nonrepetitive.

The section describes the requirements for appointing an authorized agent.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorizes the commission to adopt rules to administer the Texas Racing 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 September 19, 1990.

Effective date: October 11, 1990

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For further information, please call: (512)  
476-7223◆ ◆ ◆  
Subchapter B. Specific Licenses

## General Provisions

## • 16 TAC §311.106

The Texas Racing Commission adopts an amendment to §311.106, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3135).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedures for registering stable or kennel names. The change from the proposed text deleted the prohibition against using the real name of an owner as a kennel name.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

## §311.106. Stable or Kennel Names.

(a) A stable or kennel name may be registered with the commission by ownership entity by filing an application on a form prescribed by the commission and paying the prescribed annual fee. A person may not use the real name of an owner of a race horse as a stable name. A stable or kennel name which has already been registered with the commission may not be registered by another owner.

(b) Registering a stable or kennel name with the commission does not affect a person's obligation to file or register a fictitious name as provided by the laws of Texas.

(c) An application to register a stable or kennel name must disclose the real names of all interests participating in the stable or kennel and the percentage of ownership interest of each, including the interest owned by a corporation, general partnership, limited partnership, trust, estate, or individual.

(d) A stable or kennel name may be changed by registering a new stable or kennel name and by paying the prescribed annual fee. A stable or kennel name may be abandoned by giving written notice to the commission. A change of 5.0% or more in ownership of a stable or kennel registered under a stable or kennel name shall be immediately reported to the commission.

(e) A stable or kennel name that advertises a product or service other than the stable or kennel may not be registered.

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 September 19, 1990.

TRD-9009909 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

## Licensees for Horse Racing

### • 16 TAC §311.151

The Texas Racing Commission adopts an amendment to §311.151, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3135).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedures for changing trainers. The change from the proposed text corrected a typographical error.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

*§311.151. Change of Trainer.* An owner may change the trainer of his or her horse registered at a licensed race meeting provided:

(1) the request to change trainers is submitted for approval to the stewards on a form provided by the association and approved by the commission;

(2) the trainer from whom the horse is being transferred signs the form releasing custody of the horse;

(3) the trainer to whom the horse is being transferred signs the form accepting responsibility for the horse; and

(4) the stewards approve the transfer.

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 September 19, 1990.

TRD-9009910 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

### • 16 TAC §311.152

The Texas Racing Commission adopts an amendment to §311.152, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3135).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the duties of a trainer regarding the submission of a current list of employees. The change from the proposed text corrected a typographical error.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

#### *§311.152. Trainer Employees.*

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

(c) A trainer shall submit an original list of the trainer's employees on association grounds to the licensing office at the racetrack and shall keep the list current.

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 September 19, 1990.

TRD-9009911 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

### • 16 TAC §311.154

The Texas Racing Commission adopts an amendment to §311.154, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3135).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the prohibition against certain relatives assuming the responsibilities of a suspended trainer.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009912 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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Proposal publication date: June 5, 1990

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

### • 16 TAC §311.155

The Texas Racing Commission adopts an amendment to §311.155, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3136).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the person who may report training information to the morning clocker.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §311.156

The Texas Racing Commission adopts an amendment to §311.156, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3136).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment deletes the prohibition against someone paying a fine on behalf of a jockey.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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Effective date: October 11, 1990

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For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §311.157

The Texas Racing Commission adopts new §311.157, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3136).

The new section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new section clarifies the duties of a trainer regarding the appointment of a substitute if the trainer must be absent from the association grounds.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §311.158

The Texas Racing Commission adopts new §311.158, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3136).

The new section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new section prohibits an owner or trainer from entering a horse in a race if the owner or trainer is a part owner of the racetrack or is involved in the sale of tip sheets at the racetrack.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

Effective date: October 11, 1990

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For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §311.171

The Texas Racing Commission adopts an amendment to §311.171, with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4529).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment describes the duties of a kennel owner relating to the filing of an employee list, designating a representative, reporting illnesses and death of greyhounds, retiring greyhounds, and maintenance of kennel buildings. The change from the proposed text corrected typographical errors and authorizes the commission veterinarian to order a postmortem examination on certain greyhounds.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

## §311.171. Kennel Owners.

(a) A kennel owner shall provide workers' compensation insurance for each of the kennel owner's employees.

(b) Not later than five days before the first day of a race meeting, a kennel owner shall file with the commission licensing office a list of all individuals to be employed by the kennel on association grounds. Not later than 24 hours after a change in personnel occurs, the kennel owner shall notify the commission licensing office of the change.

(c) If the kennel owner is not to be present on association grounds during racing, the kennel owner shall:

(1) appoint an individual to be responsible for greyhounds scheduled to race during the kennel owner's absence; and

(2) shall notify the racing judges of the appointment.

(d) A kennel owner shall report to the commission veterinarian and the racing secretary a greyhound in the kennel owner's care that is in poor physical condition, is not in racing form, or is a bitch in season.

(e) A kennel owner shall retire a greyhound that is not in racing form or is in poor condition. A greyhound that has been retired for conditioning must be brought back to racing weight before being entered in a race.

(f) Immediately after a greyhound on, or registered as being on, association grounds dies or is euthanized, the kennel owner shall notify the commission veterinarian and the racing secretary. The commission veterinarian may order a postmortem examination of a greyhound that dies or is euthanized on association grounds. The examination shall be conducted at a time and place acceptable to the commission veterinarian. The kennel owner shall dispose of the remains of the greyhound in a manner that is approved by the commission veterinarian.

(g) The kennel owner shall maintain the kennel building to which the kennel owner is assigned in a safe and sanitary condition and in a condition that is conducive to the health, safety, and welfare of the greyhounds and the persons working in and around the kennel building.

(h) A kennel owner may not willfully or intentionally destroy or abuse a kennel building or the equipment or facilities in a kennel building.

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 September 19, 1990.

TRD-9009919 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
**Subchapter B. Specific Licensees**

**Licensees for Greyhound Racing**

• 16 TAC §311.173

The Texas Racing Commission adopts new §311.173, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4529).

The new section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new section describes the duties of a leadout relating to attire, smoking in uniform, ownership of greyhounds, and eating and drinking on duty.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009945 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
**Subchapter C. Alcohol and Drug Testing**

**Alcohol**

• 16 TAC §311.221

The Texas Racing Commission adopts an amendment to §311.221, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3137).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment prohibits a licensee from being under the influence of an alcoholic beverage while the licensee is engaged in the performance of the licensee's duties. The change from the proposed text reinstates the prohibition against possessing or consuming alcoholic beverages in the stable or kennel area.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

**§311.221. Prohibited Conduct.**

(a) (No change.)

(b) A licensee may not be under the influence of an alcoholic beverage or have an alcohol concentration of more than 0.0% in his or her body while the licensee is engaged in the performance of the licensee's duties. A licensee may not possess or consume an alcoholic beverage while in the stable or kennel area of the association grounds.

(c) Notwithstanding subsection (b) of this section, an owner of a horse or greyhound whose involvement is limited to that of a spectator during racing hours may consume alcoholic beverages while in the grandstand area.

(d) For purposes of this subchapter, "alcohol concentration" means:

(1) the number of grams of alcohol per 210 liters of breath; or

(2) the number of grams of alcohol per 67 milliliters of urine.

(e) (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 September 19, 1990.

TRD-9009871 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

**Chapter 313. Officials and Rules of Horse Races**

**Subchapter A. Officials**

**General Provisions**

• 16 TAC §313.1

The Texas Racing Commission adopts an amendment to §313.1, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3137).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies which racetrack and association officials must be present at horse race meetings.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009920 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.3

The Texas Racing Commission adopts the repeal of §313.3, without changes as proposed in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3468).

The section is repealed because the section is redundant of requirements contained in other rules of the commission; the repeal of the section will ensure the commission's rules are internally consistent and nonrepetitive.

The section prohibits horse racing officials from wagering at pari-mutuel racetracks.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing 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 September 19, 1990.



Effective date: October 11, 1990

Proposal publication date: June 15, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §313.6

The Texas Racing Commission adopts an amendment to §313.6 without changes to the proposed Texas as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3137).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment removes the horse identifier from the list of officials for whom the commission will set the compensation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009921

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
Duties of Stewards

## • 16 TAC §313.21

The Texas Racing Commission adopts an amendment to §313.21, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3138).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the requirements for eligibility to serve as a steward.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009922

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §313.24

The Texas Racing Commission adopts an amendment to §313.24, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3138).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the duties of the stewards regarding the keeping of records and reports on their activities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009923

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §313.25

The Texas Racing Commission adopts an amendment to §313.25, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3138).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedure for removing a horse from the steward's list.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009924

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
Duties of Other Officials

## • 16 TAC §313.45

The Texas Racing Commission adopts an amendment to §313.45, without changes to the proposed text, as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3139).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the duties of the clerk of scales.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009925

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §313.50

The Texas Racing Commission adopts an amendment to §313.50, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3139).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the duties of the horse identifier.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt

rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009926 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.56

The Texas Racing Commission adopts an amendment to §313.56, without changes to the proposed text, as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3139).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the duties of the stable superintendent.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009927 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
Subchapter B. Entries, Declarations, and Allowances

Entries

• 16 TAC §313.101

The Texas Racing Commission adopts an amendment to §313.101, without changes to the proposed text, as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3139).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the persons who may sign an entry form.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009928 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.103

The Texas Racing Commission adopts an amendment to §313.103, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3140).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the eligibility requirements for entry in a stakes race.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009929 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
Entries

• 16 TAC §313.107

The Texas Racing Commission adopts an amendment to §313.107, without changes to the as proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3140).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment expands the types of people who may be designated to draw the post positions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009930 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.108

The Texas Racing Commission adopts an amendment to §313.108, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3140).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the duties of the racing secretary regarding the preferred list.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009931 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.110

The Texas Racing Commission adopts an amendment to §313.110, without changes to the proposed text, as published in the June 5,

1990, issue of the *Texas Register* (15 TexReg 3140).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the requirements for coupling entries.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009932 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.111

The Texas Racing Commission adopts an amendment to §313.111, without changes to the proposed text, as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3141).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the age restrictions for horse and horse races.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009933 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

## Declarations and Scratches

◆ ◆ ◆  
• 16 TAC §313.132

The Texas Racing Commission adopts an amendment to §313.132, without changes to the proposed text, as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3141).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment authorizes an association to designate a scratch time.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009934 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
Allowances and Penalties

• 16 TAC §313.161

The Texas Racing Commission adopts an amendment to §313.161, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3141).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the person who is responsible for a horse carrying the correct weight.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009935 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
Subchapter B. Entries, Declarations, and Allowances  
Allowances and Penalties

• 16 TAC §313.166

The Texas Racing Commission adopts an amendment to §313.166, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3141).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies that the apprentice allowance does not apply to a jockey riding in a stakes race.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009936 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.167

The Texas Racing Commission adopts an amendment to §313.167, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3142).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the prohibition against a weight allowance solely for having been beaten in a race.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009937 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
**Subchapter C. Claiming Races**

**• 16 TAC §313.301**

The Texas Racing Commission adopts an amendment to §313.301, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3142).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the persons who may claim a horse.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009938 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
**• 16 TAC §313.302**

The Texas Racing Commission adopts an amendment to §313.302, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3142).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the claim procedure relating to the amount on deposit and the form of the claim form. The change from the proposed text deletes the requirement of an affidavit on the claim form.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wager-

ing, and for administering the Texas Racing Act.

**§313.302. Claim Procedure.**

(a) (No change.)

(b) A claim must be made in writing on forms and in envelopes approved by the commission. The form and envelope must be filled out completely and must be accurate in every detail. For purposes of this section, the name of the horse as it appears in the official program governs.

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

(f) After the deadline for filling claims for a race, a steward or a designee of the stewards shall open the box, examine the claims, and notify the stewards of all accurate claims. The steward or designee will then notify the horsemen's bookkeeper of the claims to determine whether the appropriate amount is on deposit with the bookkeeper in accordance with this section of and to debit the claimants's account for the amount of the claim, plus all applicable fees. If more than one person enters a claim for a horse, a steward or a designee of the stewards shall determine the disposition of the horse by lot.

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 September 19, 1990.

TRD-9009872 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
**• 16 TAC §313.303**

The Texas Racing Commission adopts an amendment to §313.303, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3142).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the owner for which a claimed horse runs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009939 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
**• 16 TAC §313.305**

The Texas Racing Commission adopts an amendment to §313.305, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3143).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the types of negotiable instruments that may be on deposit to claim a horse.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009940 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
**• 16 TAC §313.306**

The Texas Racing Commission adopts an amendment to §313.306, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3143).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment authorizes the association to determine the location for delivering a claimed horse.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009941 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.311

The Texas Racing Commission adopts an amendment to §313.311, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3143).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedure by which a depleted stable may make a claim.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009942 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.312

The Texas Racing Commission adopts an amendment to §313.312, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3143).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedure for protesting the claim of a horse that is found to have prohibited drug, chemical, or substance.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wager-

ing, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009943 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
• 16 TAC §313.314

The Texas Racing Commission adopts an amendment to §313.314, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3144).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the date on which a veterinarian's certificate must be issued regarding a mare that has been services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009944 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
Subchapter D. Running of the  
Race

Jockeys

• 16 TAC §313.401

The Texas Racing Commission adopts an amendment to §313.401, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3144).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the responsibility to report on each day the jockey is scheduled to ride.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009928 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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◆ ◆ ◆  
Subchapter D. Running of the  
Race

Jockeys

• 16 TAC §313.402

The Texas Racing Commission adopts an amendment to §313.402, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3144).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the jockey's responsibility to report to the clerk of scales for weighing-out. The change from the proposed text corrected a typographical error.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

§313.402. *Weighting-out.*

(a) A jockey engaged to ride in a race must report to the clerk of scales for weighing-out not more than 30 minutes before post time for the first race, if the jockey is riding in that race, and not sooner than the running of the preceding race, if the jockey is riding in any other race.

(b)-(c) (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.

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General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
• 16 TAC §313.403

The Texas Racing Commission adopts an amendment to §313.403, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3144).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the circumstances under which a jockey may not weigh-out.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009830 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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476-7223

◆ ◆ ◆  
• 16 TAC §313.404

The Texas Racing Commission adopts an amendment to §313.404, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3145).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the items which are to be included in determining the jockey's weight.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009831 Paula Cochran Carter  
General Counsel  
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For further information, please call: (512)  
476-7223

◆ ◆ ◆  
• 16 TAC §313.405

The Texas Racing Commission adopts an amendment to §313.405, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3145).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the equipment a jockey may not use.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009832 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
• 16 TAC §313.406

The Texas Racing Commission adopts an amendment to §313.406, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3145).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the required attire for jockeys.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009833 Paula Cochran Carter  
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Texas Racing Commission

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

◆ ◆ ◆  
• 16 TAC §313.407

The Texas Racing Commission adopts an amendment to §313.407, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3145).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the circumstances under which a jockey may be excused from a riding engagement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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General Counsel  
Texas Racing Commission

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476-7223

◆ ◆ ◆  
• 16 TAC §313.408

The Texas Racing Commission adopts an amendment to §313.408, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3146).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedures for severing a relationship with a jockey agent.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009835 Paula Cochran Carter  
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◆ ◆ ◆  
• 16 TAC §313.409

The Texas Racing Commission adopts an amendment to §313.409, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3146).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the time at which a jockey mount fee is considered earned.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009836 Paula Cochran Carter  
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Texas Racing Commission

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◆ ◆ ◆  
• 16 TAC §313.410

The Texas Racing Commission adopts an amendment to §313.410, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3146).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment prohibits a person from employing a jockey to prevent the jockey from riding another horse.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009837 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
• 16 TAC §313.411

The Texas Racing Commission adopts new §313.411, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3146).

The section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The section requires the stewards to designate the races in which a suspended jockey can compete. The change from the proposed text corrects typographical errors.

No comments were received regarding adoption of the section.

The section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

*§313.411. Suspended Jockeys.*

(a) Before opening day of a race meeting, the stewards shall designate the stakes or other races at that meeting which a jockey will be permitted to compete, notwithstanding the fact that the jockey is under suspension for 10 days or less for a riding infraction at the time the designated race is to be run.

(b) Official rulings for riding infractions of 10 days or less must state: "The term of this suspension does not prohibit participation in designated races."

(c) The stewards shall post a listing of the designated races in the jockeys' room, racing office, and any other place determined to be appropriate by the stewards.

(d) A suspended jockey must be named at time of entry to participate in a designated race.

(e) A day in which a jockey participated in a designated race while on suspension does not count as a suspension day.

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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TRD-9009873 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

◆ ◆ ◆  
Subchapter D. Running of the Race

Pre-race Procedure

• 16 TAC §313.421

The Texas Racing Commission adopts an amendment to §313.421, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3954).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the time at which a horse must be present in the pre-race holding area. The amendment also prohibits the placement of blinkers on a horse until after the horse has been identified by the horse identifier.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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TRD-9009838 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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◆ ◆ ◆  
Chapter 315. Officials and Rules for Greyhound Racing

Subchapter A. Officials

Appointment of Officials

• 16 TAC §§315.1-315.5

The Texas Racing Commission adopts new §§315.1-315.5. Sections 315.1-315.3 and 315.5, are adopted with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4530). Section 315.4 is adopted without changes and will not be republished.

The new sections are adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new sections describe the officials that must be present to supervise a pari-mutuel greyhound race meeting and the methods for appointing the officials. The change from the proposed text alters the designation of the types of officials, clarifies the general responsibilities of the officials, and corrects typographical errors.

Comments were received regarding the adoption of the sections from one licensed greyhound racetrack. The commenter suggested clarification in the designation of the officials, and the commission agreed with the suggestion.

The new sections are adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

### §315.1. Required Officials.

(a) The following officials must be present at each greyhound race conducted in this state:

- (1) a presiding racing judge;
- (2) two racing judges;
- (3) a commission veterinarian;
- (4) an association veterinarian;
- (5) a racing secretary;
- (6) an assistant racing secretary;
- (7) a paddock judge;
- (8) a starter;
- (9) a clerk of scales;
- (10) a mutuel manager;
- (11) a chart writer;
- (12) a photofinish operator and timer;
- (13) a kennel master; and
- (14) a mechanical lure operator.

(b) An individual may not serve as an official unless the individual has been approved or appointed by the commission. Not later than the 30th day before the first day of a race meeting, an association shall submit to the executive secretary a document containing the name of each individual appointed to serve as an official at the race meeting. If the executive secretary determines that an individual is qualified to perform the duties required of the official position for which the individual is submitted and may be issued a license by the commission, the executive secretary shall approve the appointment of the individual.

### §315.2. Racing Judges.

(a) To be eligible for appointment as a racing judge, an individual must:

(1) have experience as an official at a pari-mutuel greyhound racetrack or demonstrate to the executive secretary's satisfaction that the individual has sufficient

experience in a racing-related field to perform the duties of a racing judge;

(2) pass an optical examination conducted not more than 90 days before the appointment, indicating 20-20 vision, corrected, and the ability to distinguish colors;

(3) agree to a complete investigation into the individual's background to ensure the individual's integrity is above reproach;

(4) pass a written examination prescribed by the executive secretary;

(5) participate in an oral interview conducted by the executive secretary; and

(6) demonstrate to the executive secretary's satisfaction that the individual's income from sources other than as a racing judge is unrelated to patronage of or employment by a licensee of the commission.

(b) The executive secretary shall administer the written examination required under this section. A passing grade for the examination is 85 on a scale of 100. The written examination consists of:

- (1) 85 multiple choice questions; and
- (2) three essay questions.

(c) The commission shall maintain a list of individuals who are qualified to be appointed as racing judges.

### §315.3. Substitute Officials.

(a) The executive secretary may appoint a deputy presiding racing judge to serve in the absence of the presiding racing judge. The association may appoint a deputy racing judge to serve in the absence of one of the associate racing judges.

(b) To be eligible to be appointed as a deputy presiding racing judge or a deputy racing judge, an individual must be qualified to serve as a racing judge and must be approved by the executive secretary.

(c) If the deputy presiding racing judge or a deputy racing judge who is called to serve is unavailable or cannot be present at the designated time, the association may appoint a temporary racing judge from the licensed officials employed by the association, with the approval of the executive secretary. The association shall file a written report with the commission regarding each instance that a deputy or temporary racing judge serves. The appointment of a temporary racing judge is valid only for the day of the appointment.

(d) If an approved official becomes unavailable to serve, the association may appoint a substitute official with the approval of the executive secretary. The substitute official must obtain a commission license before assuming his or her duties. Not later than seven days after an associa-

tion official is removed or transferred, the association shall provide to the commission a written report describing in detail the circumstances of and the reasons for the removal or transfer.

(e) If a vacancy occurs among the racing officials other than the racing judges and the association has not appointed an approved substitute, or if a vacancy occurs after a performance has begun, the racing judges shall immediately appoint another qualified individual to fill the vacancy. To be eligible for appointment under this subsection, an individual must be licensed by the commission as an official. An appointment made under this subsection is valid only for the day of the appointment, unless the association fails to fill the vacancy on the following day and notifies the racing judges not later than one hour before post time for the first race of the day. The racing judges shall immediately report to the executive secretary all appointments made under this subsection.

### §315.5. General Duties.

(a) An official other than a racing judge is directly responsible to the racing judges for the performance of the official's duties and shall exercise due diligence in the performance of those duties.

(b) An official shall promptly report to the racing judges or the executive secretary any observed violation of the Act or a rule of the commission.

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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Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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

## Duties

### • 16 TAC §§315.31-315.42

The Texas Racing Commission adopts new §§315.31-315.42. Sections 315.31, 315.33-315.35, 315.37-315.38, and 315.40, are adopted with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4531). Sections 315.32, 315.36, 315.39, 315.41, and 315.42, are adopted without changes and will not be republished.

The new sections are adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new sections describe the duties of each official that must be present to supervise a pari-mutuel greyhound race meeting. The



changes from the proposed text clarify the authority of the racing judges, the responsibility for the placement of identification tags, and the amount of jump permitted in the scales, and corrects typographical errors.

Comments were received regarding the adoption of the sections from two licensed greyhound racetracks. One commenter suggested clarification in the authority of the racing judges on the operations of the racetrack, and the commission agreed with the suggestion. The other commenter suggested clarification in the placement of the identification tag and the amount of jump permitted in the scales, and the commission agreed with the suggestions.

The new sections are adopted under Texas Civil Statutes, Article 179e, §3. 02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

#### §315.31. Racing Judges.

(a) In addition to the duties described in Chapter 307 of this title (relating to Practice and Procedure), the racing judges shall supervise and exercise general authority over the conduct of the race meeting for which they are appointed and over the licensees participating in racing at the race meeting. If a question arises during a race meeting regarding the conduct of racing that is not addressed by the Texas Racing Act (Act) or a rule of the commission, the racing judges shall resolve the question in conformity with custom, precedent, justice, and the best interest of racing.

(b) The racing judges shall decide all questions before them by majority vote.

(c) The racing judges have the power to:

(1) interpret and enforce the Act and the rules of the commission and to determine all questions, disputes, complaints, or objections relating to racing matters in accordance with the applicable laws;

(2) issue rulings, which supersede any orders of the association, on racing matters that may change the conduct of a race or a race meeting;

(3) review applications for individual licenses submitted at a racetrack and make recommendations to the commission regarding the issuance of individual licenses;

(4) enter and inspect all official's stands, weighing rooms, kennels, and all other areas on association grounds;

(5) supervise entries, declarations, scratches, and substitutions, and refuse an entry or transfer of entries;

(6) supervise the grading and schooling of greyhounds and place a greyhound on the schooling list;

(7) supervise weighing and starting procedures;

(8) order the examination of a greyhound or the ownership, registration, or identification papers of a greyhound;

(9) disqualify a greyhound or request proof that a greyhound is eligible to race; and

(10) perform any other duty necessary on behalf of the commission to ensure a race meeting is conducted in accordance with the Act and the rules of the commission.

(d) The racing judges shall prepare a report of actions taken and observations made during each performance. The report must contain the name of the racetrack, the date, a designation of matinee or night performance, the weather and track conditions, inquiries and objections, and any unusual circumstances or conditions. The report must be signed by each racing judge and be filed with the executive secretary on a weekly basis.

(e) The racing judges shall maintain a detailed log of the racing judges' official activities. The log must describe all questions, disputes, protests, complaints, or objections brought to the attention of the racing judges and all interviews, investigations, and rulings made by the judges. The log must be available at all times for inspection by the commission or a representative of the commission.

(f) A majority of the racing judges shall be present on association grounds not later than the weigh-in time for each performance.

(g) The racing judges shall determine the order of finish of a race by the relative position of the muzzles, or if a muzzle is lost or hanging, of the noses, of each greyhound. The racing judges shall immediately notify the mutuel department of the numbers of the first four greyhounds.

(h) The racing judges may not declare a race official until they have determined which greyhounds finished first, second, third, and fourth.

(i) On determining the official order of finish, the racing judges shall direct the order of finish to be announced to the public and the order of finish and the official sign to be displayed on the tote board.

(j) Except as otherwise provided by this section, if the racing judges decide to consult a photograph from the photofinish equipment, the racing judges may declare the placements of the greyhounds which they have determined to be unquestionable. The photofinish equipment required by these rules is to be merely an aid to the racing judges, and the racing judges' decision is final, subject only to appeal to the commission.

(k) The racing judges may correct an error before the official sign is displayed or may recall the official sign if it was displayed in error.

#### §315.33. Paddock Judge.

(a) The paddock judge shall fully identify each greyhound and check against the card index system of identification maintained by the association. The paddock judge shall report promptly to the racing judges a greyhound that does not conform to the card index identification.

(b) The paddock judge shall supervise the inspection of the lockout kennel before weigh-in to ensure the lockout kennel and the crates are clean and in good repair.

(c) As each greyhound is weighed in, an identification tag that contains the number of the race in which the greyhound is entered and its post position shall be placed on the greyhound's collar. The tag may not be removed until the greyhound has been weighed out and blanketed.

(d) The paddock judge may not permit a greyhound to weigh in if the paddock judge knows that any person on whose behalf the greyhound is racing is not properly licensed by the commission.

(e) The paddock judge shall inspect each greyhound that leaves the paddock to ensure that each greyhound is equipped with a regulation muzzle and blanket. The paddock judge shall maintain a supply of extra muzzles, lead straps, and collars provided by the association.

(f) The paddock judge shall assign leadouts to post positions by lot before the race and shall maintain a record of the assignments.

(g) The paddock judge shall supervise the training of each leadout before a race meeting. The training must include the proper method for leading a greyhound, the handling of blankets, muzzles, and leashes, and general care and maintenance of the greyhound while in the leadout's custody. The paddock judge shall notify the racing judges when the training for each leadout has been completed.

#### §315.34. Starter.

(a) The starter shall issue orders and take measures necessary to ensure a fair start.

(b) The starter shall report the cause of a delayed start to the racing judges.

(c) There is no start until, and there may be no recall after, the doors of the starting box have opened.

(d) A start hampered due to a malfunction of the starting box or other interference is void. If the starting box malfunctions, the greyhounds will be started as soon as practicable, or the racing judges may cancel the race.

§315.35. Clerk of Scales.

(a) The clerk of scales shall weigh greyhounds, with muzzle, collar, and leash, in and out of the lockout kennel, in a uniform manner, on a scale certified by the appropriate state official and shall display the weight of each greyhound on the weight board. The clerk of scales shall display promptly the established racing weight, weighing-in weight, and weighing-out weight of each greyhound on the weight board for the information of the patrons.

(b) Immediately after displaying the weights, the clerk of the scales shall record any overweight or variation from the weight appearing on the weight sheet. The clerk of scales shall deliver to the presiding racing judge a copy of the weight sheet before each performance.

(c) The clerk of scales shall report promptly any violation of these rules regarding weight or weighing.

(d) The clerk of scales shall require a greyhound to remain on the scales until there is a sufficient lack of jump in scales action to obtain an accurate weight measurement of the greyhound being weighed.

(e) The clerk of scales shall require the leadout for a greyhound being weighed to stand away from the scale to allow at least a six-inch sag in the leadout leash.

(f) The clerk of scales shall keep a list of all greyhounds known as weight losers and shall notify the racing judges as to the weight loss before each race of a greyhound on the list.

§315.37. Racing Secretary.

(a) The racing secretary shall supervise the operations of the racing office and its employees. The racing secretary shall:

- (1) maintain a complete record of all races;
- (2) receive all stakes, entrance money, and arrears and supervise the payment of all money collected to those entitled to receive the money;
- (3) receive all entries and declarations;
- (4) view the running or a videotape of each race;
- (5) write the conditions of all races; and
- (6) perform all other duties imposed on the racing secretary by these rules or the association.

(b) The racing secretary may delegate to the assistant racing secretary any duty imposed on the racing secretary.

(c) The racing secretary may demand and inspect; owners' and trainers' licenses and all documents relating to trainers and owners, partnership agreements, the

appointment of authorized agents, and the adoption of assumed names to satisfy the racing secretary of the validity of the documents.

(d) Immediately after the entries for a race are closed and compiled and the declarations have been made, the racing secretary shall post a list of the entries in a conspicuous place. Before accepting a greyhound entry, the racing secretary shall determine whether all relevant kennel owners, owners, and trainers have been properly licensed.

§315.38. Assistant Racing Secretary. The assistant racing secretary shall perform duty assigned by the racing secretary and shall assist the racing secretary in the performance of the racing secretary's duties.

§315.40. Kennel Master.

(a) Under the supervision of the paddock judge, the kennel master shall unlock the lockout kennel and the crates immediately before weigh-in time to ensure that the crates are in good repair and that nothing has been deposited in any of the crates for the greyhound's consumption.

(b) The kennel master shall ensure that the crates are sprayed and disinfected before each performance and maintained in a proper sanitary condition.

(c) The kennel master shall receive a greyhound from its trainer, one at a time, and ensure that the greyhound is placed in its crate until removed for racing. The kennel master or the kennel master's assistant shall remain on guard in the paddock area from weigh-in time until the greyhounds are removed for the last race.

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

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Subchapter B. Entries and Pre-race Procedures

• 16 TAC §§315.101-315.111

The Texas Racing Commission adopts new §§315.101-315.111, with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4533).

The new sections are adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new sections describe the requirements for registration, entry procedure, eligibility to enter or start, sales and transfers, sweepstakes, liability for entry fee, payments of entry money, qualifying time, declarations, scratches, and schooling at a pari-mutuel greyhound race meeting. The changes from the proposed text clarify the refusal of entry for inconsistent racing and the requirements for qualifying times, and corrects typographical errors.

Comments were received regarding the adoption of the sections from one licensed greyhound racetrack. The commenter suggested clarification the distances at which a greyhound must qualify, the length of schooling races, and the need for schooling for greyhounds transferred from another track and the commission clarified the sections in response to the comments. The commenter also suggested clarification of the eligibility of greyhounds ruled off in other states; the commission disagrees with the comment to the extent that the commission intends to honor the rulings of other pari-mutuel jurisdictions.

The new sections are adopted under Texas Civil Statutes, Article 179e, §3. 02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

§315.101. Registration.

(a) Except as otherwise provided by this section, a greyhound may not enter a race, start, or be schooled on an association's grounds unless the greyhound is tattooed and registered in the stud book maintained by the National Greyhound Association. The commission may certify a greyhound that is not registered with the breed registry if the owner of the greyhound demonstrates to the commission that the greyhound's lack of registration is due to arbitrary, discriminatory, or other unreasonable action or inaction.

(b) The kennel owner for a greyhound that is to be schooled, entered, or raced at an association shall file a certificate of registration for the greyhound with the racing secretary, with the racing history and the last four performance lines for the greyhound, if applicable. The racing judges may inspect the certificates of registration at any time.

(c) A person transferring title to a lease or other interest in a greyhound schooled, entered, or racing on an association's grounds shall register and record the transfer with the National Greyhound Association.

(d) A person holding a lease or an assignment of lease in a greyhound schooled, entered, or racing on an association's grounds shall:

- (1) register and record the lease or assignment with the National Greyhound Association; and
- (2) provide certified copies of the record of the National Greyhound Association.

ciation to the commission and the racing secretary.

#### §315.102. Entry Procedure.

(a) The racing secretary shall receive entries and declarations for a race. The racing secretary may refuse to accept an entry if the racing secretary reasonably believes that the entry is prohibited by these rules.

(b) An entry in a race must be in the name of the registered owner, lessee, or a kennel name and may be made in person, in writing, or by telephone or facsimile.

(c) A greyhound may not start in a race unless the greyhound has been entered in the race in accordance with these rules.

(d) An association may not charge a fee for entering a race unless a fee is clearly stated in the conditions of the race. If the conditions require an entry fee, the fee must accompany the entry.

(e) A joint subscription or entry may be made by one or more owner of a greyhound. If the ownership interests in a greyhound are equally divided, each owner is jointly and severally liable for all fees and forfeits.

(f) The racing officials may require a person in whose name a greyhound is entered to produce proof that the greyhound is not owned in any part by a person who is not eligible to participate in pari-mutuel racing or proof of the extent of the person's ownership in the greyhound. The racing judges may declare the greyhound out of a race if the person fails to comply with demand under this subsection.

