

MAY 31 89

# Texas Register

Volume 14, Number 40, May 30, 1989

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The *Texas Register* (ISSN 0362-4781) is published twice each week 100 times a year except March 7, 1989, June 2, 1989, July 7, 1989, November 28, 1989, and December 29, 1989. Issues will be published by the Office of the Secretary of State.

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POSTMASTER: Please send Form 3579 changes to the *Texas Register*, P.O. Box 13824, Austin, Texas 78711-3824.

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Governor—appointments, executive orders, and proclamations

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

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—notices of open meetings

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

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

**How To Cite:** Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

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

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

## Texas Administrative Code

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

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

TAC stands for the *Texas Administrative Code*;

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



## Texas Register Publications

a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, Texas 78711-3824  
512-453-5561

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Subscriptions—one year (96 regular issues), \$90; six months (48 regular issues and two index issues), \$70. Single copies of most issues are available at \$4 per copy.

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**2637-1989 Publication Schedule**



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# TAC Titles Affected

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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 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 75. Curriculum

##### Subchapter A. General Provisions

The Texas Education Agency adopts on an emergency basis amendments to §75.2, and §75.151, concerning high school graduation requirements. The amendment to §75.2 requires school districts to inform students and their parents or guardians annually of courses recommended for students preparing to attend college. The amendment to §75.151 prescribes specific courses in the core areas of English language arts, mathematics, science, social studies, and other languages recommended for students planning to attend college. In addition, they require a Board of trustees in a school district that offers more than one unit of reading improvement for state graduation credit to adopt policies to identify students in need of remedial reading instruction.

The agency finds that imminent peril to the public health and welfare requires the adoption of these amendments on an emergency basis to allow school districts to have adequate time for implementation of the curriculum rules for the next school year.

#### • 19 TAC §75.2

The amendment is adopted on an emergency basis under the Texas Education Code, §21.101, which authorizes the State Board of Education to make rules concerning the well-balanced curriculum.

#### §75.2. General Responsibility of School Districts.

(a)-(d) (No change.)

(e) It shall be the responsibility of the school boards of trustees to adopt policies which will require and permit school counselors, deans, principals, assistant principals, teachers, and other student advisors for grades 7-12 to become thoroughly familiar with the curriculum, course offerings, graduation requirements, and the differences between the high school graduation requirements in §75.151 of this title (relating to High School Graduation Requirements) and the advanced high school program in §75.152 of this title (relating to advanced High School Program) so that they may adequately consult with, advise, and counsel students and their parents or guardians as to the appropriate courses and

subjects available for individual students. Similarly, boards of trustees shall adopt such policies as may be necessary to adequately disseminate and inform parents and guardians of students, as well as the students themselves, of the curriculum for grades 7-12, the course offerings, graduation requirements, and the differences between the high school graduation requirements in §75.151 of this title (relating to High School Graduation Requirements) and the advanced high school program in §75.152 of this title (relating to Advanced High School Program). Policies shall include plans for informing students and their parents or guardians annually of recommended courses as designated in §75.151 of this title (relating to High School Graduation Requirements) for students preparing to attend college. Every effort should be made to relieve counselors of extraneous tasks so that they may appropriately meet their responsibilities to consult and counsel with students as to their individual educational needs, goals, and aims.

(f) (No change.)

issued in Austin, Texas, on May 22, 1989.

TRD-8904559 W. N. Kirby  
Commissioner of Education

Effective date: May 23, 1989

Expiration date: September 20, 1989

For further information, please call: (512) 463-9212

#### Subchapter D. Essential Elements-Grades Nine-Twelve

#### • 19 TAC §75.61

The Texas Education Agency adopts on an emergency basis an amendment to §75.61, concerning English language arts. The amendment allows high school students to obtain up to three state graduation credits for reading improvement coursework.

The agency finds that imminent peril to the public health and welfare requires the adoption of this amendment on an emergency basis to allow school districts to have adequate time for implementation of the curriculum rules for the next school year.

The amendment is adopted on an emergency basis under the Texas Education Code, §21.101, which authorizes the State Board of Education to make rules concerning the well-

balanced curriculum.

#### §75.61. English Language Arts.

(a)-(j) (No change.)

(k) Reading improvement (1/2-3 [1] units). Reading improvement shall include the following essential elements:

(3)-(4) (No change.)

(l)-(ff) (No change.)

Issued in Austin, Texas, on May 22, 1989.