(g) The racing secretary shall compile and conspicuously post the entries as soon as possible after entries close. After entries close, an entry may not be altered other than to correct an error.

(h) An association may withdraw or change a race for which entries have not closed.

(i) Except as otherwise provided by this subsection, entries for purse race shall close at the time indicated in the publication of the conditions. An association may grant additional time for entries for a race that does not fill by the indicated closing time. An association may not maintain a list of also eligible entries.

(j) A greyhound whose entry is ordered refused at a racetrack in any jurisdiction because of inconsistent racing or erratic racing performance for no apparent reason may not enter a race at any association grounds in this state, until:

(1) the greyhound has been successfully schooled at the racetrack at which the greyhound is to compete; and

(2) the person making the entry has received the approval of the racing judges.

(k) In a purse race, there may not be more than two double entries at a distance of 3/8 mile or more, nor more than one double entry at a distance of less than 3/8 mile. An owner or trainer may not enter more than two greyhounds in a race, except a stakes or sweepstakes race. A double entry may not be entered until all single interest eligible for the performance are used. A double entry shall be uncoupled for wagering purposes.

(l) If the number of entries exceeds the number of greyhounds that may start in the race, the racing secretary shall determine which greyhounds shall start in the race.

(m) If a race does not fill and is declared off, the racing secretary shall conspicuously post the names of the greyhounds that had entered the race not later than 9 p.m. of the day the race is declared off.

#### §315.103. Eligibility to Enter or Start.

(a) A greyhound that is entered in a purse race shall start in the race, unless the greyhound is declared or scratched.

(b) A greyhound may not enter or start in a race if:

(1) the greyhound is disqualified from entry or start;

(2) a person owning or controlling an interest in the greyhound, or the spouse of such a person, is not eligible to participate in pari-mutuel racing;

(3) the greyhound has not been conditioned by a licensed trainer; or

(4) the greyhound is on the official schooling list or the veterinarian's list.

(c) A greyhound may not start in a race unless each person owning an interest in the greyhound or accepting a trainer's percentage, or having an interest in its winnings, at the time of entry into the race is licensed by the commission and the name of each person is registered with the racing secretary. In a stakes race, each owning an interest in the greyhound or accepting a trainer percentage, or having an interest in its winnings, must be licensed at the time of the race.

(d) A greyhound may not start in a race unless the greyhound has been fully identified.

(e) Except as otherwise provided by this section, a greyhound may not start in a race if any entry money, stakes, or arrears is owed to the association for the greyhound. If the racing secretary permits a greyhound for which all money due has not been paid to start in a race, the racing secretary is liable for the payment.

(f) A greyhound that is less than 12 months old may not start in a race other than a race conditioned for greyhounds of the same age.

#### §315.104. Sales and Transfers.

(a) If a greyhound is sold with any of its engagements, the seller cannot strike the greyhound out of the engagements. If the sale is made by private contract, the written acknowledgement of both parties that the greyhound is sold with the engagements is necessary to entitle the seller or buyer to the benefit of this section. If certain engagements are specified, only those are sold with the greyhound.

(b) If a greyhound is sold at public auction, the advertised conditions of the sale constitute the agreement of the parties, and if certain engagements are specified, only those are sold with the greyhound.

(c) If a greyhound is sold with its engagements, the greyhound may not start in a stakes race unless the documents of the transfer has been shown to the racing secretary.

(d) The seller of a greyhound with engagements is liable for stake or forfeit if the engagements are not kept.

(e) If a greyhound is sold to a person who is not eligible to participate in pari-mutuel racing in this state, the greyhound's engagements are void as of the date of the sale.

#### §315.105. Sweepstakes.

(a) Except as provided by the published notice of a sweepstakes, entries and declarations for a sweepstakes which close during or on the eve of a race meeting, close at the racing secretary's office. Entries and declarations for a sweepstakes that closes at another time close at the association's office.

(b) An entry or declaration for a sweepstakes may not be received after the hour designated for closing. If an hour is designated, an entry or declaration may be mailed or sent by facsimile before midnight of the day of closing, provided the entry or declaration is received by the racing secretary with adequate time to comply with all other conditions of the race.

(c) A nomination for a sweepstakes received and postmarked before midnight of the day of closing is valid if it is received by the racing secretary at least 24 hours before the close of overnight entries.

(d) If an entry or declaration for a sweepstakes that was sent by mail or facsimile is not timely received, the person sending the entry or declaration must present to the racing secretary proof of the mailing or teletype not later than 24 hours after the deadline for receipt of the entry or declaration. The racing secretary may not accept an entry or declaration for which proof is not submitted in accordance with this subsection.

(c) An entry in a sweepstakes is a subscription and may not be withdrawn.

#### §315.106. Liability for Entry Fee.

(a) The nominator of a greyhound is liable for the nominating, sustaining, and starting fees for a race. The death of a greyhound, failure to start, or mistake in its entry when eligible, does not release the nominator, subscriber, or transferee from liability for the applicable fees. If the nominator transfers the entry, the nominator is liable for the applicable fees only if the transferee defaults.

(b) If a person who sells a greyhound with engagements or a person who transfers entries is compelled to pay arrears through the default of the purchaser or transferee, the person may place the amount on the forfeit list as due to the person from the purchaser or transferee.

(c) If a person is prevented from entering or starting a greyhound in a race because of arrears for which the person would not otherwise be liable, the person may pay the arrears, enter or start the greyhound, and place the amount of the arrears on the forfeit list as due to the person.

(d) With the prior approval of the racing judges, the racing secretary may waive the obligation to pay arrears by a person who has sold a greyhound with engagements or transferred entries.

#### §315.107. Payments of Entry Money.

(a) The entry money and starting and subscription fees for a race shall be paid in accordance with the conditions of the race.

(b) Except as otherwise provided by these rules or by order of a court of competent jurisdiction, an association may not pay any percentage of purses, entry, nominating, or starting fees, winnings, or earnings to a person other than the owner or trainer in whose name the greyhound was entered.

(c) A person with a claim against a greyhound, such as a mortgage, bill or sale, or lien, must file the claim with the racing secretary to be entitled to receive a portion of the greyhound's winnings. A claim filed under this subsection may be satisfied only by winnings earned after the claim was filed with the racing secretary.

(d) If a stakes race is not run for any reason, the association shall refund all nominating, sustaining, and entry fees paid, if any.

(e) In an emergency, an association may postpone or declare off a race or stakes race after giving adequate public notice. The association shall refund all subscriptions and declaration money for a race postponed or declared off under this subsection.

#### §315.108. Qualifying Time.

(a) An association shall establish qualifying times for all distances.

(b) An association shall notify the executive secretary at least three days before the first day of a race meeting of the qualifying times established by the association. The association shall continuously post the qualifying times in a conspicuous place. A new qualifying time established during a race meeting takes effect, after approval by the racing judges, on the third day after the date the association posts the new time.

(c) The period for race qualifications of greyhounds may not exceed the period from the beginning of official schooling to one week before the last day of the race meeting.

#### §315.109. Declarations.

(a) The declaration of a greyhound out of a race is irrevocable.

(b) A declaration in a sweepstakes must be made to the racing secretary in the same manner as entries. The racing secretary shall record the day and hour the declaration is received and promptly publicize the declaration.

(c) A declaration in a purse race must be made by the owner, trainer, or authorized agent to the racing secretary at least one-half hour before the time designated for the drawing of post positions or the time designated by the racing secretary.

#### §315.110. Scratches.

(a) A greyhound may be scratched from a race only with the approval of the racing judges.

(b) A scratch that occurs as a result of a violation of a racing rule carries a penalty and/or suspension of the greyhound for six race days. The racing judges shall review the cause for a scratch and may take disciplinary action. If a greyhound is scratched, because the owner or trainer of the greyhound fails to have the greyhound at the track at the appointed time for weighing-in, the racing judges may impose a penalty on the person responsible.

(c) If three or more greyhounds are withdrawn or scratched from a race, the racing judges may cancel the race.

(d) The racing judges may scratch a greyhound from a race for sufficient cause.

(e) A greyhound that is withdrawn from a race after the overnight entries are closed is considered a scratch and must be examined by the commission veterinarian before the first race of the performance in which the greyhound was scheduled to start.

#### §315.111. Schooling.

(a) A greyhound must be properly schooled at least twice in the presence of

the racing judge and must, in the opinion of the racing judges, be sufficiently experienced before the greyhound may be entered in a race. A greyhound that has not started in a race in the 10-day period immediately preceding a race must be officially schooled at its established weight at least once to be eligible to enter the race.

(b) An official schooling race must be at a distance not less than the distance nearest to 5/16 mile in use at the racetrack.

(c) A greyhound that transfers from another racetrack must school at least once before it may start in a race other than a stakes or futurity race.

(d) To be official, at least six greyhounds must race in a schooling race, except by permission of the presiding racing judge. Leadouts must be used in an official schooling race, and the greyhounds must race at their established racing weight and start from the box wearing blankets. The association shall provide photofinish equipment for official schooling races.

(e) Hand schooling is not official schooling.

(f) The racing judges may place a greyhound on the official schooling list at any time. A greyhound on the official school list must be schooled officially and satisfactorily before being eligible to enter.

(g) If the racing judges determine that a greyhound has fallen or been involved in a serious jam in a race, the racing judges may require the greyhound to be schooled officially and satisfactorily before being eligible to enter.

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 Racing Commission

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

### Subchapter C. Race Procedures

#### • 16 TAC §§315.201-315.211

The Texas Racing Commission adopts new §§315.201-315.211. Sections 315.201-315.203, 315.206, 315.208, and 315.211 are adopted with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4535). Sections 315.204, 315.205, 315.207, 315.209, and 315.210, are adopted without changes and will not be republished.

The new sections are adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The new sections describe the requirements for racing weight, changes in established weight, placement in lockout, paddock to post, equipment, operation of lure, leaving the course, interference, no race, prize distribution in dead heats, and objections at a pari-mutuel greyhound race meeting. The changes from the proposed text clarify the description of interference and the procedure for making objections, and corrects typographical errors.

Comments were received regarding the adoption of the sections from a greyhound breeders organization, and two licensed greyhound racetracks. The commenter suggested eliminating the requirement that an objection regarding the conduct of a greyhound during a race be made before the race is declared official; the commission disagrees with the comment for the purpose of administrative expediency. Another commenter suggested any person being able to remove a greyhound that interferes with a race. The commission agreed with the comment somewhat and clarified the appropriate provision. Another commenter suggested clarification on the ability of kennel owners and trainers being permitted in the lockout kennel; the commission agreed with the suggestion. One commenter suggested deleting the requirement that race films showing interference be made available for viewing by the kennel owners and trainer; the commission disagrees with the comment because, in an effort to encourage education of kennel owners and trainers, the commission believes viewing race films is an effective tool.

The new sections are adopted under Texas Civil Statutes, Article 179e, §3. 02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

#### §315.201. Racing Weight.

(a) Before a greyhound may school or race at a racetrack, the owner or trainer must establish the racing weight for the greyhound with the clerk of scales.

(b) Each greyhound entered in a race in a performance must be weighed in at least one hour before the post time for the first race of that performance.

(c) The greyhound's kennel owner, trainer, assistant trainer, kennel helper, or authorized agent of the owner shall deliver the greyhound to the weighing-in room in sufficient time to have the greyhound weighed-in in accordance with this section.

(d) If a greyhound's weight at weigh-in varies from the greyhound's established racing weight by more than 1 1/2 pounds, the racing judges shall scratch the greyhound.

(e) If a greyhound's weight at weigh-in varies by more than two pounds from the greyhound's weight at weigh-in for the greyhound's previous race, the racing judges shall scratch the greyhound.

(f) Except as otherwise provided by this subsection, if a greyhound at weight-

out has lost more than two pounds while in the lock-out kennel, the racing judges shall scratch the greyhound. If the commission veterinarian certifies that the greyhound's weight loss does not impair the racing condition of the greyhound, the racing judges may permit the greyhound to race.

(g) A greyhound that is scratched from a race because of overweight or underweight shall be suspended for six race days and must officially school before starting in a race. A greyhound scratched under this subsection may school during the term of the suspension.

#### §315.202. Changes In Established Weight.

(a) A kennel owner or trainer for a greyhound may change the established racing weight for a greyhound by filing a written request by the change and obtaining written consent of the racing judges. The greyhound may not race at the new weight before the fourth day after the date the racing judges, consent.

(b) A greyhound that is granted a change of more than one pound in established racing weight must school at least once at the new weight, and more if ordered by the racing judges, before being eligible to start at the new weight.

(c) A greyhound that has not schooled officially or raced for at least three weeks may establish a new racing weight, with written consent of the racing judges, and may be officially schooled immediately on receipt of the consent.

(d) The racing judges may weigh a greyhound entered in a race at any time after entry until post time for the race.

§315.203. Placement in Lockout. Immediately after being weighed in, a greyhound shall be placed in the lock-out kennel under the supervision of the paddock judge. Only the paddock judge, commission veterinarian, kennel master, clerk of scales, leadout, racing judge, representative of the commission may enter the lock-out kennel. A kennel owner or trainer may accompany a greyhound into the lockout kennel under the direct supervision of a racing judge or a designee of the racing judges.

§315.206. Operation of Lure. The racing judges shall closely observe the operation of the lure and hold the lure operator strict accountable for inconsistency in operation.

#### §315.208. Interference.

(a) If a greyhound causes interference with the running of the race because of an accident, failure to leave the starting box, or another reason, an individual stationed along the racetrack may remove the greyhound from the racetrack.

(b) A greyhound removed from a racetrack under this section is considered a starter.

(c) If a greyhound is cited for interference by the racing judges, all films of the race shall be made available for viewing by the kennel owner or trainer with the racing judges.

#### §315.209. No Race.

(a) If a race is marred by jams, spills, or racing circumstances other than accidents to the equipment while a race is being run, and three or more greyhounds finish, the racing judges shall declare the race finished and official. If less than three greyhounds finish in such a race, the racing judges shall declare "no race" and all money wagered on the race shall be refunded.

(b) During a race, if the lure does not remain in advance of all the greyhounds at all times, or if a greyhound catches or passes the lure during a race, the racing judges shall declare no race and all money wagered on the race shall be refunded.

(c) During the running of a race, if a greyhound bolts the course or runs in the opposite direction of the running of the race, and the racing judges determine that the greyhound interfered with another greyhound in the race, the racing judges shall declare no race and all money wagered on the race shall be refunded.

(d) The racing judges shall immediately report a no race to the executive secretary or a designee of the executive secretary, and include a detailed explanation of the cause. Not later than five days after the date of a no race, the association may apply to the commission for a make-up race to replace the no race.

#### §315.210. Price Distribution in Dead Heats.

(a) If two or more greyhounds finish a race in a dead heat, the prize and money to which those greyhounds would have been entitled had they not finished in a dead heat shall be divided equally among the greyhounds.

(b) If the owners who are to divide a prize cannot agree as to which owner is to have a non-divisible prize, such as a trophy, the presiding racing judge shall distribute the non-divisible prize by lot.

#### §315.211. Objections.

(a) An objection regarding a race must be made by an owner or the authorized agent of the owner, a trainer of a greyhound engaged in the race, or an official. An objection must be made to the racing judges, who may require that the objection be made in writing with a copy sent immediately to the executive secretary.

(b) The racing judges may require a cash deposit to cover the costs and expenses of determining an objection. The deposit

may be forfeited if the objection proves to be without foundation.

(c) Except as otherwise provided by this subsection, an objection must be made to the racing judges not later than 72 hours after the race is run. An objection to a decision of the clerk of scales must be made before the greyhounds leave the paddock for the post.

(d) Pending a decision on an objection, any money or prize to which a greyhound that is the subject of the objection would be entitled, shall be held until the objection is decided.

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

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## Chapter 319. Veterinary Practices and Drug Testing

### Subchapter A. General Provisions

#### • 16 TAC §319.5

The Texas Racing Commission adopts an amendment to §319.5, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3147).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies when a veterinarian shall report the treatment of a race animal to the commission veterinarian.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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### Subchapter B. Treatment of Horses

#### • 16 TAC §319.101

The Texas Racing Commission adopts an amendment to §319.101, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3148).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the time that racing soundness examination will be conducted.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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### Subchapter B. Treatment of Horses

#### • 16 TAC §319.102

The Texas Racing Commission adopts an amendment to §319.102, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3148).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the procedures for placing a horse on and taking a horse off the veterinarian's list.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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Texas Racing Commission

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#### • 16 TAC §319.106

The Texas Racing Commission adopts an amendment to §319.106, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3148).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the duties of the racing secretary regarding the list of nerved horses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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#### • 16 TAC §319.108

The Texas Racing Commission adopts an amendment to §319.108, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3148).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the scope of post-mortem examinations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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Texas Racing Commission

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#### • 16 TAC §319.110

The Texas Racing Commission adopts an amendment to §319.110, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3954).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment eliminates the requirement that a current health certificate for a horse be on file with the commission veterinarian for the horse to be eligible to start in a race.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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General Counsel  
Texas Racing Commission

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

## Subchapter C. Treatment of Greyhounds

### • 16 TAC §319.201

The Texas Racing Commission adopts an amendment to §319.201, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4537).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment describes what the examination may consist of and deletes the requirement of a report of the examination. The amendment also requires the commission veterinarian to perform the examination.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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.

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Texas Racing Commission

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

### • 16 TAC §319.202

The Texas Racing Commission adopts an amendment to §319.202, with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4537).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment requires the commission veterinarian to post the veterinarian's list in a conspicuous place and clarifies the types of greyhounds who may be placed on the list. The amendment also requires a trainer to file a report regarding racing-related injuries. The change from the proposed text clarifies the intent and meaning of the amendment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

#### §319.202. Veterinarian's List.

(a) The commission veterinarian shall maintain a veterinarian's list of the greyhounds that are determined to be unfit to compete in a race due to physical distress, unsoundness, or infirmity. The commission veterinarian shall ensure that the veterinarian's list is posted in a conspicuous place available to all kennel owners, trainers, and officials.

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

(d) A greyhound on the veterinarian's list may not enter a race before the third day after the day the greyhound was placed on the list. The commission veterinarian may require a greyhound to school after being examined and removed from the list before the greyhound may enter a race.

(e) Each lactating bitch and each bitch in season or coming in season during a race meeting shall be placed on the veterinarian's list and may not enter a race until the greyhound has been re-examined by the commission veterinarian and removed from the veterinarian's list. A bitch in season may not be re-examined before the 21st day after the day the greyhound was placed on the veterinarian's list.

(f) A trainer shall submit to the commission veterinarian, on a form prescribed by the commission, documentation of any racing-related injury sustained by a greyhound in the trainer's care.

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 September 19, 1990.

TRD-9009825 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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

### • 16 TAC §319.203

The Texas Racing Commission adopts an amendment to §319.203, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4537).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the required contents of the commission veterinarian's report on the condition of the kennel buildings.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009826 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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

### • 16 TAC §319.204

The Texas Racing Commission adopts new §319.204, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4538).

The section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The section requires an association to require vaccinations of the greyhounds at its facility, to have its vaccination and compound entrance requirements approved by the commission veterinarian, to maintain vaccination records, and to prohibit the admittance to the facility of a greyhound without proof of vaccinations. The change from the proposed text clarifies the intent and meaning of the section.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.



### §319.204. Vaccination Requirements.

(a) An association shall safeguard the health of the greyhounds housed at its facility by requiring periodic vaccination of each greyhound against each disease that the commission veterinarian has determined communicable to other greyhounds at the facility. The vaccination and compound entrance requirements of the association must be approved by the commission veterinarian.

(b) The association shall maintain records of vaccinations of the greyhounds housed at its facility and make the records available to the commission veterinarian on request.

(c) The association may not permit a greyhound to enter its grounds unless the trainer or kennel owner of the greyhound provides proof of the necessary vaccinations to the association.

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 September 19, 1990.

TRD-9009857 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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

### Subchapter D. Drug Testing

#### General Provisions

##### • 16 TAC §319.302

The Texas Racing Commission adopts an amendment to §319.302, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3149).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment requires the owner, trainer, groom, or other person who has care and custody of a race animal to guard the animal before the race to prevent the administration of a drug, chemical, or other prohibited substance. The change from the proposed text clarifies the intent and meaning of the amendment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

§319.302. Reasonable Diligence Required. The owner, trainer, groom, or

other person who has care and custody of a race animal shall guard each animal in his or her custody before the animal races in the manner and for the time necessary to prevent the administration of a drug, chemical, or other substance prohibited by these rules.

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 September 19, 1990.

TRD-9009889 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

### Provisions for Horses

##### • 16 TAC §319.361

The Texas Racing Commission adopts an amendment to §319.361, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3955).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies which horses out of each race must submit to drug testing and for which drug testing is discretionary with the stewards.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009888 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: July 13, 1990

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

##### • 16 TAC §319.391

The Texas Racing Commission adopts an amendment to §319.391, without changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4538).

The amendment is adopted to ensure that

pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the authority of the commission and the racing judges to obtain specimens of body fluids from greyhounds involved in pari-mutuel racing and to test the specimens for prohibited substances. The change from the proposed text clarifies the intent and meaning of the amendment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009827 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: August 10, 1990

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

### Chapter 321. Pari-mutuel Wagering

#### Subchapter A. Regulation and Totalisator Operations

##### Mutuel Tickets

##### • 16 TAC §321.34

The Texas Racing Commission adopts an amendment to §321.34, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3149).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the form prescribed in which an association shall accept a claim for payment from a pari-mutuel pool in any case where the association has withheld payment or has refused to cash a pari-mutuel ticket presented for payment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §321.38

The Texas Racing Commission adopts new §321.38, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3149).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies when an association may cancel a ticket. The change from the proposed text corrects a typographical error.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

§321.38. *Cancellation of Tickets.* An association may cancel a ticket if:

(1) the pari-mutuel teller made an error in issuing the ticket and the patron requests that the ticket be cancelled before the patron leaves the teller's window and before the ticket-issuing machines are locked; or

(2) (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 September 19, 1990.

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §321.39

The Texas Racing Commission adopts an amendment to §321.39, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3150).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies that each pari-mutuel teller for an association shall retain and account for all tickets refunded or cancelled by the cashier.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
Regulation of Wagering

## • 16 TAC §321.65

The Texas Racing Commission adopts an amendment to §321.65, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3150).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the method by which race animals are joined as a coupled entry or a mutuel field. The change from the proposed text corrects a typographical error.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

§321.65. *Wagering Interests.*

(a) Except as otherwise provided by these rules, if the stewards or racing judges determine that two or more race animals entered in a race have common ties through ownership, the stewards or judges shall join the animals as a coupled entry.

(b) If the number of race animals competing in a race exceeds the numbering capacity of the totalisator system, the highest numbered race animal and any animals grouped with that animal constitute the mutuel field.

(c)-(d) (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 September 19, 1990.

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
• 16 TAC §321.70

The Texas Racing Commission adopts new §321.70, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3150).

The section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The section describes the requirements for tip sheet vendors.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512)  
476-7223◆ ◆ ◆  
Subchapter B. Distribution of  
Pari-mutuel Pools

## • 16 TAC §321.107

The Texas Racing Commission adopts an amendment to §321.107, with changes to the proposed text as published in the June 15, 1990, issue of the *Texas Register* (15 TexReg 3468).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies the method by which the daily double pools are to be distributed. The change from the proposed text clarifies the designation and distribution of the consolation pool.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

**§321.107. Daily Double.**

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

(f) If the first race of a daily double is canceled, the association shall provide a complete refund of the daily double pool. If the second race of a daily double is canceled after the first race has been completed, the entire daily double pool, minus the takeout and the breakage, shall be distributed, in proportion to the amount wagered on those combinations including the winner of the first race of the daily double, to holders of tickets which include the winner of the first race of the daily double in combination with any animal in the second race.

(g) If before the first race of a daily double is run, an animal entered in either race is scratched, declared out, or prevented from racing, all money wagered on the affected animal shall be deducted from the daily double pool and refunded to the holders of tickets on the affected animal.

(h) If after the first race of a daily double is run, an animal entered in the second race is scratched, declared out, or prevented from racing, a consolation daily double shall be awarded. All tickets which select an animal in the first race with the affected animal in the second race shall be deducted from the daily double pool and this amount shall be placed in a consolation pool. The consolation pool shall be distributed as a straight pool to the holders of tickets who correctly selected the winner of the first race with the affected animal in the second race.

(i) If wither race in a daily double ends in a dead heat, the total daily double pool shall be distributed in the same manner as a place pool.

(j) If the daily double pool cannot otherwise be distribute in accordance with this section, the money in the daily double pool shall be carried forward and added to the next consecutive daily double pool.

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 September 19, 1990.

TRD-9009882 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 15, 1990

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

◆ ◆ ◆  
**• 16 TAC §321.108**

The Texas Racing Commission adopts an amendment to §321.108, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3150).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies that undistributed quinella pools are to be carried forward.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provides the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009881 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
**• 16 TAC §321.109**

The Texas Racing Commission adopts an amendment §321.109, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3151).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies that undistributed exacta pools are to be carried forward.

No comments were received regarding adoption of the new section.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009880 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
**• 16 TAC §321.110**

The Texas Racing Commission adopts an amendment to §321.110, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15

TexReg 3151).

The amendment is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The amendment clarifies that undistributed trifecta pools are to be carried forward.

No comments were received regarding adoption of the new section.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing 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 September 19, 1990.

TRD-9009879 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆  
**• 16 TAC §321.114**

The Texas Racing Commission adopts new §321.114, with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3152).

The section is adopted to ensure that pari-mutuel racing in Texas is of the highest quality and integrity.

The section describes the method for distributing the pari-mutuel pools if a malfunction of the starting gate or box prevents an animal from getting a fair start in the race. The change from the proposed text corrects typographical errors.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

**§321.114. Prevention of Start.**

(a) In a race, if the doors of a mechanically or electronically operated starting gate or box fail to open simultaneously with the other doors, thereby preventing a horse or greyhound from obtaining a fair start when the starter dispatches the field, this section applies to the distribution of the pari-mutuel pools.

(b) If an animal is prevented from starting, the entire amount in the win, place, and show pools wagered on that animal shall be promptly refunded unless the animal finishes first, second, or third. In that case, the animal shall be considered a

starter for all straight pools in which the animal earned a placing and a nonstarter in all other straight pools. These shall not be a refund if the animal is part of a coupled entry or mutuel field.

(c) If an animal is prevented from starting, the entire amount in the multiple pools wagered on that animal shall be promptly refunded unless the animal finishes first, second, or third. In that case, the animal shall be considered a starter for the multiple pool in which the animal earned a placing. There shall not be a refund if the animal is a part of a coupled entry or mutuel field.

(d) If an animal is prevented from starting so that the total number of starters is less than five:

(1) if four animals of different betting interests leave the gate or box, the association may refund the entire amount wagered in the show pool;

(2) if two or three animals of different betting interests leave the gate or box, the association may refund the entire amount wagered in the show pool, the place pool, or both pools; and

(3) if fewer than two animals of different betting interests leave that gate or box, the association shall cancel the race and refund the entire amount wagered in the win, place, and show pools.

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 September 19, 1990.

TRD-9009874 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: October 11, 1990

Proposal publication date: June 5, 1990

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

## TITLE 22. EXAMINING BOARDS

### Part III. Texas Board of Chiropractic Examiners

#### Chapter 79. Reciprocity

##### • 22 TAC §§79.2, 79.3, 79.4

The Texas Board of Chiropractic Examiners adopts new §§79.2, 79.3, and 79.4, without changes to the proposed text as published in the August 17, 1990, issue of the *Texas Register* (15 TexReg 4678).

The new sections will set out specific requirements applicants must meet in order to qualify by licensure by reciprocity.

The applicants applying for licensure by reciprocity in the State of Texas will be required to meet specific requirements which will in-

sure that the most qualified individuals will be granted a license by reciprocity.

No comments were received regarding adoption of the new sections.

The new sections adopted under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

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 August 17, 1990.

TRD-9009716 Jennie Smetana  
Executive Director  
Texas Board of  
Chiropractic Examiners

Effective date: October 10, 1990

Proposal publication date: August 17, 1990

For further information, please call: (512) 343-1895

## Part XXVII. Board of Tax Professional Examiners

### Chapter 621. Administration

#### • 22 TAC §621.1

The Board of Tax Professional Examiners adopts the repeal of §621.1 without changes to the proposed text as published in the March 20, 1990, issue of the *Texas Register* (15 TexReg 1575).

The adoption of this repeal is due to the adoption of new §621.1.

The section was repealed and replaced by new section in toto.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 7244b, which provide the Board of Tax Professional Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 September 18, 1990.

TRD-9009717 Sam H. Smith  
Executive Director  
Board of Tax Professional  
Examiners

Effective date: October 10, 1990

Proposal publication date: March 20, 1990

For further information, please call: (512) 329-7981

### Chapter 623. Registration and Certification

#### • 22 TAC §§623.1-623.18

The Board of Tax Professional Examiners adopts the repeal of §§623.1-623.18, without changes to the proposed text as published in the March 20, 1990, issue of the *Texas Register* (15 TexReg 1576).

The sections are repealed due to adoption of new §§623.1-623.16.

The repealed are replaced by new sections in toto.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 7244b, as amended by 68th Legislature, which provide the Board of Tax Professional Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 September 18, 1990.

TRD-9009718 Sam H. Smith  
Executive Director  
Board of Tax Professional  
Examiners

Effective date: October 10, 1990

Proposal publication date: March 20, 1990

For further information, please call: (512) 329-7981

## TITLE 25. HEALTH SER- VICES

### Part I. Texas Department of Health

#### Chapter 37. Maternal and Child Health Services

#### Chronically Ill and Disabled Children's Services

The Texas Department of Health adopts the repeal of existing §37.90 and adopts new §37.90.

New §37.90 is adopted with changes to the proposed text as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4539).

The repeal of existing §37.90 is adopted without changes and will not be republished.

Section 37.90 covers CIDC approved providers and facilities, which include physicians, dentists, and podiatrists, hospitals, ambulatory surgical care facilities, and specialty centers.

Existing §37.90 has been repealed to allow for restructuring the format of the section. The new section updates existing criteria and procedures for cleft/craniofacial centers/teams for program reimbursement; and adds the criteria and procedures for bone marrow transplant centers and cardiac outreach clinics, to become approved for program reimbursement.

The following is a summary of comments which were received during the comment

period regarding proposed new §37.90.

Concerning paragraph (4)(A)(i), the department has made minor clarifying changes concerning the criteria for inpatient rehabilitation facility approval.

Concerning paragraph (4)(B)(iv)(II)(h-), comments from the Texas State Board of Examiners of Dietitians and a department staff member requested the title dietitian (licensed by the Texas State Board of Examiners of Dietitians or registered with the Commission on Dietetic Registration of the American Dietetic Association) be substituted for nutritional counseling; in addition, a commenter suggested rewording paragraph (4)(B)(iv)(II)(a) - (-i) to reflect provider's professional titles rather than services. The department agrees and has made the requested changes. The commenters also suggested that nutritionists licensed by the board be approved for participation in the CIDC Program. The department has noted the comment; licensed or registered dietitians are not an independent provider specialty eligible for CIDC program participation at this time.

Concerning references to case managers throughout paragraph (4)(B), the CIDC General Advisory Committee suggested the addition of "team" to preface "case manager." A department staff member recommended that the definition of "case management" in paragraph (4)(B)(iv)(I)(a)-(6) concerning required participation be expanded to include any person capable of performing case management services for patients with cleft/craniofacial deformities. The department agrees and has made the changes.

Concerning paragraph (4)(B)(iv)(I)(a)-(3), the Texas Board of Health amended the description of the primary care physician in the list of required active participants to include a team physician and/or a physician designated by the patient/family. The department made minor changes to paragraph (4)(B)(iv)(I), concerning the composition of a comprehensive C/C team, by expanding the criteria for required active participants. The department made minor clarifying changes to paragraph (4)(B)(iv)(II), concerning team participants who must be readily available to serve patients in the same city as the required active participants.

Concerning paragraph (4)(B)(vi)(II), the CIDC General Advisory Committee suggested that a copy of the comprehensive treatment plan be given to the local and/or referring physician and other appropriate agencies/local team case managers designated by the family as well as the family. The department agrees and made the requested changes. The department made minor clarifying changes to paragraph (4)(B)(vi) and (vii), concerning case coordinators.

The department made a few other minor editorial changes throughout the section for clarity.

The Texas State Board of Examiners of Dietitians offered comments in response to the proposed section. The commenter was in favor of the section, but offered comments and suggestions for change.

#### • 25 TAC §37.90

The repeal is adopted under Health and Safety Code, §35.005, which provides the Texas Board of Health with the authority to

adopt rules concerning medical, financial, and other criteria for eligibility to receive or to provide services under the Chronically Ill and Disabled Children's Services Program; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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 September 20 1990.

TRD-9009792

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

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The new section is adopted under Health and Safety Code, §35.005, which provides the Texas Board of Health with the authority to adopt rules concerning medical, financial, and other criteria for eligibility to receive or to provide services under the Chronically Ill and Disabled Children's Services Program; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

*§37.90. Approved Providers and Facilities.* All approved providers must agree to abide by program rules and regulations, to accept program fees as payment in full, and not to discriminate against patients on the basis of insurance or Medicaid status. The following groups of providers must be processed through an application process to determine their desire to participate within the program's rules as approved by the board and to determine their qualifications in relation to the criteria for participation as decided by the board.

(1) Physicians, dentists, and podiatrists. To be approved for program participation the person must submit a fully completed application and attach the documents as requested on the form.

(A) Criteria. To be approved for program participation, a person must:

(i) have a Texas medical/dental/podiatric practice license;

(ii) have practiced in Texas for a minimum of one year;

(iii) be certified by the American Board of Medical Specialties, the American Osteopathic Association Specialty Boards, or by American Dental Spe-

cialty Boards, or American Board of Pediatric Surgery in the specialty area in which the physician/dentist/podiatrist will participate in the Chronically Ill and Disabled Children's (CIDC) Services;

(iv) an active provider with the Texas Medicaid program and agree to accept Medicaid payment;

(v) agree to abide by the rules of the CIDC;

(vi) agree to allow on-site visits and/or audit privileges to program staff; and

(vii) accept responsibility for actions of his/her staff performed in behalf of the provider.

(B) Procedures.

(i) Applications will be reviewed by the program to assure that:

(I) all parts of the application form have been completed, including a signature and date;

(II) all of the eligibility criteria have been met; and

(III) copies of documents verifying the applicant's American board or sub-board certification and state practice license are attached; if no sub-board exists for a specialty area, documentation of the applicant's training and curriculum vitae must be attached.

(ii) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The program may consider a temporary approval status when geographic need for services exists. The one-year practice requirement may be waived in extenuating circumstances.

(I) Physicians/dentists/podiatrists who are board eligible, but not yet board certified must meet the following criteria in order for a temporary approval to be considered:

(-a) have completed their specialty training; and

(-b) are fully eligible for certification by the American specialty boards but are awaiting completion of board examinations.

(II) Temporary approval shall be granted for a 12-month period and may be renewed pending satisfactory progress, as determined by the program, toward completion of the board examination.

(iii) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(iv) Any physician/dentist/podiatrist who disagrees with the result of the program's review may appeal the decision through one of the following processes:

(I) administrative review;

(II) review by the program's General Advisory Committee; and/or

(III) due process hearing as set forth in §37.96(a)(2) of this title (Relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(C) Update activities. In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved providers at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval, but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(i) Updated information may include, but is not limited to, the following:

(I) current address, telephone number, and state comptroller's vendor identification number;

(II) names of those hospitals where current privileges are held;

(III) notification of any additional specialty medical or dental board certifications with supporting documents attached; and

(IV) a copy of the current license to practice medicine or dentistry in Texas.

(ii) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(2) Hospitals.

(A) Criteria. The criteria for hospital approval includes, but is not limited to:

(i) current approval by the Joint Commission on Accreditation of Health Care Organizations;

(ii) location within Texas, unless as provided in §37.86(g) of this title (relating to Authorization of Services);

(iii) program approved medical staff sufficient to meet anticipated program case load;

(iv) a definable pediatric unit or facilities, equipment, and qualified staff necessary to meet the special needs of program eligible patients, as determined by the program;

(v) on-site visits and/or audit privileges to program staff.

(B) Procedures.

(i) Applications will be reviewed by the program to assure that:

(I) all parts of the application form have been completed including a signature and date;

(II) all of the eligibility criteria have been met; and

(III) copies of documents have been provided verifying program approved medical staff as well as facilities available at the hospital to meet approval criteria.

(ii) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The application may be resubmitted with required documentation for reconsideration.

(iii) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(iv) Any hospital that disagrees with the result of the program's review, may appeal the decision through one of the following processes:

(I) administrative review; or

(II) review by the program's General Advisory Committee; and/or

(III) a due process hearing as set forth in §37.96(a)(2) of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(C) Update activities. In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved hospitals at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval, but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(i) Updated information may include, but is not limited to, the following:

(I) current address, telephone number, state comptroller's vendor identification number, and current administrator;

(II) additional program approved medical staff;

(III) additional qualified staff or facilities available; and

(IV) updated approval by Joint Commission on Accreditation of Health Care Organizations.

(ii) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(3) Ambulatory surgical care (ASC) facilities.

(A) Ambulatory surgery services may be utilized by the program as a cost efficient means as long as quality of care is assured. Any hospital approved for program participation whose Joint Committee on Accreditation of Health Care Organizations accreditation includes hospital-sponsored ambulatory care services may be utilized for ambulatory surgery. However, freestanding facilities, even if governed or affiliated with an approved hospital, must apply for program approval. The program may contract with a limited number of facilities to assure program cost containment. For approval to participate in the CIDC Program, a freestanding ambulatory surgical care facility must meet the following criteria.

(i) State licensure requirements. Facilities must meet state licensure requirements in accordance with for ambulatory surgical centers in accordance with §§135.1-135.27 of this title (relating to Operating Requirements for Ambulatory Sur-

gical Centers).

(ii) Medicare certification. Facilities must meet Medicare standards in accordance with Part II, Department of Health and Human Services, Health Care Financing Administration, 42 Code of Federal Regulations, Parts 405 and 416, relating to Medicare Program; Ambulatory Surgical Services, published in the Federal Register, Volume 47, Number 151, August 5, 1982.

(iii) Pediatric equipment. Pediatric facilities must have available all necessary pediatric equipment including operating room, surgical tools, resuscitation apparatus, pharmaceutical services, beds, and other supplies that are appropriate for children.

(iv) Staff requirements. Staff must be as follows.

(I) CIDC approved surgical staff must perform the surgical procedures.

(II) A board certified anesthesiologist must be in the operating room and present for the induction of anesthesia and at the time of completion of anesthesia, on the premises (immediately available) at the time of surgical procedure and until the patient leaves the facility.

(III) An R.N. with documented clinical pediatric experience must be on the premises at all times while the patient is in the facility.

(v) Risk management principles. The facility must apply risk management principles to all patient care.

(vi) Patient transfer. The facility must have patient transfer agreements with CIDC approved hospitals in the area.

(B) Centers are required to submit documentation of the criteria, as set out in subparagraph (A)(i)-(v) of this paragraph, in writing to the CIDC Bureau through an application process in accordance with subparagraph (D) of this paragraph.

(C) CIDC reimbursement for care at freestanding ambulatory surgical care facilities will be limited to:

(i) children 24 months of age or older; and

(ii) surgical procedures designated as ASA (American Society of Anesthesiologists) Level I and II.

(D) Application procedures will be as follow.

(i) Applications will be

reviewed by the program to assure that:

(I) all parts of the application form have been completed including a signature and date;

(II) all of the criteria for program participation have been met; and

(III) copies of documents have been provided verifying facility state licensure, Medicare certification, and patient transfer agreements with CIDC approved hospitals.

(ii) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The application may be re-submitted with required documentation for reconsideration.

(iii) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(iv) Any ambulatory surgical care facility who disagrees with the result of the program's review may appeal the decision through one of the following processes:

(I) administrative review; or

(II) review by the program's General Advisory Committee; and/or

(III) a due process hearing in accordance with the requirements in §37.96 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(E) In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved ambulatory surgical care facilities at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(i) Updated information may include, but is not limited to, the following:

(I) current address, telephone number, state comptroller's vendor identification number, and current administrator;

(II) current listing of program approved medical staff;

(III) current listing of qualified staff or facilities available; and

(IV) Medicare certification status.

(ii) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(4) Specialty centers. Such facilities must meet specific criteria as set forth by the program. Lists of facilities which are approved for program participation may be obtained from the program.

(A) Inpatient rehabilitation centers.

(i) Criteria. The criteria for inpatient rehabilitation facility approval includes, but is not limited to the following.

(I) The facility will have current accreditation by either the Joint Commission on Accreditation of Health Care Organizations (JCAHCO) as a comprehensive physical rehabilitation program or Commission on Accreditation of Rehabilitation Facilities (CARF) as a comprehensive inpatient rehabilitation program.

(II) The facility will be located within Texas.

(III) CIDC Program staff will have on-site visits and/or audit privileges.

(IV) A physician as medical director who is CIDC approved and demonstrates experience in rehabilitation will be available.

(V) For units with patients less than 14 years old, a designated pediatrician will be available to participate in direct patient care and consultation regarding the rehabilitation unit's pediatric patients. This physician will be either certified or eligible for certification by the American Board of Pediatrics.

(VI) When pediatric patients (patients less than 14 years old) are receiving inpatient treatment, the unit will have at least one registered nurse with pediatric training or experience available to the

unit at all times.

(VII) For units with patients less than 14 years old, a nutritionist (minimum registered dietitian) preferably with experience in evaluation and counseling children with chronic illness, will be on staff or available for consultation in order to provide nutrition services.

(VIII) For units with patients less than 14 years old, the unit-facility will have at least one recreational area or playroom with age appropriate and safe materials for patients who are at different stages in rehabilitation; the play area should be bed and wheelchair accessible.

(IX) For units with patients less than 14 years old, the unit will have specialized age-appropriate equipment necessary for day-to-day provision of care.

(X) The facility will make arrangement for/provide appropriate educational services for children in the rehabilitation unit.

(XI) It is recommended that psychological services be available.

(ii) Procedures.

(I) Applications will be reviewed by the program to assure that:

(-a-) all parts of the application form have been completed including a signature and date;

(-b-) all of the eligibility criteria have been met; and

(-c-) copies of documents have been provided verifying program approved medical staff as well as facilities available at the hospital to meet approval criteria.

(II) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The application may be resubmitted with required documentation for reconsideration.

(III) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(IV) Any facility who disagrees with the result of the program's review, may appeal the decision through one of the following processes:

(-a-) administrative review; or

(-b-) a due process hearing as set forth in §37.96(a)(2) of this title (relating to Development and Improvement of Standards and Services).

(iii) Update activities. In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved facilities at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(I) Updated information may include, but is not limited to, the following:

(-a-) current address, telephone number, state comptroller's vendor identification number, and current administrator;

(-b-) additional program approved medical staff;

(-c-) additional qualified staff or facilities available; and

(-d-) updated approval by JCAHO or accreditation from the CARF.

(II) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(B) Cleft/Craniofacial (C/C) centers. To assure that eligible children with craniofacial anomalies, including cleft lip palate, receive quality comprehensive services, the following minimum standards for C/C teams have been established. The standards are based on guidelines recommended by the American Cleft Palate Association and draft material developed by the North Carolina Crippled Children's Program and the Illinois Department of Health. These standards must be met by C/C teams requesting approval from the CIDC Program.

(i) Approval process. All C/C teams must submit a completed CIDC C/C provider application form as specified by the CIDC Program. Applicants meeting the criteria outlined in the guidelines of this subparagraph will receive CIDC Program approval for a maximum of three years. Applications may include an application form, provider agreements, resumes of active team participants, and a description of team composition and process.

(ii) Administrative responsibilities of the C/C team.

(I) Coordination. The administrator of the C/C team is clearly identified and must assure that the following activities are accomplished:

(-a-) specify the mechanism for accepting referrals and providing community and patient education;

(-b-) schedule meetings of the C/C team members and scheduling patient appointments;

(-c-) summarize the C/C team's decisions;

(-d-) assist patients with CIDC Program eligibility requirements;

(-e-) assure confidentiality;

(-f-) submit an annual report with content as specified by the CIDC program (due 30 days after the end of the state fiscal year);

(-g-) request required authorization for covered services from the CIDC Program;

(-h-) maintain centralized records;

(-i-) maintain communication (including C/C team reports) with the patient's local physician/dentist and other local resources involved in order to facilitate interim and follow-up care; and

(-j-) assure that the team abides by the CIDC Program rules and regulations.

(II) Records management. A system for maintaining a centralized record for each eligible CIDC patient must be in place. Each patient's record must include:

(-a-) a medical history and physical;

(-b-) a social assessment;

(-c-) other C/C team member assessments;

(-d-) a summary of the C/C team's decisions; and

(-e-) a treatment plan including all planned C/C team procedures and any follow-up procedures to be provided by other professionals and agencies.

(III) C/C team patient reviews.

(-a-) Frequency. Each child must be discussed by the C/C team in a joint meeting at least one time per



year; on the recommendation of the C/C team, some single cases, after 6 or 7 years of age, may be seen every other year.

(-b-) Location. The team will physically meet in a clearly identified location for patient review meetings.

(-c-) Required attendance. A representative from surgery, dentistry, and speech pathology must be present at team patient review meetings but reports from all involved team members (a minimum of all required active participants for comprehensive C/C teams) should be available.

(iii) Rights of patients. A CIDC program approved C/C team recognizes the rights of eligible patients. All members of the C/C team are expected to:

(I) inform parents/guardians or adult patients of the complete information concerning diagnosis, treatment, and prognosis; and

(II) insure that parents/guardians or adult patients participate in decisions involving the patient's care including development of the treatment plan.

(iv) Composition of a comprehensive C/C team.

(I) Required active participants.

(-a-) A comprehensive C/C team must be composed of the following active participants (only active participants representing surgery, dentistry, and speech pathology are required to attend C/C team patient review meetings):

(-1-) a plastic surgeon and/or an oral surgeon;

(-2-) an otolaryngologist;

(-3-) a primary care physician (may be a team physician and/or a physician designated by the patient/family);

(-4-) an orthodontist and/or a pediatric dentist (one of these team members should have experience in prosthodontics);

(-5-) a licensed speech language pathologist (master's level);

(-6-) a team case manager, either a social worker (MSW) or a registered nurse, or another individual identified as such who is capable of performing the responsibilities specified

in subclause II of the clause; and

(-7-) a patient educator (the team case manager may also assume this role).

(-b-) The required active team participants must be able to see patients in the same city with the exception of the primary care physician who may or may not see the patient in the same city as the other active C/C team participants. Despite this exception, the primary care physician is still required to attend and/or submit reports to the C/C team patient review meeting(s).

(-c-) Although there may be several health care providers in the same category designated as active C/C team participants (e.g. more than one plastic surgeon, more than one team case manager), each patient seen by the C/C team should be seen by a group of C/C team members who consistently interact with the patient and who are responsible for monitoring and coordinating the patient's treatment plan and follow-up.

(II) The following team participants/services must be readily available to serve patients in the same city as the required active participants. These C/C team participants or participants providing these services must agree to actively participate with the C/C team as required according to individual patient needs. These participants must attend and/or submit reports to the C/C team patient review if they have involvement with the patient:

(-a-) a pediatric dentist (if not already designated as a team member);

(-b-) a licensed audiologist (master's level);

(-c-) neurologist;

(-d-) neurosurgeon;

(-e-) ophthalmologist;

(-f-) radiologist (should be board certified but CIDC program approval not required);

(-g-) genetic counselor (either clinical geneticist, medical geneticist or master's degree genetic counselor);

(-h-) dietitian (licensed by the Texas State Board of Examiners of Dietitians or registered with the Commission on Dietetic Registration of the American Dietetic Association); and

(-i-) psychologist (minimum master's level).

(III) Physicians and

dentists must be approved as CIDC program providers, with the exception of radiologists.

(v) Diagnostic procedures. An approved C/C team must have available the following diagnostic procedures:

(I) multiview videofluoroscopy;

(II) fibroptic nasopharyngoscopy;

(III) cephalometrics; and

(IV) CT and three-dimensional reconstruction (only required for C/C teams managing craniofacial anomalies).

(vi) Case coordination.

(I) Each member of the C/C team, in cooperation with other members of the C/C team, shall be responsible for his/her specific area of management.

(II) The team case manager will be responsible for the coordination of services for each patient. Each patient should have only one team case manager. The team case manager should assure that the focus of the service is patient and family oriented and that a comprehensive treatment plan is jointly developed by the patient/family and C/C team. A copy of the plan shall be given to the family, (local) and/or referring physician, other appropriate agencies/local case managers designated by the family, and upon request, to the TDH regional social worker. The plan should include specific treatments and time frames for all disciplines and agencies involved. The case manager must assure that the patient is seen by only one team.

(III) When possible, a CIDC program approved physician, in the child's home community, should be designated for follow-up and emergencies.

(IV) Some care, other than surgery, may be delivered by providers other than the named C/C team members. These providers may be from a different geographic area than the C/C team. However, there must be communication between the independent providers and the C/C team, and services must be consistent with the C/C team treatment plan. All providers must meet CIDC program guidelines in accordance with this section. The plan should be monitored by the C/C team who will provide appropriate follow-up.

(V) Communication, including C/C team reports, must be maintained with the patient's local physician/dentist and other local resources involved in order to facilitate interim and follow-up care. If a patient moves to another part of the state, the C/C team should inform the patient and his/her family of the C/C team closest to the family's new place of residence and inform the C/C team of the patient's relocation in order to assure continuity of care.

(vii) Statewide coverage.

(I) Affiliated C/C team approval.

(-a-) To facilitate statewide coverage, affiliated C/C teams may be approved. An affiliated C/C team must meet the criteria in clauses (i)-(iii), (vi), and (viii) of this subparagraph. All of the members must meet the CIDC program provider enrollment requirements of this section. Affiliated C/C teams must be composed of a minimum of:

(-1-) a surgeon specializing in plastic surgery, oral surgery, or otolaryngology;

(-2-) an orthodontist or a pediatric dentist;

(-3-) a licensed speech language pathologist (master's level); and

(-4-) a team case manager (either a social worker (MSW) or a registered nurse).

(-b-) An affiliated C/C team must consult with and coordinate treatment plan development with a comprehensive C/C teams according to individual patient needs. This coordination for comprehensive care must be documented in the patient's record.

(-c-) In the application process, an affiliated C/C team must specify the comprehensive C/C teams with which it is linked. A letter of agreement between the two or more C/C teams must accompany the application. The letter must verify the linkage between the two or more C/C teams and must specify the following:

(-1-) the method of communication and consultation; and

(-2-) the arrangements for provision of the diagnostic procedures specified in clause (v) of this subparagraph.

(II) Corresponding

members.

(-a-) Any CIDC program provider can be a corresponding member of a C/C team for the purpose of interim and follow-up care.

(-b-) A corresponding member must work in full compliance with the treatment plan established by the comprehensive C/C team.

(-c-) Regular communication between the C/C team and the corresponding member must occur.

(viii) Implementation.

(I) Comprehensive C/C teams and affiliated C/C teams shall be designated by October 1, 1990. After January 1, 1991 only approved C/C teams will be reimbursed for invasive procedures by the CIDC program. Corresponding members may be reimbursed by the CIDC program for non-invasive follow-up and interim care only.

(II) The final decision regarding approval will only be made when the CIDC program has carefully reviewed the documentation submitted, and has been convinced that the applying C/C team is capable of meeting the standards in this subparagraph. For C/C teams with one or more deficiencies noted in their application a time frame will be specified for the correction of the deficiencies. C/C team approval and interim reimbursement will be dependent on the nature of the deficiency and the ability of the C/C team to correct it within the time frame specified. Once the C/C team has been approved, its ongoing approval will only depend on its demonstrated ability to continue to maintain the high standards expected. This ability will be verified through CIDC Program required reports and documentation. In addition to required reports and documentation, the CIDC program may verify compliance with standards in this subparagraph through site visits.

(C) Cardiac outreach clinic guidelines. These guidelines are subject to review and periodic revision by CIDC program staff and the Cardiovascular Advisory Committee (CVAC).

(i) Definition and purpose of a CIDC program approved cardiac outreach clinic.

(I) A cardiac outreach clinic is a primary or secondary level health care facility adequately equipped and staffed by local and secondary or tertiary level (outreach) staff who perform the following functions:

(-a-) assessment and screening of patients for cardiac disease;

(-b-) identification and referral of patients with cardiac disease to the appropriate closest tertiary center for definitive diagnostic procedures and, if needed, surgery; and

(-c-) clinic management of patients with heart disease to include development of a care/service plan, tracking, and periodic follow-up and coordination with local case management services providers if available.

(II) The clinic must meet a recognized need of the community and surrounding geographic area. The clinic must be located a significant distance from tertiary centers of health care. The distance is such that routine travel to the tertiary centers for the services described in subclause (I) of this clause is an unreasonable expectation for the volume of local patients in need of such services; thus, the distance represents a barrier to quality health care for the community.

(ii) Staff.

(I) The outreach clinic must have the following staff as a minimum:

(-a-) a coordinator who shall be capable of processing referrals, scheduling appointments, coordinating clinics if more than one exists and tracking patients if follow-up is necessary. It is strongly encouraged that the coordinator be locally based. If the clinic coordinator is not locally based, the clinic coordinator must communicate regularly (more frequently than the clinic frequency) with all local clinic staff involved with the cardiac clinic to insure that all of the coordinator's functions/responsibilities are fulfilled;

(-b-) an outreach physician who shall be a CIDC program approved pediatric cardiologist who is responsible for supervising the cardiac outreach clinic, conducting the patient assessment, screening, developing the patient's individualized care plan, making appropriate recommendations for referral when necessary, sending a follow-up letter to the referral source, and maintaining appropriate medical records on the patients. The CIDC program CVAC will review any request for exception to the above criteria for the outreach physician. It is strongly recommended that outreach physicians come from secondary or tertiary centers in closest geographic proximity to the community for ease of access;

(-c-) a nurse who shall be a minimum LVN with at least one year of clinical pediatric experience, either locally based or outreach. The nurse must be on site at the time of the physician exam; and

(-d-) a social worker (optional but strongly encouraged)

who shall be certified by the Texas Department of Human Services, and is either locally based or outreach. If the outreach clinic does not have a social worker, the clinic must identify patients in need of social work services and refer them to local case management services providers, if available, or the Texas Department of Health regional social work staff. The social worker, if available, must be on site at the time of the physician exam.

(II) All clinic staff must coordinate (share information) as requested with local case management services providers, if available.

(iii) Facility/equipment.

(I) The outreach clinic facility must have the ability to obtain adequate supplies, space, and equipment for the following:

(-a-) measuring vital signs on the smallest to largest child. An electronic blood pressure device must be available;

(-b-) performing weights and measures on all children; and

(-c-) obtaining acceptable EKGs and chest x-rays on all children.

(II) The clinic must be able to obtain routine lab work. It is encouraged that local resources for equipment be used when available.

(III) The clinic should be held where adequate examination facilities and record processing and storage facilities are available. Details on clinic setting standards may be obtained from the document titled "Generic Standards for Health Care" developed by the Texas Department of Health in June, 1988, which the department adopts by reference. These standards are available from the Texas Department of Health Associateship for Community and Rural Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. The key criteria for clinic setting as described in the department publication entitled "Generic Standards for Health Care" are as follows.

(-a-) The clinic shall be accessible to the target population.

(-b-) Clinic services shall be provided in a setting designed to ensure comfort, safety, and privacy of the patient, and to expedite the work of the staff.

(iv) Services.

(I) Routine outreach clinic services must include history and physical exam, standard lab, EKG, and

chest x-ray. Echocardiography may be performed if the results are of acceptable quality for pediatric patients and reviewed and interpreted by the cardiologist responsible for the clinic. In addition, each patient identified with heart disease and referred by the clinic to a secondary or tertiary center shall have an individualized care plan developed. The outreach clinic staff shall work in conjunction with the patient, family, the referral source, and the secondary or tertiary center to develop the plan. The clinic staff are responsible for tracking patients if follow-up is required in the plan of care. Clinic services shall be integrated into the patient's overall service needs through clinic staff cooperation and sharing of information with local case management services providers (if available). The clinic must address Spanish speaking/bilingual needs and, in general, be culturally sensitive in the provision of services.

(II) The following clinical services shall not be approved or reimbursed by the CIDC program at cardiac outreach clinics; echocardiography (unless clinic approval is given, see subclauses (III) and (IV) of this clause); exercise testing; catheterization; and surgery.

(III) For echocardiograms to be considered for approval and reimbursement, the following information must be submitted with the clinic proposal/application (see clause (xi) of this subparagraph):

(-a-) the names and credentials of who will review and interpret the echocardiograms; and

(-b-) the type of echocardiography equipment that will be used and its suitability for pediatric patients.

(IV) Echocardiography should be used selectively for well defined indications and must not be used as routine screening. CIDC program approval and reimbursement for echocardiography services are subject to periodic review.

(v) Patient volume/percent of patient volume that is CIDC program eligible. The anticipated outreach clinic patient volume must be projected when documenting the need for the clinic (see clause (xi) of this subparagraph). A minimum of 50% CIDC program eligibles must be projected. Clinic referrals may be accepted from all sources, including self-referral.

(vi) Records management. The clinic shall have an organized patient record system. The records shall be confidential and secure and available to the patient upon request with a signed release of information. A complete and accurate record of each patient's health care shall be maintained. The clinic shall implement a

policy which delineates guidelines for the release of confidential information. Information collected for reporting purposes shall be disclosed only in summary, statistical, or other forms which do not identify particular individuals. The clinic shall have a written policy regarding retention and proper disposal of patient records. Further details on these standards may be obtained from the department publication entitled "Generic Standards for Health Care".

(vii) Patient's rights. The outreach clinic shall assure confidentiality of patient information. Facilities within the clinic will be arranged or designed so that services shall be provided in a manner that protects the dignity and privacy of the patient. The clinic will provide services in a timely manner. The clinic shall provide services in a non-discriminatory manner. Services for patients not CIDC program eligible may be billed on a sliding scale according to income guidelines. The clinic shall have a written policy that guarantees services to patients regardless of their ability to pay. Individuals may not be coerced into services, nor must participation in one service/program be an eligibility requisite for another. The clinic shall provide services in such a way that they can be understood by the patient. Further details on these standards may be obtained from the department publication entitled "Generic Standards for Health Care".

(viii) Tracking/follow-up.

(I) Tracking of patients who require follow-up visits must be done at the local outreach clinic level. This tracking process involves updating of information on the patients' location and compliance record. This information must be communicated to the base center of the outreach physician. Tracking of patients' whereabouts and compliance must be a concerted effort of the clinic in order to ensure continuity of care. Should a patient move out of the service area of the clinic, an attempt should be made to provide the patient and family with information on what services are available in the area where they are relocating. Follow-up on services provided is also an important aspect of the clinic service delivery. The clinic should have a system in place for the active determination of the effectiveness of services provided and adjustment of the plan of care when needed to maximize the patient's benefit.

(II) The clinic will have an organized tracking system to monitor patients' health status and use of the health care system. The following tracking system requirements are adapted from the department publication entitled "Generic Standards for Health Care". The system shall:

(-a-) schedule pa-

tient contacts at regular intervals according to program guidelines/protocols, and coordinate with other services/opportunities needed;

(-b-) monitor broken appointments and put in place a system to follow-up for rescheduling;

(-c-) alert staff for follow-up of conditions identified as priorities for care; and

(-d-) track referrals made to other providers/agencies.

(ix) Community interaction.

(I) For CIDC program approval/funding of the clinic, the local community, including the local/county medical society, must support the need for the clinic (see clause (xi) of this subparagraph). Within the first three months of CIDC program funding, the local community, including local physicians, community service groups, and the general public, must be informed about the clinic setup and availability. The clinic must be integrated into the local health care system. The clinic staff must submit a report (to include patient numbers, services rendered, diagnoses, etc.) at least annually to the local/county medical group.

(II) The outreach clinic physician must communicate with the local/primary physician or referral source concerning the patient's history, physical exam, and diagnosis and must involve the local physician in the development of the patient's treatment/service plan. Local physicians must be encouraged to participate in the clinic.

(III) The outreach clinic physician and cardiac clinic staff should provide continuing education in the areas of diagnosis, evaluation, and treatment of patients with suspect and confirmed cardiovascular disease for local physicians and other community professionals involved with the clinic patient population.

(IV) The outreach clinic will coordinate its services with other community activities in an effort to facilitate the public's access to the clinic and other community services and to prevent duplication of services.

(V) If local pediatric cardiology expertise becomes available which meets the needs expressed in the outreach clinic proposal and is community supported, then the outreach clinic staff should plan and implement a phasing out of their services in coordination with the local providers.

(x) Evaluation. (these

criteria are adapted from the department's publication entitled "Generic Standard for Health Care").

(I) The outreach clinic will have a plan for internal review and evaluation of its services to assure the provision of quality services in compliance with the CIDC program/clinic standards.

(II) The outreach clinic will submit reports to the CIDC program (at least annually). The format and content of these reports will be specified by the CIDC program and will be used as a paper audit to assure that the clinic is performing in accordance with this subparagraph. The CIDC Program will be permitted to conduct on-site visits to evaluate the clinic's adherence to the guidelines in this subparagraph. The on-site visits will be conducted when deemed necessary by the CIDC program. The outreach clinic staff will typically be given two weeks notice and will be consulted for scheduling purposes.

(xi) Outreach clinic application process for initial and continued approval. The CIDC program will use the following process to determine initial approval of cardiac outreach clinics. Every three years a CIDC program approved cardiac outreach clinic must resubmit an application proposal for consideration of continued approval. In addition to the application proposal, the CIDC Program will review the clinic's annual reports and any on-site visit information available. If the clinic no longer meets the guidelines, approval may be discontinued. If concerns exist regarding quality of care, staff, facility, or justification issues, CIDC, with input from the CVAC, shall decide the status of the clinic until corrective action is taken; the recommended corrective action; the time frame for corrective action to occur; and the re-evaluation process. The CIDC program will inform the clinic as to whether or not approval is continued.

(I) Proposal/application. Physicians of the local community to which outreach is planned must submit the proposal for the outreach clinic to the CIDC program through the Texas Department of Health (TDH) Regional office. The proposal must be submitted on an application form developed by CIDC program. The proposal shall include the following information:

(-a-) a list of physicians and other staff who will participate in the clinic operation and service delivery (local and outreach);

(-b-) the estimated volume of patients (CIDC and non CIDC) in the area in need of outreach;

(-c-) the frequency

of clinics;

(-d-) the estimated number of patients (CIDC and non CIDC) per clinic;

(-e-) the medical conditions of patients to be seen;

(-f-) the comments, support, and recommendations from the local pediatric and/or family/general practitioners medical society in the area receiving outreach services;

(-g-) a justification for the outreach clinic to the area which includes the following:

(-1- ) availability of appropriate facilities with emphasis placed on utilization of existing facilities; and

(-2-) unmet needs/specific need for the outreach clinic as follows. If there are local CIDC program approved physicians practicing in the specialty of the proposed outreach clinic, the CIDC program will not consider approval/funding of the outreach clinic without specific justification of the community's "unmet need" and a written plan of coordination with the local physicians. If controversy exists in the community regarding the need for the outreach clinic, the proposal must address the controversy, the steps taken to seek resolution, and why the outreach clinic is still justified; and

(-3-) cost effectiveness.

(-h-) a plan to coordinate the clinic with the TDH regional office;

(-i-) the specifications of other outreach clinics in the area and efforts made to coordinate with them;

(-j-) an agreement to allow audit privileges to the CIDC program when deemed necessary by the CIDC program staff;

(-k-) a signed statement form indicating that the outreach clinic shall meet and uphold the guidelines of this subparagraph.

(-l-) information on procedures/services requiring special approval for CIDC Program coverage. For echocardiograms to be considered for approval and reimbursement at cardiac outreach clinics the information specified in clause (iv)(III) of this subparagraph must be submitted with the clinic proposal/application.

(-m-) a proposed budget for CIDC program funding, including the estimated overall clinic costs for personnel, facility, physician/clinic services,

laboratory, radiology, supplies, equipment, travel, and other, and the percentage/amount of these costs requested to be funded by the CIDC program; and

(-n-) a signed agreement by the outreach clinic physician that the outreach clinic staff will comply with §37.83 of this title (relating to Eligibility for Patient Services) in regard to CIDC program eligibles seen at the clinic.

(II) Texas Department of Health regional office review. The proposal will be reviewed by the TDH regional office staff (Medical Director with input from social workers, nurses, nutritionists).

(-a-) The TDH regional office review staff shall submit the following information to the CIDC program:

(-1-) comments and recommendations on the clinic proposal;

(-2-) a statement supporting, or not supporting the proposal;

(-3-) verification of local physician support and effort of clinic staff to coordinate with the TDH regional office; and

(-4-) the plan to coordinate the clinic with the TDH regional health department activities.

(-b-) If controversy exists in the community regarding the need for the outreach clinic the TDH regional office review staff shall submit the following information to the CIDC program:

(-1-) a statement regarding what steps that have been or can be taken to resolve the controversy; and

(-2-) a statement regarding whether the clinic is justified despite this controversy.

(III) CIDC review. The proposal and TDH regional review staff information will be submitted to the CIDC program for review. The proposal and regional information (and annual reports and on-site visit information if the review is for continued approval) will be shared with the CVAC. The CIDC program will determine outreach clinic approval/disapproval based on proposal content, the input from the regional staff, and the recommendations of the CVAC. The CIDC program funding of the clinic will depend upon the clinic's budget request and CIDC availability of funds in accordance with

clause (xii) of this subparagraph.