TRD-8904560 W. N. Kirby  
Commissioner of Education

Effective date: May 23, 1989

Expiration date: September 20, 1989

For further information, please call: (512) 463-9212

#### Subchapter F. Graduation Requirements

#### • 19 TAC §75.151

The amendment is adopted on an emergency basis under the Texas Education Code, §21.101, which authorizes the State Board of Education to make rules concerning the well-balanced curriculum.

#### §75.151. High School Graduation Requirements.

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

(d) Courses recommended for college-bound students shall include English I, IV, Algebra I-II, geometry, pre-calculus, foreign languages through proficiency Level III, physical science, Biology I, Chemistry I, world history studies, world geography studies, United States history, United States government, economics with emphasis on the free enterprise system and its benefits, or courses of equal or greater levels of difficulty selected from the courses listed in Subchapter D of this chapter (relating to Essential Elements-Grades 9-12).

(e)[(d)] A maximum of two of the four units of English required for graduation may be English as a second language (ESL). All credit earned in ESL which is not counted toward the graduation require-

ment in English may be counted as electives in meeting state graduation requirements.

(f) A maximum of three units of reading improvement may be offered by districts for state graduation credit under the following conditions. The school district board of trustees shall adopt policies to identify students in need of remedial reading instruction; and in addition, district procedures shall include assessment of individual students, ongoing evaluation of each student's progress, and monitoring of instructional activities to ensure that student needs are addressed.

(g)(e) Provisions concerning graduation for special education students may be found in §89.235(h) of this title (relating to General Program Requirements).

(h)(f) Districts which elect to offer coordinated vocational academic education (CVAE), vocational adjustment cooperative (VAC), and vocational education for the handicapped (VEH) in grades 9-12 may request the commissioner of education to approve modification of the unit requirements for high school graduation for students participating in CVAE, VAC, and VEH programs and shall demonstrate the methods by which the appropriate vocational and academic essential elements are to be coordinated.

(i)(g) Out-of-state transfer students and transfer students from Texas non-public schools shall complete all requirements of this section to be eligible to satisfy state graduation requirements. Units required in this section not completed by such students prior to enrolling in a Texas school district may be satisfied through the provisions of §75.172 of this title (relating to Advanced Placement Examination), §75.166 of the title (relating to Credit by Examination), §75.163 of this title (relating to Correspondence Courses), or by completing the course pursuant to the provisions of §75.169 of this title (relating to the Award of Credit, Grades 9-12).

Issued in Austin, Texas, on May 22, 1989.

TRD-8904558 W N Kirby  
Commissioner of Education

Effective date May 23, 1989

Expiration date September 20, 1989

For further information, please call: (512) 463-9212

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 289. Occupational Health and Radiation Control

##### Asbestos Exposure Abatement in Public Buildings

###### • 25 TAC §289.143, §289.144

The Texas Department of Health adopts on an emergency basis amendments to §289.143 and §289.144, concerning asbestos exposure abatement in public buildings. The sections cover licensure and licensing standards. The amendments provide for a reduced schedule of fees for the restricted licenses of building owners or managers and their asbestos activity supervisors to perform small-scale, short-duration operations or maintenance or repair activities involving asbestos materials. The amendments also enable individuals who are employees of a building owner or manager, and who are otherwise qualified, to apply for restricted licenses as asbestos supervisors without having previous experience with asbestos abatement practices and procedures.

The amendments are adopted on an emergency basis in order to enable the Department to issue immediately restricted asbestos licenses at the proper fee amount and to enable building managements with restricted licenses to deal immediately with small-scale asbestos problems. The presence of asbestos, including small-scale asbestos problems, constitutes a serious and imminent threat to public health and safety.

The amendments are being proposed for permanent adoption in this issue of the *Texas Register*.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 4477-3a, §11, which authorize the Texas Board of Health to adopt rules concerning the licensure of persons who remove or encapsulate asbestos in buildings, Article 4414b, §105, which provide the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health and Article 6252-13a, §5, which provide the board with the authority to adopt emergency rules.

###### §289.143. Licensure.

(a) A person must be licensed in compliance with the provisions of these sections to engage in [the business of] removing asbestos, [or] encapsulating asbestos, or any asbestos-related activity in a public building, whether as an asbestos abatement contractor, a building owner-operator using his own employees, or as an asbestos [project] supervisor. The term of all licenses issued under these provisions is one year and expire on the anniversary of the effective date unless renewed.