(xii) CIDC program funding of approved outreach clinics. Those outreach clinics approved by the CIDC program may receive funding on a contract or fee for service basis for the outreach physician's/team members' travel to the clinic site, the salaries of local and/or outreach staff necessary for administration of the clinic or provision of clinic services, physician services, facility use fees, laboratory, radiology, EKG's, and other procedures necessary for assessment and screening of patients. The CIDC program will reimburse fee for service for covered services provided CIDC program eligibles only if the providers of services are not otherwise funded by the CIDC program. The CIDC program will not fund rental of facility space. The specific reimbursement arrangement will depend upon budget needs specified in the clinic proposal and CIDC program availability of funds.

(D) Bone marrow transplant center guidelines. The following minimum guidelines for bone marrow transplant centers have been established to assure that children and young adults, whose medical conditions justify the need of bone marrow transplantation, receive quality comprehensive services. Bone marrow transplant centers in Texas must meet the guidelines of this subparagraph to be approved by the CIDC program for funding.

(i) Approval as a chronically ill and disabled children's (CIDC) services bone marrow transplant center.

(I) Initial approval process.

(-a-) All bone marrow transplant centers must submit to the CIDC program a completed CIDC bone marrow transplant center (center) application form. Information required shall include:

(-1-) provider agreements;

(-2-) resumes of active team participants;

(-3-) caseload history from the previous three years; and

(-4-) copies of program treatment protocols.

(-b-) The CIDC program will conduct an initial on-site visit if deemed necessary to assess quality of care and determine if the bone marrow transplant center meets the criteria in this subparagraph. Initial approval would then be based on the information obtained from the application and the on-site visit.

(-c-) Applicants meeting the guidelines as set forth in this subparagraph will receive CIDC program approval for a maximum of three years.

(-d-) For those centers that meet the guidelines of this subparagraph yet have been in existence for only one year (i.e. only six transplants performed) or whose caseload history over the prior three years does not demonstrate six transplants per year, the CIDC program may approve the center yet require a site visit after one year to determine continuing approval.

(II) Continuing approval process.

(-a-) The bone marrow transplant center's approval for an additional three years shall be based on qualitative and quantitative assessments. Quality and quantity shall be assessed by annual reports, and on-site visits. The annual reports must document that the requirements in the guidelines in this subparagraph are met. The reports must list caseload information and patient outcomes. The CIDC program shall specify the report format. If the bone marrow transplant center no longer meets the guidelines in this subparagraph, approval shall be discontinued.

(-b-) If the on-site visit generates concerns regarding the center's quality of care, staff, or facility, the annual reports and on-site review team reports will be submitted to the CIDC General Advisory Committee. The committee will make a recommendation which shall include: the status of the center until corrective action is taken; the recommended corrective action; the time frame for corrective action to occur; and the re-evaluation process.

(-c-) The CIDC program will inform the center as to whether or not approval is to be continued.

(ii) On-site visits. On-site visits made by the CIDC program will assess a center's quality of care and adherence to the guidelines of this subparagraph. At the time of the site visit the center must submit documentation that the guidelines of this subparagraph are met.

(I) On-site review team composition. The CIDC program will select the on-site review team to consist of:

(-a-) two Texas licensed pediatric hematologist/ oncologists (adult hematologist/oncologists with board certification in hematology/oncology may be substituted for review of "adult" bone marrow transplant centers), sub-board certified in pediatric hematology-oncology or eligible for sub-board certification by the American Board of Medical Specialties; and

(-b-) one CIDC program staff member.

(II) Frequency of on-site visits. On-site visits may be made by the CIDC Program site review team prior to determination of initial approval. For continuation of approved centers, on-site visits will be made every three years, or more often if deemed necessary by the CIDC program, to determine if the guidelines of this subparagraph are being maintained.

(III) On-site review process. During the on-site visit a chart review will be conducted. For initial approval the on-site review team will review at least five consecutive bone marrow transplantations performed over the last year at the center. For continuing approval the site on-site review team will review 18 consecutive bone marrow transplantations performed over the last three years at the center. The chart review will serve to assess competency of staff; quality of the therapeutic measures; and outcome of short and long-term follow-up of patients. In addition to the chart review, the quality of the facility and records documentation shall be evaluated on-site.

(IV) Written report. The on-site review team shall submit a written report to the CIDC program in a format specified by the CIDC program. The CIDC program shall share the report with the center and the CIDC General Advisory Committee.

(iii) Definitions. The following terms when used in this subparagraph shall have the following meanings unless the context clearly indicates otherwise.

(I) "Pediatric" bone marrow transplant centers-those centers which the CIDC Program approves and reimburses for bone marrow transplants performed on patients ages 0-20.

(II) "Adult" bone marrow transplant centers-those centers which the CIDC Program approves and reimburses for bone marrow transplants performed on young adult patients ages 18 through 20 only.

(iv) Case load requirements.

(I) Initial approval. For initial approval a bone marrow transplant center must have performed a minimum of six transplants over the last year. To be designated as a CIDC program approved "pediatric" bone marrow transplant center the six transplants must be performed on patients ages 0-17. The center should demonstrate the ability to perform both al-

logeneic and autologous transplants unless the center elects to limit the scope of its approval to only one type of transplant. The center must have the capability of providing total body irradiation.

(II) Continued approval. For continued approval, a center should perform at least six bone marrow transplants a year to maintain proficiency. To be continued as a CIDC/program approved "pediatric" bone marrow transplant center the six transplants must be for patients ages 0-17. The center must maintain and demonstrate the ability to perform both allogeneic and autologous transplants unless the center elects to limit the scope of its approval to only one type of transplant. The center must maintain the capability of providing total body irradiation.

(v) Bone marrow transplant center staff requirements. (For "adult" centers the equivalent CIDC program approved specialists and nurses without pediatric specialization may be substituted.) "Pediatric" centers must meet the following staff requirements.

(I) Pediatric hematologist/oncologist. The director of a CIDC pediatric bone marrow transplant center must be a CIDC program approved pediatric hematologist/oncologist. The director must be certified or eligible for certification in the sub-board of pediatric hematology/oncology and must have experience in bone marrow transplantation that includes having performed at least 25 bone marrow transplants demonstrating a consistent high quality of procedural and patient management skills when submitted to peer review.

(II) Other medical staff.

(-a-) The "pediatric" bone marrow transplant center, directed by a CIDC program approved pediatric hematologist/oncologist must assure that there is adequate professional coverage 24 hours a day to manage all complications and emergencies. Professional coverage may include pediatric residents under the supervision of attending pediatricians.

(-b-) A CIDC program approved "pediatric" bone marrow transplant center has available physicians in the following specializations for consultation:

- (-1-) pediatric infectious disease;
- (-2-) pediatric radiology;
- (-3-) pediatric surgery; and

(-4-) intensive care.

(III) Nursing staff. A CIDC program approved "pediatric" bone marrow transplant center has one to two registered nurses experienced in pediatrics per patient per shift. The head nurse must be experienced in pediatrics and have at least one year's clinical experience in bone marrow transplantation in children.

(IV) Social work staff. A CIDC program approved "pediatric" bone marrow transplant center must have available a certified social worker for referrals for family social assessments and for coordination of community resources.

(V) Case management staff. At the time of informed consent for the bone marrow transplant, an individual must be designated as case manager who is assigned to the patient's family and who will assist the family in designing and implementing an individualized service plan which will coordinate the services needed to accomplish the rehabilitation of the patient. This plan must take into account the stated medical goals and the family's specific needs to attain those goals. The case manager may be a member of the center's nursing or social work staff or may be another individual identified as such by the center who is capable of performing the stated responsibilities.

(vi) Administration/facilities requirements.

(I) Administration. Hospital support systems and service delivery must be sufficiently integrated to manage all complications and emergencies.

(II) Nursing training. A continuing education nursing inservice training program on bone marrow transplantation must be developed and in place and is required for nurses assigned to the bone marrow transplant program.

(III) Infection control. Infection control procedures must be in place and in compliance with the Joint Commission on Accreditation of Health Care Organization requirements. Transplant patients must be assigned to private rooms with the capability for standard reverse isolation.

(IV) Treatment protocols.

(-a-) The program director must assure that all bone marrow transplantation protocols are approved by the hospital's internal review board.

(-b-) To be designated as a CIDC program approved "pediatric" bone marrow transplant center, the center and staff must be active participants in one of the national pediatric research protocol groups.

(-c-) Donor match criteria for reimbursement will be designated by the CIDC program and will track the National Marrow Donor Program histocompatibility criteria.

(V) Intensive care facilities. A CIDC approved "pediatric" bone marrow transplant center must have available a pediatric intensive care unit (adult intensive care unit for "adult" centers).

(VI) Laboratory facilities. A CIDC program approved bone marrow transplant center must have documented evidence of an affiliation/agreement with an HLA (histocompatibility antigens) typing laboratory. The laboratory must be accredited by American Association of Blood Banks or the American Society of Histocompatibility and Immunogenetics. The center must have laboratory facilities available with capacity and experience in cryopreserving bone marrow in liquid nitrogen for autologous transplants.

(VII) Blood components supply. A CIDC program approved bone marrow transplant center must have a written agreement with a blood bank to provide adequate blood component support. If the blood bank does not have the ability to irradiate blood, the center's radiation therapy department or the associated radiation therapy facility must have that ability. (See subclause (VIII) of this clause).

(VIII) Radiation therapy. A CIDC program approved bone marrow transplant center must have capacity for single or double-source total body irradiation by an experienced radiation therapist either through its own facility or through documented association with an independent radiation therapy facility. A radiation therapy quality assurance program must be in place which requires an external review process.

(IX) records management. A CIDC program approved bone marrow transplant center must maintain a medical records system permitting prompt retrieval of information. Medical records must be legible, accurately documented in a timely manner, and accessible to the CIDC site review team.

(X) Responsibility to the CIDC program. A CIDC program approved bone marrow transplant center shall

agree to abide by CIDC rules and regulations which include, but are not limited to, utilizing all third party resources available to patients prior to requesting payment; accepting program payment as payment in full; and submitting program required documentation; and submitting an annual report due 30 days after the end of the state fiscal year (August 31).

(XI) Rights of patients. A CIDC program approved bone marrow transplant center is responsible for assuring that all members of the transplant team recognize the rights of eligible patients.

(-a-) The responsible physician is expected to inform parents or guardians or adult patients of the complete information concerning treatment and prognosis. He or she should provide opportunities for parents or adult patients to participate in discussion involving the patient's care and provide a written follow-up plan for parents or guardians or adult patients and referring physicians. Communication should occur between the center physician and a local physician (preferably CIDC program approved) in the child's home community for follow-up care.

(-b-) As a part of the qualification for a CIDC bone marrow transplant center, all facilities must disclose to CIDC program present methods of priority selection of patients for bone marrow transplantation. This is to include priorities for selection of both allogenic and autologous grafts and the use of any randomized patient selection methods. Selection procedures will be reviewed for their fairness and consistency with the following CIDC program policy statement. It is the policy of the Chronically Ill and Disabled Children's Bureau that once a CIDC patient is recognized as in need of a bone marrow transplant and meets both the criteria for the center's transplant protocol and the CIDC program eligibility standards, that fair selection procedures should be employed to expedite the necessary care needed without deference to the client's nationality, race, religion, creed, or socioeconomic standards.

(vii) Priority medical conditions for CIDC program reimbursement for bone marrow transplantation. The CIDC program will determine which medical conditions with levels of severity may be eligible for reimbursement as well as coverage policies for bone marrow transplants.

(E) Other types of centers. The CIDC program may recognize other types of centers in various localities in the state which may be designated for program use for diagnosis and treatment of certain conditions needing specialized evaluation and treatment, and comprehensive planning and follow-up.

(5) Other approved providers and facilities. With changes in the health delivery system and in consideration of cost effectiveness and efficiency, the CIDC Program may, with the approval of the Board, establish other areas of approved providers and facilities.

(6) Provider application for program approval.

(A) Applications may be obtained from the CIDC program on request. A copy of the CIDC Program's rules and regulations and a provider's manual will be mailed to the applicant to provide current information regarding the program. The completed application will be reviewed by CIDC program staff for correctness and to verify that all professional criteria have been met, including required documentation. Notification of the status of the application will be made within 15 days of CIDC program receipt of the application.

(B) Any provider may withdraw from program participation at any time by notifying the CIDC program in writing of its desire to do so.

(7) Denial/modification/suspension/termination of provider or facility approval.

(A) The CIDC program may deny, modify, suspend, or terminate the approval of providers or facilities for due cause. Any provider or facility submitting false or fraudulent claims, failing to provide and maintain quality services or medically acceptable standards, or not adhering to the agreement signed at the time of application or renewal for CIDC program participation is subject to review, fraud referral, and/or administrative sanctions which include suspension of payment. The CIDC program may cancel or suspend a physician's/dentist's/podiatrist's approved provider status based on the CIDC program's knowledge of disciplinary action taken against the provider by the Texas State Board of Medical Examiners, the provider's peers, or by professional medical association or society (local, regional, or national in scope).

(i) The CIDC program will notify the provider or facility in writing of the proposed action to be taken, the date of the action, and the reasons for the action.

(ii) The provider has the right of appeal as described in §37.96(a) of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(iii) The CIDC program must give the provider at least 30 days written notice prior to final action.

(B) A due process hearing is available to any provider for the resolution of conflict between the CIDC program and



the provider.

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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Deputy Commissioner  
Texas Department of  
Health

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For further information, please call: (512) 458-7355

## Chapter 143. Medical Radiologic Technologists

### • 25 TAC §§143.1, 143.11, 143.15

The Texas Department of Health adopts amendments to §§143.1-143.11; and new §143.15. Sections 143.3, 143.5-143.11; and new §143.15 are adopted with changes to the proposed text as published in the April 13, 1990, issue of the *Texas Register* (15 TexReg 2127). Sections 143.1, 143.2, 143.4 are adopted without changes and will not be republished.

The amendments implement the requirements of Acts 1989, 71st Legislature, Regular Session, Chapter 864, which exempt certain students performing radiologic procedures from the statutory provisions of Texas Civil Statutes, Article 4512m. The new section and the amendments assure that the certification of medical radiologic technologists continues to identify competent technologists and guarantee to the public needing radiologic procedures that technologists certified by the Texas Department of Health have met and maintain minimum standards for education, training, examination, and continuing education.

The amendments and new section clarify existing language in many sections; implement a statutory amendment exempting students and certain participants in continuing education activities from the provisions of Article 4512m; change the continuing education requirements by allowing credit for activities which are indirectly related to medical radiologic technology and activities which are related to the use and application of non-ionizing forms of radiation; and allow an administrative procedure whereby technologists who have completed education and training but do not qualify under §143.7 may be approved for the examination and receive a general certificate upon passing the examination.

The following comments were received regarding the proposed amendments and new section.

Concerning §143.3, a commenter said that an attorney general opinion had been issued recently concerning quorums, setting out that a quorum is a majority of the positions on a board or council, whether or not the positions were filled or vacant at the time of the meeting. The department agrees and has added

language in subsection (f) clarifying that a quorum of the advisory board is seven.

Concerning §143.5, the department made a minor change for clarification purposes.

Concerning §143.5(c)(7), a commenter said that the 10-day maximum period was too restrictive. The commenter wanted the time period extended to 12 weeks. The department made no changes since the 10-day maximum is specified in the amendment to Article 4512m which was approved by the 71st Texas Legislature.

Concerning §143.5(c)(7), another commenter stated that the paragraph was too detailed and that the determination of exempt status should be made on an individual basis. The department feels that the language is necessary because the statutory amendment requires the Board of Health to specify the recognized professional groups.

Concerning §143.6, a number of commenters expressed concern about application processing times for temporary certificates from students about to graduate from a radiologic technology education program. The proposed change reduced the number of days from 45 to 10 prior to graduation that a student could apply for a temporary certificate. The department's rationale was that 45 days was fundamentally the final six weeks of the program and a significant number of students failed to graduate, yet had already been issued their temporary certificate. In that situation, the department then had to propose revocation of the temporary certificate, and offer an opportunity for a formal hearing if the person failed to voluntarily return the temporary certificate. The change in the number of days will reduce the possibility of issuing temporary certificates which then have to be revoked. The advisory board recommended that the proposed amendment of 10 days prior to graduation be extended to 20 "working" days. For the purposes of administrative procedure and so that there would be no speculation or confusion about what qualified as a "working" day, department staff have expressed the time period as 28 "calendar" days which is the equivalent of 20 "working" days. Accordingly, the final amendment requires 28 calendar days. The time period was also extended from 10 days to 28 "calendar" days in §143.7(h) relating to Types of Certificates and Applicant Eligibility.

Concerning §143.6(c)(1)(A), a commenter objected to the requirements for specific personal data such as current and previous places of employment and criminal convictions. The department disagrees with the comment that having to provide this information is burdensome to the applicant. Employment information has proven in many cases to be extremely important when investigating complaints. How the department considers and applies information regarding criminal convictions is set out in §143.13, concerning the certifying of persons with criminal backgrounds to be medical radiologic technologists. No change was made.

Concerning §143.6, two commenters remarked that this section needed to specifically indicate processing times in accordance with Texas Civil Statutes, Article 6252-13b.1, §3 (House Bill 5, 70th Texas Legislature, (1987)). The department agrees and has added new subsection (f) by transferring lan-

guage and specific time periods from §113.1 of this title concerning special health services permits. Corresponding language regarding processing times has also been transferred into §§143.9-143.10.

Concerning §143.7, a commenter remarked that the wording in subsection (d) (6) needed to include a cross reference to subsection (h) in the section. The department agrees and has made the change.

Concerning §143.8, a commenter recommended that the term "cut-score" as it is used in subsection (f) be changed. The commenter suggested using the term "scaled" score as it is more appropriate when considering the standard of measure utilized for grading the examination in radiologic technology. The department agrees and has made the change.

Concerning §143.8(h), a commenter remarked that having to submit a score report was an invasion of privacy and all the department needed was a copy of the certificate from the American Registry of Radiologic Technologists (ARRT). The department disagrees. The ARRT reports scaled scores for all examinees to state licensing agencies following each examination administration. The language in paragraph (2)(A) sets out that the department accepts score reports or a notarized photocopy of an original letter or "other official notification" from the examining agency to the examinee. For the purposes of these sections, the department considers an ARRT certificate as "other official notification", and has made no change.

Concerning §143.9, one commenter was concerned that subsection (e) concerning limited certificate curricula requirements did not specify any clock hours for radiation physics. The concern was referred to the advisory board which studied the question. It was the general consensus of the advisory board that a sufficient number of hours related to radiation physics was covered by the topics set out in subparagraphs (A)-(E). No change was made.

Concerning §143.10(e), commenters raised concerns about technologists who do not qualify for renewal due to failure to complete the continuing education requirements. Under the existing and proposed language such a technologist may reapply for initial certification. The department has referred the study and development of a proposed procedure to prevent this to a committee of the advisory board.

Concerning §143.11, numerous comments were received concerning the proposed changes in the continuing education requirements. The advisory board recommended and the department concurred that the proposed language be deleted which required independent self-study to have an audio or audio-visual component. Other commenters asked that the term "self-study" be changed to "verifiable independent self-study." The department agrees and has made the change.

Concerning §143.11, several commenters remarked that the 25% maximum number of hours for indirectly related courses was inappropriately low for certain technologists such as radiology department administrators, managers, educators, other technologists who are not directly employed as staff technologists, and radiation therapists. Some technologists, especially those in rural areas, wanted the



number of hours required for recertification reduced from 24 hours. Other commenters remarked that the rules should not allow continuing education credits for indirectly related courses and topics related to non-ionizing forms of radiation. The rationale being that the purpose of the legislation was to protect the health and safety of the people of Texas from the harmful effects of excessive (ionizing) radiation. In response, the department has referred all these concerns to the advisory board for its consideration; however, the majority of the advisory board agreed to maintain the 25% limit on indirectly related courses and the 50% limit on courses related to non-ionizing forms of radiation as set out in the proposal. Accordingly, no change has been made.

The American Registry of Clinical Radiography Technologists (ARCRT) and the Texas Society of the American Registry of Clinical Radiography Technologists requested that the ARCRT credential be recognized in §§143.7 and 143.15. Such an addition would be a substantive change. In response, the Medical Radiologic Technologist Advisory Board referred the request to its credentialing committee for study and a recommendation for action at the advisory board's next meeting. No changes were made to the sections.

Several commenters asked that the sections relating to limited certificates be deleted in their entirety. The department's response is that the statutory language in Article 4512m requires the department to adopt rules establishing the minimum standards for issuing certificates under the Medical Radiologic Technologist Certification Act and establish different classes of certificates. The statute also includes a definition of limited certificates, and Acts 1987, 70th Legislature, Chapter 1096, §3.01 says that the department shall issue a limited certificate to a person who performed radiologic procedures for at least one year during the five years preceding the effective date of the Act (September 1, 1987). No changes were made.

A commenter asked that the department adopt rules to prohibit radiation therapy students from being employed to perform radiation therapy procedures. Such students may be employed to perform radiation therapy procedures provided they have been issued a temporary general certificate or a general certificate, or if the student performs the procedure under Article 4512m, §2.08(d). The department has not adopted these changes since the department has no authority to adopt such a prohibition.

Some commenters objected to the format in which the proposed sections were published, stating that certain subdivisions were referenced as "no change", yet were referred to in sections which were republished or changed. The department's response is that the proposal complied with the guidelines for amending existing sections which are set out by the Texas Register Division, Office of the Secretary of State.

A number of commenters asked questions or remarked that various sections could be modified for the purpose of clarification. The department agrees with a number of these comments and has made appropriate changes throughout the sections. In other areas, the department felt that the language was adequate as proposed.

None of the commenters were against the proposed sections in their entirety; commenters expressed concerns, asked questions and made recommendations regarding specific provisions of the sections.

In addition department staff has made minor editing changes to §§143.5-143.7, 143.10-143.11, and 143.15.

The groups and associations which submitted comments include the following: American Registry of Clinical Radiologic Technologists, Park Ridge, Illinois; Austin Radiologic Association, Austin; Brazos Valley Imaging and Therapeutic Society; Bureau of Radiation Control-Texas Department of Health, Austin; Cancer Treatment and Diagnostic Imaging, Texarkana; Capital Area Society of Radiologic Technologists, Austin; Crouch, Spangler and Douglas, Harrisonville, Missouri; Hendrick Medical Center, Abilene; Hoerster & Dennis Clinic, Llano; Houston Area Radiologic Technologist Society, Houston; Kirby J. Tatum, M.D. Associates, Odessa; Midland College, Midland; Midwestern State University, Wichita Falls; Panola General Hospital, Carthage; Providence Health Center, Waco; Radiology Consultants Imaging Center, Ltd., Austin; Reeves County Hospital, Pecos; Sid Peterson Memorial Hospital, Kerrville; St. Luke's Episcopal Hospital, Houston; Texas Society of the American Registry of Clinical Radiography Technologists, Fredericksburg; Tyler County Hospital, Woodville.

The amendments and new section are adopted under Texas Civil Statutes, Article 4512m, §2.05 which provides the Texas Board of Health, with the advice of the Medical Radiologic Technologist Advisory Board, with the authority to adopt rules establishing the minimum standards for the certification of medical radiologic technologists; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

#### §143.3. The Advisory Board's Operation

(a) (No change.)

(b) Officers.

(1) The chairperson shall preside at all advisory board meetings at which he or she is in attendance and perform all duties prescribed by this chapter. The chairperson may serve as an ex-officio member of any committee.

(2) (No change.)

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

(f) Quorum. A quorum of the advisory board necessary to transact official business is seven.

(g) Transaction of official business.

(1)-(2) (No change.)

(3) Roberts Rules of Order Revised shall be the basis of parliamentary decisions except where otherwise provided by this chapter.

(h)-(l) (No change.)

#### §143.5. Applicability.

(a) (No change.)

(b) Except as specifically exempted by subsection (c) of this section, the provisions of the Medical Radiologic Technologist Certification Act (Act) and this chapter apply to any person representing that he or she performs medical radiologic procedures.

(c) This chapter does not prohibit the performance of a radiologic procedure by the following:

(1) (No change.)

(2) a person who performs the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act, §2.08, by the BCE, BDE, BME, BNE, or BPE, so long as the procedure has not been identified as hazardous and dangerous under the Act, §2.08(c)(4);

(3) (No change.)

(4) students of medicine, dentistry, podiatry, or chiropractic when under instruction or direction of a practitioner and if the student and the practitioner are in compliance with paragraph (2) of this subsection;

(5) a person who performs only in-vitro clinical or laboratory testing procedures as described in the TRCR;

(6) a student enrolled in a radiologic technology program which meets the requirements of §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) who is performing radiologic procedures in an academic or clinical setting as part of the program; or

(7) a person who performs radiologic procedures for a period of not more than 10 days, while enrolled in and as a part of continuing education activities which meet the minimum standards set out in §143.11 of this title (relating to Continuing Education Requirements) and who is licensed or otherwise registered as a medical radiologic technologist in or by another state, District of Columbia, a territory of the United States, the ARRT, the ARCRT, the NMTCB, the Board of Registry of the American Society of Clinical Pathologists, the Canadian Association of Medical Radiologic Technologists, the British Society of Radiographers, the Australian Institute of Radiography, or the Society of Radiographers of South Africa.

#### §143.6. Application Requirements and Procedures.

(a) (No change.)

(b) General.

(1)-(2) (No change.)

(3) The department shall send a

notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(4) Applications will be accepted for a temporary certificate from students not more than 28 calendar days prior to the date of graduation from an approved medical radiologic technologist education program.

(c) Required application materials.

(1) The application form shall contain the following items:

(A) specific information regarding personal data, social security number (optional), birth date, current and previous places of employment, other state licenses and certifications held, misdemeanor and felony convictions, and educational and training background;

(B) a statement that the applicant has read the Act and this chapter and agrees to abide by them;

(C) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;

(D) (No change.)

(E) a statement that the applicant understands that the fees submitted are nonrefundable unless the processing time is exceeded without good cause as set out in subsection (f)(1) of this section;

(F)-(G) (No change.)

(H) a statement that the applicant shall advise the department of his or her current mailing address within 30 days of any change of address;

(I)-(J) (No change.)

(2) Applicants for a certificate who do not qualify under the provisions of §143.7(b) of this title (relating to Types of Certificates and Applicant Eligibility) must submit the following additional documents or qualify under the provisions of §143.15 of this title (relating to Alternate Eligibility Requirements):

(A) (No change.)

(B) at least one of the items set out as follows:

(i) (No change.)

(ii) if applying prior to graduation from an approved medical radiologic program in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors), an expected graduation statement signed by the program director or registrar. Within 30 days of the completion date noted in the graduation statement, the department must receive:

(I)-(III) (No change.)

(3) Persons applying under the provision of §143.7(e)(5) of this title (relating to Types of Certificates and Applicant Eligibility) must submit to the department a properly completed other license/registration documentation report form which has been completed and signed by an authorized representative of the governmental agency which issued the license or other form of registration. A photocopy of the license or other form of registration in medical radiologic technology issued by the government of another state, District of Columbia, or territory of the United States shall be submitted by the applicant.

(d) Application approval.

(1) (No change.)

(2) The administrator shall approve any application which is in compliance with subsections (b) and (c) of this section and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (e) of this section.

(3) Applicants approved for a general or limited certificate who fail to pay the prorated certificate fee, as set out in §143.10(b) of this title (relating to Certificate Issuance, Renewals and Late Renewals) must reapply in order to become certified as a medical radiologic technologist or limited medical radiologic technologist.

(e) Disapproved applications.

(1) The department shall disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this section and §143.7 of this title (relating to Types of Certificates and Applicant Eligibility);

(B) (No change.)

(C) has failed to remit any required fees;

(D) has failed or refused to properly complete or submit any application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department

to verify the applicant's qualifications for certification;

(E) has been in violation of the Act or any other applicable provision of this chapter;

(F) has been finally convicted of a felony or misdemeanor as set out in §143.13 of this title (relating to Certifying Persons with Criminal Background to be Medical Radiologic Technologist);

(G) is under restriction in another state, country, or territory; or

(H) has been disciplined or restricted by the uniformed services of the United States of America if the violation or activity for which the discipline or restriction was imposed directly relates to the duties and responsibilities of a medical radiologic technologist.

(2) If the administrator determines that the application should not be approved, the administrator shall ask the Credentialing Committee to review the application. The committee shall take one of the following actions.

(A) If the committee concurs that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for a formal hearing in accordance with the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). Within 10 days after receipt of the written notice, the applicant shall give written notice to the administrator to waive or request the hearing. If the applicant fails to respond within 10 days after receipt of the notice of opportunity or if the applicant notifies the administrator that the hearing be waived, the department shall disapprove the application.

(B)-(C) (No change.)

(3) An applicant whose application has been disapproved under paragraph (1)(D) and (E) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with this chapter and the provisions of the Act in effect at the time of reapplication.

(f) Application processing.

(1) The department shall comply with the following procedures in processing applications for a certificate.

(A) The following periods of time shall apply from the date of receipt of

an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for certification—21 days. The notice of acceptance may include a statement that an application for temporary certificate received more than 28 calendar days from the date of the applicant's graduation will be held pending until the applicant is within 28 calendar days of graduation; and

(ii) letter of application deficiency—21 days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval—42 days; and

(ii) letter of denial of certificate—180 days (this time limit reflects the time allowed for the advisory board to review the proposal to disapprove; however, in most cases, the time will be much shorter).

(2) The department shall comply with the following procedures in processing refunds of fees paid to the department.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the program administrator. If the program administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for certification or renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists that gives the department good cause for exceeding the time period.

(3) If a request for reimburse-

ment under paragraph (2) of this subsection is denied by the program administrator, the applicant may appeal to the commissioner of health for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The program administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant, if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) The time periods for contested cases related to the denial of certification or renewal are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within three to six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

#### *§143.7. Types of Certificates and Applicant Eligibility.*

(a) General. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants for certification as a medical radiologic technologist or limited medical radiologic technologist.

(1) The department shall prepare and provide a general certificate, limited certificate, or temporary certificate (general or limited), with an identification card(s) which contain the applicant's name, certificate number, and date of certificate issue.

(2) (No change.)

(3) Any certificate or identification card(s) issued by the department remains the property of the department and shall be surrendered to the department on demand.

(4) (No change.)

(5) No one shall display or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(6) No one shall make any alteration on any certificate or identification

card issued by the department.

(b) Special provisions for persons who were nationally certified on September 1, 1987. Upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue an approval letter for a general certificate to a person who was registered by the ARRT or ARCRT as a radiographer, was registered by the ARRT as a radiation therapy technologist, or was registered by the ARRT or certified by the NMTCB as a nuclear medicine technologist.

(c) Special provisions for persons who have performed radiologic procedures during the five year period, September 1, 1982-August 31, 1987, and when the application is postmarked on or before January 1, 1990. Upon payment of the application fee, submission of the application forms, and approval by the department, the department shall issue an approval letter for either:

(1) (No change.)

(2) a limited certificate to a person who has performed radiologic procedures for not less than one year, as documented on forms prescribed by the department. The category or categories of the limited certificate shall be based upon the type of documented radiologic procedures performed by the applicant. However, an approval letter for a limited certificate in the dental, chiropractic, or podiatric categories may be issued provided the applicant submits written evidence satisfactory to the department of at least one of the following items:

(A) for the dental limited certificate, the applicant:

(i) had passed the examination administered by the Dental Hygiene National Board on or before September 1, 1987;

(ii)-(iii) (No change.)

(iv) was licensed on September 1, 1987, as a dental hygienist by the BDE or the appropriate regulatory agency in another state or territory;

(B) for the chiropractic limited certificate, that the applicant was certified by the ACRRT on September 1, 1987; and

(C) for the podiatry limited certificate, that the applicant was certified by the ASPA on September 1, 1987.

(d) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of subsections (b) or (c) of this section:

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

(4) submission of a satisfactorily completed application on a form supplied by the department;

(5) payment of the appropriate fees; and

(6) eligibility for the specific certificate requested as set out in subsection (e), (f), (g) or (h) of this section.

(e) Medical radiologic technologist. To qualify for a general certificate, an applicant shall meet at least one of the following requirements in addition to those listed in subsection (d) of this section:

(1) possess current national certification as a registered technologist by the ARRT;

(2) have successfully completed the ARRT's examination in radiography, radiation therapy technology, or nuclear medicine technology;

(3) possess current national certification as a certified nuclear medicine technologist by the NMTCB;

(4) have successfully completed the NMTCB's examination in nuclear medicine technology; or

(5) be currently licensed or otherwise registered as a medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are more stringent than or are substantially equal to the requirements for Texas certification.

(f) Limited medical radiologic technologist. To qualify for a limited certificate, an applicant shall meet the requirements in paragraph (4) of this subsection and subsection (d) of this section.

(1) The limited categories shall be as follows: skull; chest; spine; extremities; dental; chiropractic; and podiatry.

(2) Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

(3) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, bedside radiography, and nuclear medicine or radiation therapy procedures.