(b) The annual [license] fee for an abatement (unrestricted) license for contractors, building owner-managers, or project supervisors is \$475. The annual fee for a license restricted to small-scale, short-duration operations or maintenance or repair activities involving asbestos materials, as described in subsection (e)(6) of this section, is \$360 for building owner-managers and \$175 for activity supervisors. No portion of this fee shall be refunded if a license is suspended or revoked, or if a licensee otherwise discontinues licensed activities.

(c)-(h) (No change.)

###### §289.144. Licensing Standards.

(a) No license shall be issued under these sections, and no license shall be renewed or remain in effect unless the licensee demonstrates to the satisfaction of the department that the following standards are met.

(1) Every asbestos removal, encapsulation, or asbestos-related activity undertaken by a licensee in a public building shall be supervised by a least one licensed abatement project supervisor. Every small-scale, short-duration maintenance or repair activity that shall cause contact or disturbance of asbestos materials in a public building shall be supervised by at least one restricted-license supervisor. Licensed abatement-project supervisors may be employed to supervise small-scale, short-duration asbestos activities. Supervisors with either restricted or unrestricted licenses may be employed as asbestos abatement workers [operation undertaken by an asbestos contractor or building owner operator shall be supervised by at least one licensed supervisor who shall be directly responsible for each asbestos abatement operation].

(2)-(6) (No change.)

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

Issued in Austin, Texas, on May 23, 1989.

TRD-8904541 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: May 23, 1989.

Expiration date: September 20, 1989

For further information, please call: (512) 458-7287

# TITLE 28. INSURANCE

## Part I. State Board of Insurance

### Chapter 7. Corporate and Financial

#### Subchapter A. Examination and Corporate Custodian and Tax

##### • 28 TAC §7.31

The State Board of Insurance adopts on an emergency basis new §7.31, concerning calculation of taxes and of other obligations, prohibitions, or restrictions for purposes of the retaliatory provisions of the Insurance Code, Article 21.46. The amendment pertains to the public welfare requires adoption of this new section on an emergency basis to provide insurers with explanatory information and the maximum practicable opportunity for tax planning which can result in Texas investments in accordance with public policy objectives of the

Insurance Code. New §7.31 provides that, for purposes of calculations under the Insurance Code, Article 21.46, taxes imposed by this state shall be calculated irrespective of any reduction in the basic rate of taxation allowed by law. The new section also provides that this method calculation shall apply to all taxes due after March 1, 1989, beginning with the taxable year ending December 31, 1989.

The new section is adopted on an emergency basis under the Insurance Code, Articles 1.04, and 21.46. Article 1.04 authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. Article 21.46 establishes retaliatory provisions applicable to taxation of foreign insurers and to the imposition of other obligations, prohibitions, or restrictions.

#### *§7.31. Taxes and Other Retaliatory Provisions Imposed under the Insurance Code, Article 21.46.*

(a) **Basis of comparison.** For purposes of the retaliatory provisions of the Insurance Code, Article 21.46, aggregate

taxes, license fees, fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions imposed by this state on insurance companies organized under the laws of another state or territory of the United States shall be calculated irrespective of any reduction in the basic rate of taxation achieved through investments in allowable Texas securities, as provided by the Insurance Code.

(b) **Effective date.** This section applies to all taxes due after March 1, 1989, beginning with the taxable year ending December 31, 1989.

Issued in Austin, Texas, on May 24, 1989.