(4) To qualify for a certificate as a limited medical radiologic technologist an applicant must provide documentary evidence satisfactory to the department of the following:

(A) the successful completion of a limited course of study as set out in the §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) and the successful completion

of the appropriate limited examination in accordance with §143.8 of this title (relating to Examinations); or

(B) current licensure or registration as a limited medical radiologic technologist by another state, District of Columbia, or territory of the United States of America whose requirements are more stringent than or substantially equal to the requirements for the Texas limited certificate at the time of application to the department.

(g) Alternate eligibility. An individual who does not qualify under subsection (d)(1) of this section may qualify under §143.15 of this title (relating to Alternate Eligibility Requirements).

(h) Temporary medical radiologic technologist (general or limited). To qualify as a temporary medical radiologic technologist (general or limited), an applicant shall meet the following requirements. These are in addition to those listed in subsection (d) of this section.

(1) For the general temporary certificate, an applicant must:

(A) have successfully completed or be within 28 calendar days of successful completion of a course of study in radiography, radiation therapy technology, or nuclear medicine technology which is accredited by CAHEA;

(B) be approved by the ARRT as examination eligible;

(C) be approved by the NMTCB as examination eligible; or

(D) be currently licensed or otherwise registered as a medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(2) For the temporary limited certificate, the applicant must have successfully completed or be within 28 calendar days of successful completion of a course of study in limited practice which is accredited by the Commission on Dental Accreditation of the American Dental Association, the CCE, or approved by the department; or be licensed or registered as a limited medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements of certification at the time of application to the department.

#### §143.8. Examinations.

(a) (No change.)

(b) Examination eligibility.

(1) Holders of temporary certificates, limited or general, and persons approved by the department under the provisions of §143.15 of this title (relating to Alternate Eligibility Requirements) may take the appropriate examination provided the person complies with the requirements of the Medical Radiologic Technologist Certification Act and this chapter. Persons who qualify under §143.7(e) of this title (relating to Types of Certificates and Applicant Eligibility) are not required to be re-examined for state certification.

(2) Persons who qualify under §143.7(b) and (c) of this title (relating to Types of Certificates and Applicant Eligibility) are not required to be reexamined for state certification.

(c) Approved examination for the general certificate. A general certificate shall be issued upon successful completion of the NMTCB examination or the appropriate examination of the ARRT. The three disciplines are radiography, nuclear medicine technology, and radiation therapy technology. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the general temporary certificate holder.

(d) Approved examination for the limited certificate. A limited certificate shall be issued upon successful completion of the appropriate examination, as follows:

(1) skull—the ARRT examination for the limited scope of practice in radiography (skull);

(2) chest—the ARRT examination for the limited scope of practice in radiography (chest);

(3) spine—the ARRT examination for the limited scope of practice in radiography (spine);

(4) extremities—the ARRT examination for the limited scope of practice in radiography (extremities);

(5) dental—the DANB examination on dental radiation health and safety or the certified dental assistant examination administered by the DANB;

(6) chiropractic—the ACRRT examination; or

(7) podiatric—the ARRT examination for the limited scope of practice in radiography (lower extremities/podiatry);

(e) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s), and application procedures shall be provided by the department to each person issued any temporary certificate or approved under the provisions of §143.15 of this title (relating to Alternate Eligibility Requirements).

(f) Standards of acceptable perfor-

mance. The scaled score to determine pass or fail performance shall be 75.

(g) (No change.)

(h) Results.

(1) Notification of examinees. Results of an examination prescribed by the department but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the department. If the score report does not come directly from the examining agency in writing or on data tape, the results shall be in the form of a photocopy which has been notarized as a true and exact copy of:

(A) an original letter, or other official notification from the approved examining agency to the examinee; or

(B) (No change.)

(3) (No change.)

(i) Refunds. Examination fee refunds will be in accordance with policies and procedures of the the department or the agency or organization prescribed by the department to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

#### *§143.9. Standards for the Approval of Curricula and Instructors.*

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

(c) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must either:

(1) be accredited by the CAHEA to offer a limited curriculum in radiologic technology, the Commission on Dental Accreditation of the American Dental Association, or the Chiropractic Council on Education; or

(2) (No change.)

(d) Application procedures for limited certificate programs. An application shall be submitted to the department at least six weeks prior to the starting date of the program to be offered by a sponsoring institution or the course of study to be offered by an independent sponsor. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's program or by the independent sponsor. Program directors and independent sponsors shall be responsible for the curriculum, the organization of classes, the main-

tenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

(1) (No change.)

(2) An original and four copies of the entire application and supporting documentation must be submitted in three-ring binders with all pages clearly legible and consecutively numbered. Each application binder must contain a table of contents and must be divided with tabs identified to correspond with the items listed in this section. If any item is inapplicable a page shall be included behind the tab for that item with a statement explaining the inapplicability.

(3) (No change.)

(4) Notices will be mailed to applicants informing the applicant of the completeness or deficiency of the application within 21 days of receipt of the application in the department. Applications which are received incomplete may cause postponement of the program starting date. The time of receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying the application is 120 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees, as set out in §143.6(f)(2) and (3) of this title (relating to Application Requirements and Procedures).

(5) If the application is revised or supplemented during the review process, the applicant shall submit an original and four copies of a transmittal letter plus an original and three copies of the revision or supplement. If a page is to be revised, the complete new page must be submitted with the changed item/information clearly marked on five copies.

(6) The application shall include:

(A)-(C) (No change.)

(D) a list of instructors approved by the department, in accordance with subsection (g) of this section, and any other persons responsible for the conduct of the program or course of study including management and administrative personnel. The list must indicate what courses each will teach or instruct or the area(s) of responsibility;

(E) a list of clinical facilities, letters of agreement from clinical facilities signed by the chief executive officer(s) of each facility and clinical schedules including the following items identified for each clinical site utilized;

(i) (No change.)

(ii) a copy of the current

registration(s) for the radiologic equipment from the Texas Department of Health, Bureau of Radiation Control;

(iii) (No change.)

(iv) whether or not the clinical facility is accredited by the JCAHO or certified to participate in the federal Medicare program, and if required, is licensed by the appropriate statutory authority. For example, if the facility is an ambulatory surgical center, licensure by the department is required;

(F) -(I) (No change.)

(7) All applications must identify the type of curriculum according to the limited categories in accordance with §143.7(f) of this title (relating to Types of Certificates and Applicant Eligibility). Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (e) of this section.

(8)-(9) (No change.)

(e) Curricula requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) at least 120 clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, dental, and chiropractic, and not less than 60 clock hours of basic theory instruction for podiatric is required. The required clock hours of basic theory/classroom instruction need not be repeated if two or more categories of curriculum are completed simultaneously or to add a category to a temporary limited or limited certificate provided; however, a person who received a limited certificate under §143.7(c)(2) of this title (relating to Types of Certificates and Applicant Eligibility) must complete the required clock hours of basic theory/classroom instruction in order to add a category to the temporary limited or limited certificate. The following subject areas and minimum number of hours (in parentheses) must be included in all programs or courses of study and must be instructor directed. The recommended clock hours for each shall be:

(A)-(E) (No change.)

(2) a clinical practicum for each category of limited curriculum is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner or certified MRT or LMRT in accordance with the following chart.

| Type of Limited Certificate | Clinical Instruction (# of clock hours) | Clinical Experience (# of clock hours) |
|-----------------------------|---|--|
| Skull                       | 50                                      | 100                                    |
| Chest                       | 6                                       | 100                                    |
| Spine                       | 25                                      | 100                                    |
| Extremities                 | 30                                      | 100                                    |
| Dental                      | 10                                      | 100                                    |
| Chiropractic                | 60                                      | 100                                    |
| Podiatric                   | 4                                       | 50                                     |

(A)-(C) (No change.)

(D) The program director or independent sponsor shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the student has or has not successfully completed the required clinical instruction and clinical experience. Such written documentation must be provided to each student within 14 days of completion of the clinical experience. Students who successfully complete the required clinical experience may be required to submit such documentation to the department if applying for a temporary limited certificate with an expected graduation statement, as set out in §143.6(c)(2) of this title (relating to Application Requirements and Procedures). Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures.

(f) Limited certificate educational program approval.

(1)-(2) (No change.)

(3) If approval is proposed to be denied, the applicant shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing within 10 days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(g) Instructor approval for limited certificate programs.

(1) All persons who plan to or who provide instruction and training in the limited certificate courses of study or programs shall:

(A)-(B) (No change.)

(C) document the appropriate instructor qualifications, in accordance with subsection (h) of this section.

(2) (No change.)

(3) Within 21 days of receipt of the application in the department, a notice will be mailed informing the applicant of the completeness or deficiency of the application. The time of receipt of the last item necessary to complete the application to the date of issuance of a written notice approving or denying the application is 42 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees paid as set out in §143.6(f)(2) and (3) of this title (relating to Application Requirements and Procedures).

(4) An applicant who is not approved by the department shall be given an opportunity to request a formal hearing within 10 days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If no hearing is requested, the right to a hearing is waived and the proposal action shall be taken.

(h) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and experience in teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

(A)-(B) (No change.)

(C) be a practitioner who is in good standing with all appropriate regulatory agencies, including, but not limited to, the department, the BCE, BDE, BME or BPE, the Texas Department of Human Services, and the United States Department of Health and Human Services.

(2) A limited medical radiologic technologist may not teach, train, or provide

clinical instruction in a program or course of study different from the technologist's current level of certification. For example, an LMRT who holds a limited certificate in dental radiography may not teach, train, or provide clinical instruction in a limited course of study for chest radiography.

*§143.10. Certificate Issuance, Renewals, Late Renewals.*

(a) (No change.)

(b) Issuance of certificates.

(1) (No change.)

(2) Upon receiving the applicant's form and fee, the department shall issue the person a general certificate or limited certificate with an expiration date and a certificate number. An identification card shall be included with the general certificate.

(3) The department shall replace a lost, damaged, or destroyed certificate, limited certificate, temporary certificate, identification card(s) upon a written request and payment of the replacement fee. Requests shall include detailing of the loss or destruction of the original certificate and/or identification card(s), or be accompanied by the damaged certificate or card(s).

(c) Temporary certificates.

(1) The department shall send each applicant whose application has been approved for the temporary certificate (general or limited) an appropriate temporary certificate which shall expire one year from the date of issue.

(2) The department shall send with the temporary certificate information regarding examinations and application deadlines.

(3) All temporary certificates are not subject to renewals or extensions for any reason. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(d) Certificates. The initial certificate is valid through the MRT's or LMRT's next birth month; however, when the next

birth month occurs within six months, the certificate shall be issued for that period plus the next full year in order to establish a staggered renewal system. Fees shall be prorated and must be paid before a certificate will be issued by the department.

(e) Certificate renewal. Each MRT or LMRT shall renew the certificate biennially on or before the last day of the MRT's or LMRT's birth month.

(1) Each MRT is responsible for renewing the certificate before the expiration date and shall not be excused from paying late fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or late renewal.

(2) The department may not renew the certificate of an MRT or LMRT who is in violation of the Act or this chapter at the time of renewal.

(3) At least 60 days prior to the expiration of an MRT's or LMRT's certificate, the department shall send notice to the MRT or LMRT at the address in the department's records at the time the notice is sent, of the expiration date of the certificate, the amount of renewal fee due, and a renewal form which the MRT or LMRT must complete and return to the department with the required renewal fee.

(4) The renewal form shall require the provision of the MRT's or LMRT's preferred mailing address, primary employment address and phone number, category of employment, information regarding misdemeanor and felony convictions (if any since initial certification or last renewal), and continuing education completed in accordance with §143.11 of this title (relating to Continuing Education Requirements). The renewal form must be signed and dated by the renewal applicant.

(5) The MRT or LMRT has renewed the certificate when the renewal form and required renewal fee are mailed on or before the expiration date of the certificate and received by the administrator. The postmark date shall be considered the date of mailing. The processing times and procedures set out in §143.6(f) of this title (relating to Application Requirements and Procedures) shall apply to renewals.

(6) The department is not responsible for lost, misdirected, or undelivered renewal application forms, fees, renewal certificates, or renewal identification cards.

(7) The department shall issue renewal identification cards for the current renewal period to an MRT or LMRT who has met all the requirements for renewal. The cards shall be sent to the preferred mailing address provided on the renewal application form.

(8) The department shall issue renewal identification cards to an MRT or

LMRT who fails to complete the continuing education requirements for recertification as set out in §143.11 of this title (relating to Continuing Education Requirements). The renewal identification cards shall expire 120 days after the last day of the MRT's or LMRT's birth month. If the deficiency is corrected within the 120-day period, the department shall issue a renewal identification card which expires on the last day of the MRT's or LMRT's next birth month plus one year. An MRT or LMRT who does not correct the deficiency within 120 days shall not be allowed to extend or renew the certificate.

(f) Late renewals.

(1) A person whose certificate has expired for not more than 60 days may renew the certificate by submitting to the department the completed renewal form, continuing education report forms (if required), and the late renewal fee.

(2) The late renewal is effective if it is mailed to the department or personally delivered by the MRT or LMRT or his/her agent to the department not more than 60 days after certificate expiration. If mailed, the postmark date shall be considered the date of mailing. A postage metered date is not considered as a postmark. A certificate not renewed within 60 days after expiration cannot be renewed.

(g) Expired certificates. The department, by certified mail using the last address known, shall attempt to inform each MRT or LMRT who has not renewed a certificate after a period of more than 60 days after the expiration of the certificate that the certificate has automatically expired. A person whose certificate automatically expires is required to surrender the certificate and identification cards to the department.

#### *§143.11. Continuing Education Requirements.*

(a) (No change.)

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period beginning on the first day of the month following each MRT's or LMRT's birth month and ending on the last day of each MRT's or LMRT's birth month two years hence.

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

(5) No more than 50% of the required number of hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials or a combination thereof which meet the requirements set out in subsection (c) of this section.

(6) At least 50% of the required number of hours must be activities which are directly related to the use and applica-

tion of ionizing forms of radiation to human beings for medical purposes.

(7) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are related to the use and application of non-ionizing forms of radiation for medical purposes.

(8) No more than 25% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purposes of this section, indirectly related topics include, but are not limited to, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(9) Persons who hold temporary certificates, either general or limited, are not subject to these continuing education requirements.

(10) An MRT or LMRT who also holds a current Texas license/registration/certification in another health profession may satisfy the continuing education requirement for renewal of the MRT or LMRT with hours counted toward renewal of the other license, registration, or certification provided the hours meet all the requirements of this section.

(c) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity:

(1) is offered for semester hour or quarter hour credit by an institution accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools and is directly or indirectly related to the disciplines of radiologic technology as specified in subsection (b) of this section; or

(2) is offered for continuing education credit by an institution accredited by CAHEA or the Commission on Dental Accreditation of the American Dental Association or the CCE and is directly or indirectly related to the disciplines of radiologic technology; or

(3) is an educational activity which meets the following criteria:

(A) the content applies directly or indirectly to the disciplines of radiologic technology or is specific to the category of the limited certificate held by the LMRT; and

(B) is approved, recognized, accepted, or assigned continuing education



credits by professional organizations or associations such as the American Society of Radiologic Technologists, the ARCRT, the American Healthcare Radiology Administrators, the American Society of Podiatric Assistants, the Society of Nuclear Medicine, the CCE, the Texas Society for Radiologic Technologists, the Texas Society of the ARCRT, the American Podiatric Medical Association, the American Dental Hygiene Association, the American Medical Association (Category I Continuing Medical Education only), the American Osteopathic Association (Category I Continuing Medical Education only), or the American Dental Association.

(d) Additional acceptable activities. The additional activities for which continuing education credit will be awarded are as follows:

(1) successful completion or recertification in a cardio-pulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than three hours credit during a renewal period; or

(2) attendance and participation in inservice education and training offered or sponsored by JCAHO-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology.

(e) (No change.)

(f) Determination of clock hour credits. The department shall credit continuing education experiences and activities as follows.

(1) Semester hour or quarter hour credits as set out in subsection (c)(1) of this section shall be credited on the basis of 15 clock hour credits for each semester hour and 10 clock hour credits for each quarter hour successfully completed with a grade of "C" or better, evidenced by an official transcript.

(2) (No change.)

(g) Activities unacceptable as continuing education. The department shall not grant credit for:

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

(4) verifiable independent self-study activities which have no post-test or other measurement or evaluation instrument provided;

(5) verifiable independent self-study activities which exceed 50% of the clock-hour requirements as set out in subsection (b)(2) and (3) of this section;

(6) learning activities indirectly related to radiologic technology which exceed 25% of the clock hour requirements as set out in subsection (b)(2) and (3) of this

section;

(7) learning activities which are related to non-ionizing forms of radiation in excess of the 50% of the clock hour requirement as set out in subsection (b)(2) and (3) of this section;

(8) any activities or experiences which do not meet the criteria set out in subsection (c) of this section; or

(9) activities in accordance with subsection (d)(1) of this section which are repeated during the renewal period or hours in excess of three hours per renewal period.

(h) Failure to complete the required continuing education.

(1) (No change.)

(2) The next continuing education reporting period shall commence on the day following the completion of continuing education credits to correct the deficiency and shall end two years from the date the previous renewal period ended. In other words, the extension period is borrowed from the next reporting period.

(3) (No change.)

#### *§143.15. Alternate Eligibility Requirements.*

(a) This section applies to individuals applying for general certification who have not met the requirements set out in §143.7 of this title (relating to Types of Certificates and Applicant Eligibility) but who have completed education, training, and clinical experience which is equivalent to that of a CAHEA-accredited educational program in radiography.

(b) An applicant who meets these alternate eligibility requirements is eligible to be examined for the general certificate. Upon the applicant's successful completion of the examination, the department shall issue an approval letter for the general certificate. In addition to meeting the minimum eligibility requirements set out in §143.7(c)(1)-(5) of this title (relating to Types of Certificates and Applicant Eligibility), an individual must submit the following items to be considered eligible for the general examination:

(1) a satisfactorily completed application on the forms prescribed by the department;

(2) official transcripts or other certified documents which indicate successful completion of coursework specified in subsection (c) of this section which are accompanied by a list which has been typed or legibly printed in English identifying each transcript or document, the sponsor or sponsoring institution for each course, workshop, symposium or seminar, and the inclusive dates of each learning activity;

(3) proof of successful completion, within the eight-year period prior to application to the department, of supervised

clinical practice experience in radiologic technology as specified in subsection (d) of this section;

(4) a complete resume which has been typed or legibly printed in English of all education, training, and work experience in the field of radiologic technology giving specific dates, locations, names, and qualifications of supervisors and instructors.

(c) The required coursework must consist of instructor-directed learning activities or classroom instruction in the following subject areas for not less than the number of clock-hours specified:

(1) principles of radiation biology and radiation protection—40 hours;

(2) human anatomy and physiology—45 hours;

(3) radiographic procedures and principles of radiographic exposure—60 hours;

(4) radiographic film processing—five hours; and

(5) introduction to radiography, medical ethics and law, medical terminology, methods of patient care and management essential to radiologic procedures, imaging equipment, evaluation of radiographs, radiation physics, radiographic pathology, introduction to quality in medical imaging, and an introduction to computer literacy as it applies to the medical radiologic technologist—150 hours, total. All subjects must be covered.

(d) The required supervised clinical experience in medical radiologic technology shall consist of at least 2,000 clockhours. Written verification of the experience must be provided on the forms prescribed by the department and must be signed by a physician and a supervising radiologic technologist who is either an ARRT registered technologist or certified by the department as a medical radiologic technologist. The experience must include the following:

(1) a sufficient and well-balanced variety of radiographic examinations and equipment;

(2) integration of the clinical experience with the coursework set out in subsection (c) of this section;

(3) laboratory practicum for student demonstration and practice of essential skills, principles and procedures of image quality, image evaluation, quality assurance, and radiation safety and protection; and

(4) periodic evaluation of the student or trainee's knowledge, problem solving skills, and clinical competencies which shall include, but not be limited to, the following areas listed in subparagraphs (A)-(O) of this paragraph. Upon completion of the 2,000 hours of clinical experience the student or trainee shall be able to:



(A) use oral and written medical communication;

(B) demonstrate knowledge of human structure, function and pathology;

(C) anticipate and provide basic patient care and comfort;

(D) apply principles of body mechanics;

(E) perform basic mathematical functions;

(F) operate radiographic imaging equipment and accessory devices in a safe and appropriate manner;

(G) position patients and radiographic imaging equipment to perform radiographic examination procedures;

(H) modify standard procedures to accommodate for patient condition and other variables of medical significance;

(I) process radiographs;

(J) determine exposure factors to obtain diagnostic quality radiographs with minimum radiation exposure and adapt exposure factors for various patient conditions, equipment, accessories, and contrast media to maintain appropriate radiographic quality;

(K) practice radiation protection for the patient, self, and others;

(L) recognize emergency patient conditions and initiate first aid and basic life-support procedures;

(M) evaluate radiographic images for appropriate positioning and image quality;

(N) evaluate the performance of radiographic equipment, know the safe limits of operation, report malfunctions to the proper authority, and demonstrate knowledge and skills relating to quality assurance; and

(O) exercise independent judgment and discretion in the technical performance of medical radiologic procedures.

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 September 24, 1990.

TRD-9010013

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: October 15, 1990

Proposal publication date: April 13, 1990

For further information, please call: (512) 458-7275

## Chapter 337. Water Hygiene

### Drinking Water Standards Governing Drinking Water Quality and Reporting Re- quirements for Public Water Supply Systems

The Texas Department of Health adopts amendments to §§337.4, 337.7, and 337.12; the repeal of §§337.5 and §337.6; and new §§337.5 and §337.6. The amendment to §337.4 and new §337.6 are adopted with changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3969). The remaining sections are adopted without changes and will not be republished. Amendments to §337.3 and §337.18 and new §§337.19-337.21, which were included in the proposal, are not being adopted at this time.

The amendments and new sections revise requirements for coliform monitoring and maximum contaminant levels to conform with federal regulations.

The following comments were received regarding the proposed amendments.

Concerning §337.4, department staff have changed the proposed amendment to this section by withdrawing the proposed new wording in paragraph (2), because the proposed new wording reflected changes to requirements for surface water monitoring, which are not being adopted at this time. However, the department adopted the proposed deletion of existing language in paragraph (2), which required the entire section to be restructured.

Concerning §337.6(a)(1), two commenters suggested that service connections may not always be the best sampling points since household activities which occur beyond the utilities control may adversely affect the quality of water. The department agrees and has amended the proposed wording to allow special sampling stations or other sampling sites. Another commenter suggested a need for further guidance on the written siting plan. The department has already begun to formulate a guidance document for the siting plans.

Concerning §337.6(a)(3), one commenter requested that clarification be made for which systems could collect all samples on the same day. The department has changed the reference to help clarify this matter. Systems which utilize sources other than groundwater may not collect all samples on the same day which is the requirement of the federal regulations.

Concerning §337.6(b)(1), one commenter made comments on the department's allowance to let laboratory schedules dictate sam-

pling protocol. The department believes that this is an acceptable arrangement and has made no change. Another commenter suggested wording changes to §337.6(b)(1)(A) to clarify which systems must collect four repeat samples. The department believes that since systems may collect more samples than required, the department will not require four repeat samples for any system if it has collected at least two routine samples whether or not they are required.

Concerning §337.6(b)(2), two commenters suggested that clarification is needed for repeat sampling procedures when positive samples are collected at the end of distribution lines. The department agrees and has amended the proposed wording.

Concerning §337.6(c)(1)(B), one commenter requested wording be included to allow systems to cease repeat sampling after finding that the requirement for invalidation has been met. The department agrees and has amended the proposed wording.

Concerning §337.6(c)(1)(C), one commenter stated that the term "substantial grounds" needs clarification. The department believes that, since invalidation of samples will be handled on a case-by-case basis under this section, the department does not wish to limit the grounds which can be used to request invalidation.

Concerning §337.6(c)(2), one commenter asked if laboratory errors could be used to invalidate a sample. The department's response is that §337.6(c)(1)(A) makes allowance for this, but the error has to be reported by the laboratory. Another commenter suggested including wording to allow for laboratory schedules. The department agrees and has amended the proposed wording.

The commenters were the Lost Creek Municipal Utility District, the Kupferle Foundry Company, TU Services, and the City of Houston. None of the commenters opposed the sections, but they had concerns and recommendations.

#### • 25 TAC §§337.4-337.7, 337.12

The amendment and new sections are adopted under the Health and Safety Code, §341.002, which provides the Texas Board of Health with the authority to adopt rules for public water systems, and establish standards and procedures for the management and control of sanitation for health protection measures; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

**§337.4. Control Tests.** These tests permit the operator of the system to judge variations in water quality, to identify objectionable water characteristics, and to detect the presence of foreign substances which may adversely affect the potability of the water. These control tests shall be performed in accordance with procedures approved by the department. Operators of water treatment plants utilizing coagulation, settling, softening, or filtration shall perform daily the following chemical control tests on the filtered water, list them on the

monthly report of water works operation and submit a copy of this report to the department after each month of operation.

| TEST              | APPLICABILITY               |
|-------------------|-----------------------------|
| Turbidity         | All Public Supplies         |
| pH                | Community Type Systems Only |
| Alkalinity        | Community Type Systems Only |
| Chlorine Residual | All Public Supplies         |

§337.6. *Coliform Sampling.*

(a) Routine monitoring.

(1) Public water systems must collect routine total coliform samples at active service connections which are representative of water throughout the distribution system according to a written sample siting plan. Other sampling sites may be used if located adjacent to service connections. These plans are subject to review and revision by the Department of Health.

(2) The monitoring frequency for total coliforms for community and noncommunity water systems is based on the population served by the system, in accordance with the following table:

| Population Served | Minimum<br>Number of<br>Samples<br>per Month |
|-------------------|--|
|-------------------|--|

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|                             |     |
|-----------------------------|-----|
| 1 to 1,000-----             | 1   |
| 1,001 to 2,500-----         | 2   |
| 2,501 to 3,300-----         | 3   |
| 3,301 to 4,100-----         | 4   |
| 4,101 to 4,900-----         | 5   |
| 4,901 to 5,800-----         | 6   |
| 5,801 to 6,700-----         | 7   |
| 6,701 to 7,600-----         | 8   |
| 7,601 to 8,500-----         | 9   |
| 8,501 to 12,900-----        | 10  |
| 12,901 to 17,200-----       | 15  |
| 17,201 to 21,500-----       | 20  |
| 21,501 to 25,000-----       | 25  |
| 25,001 to 33,000-----       | 30  |
| 33,001 to 41,000-----       | 40  |
| 41,001 to 50,000-----       | 50  |
| 50,001 to 59,000-----       | 60  |
| 59,001 to 70,000-----       | 70  |
| 70,001 to 83,000-----       | 80  |
| 83,001 to 96,000-----       | 90  |
| 96,001 to 130,000-----      | 100 |
| 130,001 to 220,000-----     | 120 |
| 220,001 to 320,000-----     | 150 |
| 320,001 to 450,000-----     | 180 |
| 450,001 to 600,000-----     | 210 |
| 600,001 to 780,000-----     | 240 |
| 780,001 to 970,000-----     | 270 |
| 970,001 to 1,230,000-----   | 300 |
| 1,230,001 to 1,520,000----- | 330 |
| 1,520,001 to 1,850,000----- | 360 |
| 1,850,001 to 2,270,000----- | 390 |
| 2,270,001 to 3,020,000----- | 420 |
| 3,020,001 to 3,960,000----- | 450 |
| 3,960,001 or more-----      | 480 |

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The population for noncommunity systems will be based on the maximum daily population.

(3) The public water system must collect samples at regular time intervals throughout the month, except that a system which uses groundwater (except groundwater under the direct influence of surface water, as described in the department's rules and regulations for public water systems in §337.204 of this title (relating to Water Sources), and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

(4) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms.

(b) Repeat monitoring.

(1) If a routine sample is total coliform-positive, the public water system must collect a set of repeat samples within 24 hours of being notified of the positive result, or as soon as possible if the laboratory is closed.

(A) A system which collects more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample found.

(B) A system which collects one routine sample per month must collect no fewer than four repeat samples for each total coliform-positive sample found.

(2) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a fourth repeat sample is required, it must be collected within five service connections upstream or downstream. If the positive routine sample was collected at the end of the distribution line, one repeat sample must be collected at that point and all other reports must be collected within five connections upstream of that point.

(3) The system must collect all repeat samples on the same day, except that a system with a single service connection may collect daily repeat samples until the required number of repeat samples has been collected.

(4) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set of repeat samples in the manner specified in paragraphs (1)-(3) of this subsection. The additional samples must be collected within 24 hours of being notified

of the positive result or as soon as possible if the laboratory is closed. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms has been exceeded.

(5) If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the department does not invalidate the samples in accordance with subsection (c) of this section, it must collect at least five routine samples during the next month the system provides water to the public.

(6) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent samples as a repeat sample instead of as a routine sample.

(7) Results of all routine and repeat samples not invalidated by the department must be included in determining compliance with the MCL for total coliforms in accordance with §337.5 of this title (relating to Maximum Bacteriological Contaminant Levels (MCLs) for Microbiological Contaminants).

(c) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subsection does not count towards meeting the minimum monitoring requirements of this section.

(1) The department may invalidate a total coliform-positive sample only if one of the following conditions is met:

(A) the laboratory establishes that improper sample analysis caused the total coliform-positive result;

(B) the department, on the basis of the results of repeat samples collected as required by this section, determines that the total coliform-positive sample resulted from a domestic or other nondistribution system plumbing problem. The department cannot invalidate a sample on the basis of repeat sample results unless all repeat samples collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. Under those circumstances, the system may cease resampling and request the department invalidate the sample. The system must provide copies of the routine positive and all repeat samples; or

(C) the department has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by this section, and use them to determine compliance with the MCL for total coliforms in §337.5 of this title (relating to Maximum Contaminant Levels (MCLs) for Microbiological Contaminants). The system must provide written documentation which must state the specific cause of the total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The department may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(2) If a laboratory invalidates a sample, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, or soon as possible if the laboratory is closed, and have it analyzed for the presence of total coliforms. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result.

(d) Fecal coliforms/*Escherichia coli* (*E. coli*) testing.

(1) If any routine or repeat sample is total coliform-positive, that total coliform-positive culture medium must be analyzed to determine if fecal coliforms or *E. coli* are present. If fecal coliforms or *E. coli* are present, the system must notify the department by the end of the day when the system is notified of the test result, unless the system is notified of the result after the department office is closed, in which case the system must notify the department before the end of the next business day.

(e) Response to violation.

(1) A public water system which has exceeded the MCL for total coliforms in §337.5 of this title (relating to Maximum Contaminant Levels for Microbiological Contaminants) must report the violation to the department no later than the end of the next business day after it learns of the violation, and notify the public in accordance with §337.3(8) of this title (relating to Standards of Chemical Quality).

(2) A public water system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the department within ten days after the system discovers the violation, and notify the public in accordance with 337.3(8) of this title (relating to Standards of Chemical Quality).

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 September 21, 1990.

TRD-9009997

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: January 1, 1991

Proposal publication date: July 13, 1990

For further information, please call: (512) 458-7533

◆ ◆ ◆  
• **25 TAC §337.5, §337.6**

The repeals are adopted under the Health and Safety Code, §341.002, which provides the Texas Board of Health with the authority to adopt rules covering public water systems; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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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◆ ◆ ◆  
• **25 TAC §337.18**

The Texas Department of Health (department) adopts an amendment to §337.18, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3969).

The amendment changes the amount of the fee permitted for coliform analyses by the department's Bureau of Laboratories.

No comments were received regarding adoption of the amendment.

The amendment is proposed under the Health and Safety Code, §341.002, which provides the Texas Board of Health with the authority to adopt rules for public water systems, and establish standards and procedures for the management and control of sanitation for health protection measures; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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.

cy's legal authority.

Issued in Austin, Texas, on September 20, 1990.

TRD-9009791

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: October 11, 1990

Proposal publication date: July 13, 1990

For further information, please call: (512) 458-7539

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**Part IX. Texas Water Commission**

**Chapter 334. Underground and Aboveground Storage Tanks**

**Subchapter I. Underground Storage Tank Contractor Registration and Installer Licensing**

• **31 TAC §§334.412, 334.414-334.428**

The Texas Water Commission (TWC) adopts an amendments to §334.412 and new §§334.414-334.428. Sections 334.414-334.417 and 334.421 are adopted with changes to the proposed text as published in the August 14, 1990, issue of the *Texas Register* (15 TexReg 4617). Sections 334.412, 334.418-334.420, and 334.422-334.428 are adopted without changes and will not be republished.

The TWC is required in House Bill 183, 71st Legislature, 1989, to establish a program to license installers and on-site supervisors; to establish standards for the licensing, renewal, denial, revocation, suspension, and reinstatement of an installer or on-site supervisor license, to develop procedures which provide hearings and types of hearings to installers and on-site supervisors contesting denial, revocation, or suspension of a license; and to promote a system of fee assessments to support the state's cost of administering such a program. House Bill 183, 71st Legislature 1989, also provides that no underground storage tank (UST) may be installed, repaired, or removed except by a registered underground storage tank contractor who has a licensed installer or an on-site supervisor at the site at all times during the critical junctures of the UST installation, repair, or removal. These new sections are to be contained in Title 31 Texas Administrative Code Chapter 334, Subchapter I.