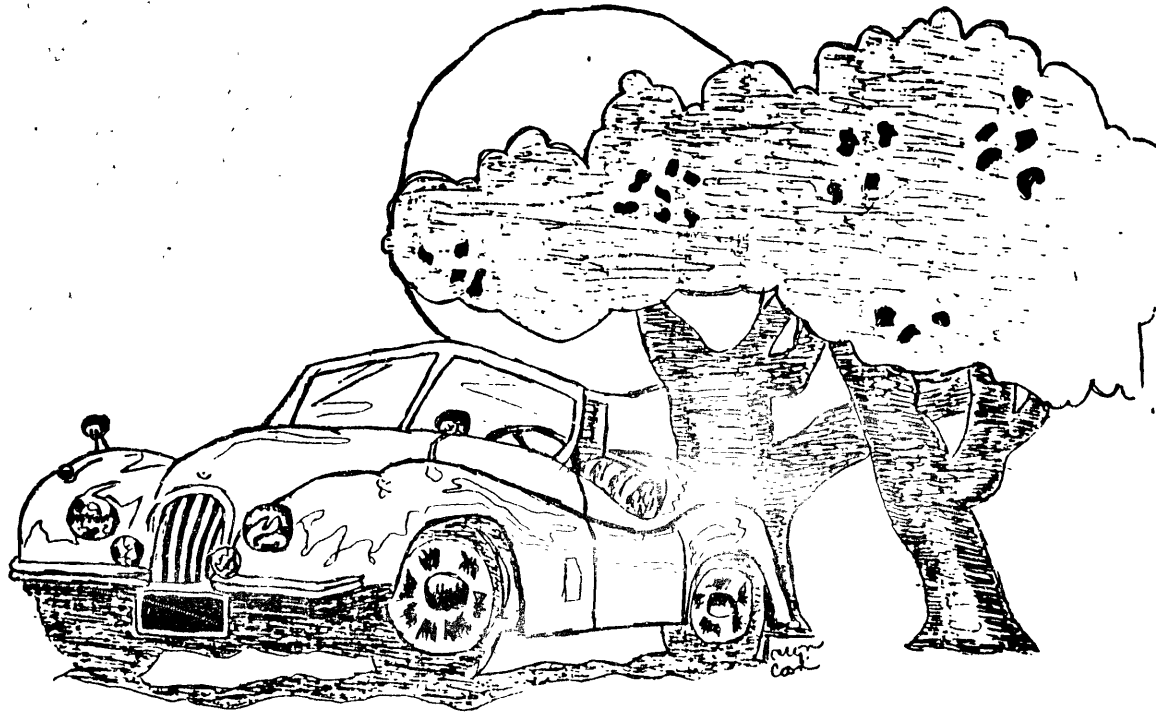
TRD-8904605

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: May 24, 1989

Expiration date: September 21, 1989

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



Name: Aaron Cook

Grade: 8

School: T.H. McDonald Middle School, Mesquite

# Proposed Sections

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

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

## TITLE 16. ECONOMIC REGULATION Part VIII. Texas Racing Commission

### Chapter 301. Definitions

#### • 16 TAC §301.1

The Texas Racing Commission proposes an amendment to §301.1, concerning the definitions in the commission's rules. The amendment adds the definition of individual licensee, which means an individual to whom the commission issues a license to participate in racing with pari-mutuel wagering.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in effect the public benefit anticipated as a result of enforcing the amendment is that the public will be able to clearly understand the rules of the commission. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711.

The amendment is proposed under the Texas Racing Act, §3.02, Texas Civil Statutes, Article 179e, which authorizes the commission 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.

**Individual licensee—**an individual to whom the commission has issued a license to participate in racing with pari-mutuel wagering.

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 May 23, 1989.

TRD-8904574

Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: **June 30, 1989**

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

### Chapter 303. General Provisions

#### Subchapter B. Powers and Duties of the Commission

##### • 16 TAC §303.42

The Texas Racing Commission proposes new §303.42, concerning the approval of charity race days. The new section requires commission approval of charity race days, states the requirement to apply for approval, and requires a racetrack licensee to pay its portion of the pari-mutuel handle for a charity race day to the designated charity.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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. Because the amount of the pari-mutuel handle that a racetrack licensee will have to pay to the charity will vary, it is not possible to determine the fiscal implications for small businesses required to comply with the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that charity race days are conducted in accordance with the intent of the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under the Texas Racing Act, §8.02 and §10.01, Texas Civil Statutes, Article 179e, which require the commission to adopt rules relating to the conduct of charity race days.

##### §303.42 Approval of Charity Race Days

(a) Before conducting a charity race day, an association must receive the approval of the commission.

(b) To receive approval of a charity race day, an association shall file a request

not later than 45 days before the first day of the race meeting in which the proposed race day is to be conducted. The request must be in writing and contain:

(1) the name of the charity;

(2) the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5.0% or more;

(3) a brief description of the activities or purposes of the charity; and

(4) a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.

(c) An association shall pay to the charity all of the association's share of the pari-mutuel handle generated on the charity race day, less the actual expenses incurred by the association for conducting the charity race day.

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 May 23, 1989.

TRD-8904592

Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: **June 30, 1989**

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

### Subchapter E. Regulation of Nonpari-mutuel Racing

#### • 16 TAC §303.151

The Texas Racing Commission proposes an amendment to §303.151, concerning the registration of racetracks to conduct races without pari-mutuel racing. The amendment exempts from registration requirements any races conducted by a charitable organization at an annual exhibition.

Paula Cochran Carter, legal counsel for the Texas Racing Commission also has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal implications for state or local government or for small businesses required to

comply with the amendment.