The law firm of Baker and Botts, the Industry Advisory Group, and Les Gray and Company submitted comments to the proposed sections. No comments concerning the proposed sections were submitted to the TWC at a public hearing conducted on August 28, 1990, in Room 1-1111 of the William B. Travis Building, Austin.

One commenter suggested modifying §334.414(b) (relating to license for installers and on-site supervisors) to allow non-licensed workers to install, repair, or remove underground storage tanks as long as that work is performed under the direct supervision of an appropriately licensed installer or on-site supervisor. The TWC agrees with the commenter and changes §334.414(b) and §334.414(c) (relating to license for installers and on-site supervisors). Section 334.414(b) is changed to state that a license is required for a person who supervises the installation, repair, or removal of an underground storage tank. Section §334.414(c) is changed to state that an applicant who has no underground utility or other engineering construction experience may obtain the experience required to apply for a license by performing the installation, repair, or removal of underground storage tanks under the director, on-site supervision of a duly licensed person.

Two commenters suggested the addition of language to §334.414(d) concerning license for installers and on-site supervisors. One commenter requested clarification on whether the licensed installer or on-site supervisor could be the same person as the registered contractor. Another commenter suggested that the TWC require the presence of the licensed installer or on-site supervisor at the site at all times during the critical junctures of the UST installation, repair, or removal.

The TWC agrees with both commenters and changes §334.414(d) to state that if a person or business entity is contracting with the public to perform the installation, repair, or removal of an underground storage tank and is also participating in or supervising UST installation, repair, or removal, then that person must both be registered as a contractor and licensed as an installer or on-site supervisor. Therefore, a duly registered UST contractor must either have a licensed installer or on-site supervisor, or be a licensed installer or on-site supervisor, at all times during the critical junctures of the installation, repair, or removal of an underground storage tank. The TWC also agrees that the presence of the licensed installer or on-site supervisor must be required at the site at all times during the critical junctures of the UST installation, repair, or removal.

One commenter noted an error to references contained in §334.416(i) and (k) concerning the requirements for issuance of License A and License B. The TWC agrees with this commenter and the references to §334.415(g) and (h) contained in §334.416(i) and (k) are changed to indicate §334.416(g) and (h) as the correct references.

One commenter suggested changes to §334.417(a)(6) (relating to application for License A and License B) which requires sworn statements from at least four persons (three unrelated clients and one employer) that have engaged the applicant within the previous 12 months and attestation of the applicant's character as part of the application for a License A or License B. This commenter suggested extending the time period from 12 months to 36 months to allow an applicant that may have performed multiple work for the same client over the past year sufficient time to obtain the required sworn statements. This commenter also questioned whether a client would have sufficient knowledge of the

applicant's character as a result of UST work to properly attest to the applicant's character.

The TWC agrees that the previous 12-month period in which to obtain the sworn statements required to be submitted as part of application for License A and License B in §334.417(a)(6) should be extended. As a result, the 12-month requirements is changed to indicate the previous 24 months as the period in which an applicant may submit the sworn statements as part of the application for a License A or License B. The TWC believes it is appropriate to require sworn statements from the previous 24 months since the applicant will be required to have at least 24 months of active experience as part of the requirements for the issuance of License A and License B. The previous 24-month period will also allow applicants who perform multiple jobs for the same client to have a sufficient time period in which to supply the required sworn statements. However, the TWC believes that the attestation clause should not be removed because the applicant's client is in the best position to determine the applicant's work character as related to the applicant's overall on the job performance.

Two commenters suggested extending the December 1, 1990, deadline in which a person is to be licensed as an installer or on-site supervisor to six months in order to give a reasonable amount of time for applications to be received and reviewed by the TWC, applicants to actually take the exams, and exams to be graded. One commenter questioned the purpose of requiring the receipt of the application by the executive director at least 60 days prior to the scheduled examination date.

The TWC believes that a six-month extension of the December 1, 1990 deadline will serve only to add further delay to a much needed installer and on-site supervisor licensing program in the State of Texas. The TWC intends to offer the licensing examination soon after the commission adoption of these rules. However, the TWC changes §334.417(b) (relating to application for License A and License B) and eliminates the requirement that an applicant submit a licensing application at least 60 days prior to the date of a scheduled examination. Instead, the TWC believes that an applicant should be allowed to schedule an examination within 120 days after the executive director approves the application. This change will allow approved applicants to take the appropriate licensing examination before December 1, 1990.

One commenter stated that the TWC should not rely on industry guidance for the licensing examination unless the guidance can be specifically identified and made available to the public and was reviewed by the TWC for consistency with the TWC guidelines, Environmental Protection Agency guidance, and other documents referenced. The TWC states that whenever inconsistencies develop among the various industry guidance documents, the TWC's rules contained in Title 31 Texas Administrative Code Chapter 334 (relating to underground and aboveground storage tanks) shall prevail as the definitive answer. The standards, instructions, and recommended practices published by organizations with expertise in various aspects of the installation, repair, or removal of underground storage tanks will be monitored and evalu-

ated by the TWC. The TWC plans to provide a listing of industry recommended publications to applicants along with mailing addresses and phone numbers of the listed organizations. In addition, the licensing examination will be developed from the industry recommended publications on the mailing list and from applicable TWC rules and regulations.

One commenter suggested that the training and education courses listed in §334.421(i) (relating to renewal of license) be sponsored or recognized by educational or governmental institutions, or recognized organizations.

The commission believes that the training and education courses should be sponsored by educational or governmental institutions, or recognized organizations because sponsorship denotes a method of guaranteeing the performance and viability of the offered course. Recognition by educational or governmental institutions or recognized organizations may acknowledge the existence of a training and education course, but that acknowledgement alone does not guarantee the performance and viability of the course that is available from sponsorship.

Another commenter suggested wording all references to the training and educational requirements of this subchapter exactly the same to avoid confusion. The TWC believes that although worded differently, all of the references to the training and educational requirements contained in this subchapter convey the same message. However, to promote consistency within these rules, the commission deletes the word "associations" contained in §§334.416(i)(7) (relating to requirements for issuance of License A and License B) and 334.421(i) (relating to renewal of license). The commission substitutes the word "organizations" for "associations" in §334.421(i) and adds to §334.421(i)(7) the word "nationally."

One commenter expressed concern over the requirement that all training must be performed by approved educational institutions, because this would eliminate the possibility of in-house training and assumes that institutional training is superior to in-house training.

Section 334.421(i) (relating to renewal of license), does not limit training to approved educational institutions. This section also allows governmental institutions and other recognized organizations. While the commission realizes that there may be UST contractors and other businesses that may have the capabilities to administer in-house training programs, at this time the commission believes that adequate mechanisms to control the quality of those programs do not exist. In addition, the commission believes that demands for training in the market place will cause these educational and governmental institutions and recognized organizations to develop training courses and to promote other training courses sponsored by their own organization.

One commenter requested clarification to indicate whether the eight hours of continuing education as required by §334.421(g) and (h) (relating to renewal of license) must be completed prior to an application for renewal, prior to actual renewal by the TWC, or during the year prior to an application for renewal of a license.

The TWC states that the completion of at least eight hours of continuing education must be completed within the previous validated year of the license. In other words, the eight hours of continuing education must be completed by a license holder prior to the time that the license expires.

One commenter requested clarification between the effect of a renewal application being received by the TWC within 30 days of the expiration of the license as required in §334.421(c) (relating to renewal of license) and the requirement that a renewal application is late when it is received after the actual expiration date of the license pursuant to §334.423 (relating to fee assessments for License A and License B).

The TWC states that receipt of a renewal application submitted at least 30 days prior to the expiration date of the license entitles the current license to remain valid until the executive director notifies the applicant of renewal or denial of the submitted renewal application. A renewal application submitted to the TWC less than 30 days prior to the expiration of the license is not entitled to the same validation and will expire on the date specified on the license. In either case, a late renewal fee will not be assessed against the renewal applicant because the renewal application would have been received by the executive director prior to the actual expiration date of the license.

The new and amended sections are adopted under House Bill 183, 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a program to register underground storage tank contractors and license underground storage tank installers and on-site supervisors; and the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

#### *§334.414. License for Installers and On-site Supervisors.*

(a) Any installer or on-site supervisor as defined in §334.412 of this title (relating to Definitions) shall hold a valid License A, License B, or both, pursuant to this subchapter.

(b) After December 1, 1990, no person shall supervise the installation, removal, or repair of an underground storage tank system unless that person holds a valid license issued by the commission pursuant to this subchapter enabling that person to supervise the installation, repair, or removal of an underground storage tank.

(c) After December 1, 1990, no person shall participate in the installation, removal, or repair of an underground storage tank system unless:

(1) that person holds a valid license issued by the commission pursuant to this subchapter enabling that person to supervise the installation, repair, or removal of an underground storage tank; or

(2) that person is under the direct, on-site supervision of a licensed installer or on-site supervisor as described in subsection (b) of this section, provided that a licensed installer or on-site supervisor shall be present during all critical junctures, as prescribed in subsection (d) of this section.

(d) An underground storage tank system may not be installed, repaired, or removed except by a duly registered underground storage tank contractor who either has or is an installer or an on-site supervisor who is licensed by the commission pursuant to this chapter at the site at all times during the critical junctures of the installation, repair, or removal.

(e) This section does not apply to situations where no license is required pursuant to §334.425 of this title (relating to Exceptions to License A and License B Requirements).

#### §334.415. License A and License B.

(a) An applicant who intends to participate in or supervise the installation or repair of underground storage tank (UST) systems shall apply for a License A.

(b) An applicant who intends to participate in or supervise the removal of UST systems shall apply for a License B.

(c) This subsection shall not prevent the applicant from obtaining both a License A and License B.

#### §334.416. Requirements for Issuance of License A and License B.

(a) Each installer or on-site supervisor desiring to obtain a License A or License B shall submit a completed application to the commission pursuant to §334.417 of this title (relating to Application for License A and License B).

(b) Each applicant shall pay the initial license application fee as required by §334.423 of this title (relating to Fee Assessments for License A and License B) upon submission of the application. An application submitted without the required application fee shall not be accepted.

(c) Each applicant shall be at least 18 years of age.

(d) Each applicant shall have at least two years of active experience in installation, removal, or repair, of underground storage tanks, underground utilities, or other engineering construction.

(e) Each applicant's qualifications shall meet the minimum requirements of this section, and shall be approved by the executive director before the applicant can take the examination required under §334.419 of this title (relating to License A and License B Examination).

(f) Subsequent to the executive di-

rector's approval of an applicant's qualifications, an applicant shall successfully complete the appropriate licensing examination.

(g) After December 1, 1991, each applicant for License A shall have completed 28 hours of training and education courses in the installation and repair of underground storage tanks (UST).

(h) After December 1, 1991, each applicant for License B shall have completed 12 hours of training and education courses in the removal of USTs.

(i) The training and education courses prescribed in §334.416(g) and (h) of this section shall be approved by the executive director and sponsored by educational or governmental institutions, or recognized organizations including, but not limited to:

- (1) Petroleum Equipment Institute;
- (2) American Petroleum Institute;
- (3) Steel Tank Institute;
- (4) National Association of Corrosion Engineers;
- (5) Fiberglass Petroleum Tank and Pipe Institute;
- (6) National Fire Protection Association; or
- (7) other nationally recognized organizations approved by the executive director.

(j) The training and education courses may include instructional courses, seminars, workshops, and conferences.

(k) The applicant shall submit a certificate of completion for the appropriate training and education courses required in §334.416(g) and (h) of this title (relating to Requirements for Issuance of License A and License B). The certificate shall be dated and signed by the designated sponsor.

#### §334.417. Application for License A and License B.

(a) An applicant for Licenses A and B shall provide the following information:

- (1) the applicant's name, business address and telephone number, and permanent mailing address and telephone number;
- (2) the applicant's birth date and social security number;
- (3) a list of other professional registrations and licenses that the applicant holds from a governmental body within or outside of the State of Texas;
- (4) a statement of circumstances in which a license or registration has been previously suspended, revoked, or any disciplinary action resulting from other under-

ground storage tank (UST) related activities within or outside of the State of Texas;

(5) after December 1, 1991, a list and description of the training and education courses on USTs that the applicant has completed;

(6) sworn statements, on forms approved by the executive director, from at least four persons (three from clients not related by blood or marriage and one from a current or previous employer, or employer's representative), that have engaged the applicant or the applicant's employer within the previous 24 months to perform: UST installations, repairs, or removals; underground utilities; or other engineering construction. These statements shall attest to the applicant's character, knowledge of construction, and ability to supervise the construction activity. Such statements shall also include a description of the type of construction performed by the applicant; and

(7) a sworn statement by the applicant as to the authenticity of the information provided on the application.

(b) All applications for licensing shall be submitted on forms provided by the executive director.

(c) The applicant shall schedule a license examination within 120 days after the executive director's approval of the application.

(d) An application shall be denied without prejudice and the examination fee shall be forfeited, if the applicant fails to take the licensing examination within 120 days after the executive director approves the application. An applicant who has received a denial without prejudice may re-apply for a license. The executive director may extend the 120-day examination period upon written request by the applicant and for good cause.

#### §334.421. Renewal of License.

(a) All licenses will expire one year following issuance or renewal of the license.

(b) The executive director shall notify each licensee in writing of the impending license expiration at least 60 days before the expiration. The executive director shall furnish application forms for license renewal.

(c) A properly completed application for renewal shall be submitted to the executive director 30 days prior to expiration. The application must be accompanied by the following:

(1) evidence satisfactory to demonstrate compliance with the continuing education requirements of this section; and

(2) the renewal fee prescribed by §334.423 of this title (relating to Fee Assessments for License A and License B).

(d) The current license shall be valid until the executive director notifies the applicant of renewal or denial of the submitted renewal application provided a properly completed application for renewal was submitted at least 30 days prior to the expiration date of the license.

(e) If the license is not renewed within one year after the expiration date of the license, a new license shall not be issued until the person meets the requirements of §334.416 of this title (relating to Requirements for Issuance of License A and License B) and successfully completes a subsequent examination pursuant to §334.419 of this title (relating to License A and License B Examination).

(f) Upon proper completion of the license renewal process, the executive director shall issue a wallet size card indicating the expiration date of the license.

(g) The renewal applicant for License A shall complete at least eight hours of continuing training and education courses prior to renewal of the license.

(h) The renewal applicant for License B shall complete at least eight hours of continuing training and education courses prior to the renewal of the license.

(i) The training and educational courses required in subsections (g) and (h) of this section shall be approved by the executive director and sponsored by educational or governmental institutions or recognized organizations including, but not limited to, the following:

- (1) Petroleum Equipment Institute;
- (2) American Petroleum Institute;
- (3) Steel Tank Institute;
- (4) National Association of Corrosion Engineers;
- (5) Fiberglass Petroleum Tank and Pipe Institute;
- (6) National Fire Protection Association; or
- (7) other nationally recognized organizations.

(j) The renewal application shall submit a certificate of completion for the appropriate training and education courses required in subsections (g) and (h) of this section. The certificate shall be dated and signed by the designated sponsor's representative.

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 September 21, 1990.

TRD-9010008

Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: October 12, 1990

Proposal publication date: August 14, 1990

For further information, please call: (512) 463-8069

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 6. Disaster Assistance Program

##### General Information

The Texas Department of Human Services adopts amendments to §6.1 and §6.103, concerning restrictions on flood damage grants. The amendments are a result of a federal mandate that allows the Individual and Family Grant (IFG) Program awards to be granted to individuals or families who live in flowage easement areas.

The amendments are justified to comply with federal requirements.

The amendments will function by allowing individuals and families living within a flowage easement, between a levee and a river, and on leased land to receive assistance from the IFG Program.

##### • 40 TAC §6.1

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs. To comply with federal requirements, this amendment is adopted to be effective April 1, 1990.

**§6.1. Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Assistance from other means—Assistance,** including monetary or in-kind contributions, from other governmental programs, insurance, volunteer, or charitable organizations, or from any source other than those of the individual or family. It does not include expendable items.

**Dependent—Someone** who is normally claimed as such on the federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together if the children live in the residence with the parent who does not actually claim them on the tax return.

**Expendable items—Linens,** clothes, and basic kitchenware (pots, pans, utensils, dinnerware, flatware, small kitchen appliances).

**Family—Social unit** living together and composed of legally married individuals, or those couples living together as if they were married, and their dependents; a single person and his dependents; or persons who jointly own the residence, and

their dependents.

**Federal emergency management agency (FEMA)—A federal agency** responsible for coordinating responses to disasters among other federal, state, local, and voluntary agencies.

**Flood hazard area—Area** shown on a Federal Insurance Administration map as an area prone to flooding. These areas are designated Zone A, 100-year flood plain, and Zone V, coastal high hazard area.

**Floodway—That part** of the flood hazard area that is most prone to flooding.

**Individual—Person** who is not a member of a family as defined in these rules.

**Individual and family grant (IFG) program—A federal/state assistance program** created under Public Law 100-707, §411, to award grants to eligible people who incur necessary expenses or who have serious needs as a result of a disaster. These grants are not intended to repay individuals or families for all disaster losses or to allow purchases of items or services that are non-essential, luxury, or decorative.

**Major disaster—Hurricane,** tornado, storm, flood, high water, wind-driven water, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe.

**National eligibility criteria—Standards** prescribed by the FEMA's regulations which state and federal governments must apply when determining eligibility for grants.

**National Flood Insurance Program (NFIP)—Program** that provides flood insurance to people living in communities that are designated as flood prone areas.

**Necessary expense—Cost** of a serious need.

**Owner-occupied—Residence** that is occupied by the legal owner; a person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence, and pays no rent; or a person who has lifetime occupancy rights in the residence with formal title vested in another.

**Primary residence—Dwelling** where the applicant usually lives during the calendar year.

**Sanctioned communities—Communities** that the NFIP designates as having special flood hazard areas but which do not participate in NFIP.

**Serious need—Requirement** for an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

**Small business administration (SBA)—Federal agency** that loans money at a lower than usual interest rate to small business, individuals, and families to assist them in recovering from a disaster.

**State coordinating officer—Person** appointed by the governor through the director of the Division of Disaster Emergency Management to coordinate state and local disaster assistance efforts with those



of federal government agencies. As the representative of the director of the Division of Disaster Emergency Management, state coordinating officer exercises powers granted to the governor by the Texas Disaster Act of 1975, to the extent delegated for the disaster situation.

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 September 21, 1990.

TRD-9009978

Cathy Rossberg  
Agency liaison, Policy and  
Document Support  
Department  
Texas Department of  
Human Services

Effective date: April 1, 1990

For further information, please call: (512) 450-3765

### Eligibility Criteria for Individual and Family Grants

#### • 40 TAC §6.103

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs. To comply with federal requirements, this amendment is adopted to be effective April 1, 1990.

#### §6.103. Additional Eligibility Criteria for Grants for Flood Damage.

(a) A disaster victim who lives in a designated flood hazard area and whose property damage is the result of flooding has restrictions on the amount of grant he may receive. The department applies the following restrictions in determining grant amounts.

(1)-(5) (No change.)

(b) (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 September 21, 1990.

TRD-9009979

Cathy Rossberg  
Agency liaison, Policy and  
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Texas Department of  
Human Services

Effective date: April 1, 1990

For further information, please call: (512) 450-3765

### Chapter 10. Family Self-support Services

#### Title IV-A Funded Child Care

#### • 40 TAC §10.3325

The Texas Department of Human Services (DHS) adopts new §10.3325, without changes to the proposed text as published in the August 17, 1990, issue of the *Texas Register* (15 Tex Reg 4683).

Justification for the new section is to establish the requirement that providers of self-arranged child care for clients in unregulated facilities be at least 18 years old.

The section will function by providing an additional safeguard for families using unregulated child care that the families themselves arrange.

The department received no comments regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

Issued in Austin, Texas on September 20, 1990.

TRD-9009988

Cathy Rossberg  
Agency liaison, Policy and  
Document Support  
Department  
Texas Department of  
Human Services

Effective date: October 15, 1990

Proposal publication date: August 17, 1990

For further information, please call: (512) 450-3765

### Child Care Management Services Statewide Implementation

#### • 40 TAC §10.3456

The Texas Department of Human Services (DHS) adopts new §10.3456 without changes to the proposed text as published in the August 17, 1990, issue of the *Texas Register* (15 Tex Reg 4683).

The justification for the new section is to establish the requirement that providers of self-arranged child care for eligible clients in unregulated facilities be at least 18 years old.

The section will function by providing an additional safeguard for families using unregulated child care that the families themselves arrange.

The department received no comments regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

Issued in Austin, Texas on September 20, 1990.

TRD-9009989

Cathy Rossberg  
Agency liaison, Policy and  
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Department  
Texas Department of  
Human Services

Effective date: January 2, 1991

Proposal publication date: August 17, 1990

For further information, please call: (512) 450-3765

### Child Care Management Services Statewide Implementation

#### • 40 TAC §10.3457

The Texas Department of Human Services (DHS) adopts new §10.3457, concerning eligibility for food stamp employment and training-related child care, in its Family Self-support chapter. The Hunger Prevention Act of 1988, Public Law 100-435, mandates that DHS provide child care for food stamp employment and training (FSE&T) participants and reimburse these participants for child care expenses in an amount up to \$160 per dependent per month. Food and Nutrition Services of the United States Department of Agriculture filed the final federal regulations June 21, 1990.

The purpose of the new section is to implement the food stamp employment and training child care program and to comply with the federal regulations.

The new section will function by providing child care to parents who are required to participate in the food stamp employment and training program because they have children over the age of six years.

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. The new section is adopted effective August 21, 1990, to comply with federal law.

*§10.3457. Eligibility for Food Stamp Employment and Training-related Child Care.* The Texas Department of Human Services (DHS) provides child care for families participating in the food stamp employment and training program according to 7 Code of Federal Regulations Part 273.

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 September 21, 1990.

TRD-9009977

Cathy Rossberg  
Agency liaison, Policy and  
Document Support  
Department  
Texas Department of  
Human Services

Effective date: August 21, 1990

For further information, please call: (512) 450-3765

## Chapter 27. Intermediate Care Facilities for Mentally Retarded

### 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 July 24, 1990, issue of the *Texas Register* (15 TexReg 4197).

The purpose for the amendment is to create a class of small facilities, convert the establishment of the small facility rate from a pro forma model to a cost report based rate, and create labor and nonlabor cost areas for rate analysis. In addition, DHS is changing references to old Level of Care VII, as denoted in the original rule, to the current Level of Care VIII.

The section will function by changing the reimbursement rate to one that more closely represents the cost of providing care in small intermediate care facilities for the mentally retarded.

During the public comment period, DHS received comments from the Texas Association of Private Residential Resources. A summary of the comments and DHS's response to the comments follows.

**Comment**—The commenter believes that Level I facilities should be included under §27.9801(f)(2)(B) in the small facility category and should have a rate methodology consistent with that of the small facilities.

**Response**—DHS agrees with this reclassification, and staff will seek approval at the next available DHS board meeting to publish revised rules under this section. Also, staff will propose revising §27.9801(f)(4) to include Level I providers in the group of providers whose costs are categorized into the labor cost center and the all-other cost center. In response to the commenter's concern regarding a consistent methodology between small facilities and Level I facilities, the same method is used in setting rates for all community-based facilities.

**Comment**—The commenter believes that the labor cost center should include central office salaries and wages, because providers might have difficulty in allocating salaries and wages for staff who perform both central office and direct care functions.

**Response**—DHS agrees that central office salaries are more appropriately placed in the labor cost center and has revised §27.9801(f)(4)(A). However, a distinction between central office and direct care functions is still needed on the cost report for analysis. This means that allocations will still need to be made. To assist providers in these allocations, DHS will include on the cost report specific instructions regarding allocations.

**Comment**—The commenter suggested changing the phrase "classes of service" in §27.9801(g)(2) to "levels of service."

**Response**—DHS disagrees with this suggestion because such wording could be construed by some people as meaning that different service intensity is given to various

classes of service. Therefore, no revision is being made to this section.

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.

#### *§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 VIII 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) (No change.)

(2) Classes of service. Classes of service are based upon the level of care of the recipient and the facility size category.

(b)-(e) (No change.)

(f) Cost finding methodology.

(1) (No change.)

(2) Cost determination by class of provider. "Class of provider" incorporates references to large and small facilities: large facilities are those with more than six Medicaid-contracted beds; small facilities are those with six or fewer Medicaid-contracted beds. For rate determination purposes, TDHS establishes three classes of ICF-MR providers:

(A) ICF-MR I, large ICF-MR V, and large ICF-MR VI community-based providers;

(B) small ICF-MR V and small ICF-MR VI community-based providers; and

(C) state schools.

(3) Cost determination by cost centers for ICF-MR I, large ICF-MR V, and large ICF-MR VI community-based providers. TDHS combines adjusted expenses from the rate base into the following cost centers for ICF-MR I, large ICF-MR V, and large ICF-MR VI community-based providers:

(A) (No change.)

(B) all other cost center.  
This composite cost center combines:

(i)-(iii) (No change.)

(4) Cost determination by cost centers for small ICF-MR V and small ICF-MR VI community-based providers. TDHS combines adjusted expenses from the rate base into the following cost centers for small ICF-MR V and small ICF-MR VI community-based providers.

(A) Labor cost center. The labor cost center includes all staff salaries and wages for persons working at the facility, regardless of the function of those staff, central office salaries and wages, and all consultant and contracted expenses.

(B) All other cost center. The all other cost center is comprised of all expenses not included in the labor cost center.

(5) Cost determination by cost centers for state schools. Effective July 1, 1988, TDHS combines adjusted expenses from the rate base into the following cost centers for state schools.

(A)-(E) (No change.)

(g) Rate setting methodology.

(1) Classes of providers. Reimbursement rates are determined separately by level of care within each of the three classes of ICF-MR providers.

(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 for state schools are ICF-MR I, ICF-MR V, and ICF-MR VI. The classes of service for community-based providers are ICF-MR I, large ICF-MR V facilities, small ICF-MR V facilities, large ICF-MR VI facilities, and small ICF-MR VI facilities. Large facilities are those with more than six beds. Small facilities are those with six or fewer beds.

(3) (No change.)

(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) ICF-MR/RC VIII rates. DHS defines community-based facilities that are certified as intermediate care facilities

ties for the mentally retarded/related conditions (ICF-MR/RC) VIII and that have no more than six Medicaid- contracted beds as an experimental class.

(i) Effective January 1, 1990, facilities in the ICF-MR/RC VIII 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 VIII 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 of ICF-MR/RC VIII providers are not included in the data base for determining rates for small-facility or community-based providers.

(5)-(6) (No change.)

(h) (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 September 21, 1990.

TRD-9009976

Cathy Rossberg  
Agency liaison, Policy and  
Document Support  
Department  
Texas Department of  
Human Services

Effective date: October 15, 1990

Proposal publication date: July 24, 1990

For further information, please call: (512) 450-3765



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### State Board of Insurance Exempt Filing

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Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

*(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.*

*These actions become effective 15 days after the date of publication or on a later specified date.*

*The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)*

The State Board of Insurance in an open meeting on September 20, 1990, adopted an amendment to Rule III-C of the *Texas Basic Workers' Compensation and Employers Liability Manual* pertaining to Workers' Compensation policy periods. The rule defines that a workers' compensation policy is to be written for a specific one-year term. The rule does contain three exceptions whereby a policy may be issued for a term less than a year.

The amended rule applies to all new and renewal workers' compensation policies written on and after 12:01 a.m. October 15, 1990.

The board adopted the amended rule under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.77, 5.78, and 5.96.

This notification is filed pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register 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 September 21, 1990.

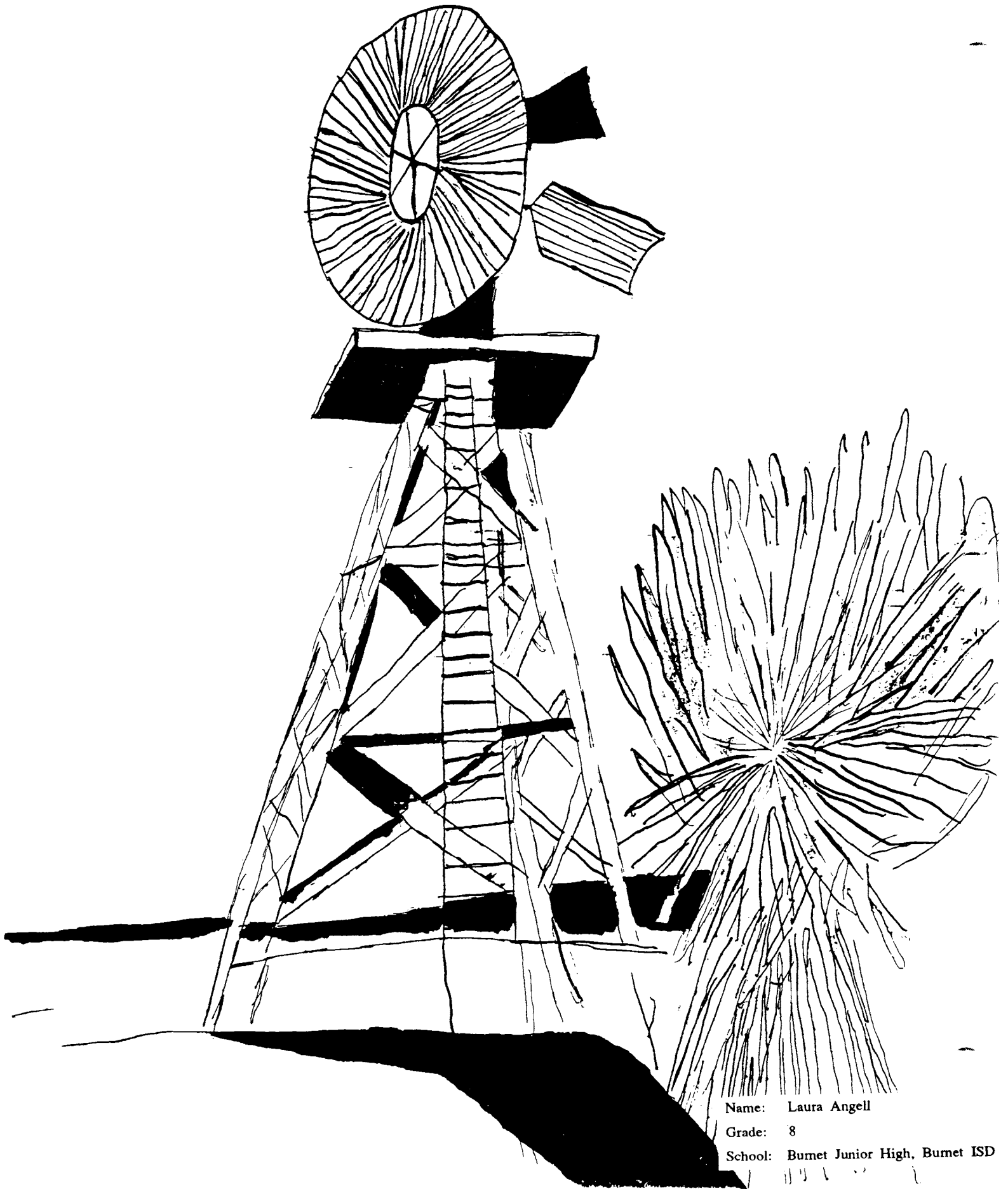
TRD-9010006

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: October 15, 1990

For further information, please call: (512) 463-6327





Name: Laura Angell  
Grade: 8  
School: Bumet Junior High, Bumet ISD

# 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 Department of Agriculture

**Friday, October 12, 1990, 1 p.m.** The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, two blocks west of Morningside Road, San Juan. The department will conduct an administrative hearing to review alleged violation of Texas Agriculture Code Section 103.001 et. seq. by Val-Mex Fruit Company as petitioned by Carl Samek.

**Contact:** Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

**Filed:** September 21, 1990, 3:02 p.m.

TRD-9009991

**Friday, October 12, 1990, 2 p.m.** The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, two blocks west of Morningside Road, San Juan. The department will conduct an administrative hearing to review alleged violation of Texas Agriculture Code Section 103.001 et. seq. by Val-Mex Fruit Company as petitioned by Earl and Evelyn Runge.

**Contact:** Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

**Filed:** September 21, 1990, 3:01 p.m.

TRD-9009990

## State Board of Barber Examiners

**Tuesday, October 2, 1990, 8:30 a.m.** The Board Members of the State Board of Barber Examiners will meet at 9101 Burnet Road, Suite 103, Austin. According to the complete agenda, the board will approve minutes of previous meeting, sign teacher and school certificates, hear reports by the executive director, read letters to the board, approve an examination schedule for January-June, 1991; discuss methods of auditing school attendance records, adjourn.

**Contact:** Jo King McCrorey, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

**Filed:** September 20, 1990, 10:04 a.m.

TRD-9009774

## Texas Commission for the Blind

**Friday-Saturday, October 12-13, 1990, 8:30 a.m.** The Consumer Advisory Committee of the Texas Commission for the Blind will meet at 4800 North Lamar Boulevard, CCRC (12th), and Doubletree Hotel North, 6505 IH-35 (13th). According to the complete agenda, the committee will hear a report from CAC chairman; review and approve minutes; report from coordinator of consumer affairs; report from special projects coordinator, Texas Department on Aging; subcommittee discussions and reports; and report from executive director; 10/13-report from subcommittees; report to the executive director; and regional issues.

**Contact:** Cecilia Berrios, 4800 North Lamar Boulevard, Suite 320, Austin, Texas 78756, (512) 459-2611.

**Filed:** September 24, 1990, 2:07 p.m.

TRD-9010032

**Friday, October 5, 1990, 10 a.m.** The Pricing Subcommittee of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the Texas State Purchasing and General Services Commission, Central Services Building, #200-B, 1711 San Jacinto Street, Austin. According to the agenda summary, the subcommittee will introduce subcommittee members and guests; approval of minutes from June 27, 1990; discussion and recommendations for action on new services; renewal services; new products; and product changes and revisions; action on San Antonio State Hospital's contract for business cards; and discussion and action on adoption of pricing subcommittee rules.

**Contact:** Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2603.

**Filed:** September 25, 1990, 10:05 a.m.

TRD-9010060

## Texas Education Agency

**Friday, September 21, 1990, 1 p.m.** The School Facilities Advisory Committee of the Texas Education Agency held an emergency meeting at the First City Financial Center, 1301 Fannin Street, 23rd Floor, Houston. According to the complete agenda, the committee will discuss the final approval to the financing options for facilities funding program, a report of the school facilities advisory committee. The following issues for consideration at this and future meetings: financing of facilities constructed without use of debt; a transition or phase in program for long-term financing of facilities; the use of proration of state funds versus prioritization of projects. The emergency status was necessary to ensure that the committee can begin its work in order to meet timelines for state board approval in October.

**Contact:** Joe Wisnoski, 1701 North Congress Avenue, Room 3-101, Austin, Texas 78701, (512) 463-9704.

**Filed:** September 20, 1990, 11:20 a.m.

TRD-9009779

**Wednesday, November 7, 1990, 10 a.m.** The Investment Advisory Committee on the Permanent School Fund of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will review investment practices; review of performance results; and draft policy document of the Texas Growth Fund.

**Contact:** Walter Arellano, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9169.

**Filed:** September 21, 1990, 4:01 p.m.

TRD-9010004

## Texas Employment Commission

**Tuesday, October 2, 1990, 8:30 a.m.** The Texas Employment Commission will meet at the Texas Employment Commission Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will approve prior meeting notes; hold executive session to consider Jesus Ramirez versus TEC et al.; Dionicio Trevino versus TEC et al.; Joe R. Levrie versus TEC et al.; and Paul C. Moors versus TEC; actions, if any, resulting from executive session; consideration and approval of final adoption of new Section 305.2 adopting by reference a memorandum of understanding with the Texas Education Agency; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 40; and set date of next meeting.

**Contact:** C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

**Filed:** September 24, 1990, 4:13 p.m.

TRD-9010044

## Texas Department of Health

**Thursday, October 4, 1990, 10 a.m.** The Advisory Council on Massage Therapy of the Texas Department of Health will meet at 4200 North Lamar Boulevard, Room 27, Austin. According to the agenda summary, the council will approve minutes of last meeting; consider report on July 13, 1990, examination; massage therapy law, policies, and procedures; state examination, examiners, and test issues; complaint procedures; other matters not requiring council action; elect officers; and set next meeting date.

**Contact:** Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7512.

**Filed:** September 20, 1990, 2:10 p.m.

TRD-9009785

## Texas Health and Human Services Coordinating Council

**Monday, October 1, 1990, 11:30 a.m.** The Commission on Children, Youth and Family Services Community Resources Workgroup of the Texas Health and Human Services Coordinating Council will meet at the Texas Juvenile Probation Commission, Board Room, 2015 South IH-35, Austin. According to the complete agenda, the commission will approve September 12, 1990 meeting minutes; hear report from Gerry McKimmey, Melodye Fleming, and Cynthia McKenzie on: training content; infor-

mation packet review; and MOU review; update on independently implemented CRCG survey; biennial report summary; agency contact appointments; suggested biennial report completion schedule; discuss new business; and old business.

**Contact:** Louis Worley, 311-A East 14th Street, Austin, Texas 78711, (512) 463-2195.

**Filed:** September 20, 1990, 2:11 p.m.

TRD-9009786

## State Board of Insurance

**Tuesday, October 2, 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 the application of Ronald Buchanan Miles, Houston, for a Group II, Insurance Agent's license. Docket Number 10944.

**Contact:** Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

**Filed:** September 24, 1990, 4:15 p.m.

TRD-9010045

**Wednesday, October 3, 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 Richard Neira Garcia, Missouri City, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Group II Insurance Agent's license. Docket Number 10940.

**Contact:** Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

**Filed:** September 24, 1990, 4:15 p.m.

TRD-9010046

**Wednesday, October 3, 1990, 1:30 p.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 James Anthony Hart doing business as Hart Agencies, Arlington, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Local Recording Agent's license. Docket Number 10961.

**Contact:** Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

**Filed:** September 24, 1990, 4:16 p.m.

TRD-9010047

**Monday, October 8, 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 the application for amendment to the Articles of Incorporation of American General Life Insurance Company, Houston, pertaining to director liability.

**Contact:** O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

**Filed:** September 24, 1990, 4:16 p.m.

TRD-9010048

**Monday, October 8, 1990, 1:30 p.m.** The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 414, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Raymond Maye, Arlington, who holds a Local Recording Agent's license, a Group I, Legal Reserve Life Insurance Agent's license and a Group II, Insurance Agent's license. Docket Number 10981.

TRD-9010049

**Monday, October 8, 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 the application for amendment to the Articles of Incorporation of National Life and Accident Insurance Company, Houston, pertaining to director liability. Docket Number 10979.

**Contact:** O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

**Filed:** September 24, 1990, 4:16 p.m.

TRD-9010050

## Texas Commission on Jail Standards

**Wednesday, September 26, 1990, 9 a.m.** The Texas Commission on Jail Standards held a meeting at the Employees Retirement Building, Room 100, 18th and Brazos Streets, Austin. According to the emergency revised agenda summary, the committee discussed old business: Liberty County; new business: Morris County and certification of privately operated jails. The emergency status was necessary as unexpected development required the immediate attention of the commission.

**Contact:** Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

**Filed:** September 21, 1990, 10:40 a.m.

TRD-9009960

## Texas Juvenile Probation Commission

Friday, October 5, 1990, 9 a.m. The Board of the Texas Juvenile Probation Commission will meet at Cal Farley's Boys Ranch, FM Road 1061, Amarillo. According to the complete agenda, the board will approve minutes of June 29, 1990; revision of FY 1990 administration budget; second submission of legislative appropriation request for FY 1992 and FY 1993; applications for intensive supervision grants; applications for renewal of discretionary fund grants; memorandum of understanding on service contracts for dysfunctional families; resolution to authorize signature for expenditure for expenditures and other documents required for fiscal administration; evaluation committee report; director's report; legislative report; and public comments. Members of the public are invited to attend this meeting and speak on any issue under the jurisdiction of the commission.

Contact: Bernard Licarione, 2015 South IH-35, Austin, Texas 78741, (512) 443-2001.

Filed: September 25, 1990, 9:02 a.m.

TRD-9010056

## Lamar University System, Board of Regents

Thursday, September 27, 1990, 9 a.m. The Lamar University System Board of Regents met at the John Gray Institute, Office Of the Chancellor, 855 Florida Street, Beaumont. According to the complete agenda, the board met in executive session, held under Provisions of Vernon's Civil Statutes, Article 6252-17, Section 2, Paragraph 3, g, personnel, to review and discuss goals and evaluation.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

TRD-9009986

## Texas Commission on Law Enforcement Officer Standards and Education

Friday, October 5, 1990, 10 a.m. The Texas Peace Officers' Memorial Advisory Committee of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the TCLEOSE Headquarters, Lacosta Green Office Building, 1033 LaPosada, Austin. According to the complete agenda, the committee will have roll call, introduction of program administrator; presentation by funding consultant and action; and status report on ongoing activities report by program administrator.

Contact: James Ball, 1033 LaPosada, Austin, Texas 78752, (512) 450-0188.

Filed: September 21, 1990 at 10:03 a.m.

TRD-9009958

## Mental Health and Mental Retardation Center of East Texas

Thursday, September 27, 1990, 3 p.m. The Board of Trustees of the Mental Health and Mental Retardation Center of East Texas met at 2323 West Front Street, Board Room, Tyler. According to the agenda summary, the board heard the executive committee report; approved FY 1991 provider contracts; and proposed agenda for October 9 Board Retreat.

Contact: Richard J. Desanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

Filed: September 20, 1990, 3:45 p.m.

TRD-9009946

## Board of Nurse Examiners

Tuesday-Thursday, September 25-27, 1990, 8 a.m. The Board of Nurse Examiners met at the Radisson Plaza Hotel, 700 San Jacinto Street, Austin. According to the complete emergency revised agenda, the board conducted disciplinary hearings-Cynthia M. Stoughton, TX #509269, Article 4525(a)(8), hearing recommendations of executive directors and consent orders by Donna Lynn McWhite, TX #563519. The emergency status was necessary as these names were inadvertently omitted and board action is required prior to the next regularly scheduled meeting.

Contact: Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: September 24, 1990, 12:25 p.m.

TRD-9010024

## Texas Department of Criminal Justice Board of Pardons and Paroles

Monday-Friday, October 1-5, 1990, 10 a.m. The Texas Department of Criminal Justice Board of Pardons and Paroles will meet at 2503 Lake Road, Suite 2, Huntsville. 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 releases 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: September 21, 1990, 11:18 a.m.

TRD-9009972

## Texas State Board of Public Accountancy

Wednesday, October 3, 1990, 9 a.m. The Public Hearing Division of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the division will conduct a hearing on individuals failing to comply with the board's mandatory continuing education requirement.

Contact: William Treacy, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: September 24, 1990, 11:27 a.m.

TRD-9010022

Wednesday, October 3, 1990, 1:30 p.m. The Public Hearing Division of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the division will conduct a hearing to consider those licensees who failed to pay the license fee in a timely manner.

Contact: William Treacy, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: September 24, 1990, 11:28 a.m.

TRD-9010023

## Public Utility Commission of Texas

Monday, October 29, 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 in Docket Number 9746, notice of agreement to combine Lone Wolf Electric Cooperative, Inc. and Cap Rock Electric Cooperative, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 24, 1990, 3:04 p.m.

TRD-9010037

## Texas Racing Commission

October 1, 1990, 10 a.m. The Texas Racing Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider minutes of executive session to confer with attorneys regarding pending litigation with Rexco Partners '88, Ltd. and Lone Star

Greyhound Park, Inc.; proceedings on rulemaking; emergency adoption and repeal of rules for horse and greyhound racing; consideration of and votes on the renewal of the Class 2 license of Lubbock Downs, Inc.; matters relating to Bandera Downs, Inc.; application period for Class 3 applications; matters relating to Corpus Christi Greyhound Racing Associates; discuss old business; and new business.

**Contact:** Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 476-7223.

**Filed:** September 21, 1990, 3:31 p.m.

TRD-9009993

**Monday, October 1, 1990, 10 a.m.** The Texas Racing Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the emergency revised agenda summary, the commission will hear consideration and votes on matters relating to hearings on and evaluation of applications for the Class One racetrack license in Harris County and to consider and vote on the renewal of the Class Two license of Manor Downs, Inc. The emergency status is necessary to ensure the licensing proceedings in Harris County and for Manor Downs to be handled expeditiously.

**Contact:** Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 476-7223.

**Filed:** September 24, 1990, 3:53 p.m.

TRD-9010041

## Railroad Commission of Texas

**Monday, October 1, 1990, 9 a.m.** The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room (12-126), Austin. Agendas follow.

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:** September 21, 1990, 11 a.m.

TRD-9009965

The commission will consider and act on the Office of 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:** September 21, 1990, 10:59 a.m.

TRD-9009964

The commission will consider category determinations under sections 102 (c)(1) (B), 102 (c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

**Contact:** Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6755.

**Filed:** September 21, 1990, 10:58 a.m.

TRD-9009962

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 78711-2967, (512) 463-6710.

**Filed:** September 21, 1990, 11 a.m.

TRD-9009966

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 78711-2967, (512) 463-6981.

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 78711-2967, (512) 463-7257.

**Filed:** September 21, 1990, 11:01 a.m.

TRD-9009968

The commission will consider and act on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

**Contact:** Mary Ann Wiley, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6828.

**Filed:** September 21, 1990, 11:02 a.m.

TRD-9009969

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 vari-

ous action, 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 78711-2967, (512) 463-6921.

**Filed:** September 21, 1990, 10:30 a.m.

TRD-9009970

## House of Representatives

**Thursday, October 4, 1990, 9 a.m.** The Joint Interim Committee on Proprietary Schools of the House of Representatives will meet at the Old Supreme Court Room, Capitol Building, Austin. According to the complete agenda, the committee will hear invited testimony; public comment; and committee business.

**Contact:** Judy Sexton, P.O. Box 2910, Austin, Texas 78769, (512) 463-0900.

**Filed:** September 24, 1990, 9:56 a.m.

TRD-9010018

## Texas National Research Laboratory Commission

**Thursday, September 27, 1990, 9:30 a.m.** The Texas National Research Laboratory Commission met at the Dallas Love Field Airport Administration Offices, 8008 Cedar Springs Road, Dallas. According to the complete emergency revised agenda, the commission took roll call of members; approved August 22, 1990, meeting minutes; heard executive director's report-Edward C. Bingler, on approval to proceed with regional groundwater study; land acquisition committee report-Charles R. Perry; on authorization to proceed with eminent domain (condemnation). Parcel 255, Taylor, Grid #F-8, Quadrant NW, Parcel 258, Johnson, Grid #F-8, NW, Parcel 276A, Loftis, Grid # F-8, Quadrant NW, Parcel 678, Franks, Grid F-8, Quadrant NW, Parcel 343, Sheen, Grid # F-10, Quadrant SW; executive session-personnel (hiring a construction manager); and discussed old business. The nature of the emergency is in response to a DOE request that the commission proceed immediately with this study.

**Contact:** Karen L. Chrestay, 1801 North Hampton Road, Suite 400, DeSoto, Texas 75115, (214) 709-6481.

**Filed:** September 24, 1990, 3:18 p.m.

TRD-9010038



## School Land Board

**Tuesday, October 2, 1990, 10 a.m.** The School Land Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the board will approve previous board meeting minutes; opening and consideration of bids received for October 2, 1990, oil, gas and other minerals lease sale; pooling agreement amendments, Alabama Ferry Field, Leon County; Canadian Hunter Field, Harris County; pooling applications, Manor Lake Field, Brazoria County; Winters (Capps) Field, Runnels County; application to lease highway right of way for oil and gas, Haskell County; consideration of bids received for crude oil; consideration of sealed bid land sale for November 6, 1990; coastal public lands, commercial lease applications, Galveston Bay, Galveston County; structure permit amendment, Laguna Madre, Kenedy County; structure permit terminations, Laguna Madre, Kleberg County; Titlum-Tatum Bayou, Brazoria County; structure permit requests, Laguna Madre, Kleberg County; Titlum-Tatum Bayou, Brazoria County; executive session to consider Aquaculture leasing guidelines; land trade/acquisition; and pending and proposed litigation.

**Contact:** Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

**Filed:** September 24, 1990, 3:58 p.m.

TRD-9010042

## Board for Lease of State-owned Lands

**Wednesday, October 3, 1990, 11 a.m.** The Board for Lease of Texas Parks and Wildlife Department of the Board for Lease of State-owned Lands will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the agenda summary, the board will approve minutes of the previous board meeting; consider and approve bids received for the October 2, 1990 oil, gas and other minerals lease sale.

**Contact:** Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

**Filed:** September 24, 1990, 3:59 p.m.

TRD-9010043

## Sunset Advisory Commission

**Tuesday-Wednesday, October 2-3, 1990, 10 a.m.** The Sunset Advisory Commission will meet at the State Capitol Building, Senate Chamber, Austin. According to the complete agenda, the commission will approve minutes; decisions on Texas Depart-

ment of Highways and Public Transportation; State Purchasing and General Services Commission, Dallas Area Rapid Transit Authority, Capital Metropolitan Transportation Authority; consideration of draft legislation on the following agencies: Board of Barber Examiners, Texas Cosmetology Commission, Fire Protection Personnel Standards and Education Commission, Funeral Service Commission, Motor Vehicle Commission and Board of Professional Land Surveying.

**Contact:** Susan Kinney, 105 West 15th Street, Room 305, Reagan Building, Austin, Texas 78701, (512) 463-1300.

**Filed:** September 21, 1990, 1:27 p.m.

TRD-9009980

## Texas Tech University

**Friday, September 28, 1990, 9:30 a.m.** The Academic, Student, and Administrative Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990, committee meeting minutes; consider long-distance telephone service in residence halls; ratify leaves of absence; commissioning of peace officers; change of name of Child Development Center; and hear reports.

**Contact:** Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

**Filed:** September 20, 1990, 2:31 p.m.

TRD-9009798

**Friday, September 28, 1990, 9:30 a.m.** The Finance Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990, meeting minutes; consider budget adjustments for June, July and August; ratify delegation of authority; and hear reports.

**Contact:** Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

**Filed:** September 20, 1990, 2:33 p.m.

TRD-9009799

**Friday, September 28, 1990, 9:30 a.m.** The Campus and Building Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990 committee meeting minutes; consider: award construction contract for repair of cooling towers in Central heating and cooling plant I; receive bids for Phase II of reroof of University Center; authorize president to forward University campus master plan to Texas Higher Education Coordinat-

ing Board; rename former presidents' home to ex-students association building; rename child development center building The Child Development Research Center building; ratify acceptance dates and award of contract for Phase I of physical plant renovation; update on Brownfield Highway; and hear reports.

**Contact:** Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

**Filed:** September 20, 1990, 2:33 p.m.

TRD-9009800

**Friday, September 28, 1990, 9:30 a.m.** The Development and Public Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990 committee meeting minutes; consider appointment of members to board of directors to Texas Tech University Foundation; change title of vice president for development to vice president for institutional advancement; and hear reports.

**Contact:** Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

**Filed:** September 20, 1990, 2:34 p.m.

TRD-9009801

**Friday, September 28, 1990, 9:30 a.m.** The Committee of the Whole of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will consider hearing committee recommendations and determinations of non-renewal of employment contract; executive session agenda: Vernon's Annotated Civil Statute Article 6252-17 (e), consultation with president and general counsel regarding pending and contemplated litigation; settlement offers; settlement negotiations and matters confidential pursuant to code of professional responsibility of State Bar of Texas; discussion of prospective gifts to University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussion concerning evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; and conference with various employees for the purpose of receiving information and asking questions of employees.

**Contact:** Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

**Filed:** September 20, 1990, 2:34 p.m.

TRD-9009802

**Friday, September 28, 1990, 9:30 a.m.** The Research Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990 committee meeting minutes; and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 9:30 a.m.

TRD-9009803

**Friday, September 28, 1990, 9:30 a.m.**  
The Athletic Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve June 29, 1989, committee meeting minutes; and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:35 p.m.

TRD-9009804

**Saturday, September 29, 1990, 9 a.m.**  
The Board of Regents of Texas Tech University will meet at the Board Suite, Administration Building, Campus, Lubbock. According to the agenda summary, the board will hear reports and act on minutes; president's report; academic, student and administrative affairs; finance; campus and building; development and public affairs; and committee of the whole.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:31 p.m.

TRD-9009797

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**Texas Tech University Health Sciences Center**

**Friday, September 28, 1990, 9:30 a.m.**  
The Academic, Student, Clinical and Administrative Affairs Committee of the Board of Regents of Texas Tech University will meet at Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990 minutes; consider affiliation agreements with Golden Plains Community Hospital, Bowie Memorial Hospital, Medical Arts Hospital for continuing health care education programs; affiliation agreements with Clovis High Plains Hospital, Center for Spinal Evaluation and rehabilitation for Occupational Therapy students clinical facilities; agreement with Life Management Center for crisis stabilization service; lease agreement with University Medical Center for space; agreement with University Medical Center for neurosurgeon services; agreement with City of El Paso for emergency medical services; agreement with Dr. Jack Baldwin regarding medical practice interagency agreement with Texas Department of Criminal Justice for prison services; hospital subcontract agreement with Texas Department of Criminal Justice and D. M. Cogdell Memorial Hospital for Snyder prison medical services; ratify commission of peace officers, faculty develop-

ment leaves, Laros agreement and dual employment; reports; and grant tenure with appointment.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:41 p.m.

TRD-9009806

**Friday, September 28, 1990, 9:30 a.m.**  
The Finance Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990 committee minutes; consider budget adjustments for July 1 to September 1, 1990; budget adjustments for September 1, 1990, to August 31, 1991; vending machine agreement with Lubbock Avalanche Journal newspaper to allow vending machine in cafeteria; agreement with Southwestern Bell Telephone to install and maintain public telephone equipment at El Paso and Amarillo Regional Academic Health Centers; ratify delegation of authority; and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:41 p.m.

TRD-9009807

**Friday, September 28, 1990, 9:30 a.m.**  
The Campus and Building Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990 committee minutes; consider: award construction contract for Phase I and Phase II of Internal Medicine Clinic on fourth level, Pod C, Health Sciences Center Building; president enter into loan agreement with Office of Governor to provide funding for renovation and upgrade of mechanical equipment to enhance energy conservation at campuses; campus master plan and authorization of president to forward it to Texas Higher Education Coordinating Board as campus master plan for Health Sciences Center; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:42 p.m.

TRD-9009808

**Friday, September 28, 1990, 9:30 a.m.**  
The Development and Public Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will approve August 3, 1990 committee meeting minutes; consider changing title of vice president for development to vice president for institutional advancement; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:42 p.m.

TRD-9009809

**Friday, September 28, 1990, 9:30 a.m.**  
The Research Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will hear report on end of FY awards; and other reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:43 p.m.

TRD-9009810

**Friday, September 28, 1990, 9:30 a.m.**  
The Committee of the Whole of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the complete agenda, the committee will meet in executive session agenda: Vernon's Annotated Civil Statute Article 6252-17 (e), consultation with president and general counsel regarding pending and contemplated litigation, settlement offers, settlement negotiations and matters confidential pursuant to Code of Professional Responsibility of State Bar of Texas; discussion of prospective gifts to the University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussion concerning evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; and conference with various employees for the purpose of receiving information and asking questions of employees.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:43 p.m.

TRD-9009811

**Friday, September 28, 1990, 9:30 a.m.**  
The Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Room 2B152, Campus, Lubbock. According to the agenda summary, the board will hear reports and act on minutes; academic, student, clinical and administrative affairs; finance; campus and building; development and public affairs; and committee of the whole.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: September 20, 1990, 2:35 p.m.

TRD-9009805

## The University of Texas at Austin

**Friday, September 28, 1990, 2 p.m.** The Council for Intercollegiate Athletics for Women of the University of Texas at Austin will meet at the Ex-Students' Association, Moffett Library, 21st and San Jacinto Streets, University of Texas, Austin. According to the agenda summary, the council will approve minutes of the previous meeting; announcements/information reports; discuss old business; new business; and meet in executive session.

**Contact:** Dr. Donna A. Lopiano, University of Texas, BEL 718, Austin, Texas 78713, (512) 471-7693.

**Filed:** September 25, 1990, 10:04 a.m.

TRD-9010059

## Texas Board of Veterinary Medical Examiners

**Thursday-Saturday, October 4-6, 1990, 8:30 a.m.** The Texas Board of Veterinary Medical Examiners will meet at the Wyndham Hotel, 4140 Governor's Row, Austin. According to the agenda summary, the board will conduct disciplinary hearings, consider various petitions, a proposed rule for adoption, hear committee reports, elect officers and other business. The board will hold an executive session on Friday, October 5, 1990, at 1 p.m. to consider pending litigation concerning Craig McFarland, D.V.M.

**Contact:** Don Wilson, 1946 South IH-35, Austin, Texas 78704, (512) 447-1183.

**Filed:** September 20, 1990, 2:13 p.m.

TRD-9009788

## Texas Water Commission

**Thursday, September 20, 1990, 2 p.m.** The Texas Water Commission met at 1700 North Congress Avenue, Stephen F. Austin Building, Room 123, Austin. According to the emergency revised agenda, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the Texas Water 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 Texas Water 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. The emergency status was necessary because an imminent loss of funds to Tarleton State University necessitates an emergency vetting of this item.

**Contact:** Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 20, 1990, 1:37 p.m.

TRD-9009780

**Tuesday, October 2, 1990, 2 p.m.** The Texas Water Commission will meet at the State Capitol Building, Speaker's Committee Room, 1100 North Congress Avenue, Second Floor, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the Texas Water 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 Texas Water 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:** Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 24, 1990, 4:44 p.m.

TRD-9010054

**Wednesday, October 3, 1990, 9 a.m.** The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the revised rescheduled agenda summary the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the Texas Water 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 Texas Water 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:** Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 24, 1990, 3:47 p.m.

TRD-9010039

**Wednesday, October 3, 1990, 3 p.m.** The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the rescheduled agenda summary the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the Texas Water 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 Texas Water 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:** Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 24, 1990, 3:48 p.m.

TRD-9010040

**Wednesday, October 10, 1990, 3 p.m.** The Texas Water Commission will meet at Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing regarding adoption of standby fees for Harris County MUD Number 157.

**Contact:** Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 17, 4:11 p.m.

TRD-9009565

**Wednesday, October 17, 1990, 3 p.m.** The Texas Water Commission will meet at Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on adoption of standby fees for Northwest Harris County MUD Number 12.

**Contact:** Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 17, 1990, 4:12 p.m.

TRD-9009567

**Monday, October 22, 1990, 10 a.m.** The Texas Water Commission will meet at 512, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on application for transfer of a water certificate of convenience and necessity for Kings Country Water Supply Corporation (CCN 10532) and Stephens Development Corporation (CNN 11512), to South Franklin Water Supply Corporation, Docket Number 9398-S.

**Contact:** Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 20, 1990, 3:52 p.m.

TRD-9009948

**Wednesday, October 24, 1990, 3 p.m.** The Texas Water Commission will meet at Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on the adoption of standby fees for Three Lakes Mud Number 1.

**Contact:** Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 17, 1990, 4:12 p.m.

TRD-9009566

**Monday, October 29, 1990, 10 a.m.** The Texas Water Commission will meet at Room 512, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on application for amendment to CCN's by City of Harlingen, City of San Benito and Military Highway Water Supply District, Docket

Numbers 8485-C, 8512-C and 8480-C.

**Contact:** Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 20, 1990, 3:51 p.m.

TRD-9009947

**Wednesday, October 31, 1990, 3 p.m.** The Texas Water Commission will meet at Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on request for approval to levy impact fees by San Antonio River Authority in the Martinez Creek watershed service area.

**Contact:** Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 17, 1990, 4:13 p.m.

TRD-9009568

**Wednesday, October 31, 1990, 3 p.m.** The Texas Water Commission will meet at Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing regarding approval of impact fees for Southern Montgomery County MUD.

**Contact:** Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** September 17, 1990, 4:11 p.m.

TRD-9009564

## Texas Workers' Compensation Commission

**Thursday, September 27, 1990, 9 a.m.** The Texas Workers' Compensation Commission met at the Bevington A. Reed Building, 200 East Riverside Drive, Second Floor, Room 255, Austin. According to the agenda summary, the commission approved minutes; discussed and considered the rules process; discussion and consideration of rules: Chapter 130-Impairment and Supplemental Income Benefits and Chapter 164-Extra Hazardous Employer Program; report on rule chapters ready for release to *Texas Register*; discussion of requirement for the Medical Advisory Committee; progress report on TWCC implementation of Senate Bill; and discussion of future public meetings and agenda.

**Contact:** George E. Chapman, 200 East Riverside Drive, Austin, Texas 78704-1287, (512) 448-7900.

**Contact:** September 24, 1990, 8:38 a.m.

TRD-9010010

## Regional Meetings

### Meetings Filed September 20, 1990

**The Coastal Bend Council of Governments Membership Committee** will meet at the Nueces County Courthouse, Commissioners Courtroom, Third Floor, 901 Leopard Street, Corpus Christi, September 28, 1990, at 2 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9009790.

**The Dallas Area Rapid Transit Corporate Location Ad Hoc Committee** met at 601 Pacific Avenue, Conference Room 7A, Dallas, September 25, 1990, at 10:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9009953.

**The Dallas Area Rapid Transit Board/Staff Ad Hoc Committee** met at 601 Pacific Avenue, Conference Room 7A, Dallas, September 25, 1990, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9009951.

**The Dallas Area Rapid Transit Minority Affairs Committee** met at 601 Pacific Avenue, Board Room, Dallas, September 25, 1990, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9009954.

**The Dallas Area Rapid Transit Governmental Relations Committee** met at 601 Pacific Avenue, Dallas, September 25, 1990, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9009952.

**The Hays County Appraisal District Appraisal Review Board** held a meeting at 632 "A" East Hopkins Street, Municipal Building, San Marcos, September 25, 1990, at 8:30 a.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins Street, San Marcos, Texas 78666, (512) 754-7400. TRD-9009777.

**The Leon County Central Appraisal District Board of Directors** met at the Leon County Central Appraisal District Office, September 24, 1990, at 7:30 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252. TRD-9009796.

**The Pecan Valley Mental Health and Mental Retardation Region Board of Trustees** met at the Pecan Valley MHMR Region Clinical Office, 104 Charles Street, Granbury, September 26, 1990, at 9 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9009794.

**The Region VIII Education Service Center Board of Directors** met at the Region VIII Education Service Center, F.M. 1734, Mt. Pleasant, September 27, 1990, at 7 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75455, (214) 572-8552. TRD-9009795.

**The San Jacinto River Authority Board of Directors** met at the Lake Conroe Office Building, Conference Room, Conroe, September 26, 1990, at 1 p.m. Information may be obtained from Jack K. Ayer, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9009778.

**The Wise County Appraisal District Agricultural Advisory Board** will meet at 206 South State Street, Decatur, October 3, 1990, at 9 a.m. Information may be obtained from Freddie Dempsey, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9009789.

### Meetings Filed September 21, 1990

**The Austin-Travis County Mental Health and Mental Retardation Center Finance and Control Committee** held a meeting at 1430 Collier Street, Austin, September 26, 1990, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9009992.

**The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees** held a meeting at 1430 Collier Street, Board Room, Austin, September 27, 1990, at 7 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9009994.

**The Austin-Travis County Mental Health and Mental Retardation Center** held a meeting at 1430 Collier Street, Board Room, Austin, September 27, 1990, at 7 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9009996.

**The Bastrop County Appraisal District Board of Directors** met at the Bastrop County Appraisal District, 1200 Cedar Street, Bastrop, September 26, 1990, at 6:30 p.m. Information may be obtained from Lorraine Perry, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9009963.

**The Capital Area Rural Transportation System (CARTS) Board of Directors** met at 5111 East First Street, Conference Room, Austin, September 27, 1990, at 9 a.m. Information may be obtained from Edna M. Burroughs, 2201 Post Road, #103, Austin, Texas 78704, (512) 478-7433. TRD-9009975.

**The Dallas Area Rapid Transit Board of Directors** met at 601 Pacific Avenue, Dallas, September 25, 1990, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9009995.

**The Eastland County Appraisal District Board of Directors** will meet at the Commissioners' Courtroom of Eastland, County Courthouse, Eastland, October 3, 1990, at 1 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9009956.

**The Lampasas County Appraisal District Board of Directors** met at 109 East Fifth Street, Lampasas, September 26, 1990, at 8:30 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9009957.

**The Mental Health and Mental Retardation Authority of Brazos Valley Board of Trustees** met at the Brazos Center, 3232 Briarcrest Drive, Room 108, Bryan, September 27, 1990, at 2:30 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9009985.

**The North Central Texas Council of Governments Executive Board** met at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, September 27, 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. TRD-9009955.

**The Parmer County Appraisal District Board of Directors** will meet at 305 Third Street, Bovina, October 11, 1990, at 7:30 p.m. Information may be obtained from Ron Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9009982.

**The South Texas Private Industry Council, Inc.** met at Highway 83 and 10th Street, Zapata, September 27, 1990, at 3 p.m. Information may be obtained from Ruben M. Garcia, P.O. Box 1757, Laredo, Texas 78044-1757, (512) 722-3973. TRD-9009974.

**The Tarrant County Appraisal District Board of Directors** will meet at 2301 Gravel Road, Fort Worth, September 28, 1990, at 9 a.m. Information may be obtained from Ol-

ive Miller, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TRD-9009984.

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**Meetings Filed September 24,  
1990**

**The Atascosa County Appraisal District Appraisal Review Board** will meet at the Atascosa County Appraisal District, 4th and Avenue J, Poteet, October 1, 1990, at 8 a.m. Information may be obtained from Vernon A. Warren, P. O. Box 139, Poteet, Texas 78065, (512) 742-3591. TRD-9010053.