Ms. Carter also has determined that for each of the first five years the amendment will be in effect the public benefit anticipated as a result of enforcing the amendment is that the commission's rules will apply only to events for which the commission perceives a need for regulation. There are no anticipated economic costs to individuals required to comply with the amendment.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

**§301.151. Registration Required.**

(a)-(d) (No change.)

(e) This subchapter does not apply to the conduct of races at an annual exhibition sponsored by a charitable organization as a part of a rodeo.

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 May 23, 1989.

TRD-8904554 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
**• 16 TAC §303.154**

The Texas Racing Commission proposes an amendment to §303.154, concerning the conduct of nonpari-mutuel horse races. The amendment requires racetracks registered to conduct nonpari-mutuel horse races to conduct those races in accordance with the commission's rules for horse racing.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that nonpari-mutuel racing will be conducted safely and with high integrity. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e-4, which require

the commission to regulate all racing in Texas.

**§303.154. Operations.**

(a) A person registered under this subchapter shall operate the racetrack in a manner that ensures the health, safety, and comfort of the race animals, the participants, and the spectators.

(b) A person registered to conduct horse races under this subchapter shall conduct the racing in accordance with Chapter 313 of this title (relating to Officials and Rules of Horse Races.)

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 May 23, 1989.

TRD-8904550 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
**Chapter 305. Licenses for Pari-mutuel Racing**

**Subchapter A. General Provisions**

**• 16 TAC §305.6**

The Texas Racing Commission proposes an amendment to §305.6, concerning the fees required for licenses issued by the commission. The amendment requires that the license fee for an individual license must be in the form of a money order, rather than cash.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that the accounting and auditing functions of the commission will be simplified. Because the cost of obtaining a money order will vary depending on the amount of the fee, it is not possible to determine the anticipated economic cost to individuals required to comply with the amendment.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

**§305.6. Fees.**

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

(c) A license fee must be in the form of a money order [cash], a certified check, or a cashier's check.

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 May 23, 1989.

TRD-8904573 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
**• 16 TAC §305.13**

The Texas Racing Commission proposes an amendment to §305.13, concerning the effect of accepting a license issued by the commission. The amendment changes the citation of a chapter of the commission's rules.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that the commission's rules will be more clear to the public. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

**§305.13. Effect of Acceptance.** By accepting a license issued by the commission, a person consents to:

(1)-(2) (No change.)

(3) [random] testing for controlled substances in accordance with Chapter 311 [321] of this title (relating to Conduct and Duties of Individual Licensees [Medication and Drug Testing]).

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 May 23, 1989.

TRD-8904572 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## Subchapter B. Individual Licenses

### General Provisions

#### • 16 TAC §305.33

The Texas Racing Commission proposes an amendment to §305.33, concerning the license badge issued by the commission to individual licensees. The amendment deletes some of the personal information required to be on the badge, and requires a color code.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that the license badges will be more readable and of more use to security personnel at a racetrack. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

#### §305.33. License Badge.

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

(c) The badge must contain:

- (1) the licensee's full name [city and state of residence, and date of birth];
- (2) [the licensee's weight, height, gender, and hair and eye color];
- [(3)] the licensee's photograph and right thumbprint;
- (3)[(4)] the category of license;

(4)[(5)] the issuance date and the expiration date of the license; [and]

(5) color codes that designate where the license was issued and whether the licensee has access to the stable or kennel area; and

(6) the serial number assigned by the commission.

(d)-(e) (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 May 23, 1989.

TRD-8904571 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

#### • 16 TAC §305.34

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Racing Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brasos Street, Austin.)*

The Texas Racing Commission proposes the repeal of §305.34, concerning the issuance of a temporary owner's license for the owner of a horse. The section is proposed for repeal because the issuance of temporary owner's licenses may be subject to abuse and may result in significant enforcement problems at pari-mutuel racetracks.

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

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

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter,

Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

#### §305.34. Temporary Owner's License.

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 May 23, 1989.

TRD-8904546 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

#### • 16 TAC §305.35

The Texas Racing Commission proposes new §305.35, concerning annual license fees for individual licenses. The section sets the amount of the annual license fees based on the type of license and the amount of anticipated income derived by each type of licensee.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that the individual licensing program of the commission will be operated efficiently and effectively. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under the Texas Racing Act, §7.05, Texas Civil Statutes, Article 179e, which requires the commission to adopt a fee schedule for individual licensees by rule.

§305.35. License Fees. The annual fee for an individual license is as follows.

<u>Type of License</u>	<u>Fee</u>
Owner	\$ 50
Lessor	\$ 50
Lessee	\$ 50
Kennel Owner	\$ 50
Trainer	\$ 50
Asst. Trainer	\$ 20
Jockey	\$100
Apprentice Jockey	\$100
Exercise Rider	\$ 20
Groom	\$ 20
Hotwalker	\$ 20
Stable Foreman	\$ 20
Veterinarian	\$100
Veterinarian Asst.	\$ 50
Jockey Agent	\$ 50
Farrier	\$ 50
Tattooer	\$ 50
Cool-out	\$ 20
Pony person	\$ 20
Valet	\$ 20
Owner-trainer	\$100
Director of Racing	\$ 50



<b>Racing Secretary</b>	<b>\$ 50</b>
<b>Assistant Secretary</b>	<b>\$ 20</b>
<b>Handicapper</b>	<b>\$ 20</b>
<b>Paddock Judge</b>	<b>\$ 20</b>
<b>Starter</b>	<b>\$ 50</b>
<b>Asst. Starter</b>	<b>\$ 50</b>
<b>Patrol Judge</b>	<b>\$ 20</b>
<b>Placing Judge</b>	<b>\$ 20</b>
<b>Clerk of Claims</b>	<b>\$ 20</b>
<b>Clerk of Scales</b>	<b>\$ 20</b>
<b>Jockey Room Custodian</b>	<b>\$ 20</b>
<b>Track Superintendent</b>	<b>\$ 20</b>
<b>Lure Operator</b>	<b>\$ 20</b>
<b>Association President</b>	<b>\$150</b>
<b>General Manager</b>	<b>\$150</b>
<b>Asst. General Manager</b>	<b>\$150</b>
<b>Dir. of Public Relations</b>	<b>\$ 50</b>
<b>Association - other</b>	<b>\$ 50</b>
<b>Admissions person</b>	<b>\$ 20</b>
<b>Entry clerk</b>	<b>\$ 20</b>
<b>Parking attendant</b>	<b>\$ 20</b>
<b>Horseman's Bookkeeper</b>	<b>\$ 20</b>
<b>Maintenance</b>	<b>\$ 20</b>
<b>Lead-out</b>	<b>\$ 20</b>
<b>Kitchen employee</b>	<b>\$ 20</b>
<b>Timer</b>	<b>\$ 20</b>

<b>Chart-writer</b>	<b>\$ 20</b>
<b>Announcer</b>	<b>\$ 20</b>
<b>Outriders</b>	<b>\$ 20</b>
<b>Security Guard</b>	<b>\$ 20</b>
<b>Kennelmaster</b>	<b>\$ 20</b>
<b>Test Barn Technician</b>	<b>\$ 20</b>
<b>Mutuel Manager</b>	<b>\$ 50</b>
<b>Mutuel Clerk</b>	<b>\$ 20</b>
<b>Mutuel - other</b>	<b>\$ 20</b>
<b>Vendor</b>	<b>\$100</b>
<b>Vendor employee</b>	<b>\$ 20</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 May 23, 1989.

TRD-8904582 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## Specific Licensees

### • 16 TAC §305.44

The Texas Racing Commission proposes an amendment to §305.44, concerning the licensing of trainers to participate in racing with pari-mutuel wagering. The amendment expands the qualifications for receiving a license to include a barn test and exempts individuals licensed in other racing jurisdictions from taking the applicable examinations.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that the individuals participating in racing with pari-mutuel wagering will be highly skilled and of the highest integrity. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

#### §305.44. Trainer

(a) Except as otherwise provided by this section, to be licensed by the commission as a trainer, a person must:

- (1) be at least 18 years of age;
- (2) satisfactorily complete a written examination prescribed by the commission, [.]
- (3) pass a barn test that demonstrates the trainer's skill in handling a horse on a racetrack facility in a manner that ensures the well-being of the horse; and
- (4) provide recommendations from two trainers licensed in this state.

(b) A person who has a current license issued by another pari-mutuel racing jurisdiction and for whom the required background investigation is satisfactory, is not required to provide recommendations from trainers or to take the written examination required under subsection (a) of this section.

(c) A person who fails the written examination twice in a 12-month period is ineligible to take the examination until 12 months have elapsed since the last attempt to pass the examination.

(d) A trainer who is also an owner may use a stable or kennel name in the capacity of owner.

(e)[(c)] A trainer must use the trainer's legal name to be licensed as a trainer.