**The Dallas Central Appraisal District Board of Directors** met at 1420 West Mockingbird Lane, #500, Dallas, September 27, 1990, at noon. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, #500, Dallas, Texas 75247, (214) 631-0520. TRD-9010014.

**The Dallas Central Appraisal District Board of Directors** met at the La Villa Mexican Restaurant, Intersection Highways 96 and 86, Center, September 27, 1990, at 1 p.m. Information may be obtained from Lewis J. Johnson, Jr., 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9010015.

**The Deep East Texas Council of Governments Grants Application Review Committee** met at the Center City Hall, 617 Tenaha Street, Center, September 27, 1990, at 11 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9010021.

**The Deep East Texas Council of Governments Board of Directors** met (revised agenda) at the LaVilla Mexican Restaurant, Highways 96 and 87, Center, September 27, 1990, at 1 p.m. Information may be obtained from Lewis J. Johnson, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9010025.

**The Gulf Bend Mental Health and Mental Retardation Center Board of Trustees** met at Brackenridge Park, Lake Texana, 111 East, Eight miles Edna, September 27, 1990, at noon. Information may be obtained from Carol Letsinger, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9010019.

**The Region 18 Education Service Center Board of Directors** will meet at 2811 La Force Boulevard, Midland, October 4, 1990, at 7:30 p.m. Information may be obtained from Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9010020.

**The Texas Council Risk Management Fund Executive Committee** met at the Embassy Suites Hotel, Downtown, Pecan Room, 300 South Congress Avenue, Austin, September 27, 1990, at 7 p.m. Information may be obtained from Spencer McClure, Westpark Building 3, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9010052.

**The Texas Council Risk Management Fund** will meet at the Embassy Suites Hotel, Downtown, Library Room, 300 South Congress Avenue, Austin, September 28, 1990, at 8 a.m. Information may be obtained from Spencer McClure, Westpark Building 3, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9010051.

**The Wheeler County Appraisal District Board of Directors** will meet at the District's Office, County Courthouse Square, Wheeler, October 1, 1990, at 2 p.m. Information may be obtained from Larry M. Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900. TRD-9010033.

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**Meetings Filed September 25,  
1990**

**The Lavaca County Central Appraisal District Appraisal Review Board** will meet at the Lavaca County Central Appraisal District, 113 North Main Street, Hallettsville, October 16, 1990, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9010055.

**The Region VII Education Service Center Board of Directors** held an emergency meeting at the Days Inn, Highway 259 South, Henderson, September 27, 1990, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main Street, Kilgore, Texas 75662, (214) 984-3071. TRD-9010058.



Name: Lilly Hopkins

Grade: 8

School: Burnet Junior High, Burnet ISD

# 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 Department of Agriculture Request for Proposals

The Texas Department of Agriculture (TDA) requests proposals for boll weevil diapause programs. TDA will award a total of \$47,870 and will divide the funding among qualified applicants according to need. The funds are intended for use in boll weevil diapause programs conducted by certified cotton producer associations.

Each proposal should include a one-page project summary; a review of previous diapause programs conducted by the producer association; a detailed project description including a general work plan and rationale; project duration; a statement showing need for state funding with a financial statement of current and available assets and a detailed project budget, including funds from other sources to be used for the diapause program. A full program report will be due four weeks after the project is completed. The quality of this report may be used to evaluate future funding requests.

Proposals should be submitted to David Davis, Director, Pest Management Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Davis may be contacted at (512) 463-7540 for additional information about preparing the proposal. Proposals must be submitted no later than 5 p.m., October 26, 1990. Analysis of proposals will be based on the requirements listed above and proven results from projects funded previously by TDA. Contract may be awarded to more than one program.

Issued in Austin, Texas, on September 19, 1990.

TRD-9009949 Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of Agriculture

Filed: September 20, 1990

For further information, please call: (512) 463-7583

## 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).

| <u>Types of Rate Ceilings</u>  | <u>Effective Period<br/>(Dates are Inclusive)</u> | <u>Consumer (3)/Agricultural/<br/>Commercial (4) thru \$250,000</u> | <u>Commercial(4)<br/>over \$250,000</u> |
|--|---|---|---|
| Indicated (Weekly) Rate - Art. 1.04(a)(1)  | 09/24/90-09/30/90                                 | 18.00%  | 18.00%                                  |
| Monthly Rate - Art. 1.04 (c)(1)  | 09/01/90-09/30/90                                 | 18.00%  | 18.00%                                  |
| Standard Quarterly Rate - Art. 1.04(a)(2)  | 10/01/90-12/31/90                                 | 18.00%  | 18.00%                                  |
| Retail Credit Card Quarterly Rate - Art. 1.11(3)   | 10/01/90-12/31/90                                 | 18.00%  | N.A.                                    |
| Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)   | 10/01/90-12/31/90                                 | 15.02%  | N.A.                                    |
| Standard Annual Rate - Art. 1.04(a)(2)(2)  | 10/01/90-12/31/90                                 | 18.00%  | 18.00%                                  |
| Retail Credit Card Annual Rate - Art. 1.11(3)  | 10/01/90-12/31/90                                 | 18.00%  | N.A.                                    |
| Annual Rate Applicable to Pre-July 1, 1983 Retail<br>and Lender Credit Card Balances with Annual<br>Implementation Dates from: | 10/01/90-12/31/90                                 | 18.00%  | N.A.                                    |
| Judgment Rate - Art. 1.05, Section 2   | 10/01/90-10/31/90                                 | 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 September 17, 1990.

TRD-9009719 Al Endsley  
Consumer Credit Commissioner

Filed: September 19, 1990

For further information, please call: (512) 479-1280

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**Texas Department of Criminal Justice-  
Institutional**

**Request for Proposals**

Pursuant to the authority granted by Article 1, House Bill 2335, 71st Legislature, and the Government Code, §492.001, Texas Codes Annotated, the State of Texas and Texas Department of Criminal Justice, Institutional Division (TDCJ-ID) hereby requests all interested parties to submit proposals for professional engineering services concerning an underground storage tank management plan. The purpose of this plan is to bring TDCJ-ID into compliance with state and federal regulations concerning underground storage tanks. Scope of the plan will cover tank removals, tank closures, tank installations, tank monitoring, and necessary remedial action. The professional engineering firm selected will be responsible for acting jointly with TDCJ-ID staff in developing, implementing, and overseeing this plan. Plans, reports, and actions are to be accomplished while satisfying the technical recommendations and regulations put forth by the Texas Water Commission. Further, the selected proposer will be charged with developing bid packets for procurement of sealed bids from contractors to carry out fieldwork as directed by the plan. These bids will be released and awarded by the Texas Department of Criminal Justice, Institutional Division. Deadline for submission for the request for proposal is noon, October 31, 1990.

The underground storage tanks to be covered by this plan are located at TDCJ-ID units throughout the state.

For a complete copy of the request for proposal, contact: Tom Fordyce, Assistant Director, Environmental Affairs, Texas Department of Criminal Justice, Institutional Division, P.O. Box 99 (Spur 59), Room 215, Huntsville, Texas 77342-0099 (409) 294-2144.

The evaluation of the proposals will be based upon the expertise of the applicant, experience of applicant dealing with similar situations, any required licenses or registrations required by the state for underground storage tank work held by the applicant, projected time schedule for project, financial assurance of firm, and efficiency of scope of services presented. Any resulting work will be negotiated in accordance with the Professional Services Procurement Act (Texas Civil Statutes, Article 664-4).

Issued in Austin, Texas, on September 20, 1990.

TRD-9009973 Carl Reynolds  
Assistant General Counsel  
Texas Department of Criminal Justice,  
Institutional Division

Filed: September 21, 1990

For further information, please call: (409) 294-2180

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**Texas Education Agency**

**Request for Applications**

This request for applications is filed in accordance with ESEA Title II, Dwight D. Eisenhower Mathematics and

Science Education Act.

**Description:** The Texas Education Agency (TEA) requests applications for the development of a staff development module for improving the utilization of varying strategies to enhance the teaching of mathematics for Grades nine-12 teachers (RFA #701-91-926). The focus of the module is on using innovative concrete materials and problem-solving strategies to provide opportunities for students to learn the essential elements of the state mathematics curriculum. Contracts will be awarded for the development of one module: Fundamentals of Mathematics, Consumer Mathematics, and Pre-Algebra. Teacher trainers will be identified by the Mathematics Section of the Texas Education Agency and the contractor will provide training for these identified people with assistance from staff at the Texas Education Agency. The contractor will also be responsible for designing an evaluation of the module and all activities involved.

**Eligible Applicants:** Eligible applicants include any school district, education service center, or college or university.

**Dates of Project:** The project starting date will be on or about December 3, 1990. The project ending date will be no later than August 30, 1991.

**Project Amount:** The maximum funding for this project is \$40,000.

**Selection Criteria:** Applicants will be approved based upon the ability of the applicant to carry out all requirements contained in the request for application.

**Requesting the Application:** A copy of the complete request for application (RFA #701-91-026) may be obtained by calling or writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

**Further Information:** For clarifying information about this request contact Bonnie McNemar, Texas Mathematics Staff Development, Project Director, Harris County Department of Education, (713) 694-6300.

**Deadline for Receipt of Applications:** The deadline for submitting an application is 5 p.m., Friday, November 2, 1990.

Issued in Austin, Texas, on September 18, 1990.

TRD-9010005 W. N. Kirby  
Commissioner of Education

Filed: September 21, 1990

For further information, please call: (512) 463-9701

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**Correction to Request for Proposals**

The following correction to request for proposals is filed in accordance with Texas Civil Statutes, Article 6252-11c.

In the September 25, 1990, issue of the *Texas Register* (15 TexReg 5618), the Texas Education Agency published a request for proposals (#701-91-030) for assistance in identifying nominees for the position of commissioner of education.

As published, the starting date of the project will be November 3, 1990, and the ending date will be January 3, 1991. The correct ending date of the project should be January 31, 1991.



Issued in Austin, Texas, on September 21, 1990.

TRD-9010003      W. N. Kirby  
                         Commissioner of Education

Filed: September 21, 1990

For further information, please call: (512) 463-9701



## **Texas Department of Health**

### **Licensing Actions for Radioactive Materials**

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

| <u>Location</u> | <u>Name</u>                   | <u>License#</u> | <u>City</u> | <u>Amend-<br/>ment #</u> | <u>Date of<br/>Action</u> |
|-----------------|-------------------------------|-----------------|-------------|--------------------------|---------------------------|
| Smithville      | Smithville Hospital Authority | L04428          | Smithville  | 0                        | 09/07/90                  |
| Texas City      | Marathon Petroleum Company    | L04431          | Texas City  | 0                        | 08/22/90                  |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| <u>Location</u> | <u>Name</u>                                      | <u>License#</u> | <u>City</u>     | <u>Amend-<br/>ment #</u> | <u>Date of<br/>Action</u> |
|-----------------|--|-----------------|-----------------|--------------------------|---------------------------|
| Angleton        | Angleton-Danbury General Hospital                | L02544          | Angleton        | 7                        | 08/30/90                  |
| Baytown         | IGI Baychem, Inc.                                | L04436          | Houston         | 0                        | 08/22/90                  |
| Chammelview     | Via NDT Engineering and Testing                  | L04322          | Channelview     | 3                        | 08/28/90                  |
| Cleburne        | Walls Regional Hospital                          | L02039          | Cleburne        | 9                        | 08/31/90                  |
| Corpus Christi  | Jordan Laboratories, Inc.                        | L02455          | Corpus Christi  | 11                       | 08/31/90                  |
| Corpus Christi  | Spohn Hospital                                   | L02495          | Corpus Christi  | 27                       | 09/07/90                  |
| DFW Airport     | American Airlines                                | L03974          | Tulsa, Oklahoma | 3                        | 08/31/90                  |
| El Paso         | Syncor International Corporation                 | L01999          | El Paso         | 68                       | 09/05/90                  |
| Fort Worth      | Osteopathic Medical Center of Texas              | L00730          | Fort Worth      | 34                       | 08/31/90                  |
| Grand Prairie   | Dallas Fort Worth Medical Center - Grand Prairie | L02612          | Grand Prairie   | 18                       | 09/07/90                  |
| Hamlin          | Hamlin Memorial Hospital                         | L03418          | Hamlin          | 6                        | 08/29/90                  |
| Hillsboro       | Hill Regional Hospital                           | L01949          | Hillsboro       | 20                       | 09/07/90                  |
| Houston         | The U.T. Health Science Center at Houston        | L02774          | Houston         | 16                       | 08/29/90                  |
| Longview        | Longview Regional Hospital                       | L02882          | Longview        | 9                        | 08/29/90                  |
| Longview        | Good Shepherd Medical Center                     | L02411          | Longview        | 29                       | 09/07/90                  |
| Lubbock         | Methodist Hospital                               | L00483          | Lubbock         | 60                       | 08/29/90                  |
| McAllen         | Upper Valley Radiology Clinic                    | L04335          | McAllen         | 3                        | 09/06/90                  |
| Odessa          | Inspection Service, Inc.                         | L03867          | Odessa          | 1                        | 08/24/90                  |
| Odessa          | University of Texas of the Permian Basin         | L02695          | Odessa          | 6                        | 08/28/90                  |
| Odessa          | Odessa Diagnostic Imaging Center, Ltd.           | L03687          | Odessa          | 11                       | 08/31/90                  |
| Orange          | Chevron Chemical Company                         | L00031          | Orange          | 29                       | 08/31/90                  |
| Pampa           | Mundy Industrial Service, Inc.                   | L04360          | Houston         | 2                        | 09/05/90                  |
| Pasadena        | Hoechst Celanese Chemical Company                | L01130          | Houston         | 36                       | 08/23/90                  |
| Pasadena        | Ethyl Corporation                                | L04072          | Pasadena        | 4                        | 08/31/90                  |
| Port Lavaca     | Union Carbide Corporation                        | L03105          | Port Lavaca     | 3                        | 08/10/90                  |
| Richardson      | EPI Technologies, Inc.                           | L03706          | Richardson      | 7                        | 09/06/90                  |

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

|                  |                                    |        |         |    |          |
|------------------|------------------------------------|--------|---------|----|----------|
| Rowlett          | Lakepointe Medical Center          | L04060 | Rowlett | 1  | 08/31/90 |
| Throughout Texas | Halliburton Logging Services, Inc. | L02113 | Houston | 65 | 08/28/90 |
| Throughout Texas | City of Bryan                      | L03002 | Bryan   | 4  | 08/27/90 |
| Throughout Texas | El Paso Natural Gas Company        | L00308 | El Paso | 25 | 08/28/90 |

|                  |                                       |        |               |    |          |
|------------------|---------------------------------------|--------|---------------|----|----------|
| Throughout Texas | Technical Welding Laboratory, Inc.    | L02187 | Pasadena      | 57 | 08/24/90 |
| Throughout Texas | AnAid, Inc.                           | L03171 | Dickinson     | 14 | 08/28/90 |
| Throughout Texas | Panhandle N.D.T. & Inspection, Inc.   | L02627 | Borger        | 23 | 08/27/90 |
| Throughout Texas | Professional Service Industries, Inc. | L00203 | Houston       | 37 | 08/21/90 |
| Throughout Texas | Permian Non-Destructive Testing       | L03683 | Odessa        | 13 | 08/22/90 |
| Throughout Texas | Four Seasons Industrial X-Ray         | L02855 | Beeville      | 15 | 09/04/90 |
| Throughout Texas | Qualitex Industrial X-Ray, Inc.       | L04079 | Odessa        | 3  | 08/27/90 |
| Throughout Texas | Global X-Ray & Testing Corp.          | L03663 | Houston       | 11 | 09/10/90 |
| Throughout Texas | Ebasco Services Incorporated          | L02662 | Houston       | 21 | 08/10/90 |
| Throughout Texas | BIX Testing Laboratories              | L02143 | Baytown       | 41 | 09/07/90 |
| Throughout Texas | General Inspection Services           | L02319 | Houston       | 19 | 08/31/90 |
| Tyler            | Mother Frances Hospital               | L01670 | Tyler         | 35 | 09/07/90 |
| Tyler            | Medical Center Hospital               | L00977 | Tyler         | 50 | 09/05/90 |
| Wichita Falls    | Bethania Regional Health Care Center  | L01844 | Wichita Falls | 33 | 08/30/90 |

RENEWALS OF EXISTING LICENSES ISSUED:

| <u>Location</u> | <u>Name</u>                      | <u>License#</u> | <u>City</u>   | <u>Amend-<br/>ment #</u> | <u>Date of<br/>Action</u> |
|-----------------|----------------------------------|-----------------|---------------|--------------------------|---------------------------|
| The Woodlands   | The Woodlands Community Hospital | L03772          | The Woodlands | 9                        | 08/30/90                  |

TERMINATIONS OF LICENSES ISSUED:

| <u>Location</u> | <u>Name</u>                            | <u>License#</u> | <u>City</u> | <u>Amend-<br/>ment #</u> | <u>Date of<br/>Action</u> |
|-----------------|--|-----------------|-------------|--------------------------|---------------------------|
| Carrollton      | Frito-Lay Inc.                         | L04245          | Carrollton  | 1                        | 08/27/90                  |
| Houston         | Halliburton Geophysical Services, Inc. | L03489          | Houston     | 12                       | 08/31/90                  |

TERMINATIONS TO EXISTING LICENSES DENIED:

|             |               |        |             |   |          |
|-------------|---------------|--------|-------------|---|----------|
| Friendswood | Iso-Tex, Inc. | L01937 | Friendswood | 0 | 09/07/90 |
|-------------|---------------|--------|-------------|---|----------|

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the 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 due to emissions of radiation. A licensee, applicant, or "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 78756-3189.

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.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on September 19, 1990.

Filed: September 20, 1990

For further information, please call: (512) 835-7000.

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## Status of Minority Health Public Hearing

The Texas Department of Health will hold public hearings on the status of minority health in Texas as follows: Monday, October 8, 1990, 1 p.m.-4 p.m., University of Texas Southwestern Medical Center, Room D-1.600, 5323 Harry Hines Boulevard, Dallas, (512) 463-0664; Wednesday, October 10, 1990, 3 p.m.-8 p.m., 1301 Rangerville Road, Harlingen, (512) 847-3351.

Issued in Austin, Texas, on September 20, 1990.

TRD-9009781     Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: September 20, 1990

For further information, please call: (512) 458-7323

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## Texas Department of Human Services Public Notice Availability of Intended Use Report

The Texas Department of Human Services (DHS) has prepared the Intended Use Report for the Title XX Social Services Block Grant for program year 1991. The report describes department services funded through this federal source and includes a distribution-of-funds section which provides financial information on the allocation of funds to all department social services. Public comment was sought in the development of the Intended Use Report. During October and November 1989, 11 public hearings were held across the state. These hearings were held to receive suggestions from the public early in the preparation of the department's 1991 operating plan and legislative appropriations request (LAR) for fiscal years 1992-1993. Over 300 people, speaking as individuals or representing organizations, offered testimony. Testimony was received on all department programs, including block grant programs. Members of citizen advisory committees were present during these hearings. Citizen advisory committees considered the testimony from the hearings and made recommendations to the department. In addition to oral testimony, approximately 200 written comments were received. Department staff considered the public comments in preparing a proposed 1991 operating plan and 1992-1993 LAR. On July 13, the proposed Intended Use Report was made available to the public for review and comment. The department received and responded to requests for copies of the report. On August 2, 1990, the Texas Board of Human Services met to review the proposed plans, including the use of block grant funds. Nine people offered testimony on department programs at the board meeting. The board approved the plans at the August 2, 1990 meeting. Summary of public comments on the intended use report: Child day care. Commenters requested increased funding and availability of day care; recommended that DHS establish guidelines for unregulated day care providers; and requested that DHS provide the full cost of day care. Commenters also mentioned the need for the following: more affordable child care for low income mothers; after school care for working AFDC mothers; child care for AFDC mothers seeking employment; child

care for teenage mothers in school; and parental choice in picking a child care center. Family planning. Commenters requested increased funding for family planning services; additional pregnancy education for teenagers; and greater male involvement in family planning. Protective services for abused and neglected children. Commenters requested increased prevention services; provision of more information about child abuse and neglect; and the addition of respite services to natural, foster, and adoptive families. Family violence. Commenters requested increased funding for family violence services and increased education about family violence and awareness of how to prevent it. Services to runaways and at-risk youth. Commenters requested increased funding and services for homeless and runaway youth and for emergency shelters. Commenters also requested funds to expand the independent living program and requested that DHS expand its programs for runaways, and for children at risk of abuse who remain in their homes. Family care. Commenters requested increased transportation services; additional funding for adult day care services; more community-based services; the addition of performance of health-related tasks as a new service; and increased access to health care by the elderly. Congregate and home-delivered meals. Commenters requested that DHS support congregate meals for clients. Adult foster care. Commenters requested additional funding for foster care for adults; the addition of respite services for foster care families; and improved adult day care programs. Emergency Response Services. A commenter requested expanding eligibility for this program to include families who have children who are medically fragile. Case management services. Commenters requested increased funding for monitoring client and service delivery; better CCAD case management; more community-based services; and sensitivity to, and respect for, clients. Day care licensing. A commenter requested the addition of a new service to offer advice, technical assistance, and training to promote accessibility and integration of children with disabilities into child care center programs. Special services to handicapped adults. Commenters requested increased funding for handicapped adults and for attendant services. Adult protective services. Commenters requested increased funding and staff for adult protective services as well as increased salary for staff. Commenters also recommended that DHS provide greater education on adult abuse and more emergency care for the abused elderly. Day care licensing. Commenters requested additional regulations to ensure that children receive appropriate nutrition, and to ensure that they are protected from abuse in day care centers. Response to comments. Decisions regarding distribution of funds to the various programs continues to be a function of legislative mandates, appropriations, assessment of need, the department's strategic plan, and input from advisory committees and the public. Without increased funding, services generally must be maintained at the same level. In the event that state and federal funds are totally or partially unavailable, necessary reductions in services will be made. Distribution of the report. Free copies of the 1991 intended use report are available to the public. To obtain a copy, write to Cathy Rossberg, Director, Policy and Document Support Department, Mail Code E-503, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

Issued in Austin, Texas, on September 20, 1990.

TRD-9009987     Cathy Rossberg  
Agency Liaison, Policy and Document  
Support Department  
Texas Department of Human Services

Filed: September 20, 1990

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**Texas Department of Mental Health  
and Mental Retardation**

**Request for Proposals**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) is requesting proposals for training services.

**Description of Services.** The department invites prospective contractors to offer their services to assist in implementing an organized, ongoing Executive Development Program for approximately 100-125 executive officers. In addition to promoting the superior individual performance of agency executives, a critical component of this program will be the development of an organizational culture for the department by its top leaders.

TDMHMR is inviting interested parties to submit proposals for providing the training for one or more of the following five key components identified for the Executive Development Program: TDMHMR mission, values, and goals; leadership; communication; advanced management principles, functions, and skills; and the TDMHMR Positive Performance Program.

TDMHMR will consider for purchase an existing training program for each of the preceding five key components including the following: the initial training session(s) for 125 executives, a master set of the training curriculum and materials, right to reproduce or license to use training materials for continued use inside the TDMHMR system, and certification of three TDMHMR trainers in course delivery.

**Contact Persons.** Copies of the request for proposal may be obtained by writing Margene Caffey or Susan Askey, Staff Development Services, P.O. Box 12668, Austin Texas 78711-2668 or calling (512) 465-4527.

**Closing Date.** Proposals are due by 1 p.m. on November 16, 1990.

**Evaluation and Selection.** The proposals submitted will be reviewed consistent with the evaluation criteria outlined in the request for proposal. Potential contractors may be asked to make a brief presentation of the training program to a select group of agency executives in Austin, as part of the selection process. Generally, selection will be based on a review of the following: the proposal for the delivery of training; the entire training curriculum for one or more of the specified components of the executive development program; current resumes of the individual or individuals who will conduct training, including at least three professional reference and a listing of the last 10 organizations for whom training has been provided; and an itemization of cost.

Issued in Austin, Texas, on September 21, 1990.

TRD-9010009      Dennis R. Jones, M.B.A., M.S.W.  
Commissioner  
Texas Department of Mental Health and  
Mental Retardation

Filed: September 21, 1990

For further information, please call: (512) 465-4591

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**State Preservation Board**

**Notice To Bidders**

Sealed proposals for Texas State Capitol Extension, in Austin, will be received in the Senate Chamber of the State Capitol Building, Austin.

Bids shall be addressed to the Architect of the Capitol, State Preservation Board, State of Texas, and will be publicly opened and read on November 20, 1990.

Base bid proposal-A shall be submitted at 2:00 p.m. Alternate Bid Proposal-B shall be submitted at 4 p.m. Both Bid Proposals will be opened and read publicly immediately after 4 p.m. same day.

No bid may be changed, amended, or modified by telegram or otherwise after the same has been submitted or filed in response to this notice. A bid may be withdrawn, however, and resubmitted any time prior to the time set for receipt of bids.

The work will be awarded under one lump sum contract. The successful bidder will be required to enter into a contract with the State Preservation Board.

A Cashier's Check or Certified Check payable without recourse to the State Preservation Board, or Surety Proposal Bond issued by an acceptable surety company authorized to do business in Texas, in an amount not less than 5.0% of the largest possible total bid, must accompany each bid as a guarantee that, if awarded the contract, the bidder will promptly enter into a contract and execute bonds in forms provided as outlined in the Specification and Information bidders. A Performance Bond and Payment Bond in an amount of 100% of the contract price will be required.

Attention is called to the fact that not less than the minimum wage rates prescribed in the special conditions must be paid on this project.

The owner reserves the right to reject any and all bids.

Bidders may obtain bid documents by contacting Ms. Lin Bernard, at the office 3D/International, Suite 400, 1900 West Loop South, Houston, Texas, 77027, (713) 871-7323.

A pre-bid conference to answer questions of the bidders will be held on November 1, 1990 at 2 p.m. in the House Chamber of the State Capitol Building, Austin.

Issued in Austin, Texas, on September 20, 1990.

TRD-9010011      Mary L. (Lulu) Wright  
Administrative Secretary  
State Preservation Board

Filed: September 24, 1990

For further information, please call: (512) 463-5495

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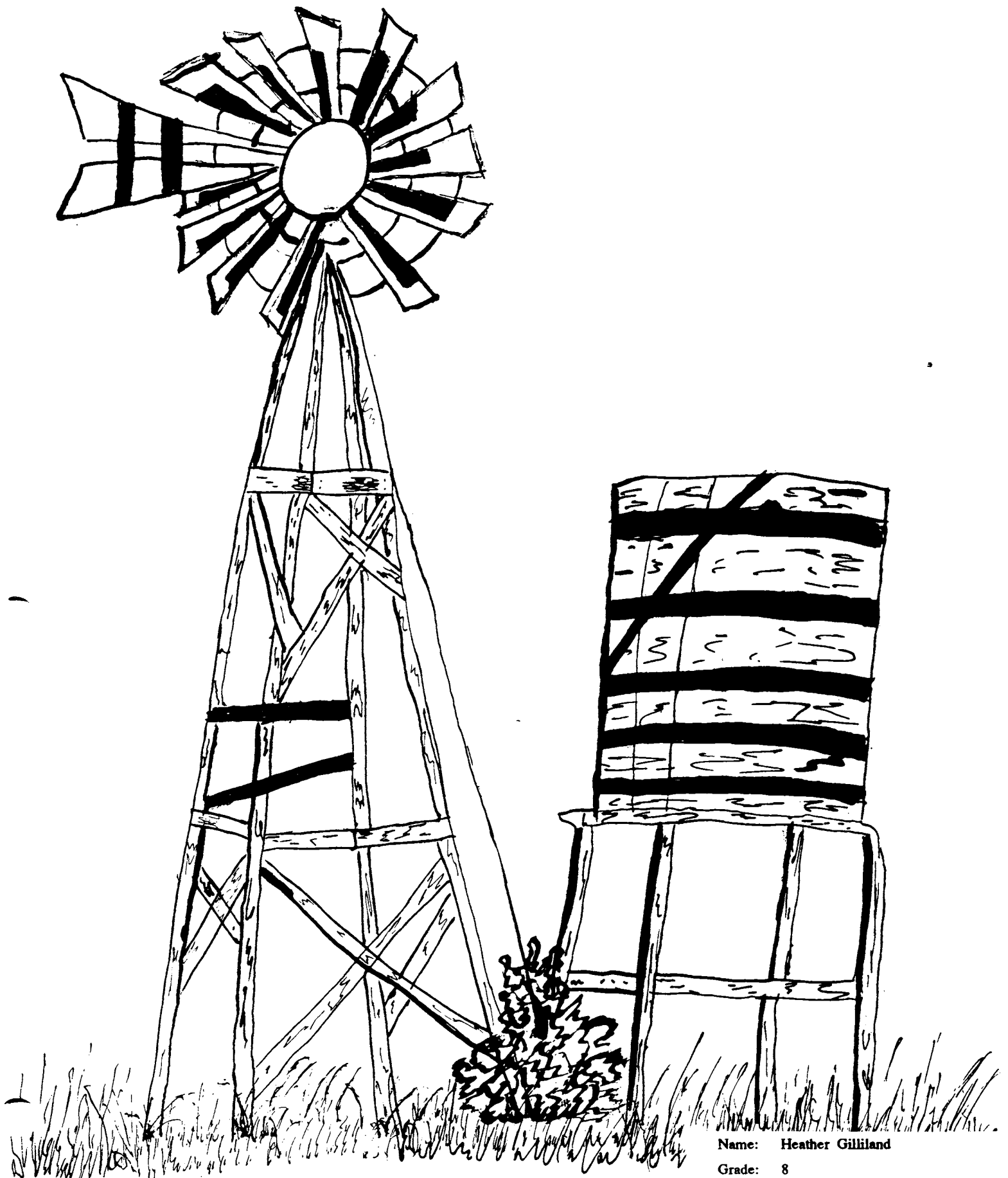
**Texas Water Commission**

**Enforcement Orders**

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to American Plant Food Corporation, TWC Facility, I.D. Number 041874, on September 20, 1990, assessing \$3,080 in administrative penal-





Name: Heather Gilliland

Grade: 8

School: Burnet Junior High, Burnet ISD

U.S. Postal Service

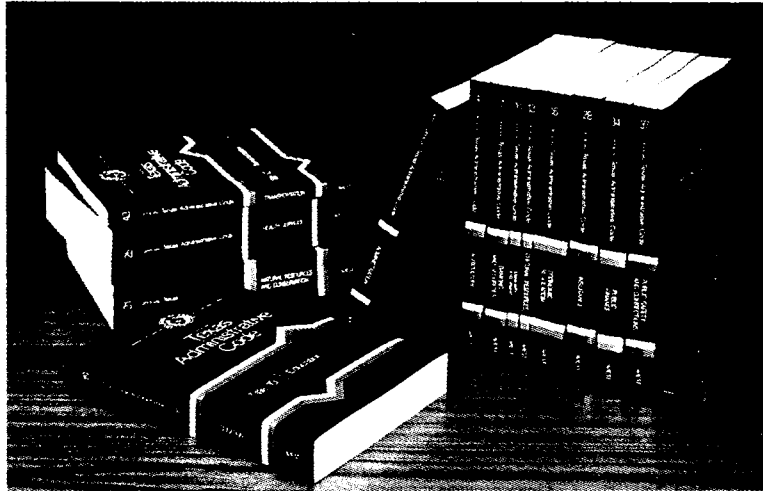
**STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION**

Required by 39 U.S.C. 3685

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|---|--|--|--|--|
| 1A. Title of Publication<br><b>Texas Register</b>   |  | 1B. PUBLICATION NO.<br>0 3 6 2 4 7 1   |  | 2. Date of Filing<br>9-25-90   |
| 3. Frequency of Issue<br><b>Semi-Weekly</b>   |  | 3A. No. of Issues Published Annually<br>100  | 3B. Annual Subscription Price<br>90.00                             |  |
| 4. Complete Mailing Address of Known Office of Publication (Street, City, County, State and ZIP+4 Code) (Not printers)<br>1019 Brazos, P.O. Box 13824, Austin, Texas (Travis County) 78711-3824   |  |  |  |  |
| 5. Complete Mailing Address of the Headquarters of General Business Offices of the Publisher (Not printers)<br>1019 Brazos, P.O. Box 13824, Austin, Texas (Travis County) 78711-3824  |  |  |  |  |
| 6. Full Names and Complete Mailing Address of Publisher, Editor, and Managing Editor (This item MUST NOT be blank)  |  |  |  |  |
| Publisher (Name and Complete Mailing Address)<br>Secretary of State of Texas, State Capitol, Austin, Texas 78711-2887   |  |  |  |  |
| Editor (Name and Complete Mailing Address)<br>Dan Procter, P.O. Box 13824, Capitol Station, Austin, Texas 78711-3824  |  |  |  |  |
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| 7. Owner (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual must be given. If the publication is published by a nonprofit organization, its name and address must be stated.) (Item must be completed) |  |  |  |  |
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| A. Total No. Copies (Net Press Run)   |  | 4,083  | 4,283  |  |
| B. Paid and/or Requested Circulation  |  |  |  |  |
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| F. Copies Not Distributed   |  |  |  |  |
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