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 May 23, 1989.

TRD-8904553 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## Subchapter C. Racetrack Licenses.

### General Provisions.

#### • 16 TAC §305.62

The Texas Racing Commission proposes new §305.62, concerning the criteria and burden of proof for applications for racetrack licenses. The new section clarifies the number and location of Class 1 and greyhound racetrack licenses the commission may grant and outlines criteria the commission will use when selecting among competing applications. The new section also tracks statutory language by placing the burden of proof on the applicant and by requiring a succinct order by the commission.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the section will be in effect, there will be no fiscal implications for state or local government or for small businesses required to comply with the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that the commission acts fairly and in accordance with state law when considering racetrack applications. There are no anticipated economic costs to individuals required to comply with the section.

Comments on the proposed section may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Rac-

ing Commission, P.O. Box 12080, Austin, Texas, 78711.

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

#### §305.62. Criteria And Burden Of Proof.

(a) Consistent with the Texas Racing Act which prohibits the commission from granting more than four Class 1 horse racetrack licenses and which requires the Class 1 racetracks to be located only in counties with a population of 750, 000 or more or in a county adjacent to such a county, the commission determines that only one Class 1 horse racetrack license will be granted for each eligible geographical area. No more than one Class 1 or greyhound racetrack may be located in a county.

(b) Consistent with the Texas Racing Act which prohibits the commission from granting more than three greyhound racetrack licenses and which requires the greyhound racetracks to be located only in counties with a population of 190, 000 or more and with all or part of an island that borders the Gulf of Mexico, the commission determines that only one greyhound racetrack license will be granted for each eligible geographical area.

(c) The commission may not issue a license to an applicant unless the commission finds:

(1) the conduct of race meetings at the proposed track and location complies with all zoning laws, the Act, and commission rules;

(2) the applicant is eligible to receive a license; and

(3) the applicant will not violate the criminal laws of this state.

(d) If the commission receives more than one application for a Class 1 or greyhound racetrack license for an eligible geographical area, the appropriate section of the commission may:

(1) refuse to grant a license to any of the applicants; or

(2) grant the license to the applicant which, in the sole judgment and discretion of that section, will be in the best interests of racing and the public.

(e) In determining which applicant will be in the best interests of racing and the public, the commission may consider the degree to which any of the following factors regarding the proposed racetrack will serve to nurture, promote, develop, or improve the horse or greyhound industry in Texas:

(1) the applicant's financial stability;

- (2) the track location;
- (3) traffic flow;
- (4) facilities for patrons;
- (5) facilities for race animals and individual licensees;
- (6) the availability of support and emergency services to the racetrack;
- (7) the experience and training of the applicant's employees;
- (8) the potential for conflict with other licensed race meetings;
- (9) the character and reputation for honesty of the applicant and all persons employed by or participating in the applicant;
- (10) the public opinion in the community or vicinity in which the racetrack is to be located;
- (11) the anticipated effect of the racetrack on the greyhound or horse breeding industry in Texas; and
- (12) the anticipated effect of the racetrack on the state and local economy from tourism, increased employment, and other sources.

(f) In a hearing on a racetrack license application, the burden of proof is on the applicant to show that the applicant complies with the Act and the rules of the commission regarding eligibility and qualifications for a license to operate a racetrack. An applicant who fails to show the necessary compliance with applicable rules and laws is not eligible to receive or renew a license.

(g) In the order granting or denying a racetrack license, the commission shall succinctly state the findings on which the decision is based.

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 May 23, 1989

TRD-8904591 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
• 16 TAC §305.70

The Texas Racing Commission proposes new §305.70, concerning the payment of the annual license fee for a racetrack license. The new section requires the fee to be paid not later than 10 business days after the date of the commission's order granting or renewing the license

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the prompt payment of license fees to offset the costs of administering the licensing and enforcement programs of the commission. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

§305.70. *Payment of License Fee.* An association shall pay the annual license fee for a racetrack license not later than 10 business days after the date of the commission's order granting or renewing the license.

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 May 23, 1989.

TRD-8904590 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
Chapter 309. Operation of  
Racetracks

Subchapter A. General  
Provisions

Facilities and Equipment

• 16 TAC §309.12

The Texas Racing Commission proposes an amendment to §309.12, concerning the comfort and safety of racetrack facilities. The amendment requires a racetrack licensee to designate a nonsmoking area for each of the public areas on association grounds.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section

Ms. Carter also has determined that for each year of the first five years the section is in

effect the public benefit anticipated as a result of enforcing the section will be cleaner and more comfortable for patrons. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

§309.12. *Comfort and Safety.*

(a) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons.

(b) An association shall designate as a nonsmoking area a portion of each of the public areas on association grounds.

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 May 23, 1989.

TRD-8904552 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
• 16 TAC §309.32

The Texas Racing Commission proposes new §309.32, concerning the location of automatic banking machines on association grounds. The new section prohibits a racetrack licensee from placing an automatic banking machine on its grounds

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the section will be in effect, there will be no fiscal implications for state or local government or for small businesses required to comply with the section

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be consistent with the best interests of the patrons. There is no anticipated economic cost to individuals who are required to comply with the section as proposed

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711.

The new section is proposed under the Texas Racing Act, Texas Civil Statutes, Article

179e, §11.04, which require the commission to adopt rules prohibiting automatic banking machines within the enclosure.

§309.32. *Automatic Banking Machines.* An association may not permit the placement of an automatic banking machine on association grounds.

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 May 23, 1989.

TRD-8904581 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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



### Operations

#### • 16 TAC §309.56

The Texas Racing Commission proposes an amendment to §309 56, concerning the issuance of temporary passes to the stable or kennel area on racetracks. The amendment requires the method of issuing the passes to be approved by the commission. The amendment also limits the persons to whom a temporary pass may be issued and the period of time that a temporary pass is valid.

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more secure. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

#### §309.56. *Temporary Pass.*

(a) An association may issue a temporary pass to a person to enter the stable or kennel area, in accordance with this section. The method used by an association for issuing temporary passes under this section must be approved by the commission.

(b) An association may issue a temporary pass only to [ ]

[(1)] a guest of:

(1)[(A)] an[the] association employee; [or]

(2) a commission employee; or

(3) a trainer or kennel owner licensed by the commission.

[(B) a licensee working in the stable or kennel area; or

[(2) a prospective employee of a licensee working in the stable or kennel area.]

(c) (No change.)

(d) A temporary pass issued under this section is valid for not more than 24 [72] hours after the time of issuance.

(e) (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 May 23, 1989.

TRD-8904551 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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



#### • 16 TAC §309.66

The Texas Racing Commission proposes new §309.66, concerning personnel qualified to take fingerprints for individual licenses. The new section requires a racetrack licensee to provide an employee on its security staff who is qualified to take fingerprints for issuing individual licenses.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or for small businesses as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that the licensing program of the commission is operated efficiently and effectively. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

#### §309.66. *Fingerprinting.*

(a) An association shall provide an employee on its security staff to assist in

taking fingerprints for applicants for individual licenses.

(b) The association shall ensure that the designated employee is properly trained and is capable of taking fingerprints of a quality required by the Federal Bureau of 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 May 23, 1989.

TRD-8904577 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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



### Racetracks

#### • 16 TAC §309.114

The Texas Racing Commission proposes an amendment to §309 114, concerning the official's stands at a horse racetrack. The amendment requires a racetrack licensee to provide a clocker's stand on the backside of the racetrack.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government. The cost for compliance by a small business is approximately \$100-\$500, depending on the size of the racetrack facility.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that racing with pari-mutuel wagering will be conducted fairly and accurately. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

#### §309.114. *Official's Stands.*

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

(c) An association shall provide a clocker's stand, located on the left side of the back entry gap to the racetrack.

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 May 23, 1989.

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
• 16 TAC §309.116

The Texas Racing Commission proposes an amendment to §309.116, concerning the distance markers at a horse racetrack. The amendment requires the 1/2 mile pole to be painted with blue and white stripes.

1/16 poles

1/8 poles

1/4 poles

1/2 poles

220 yards

250 yards

300 yards

330 yards

350 yards

400 yards

440 yards

550 yards

660 yards

770 yards

870 yards

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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. The cost for compliance by a small business is approximately \$10.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be conducted fairly and accurately. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

§309.116. Distance Markers.

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

(c) The starting point markers and distance poles must be marked as follows:

Black and white stripes

Green and white stripes

Red and white stripes

Blue and white stripes

Green and white stripes

Blue

Yellow

Black and white stripes

Red

Black

Red and white stripes

Black and white stripes

Green and white stripes

Black and white stripes

Blue and white stripes

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 May 23, 1989

TRD-8904548 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption June 30, 1989

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

◆ ◆ ◆  
• 16 TAC §309.196

The Texas Racing Commission proposes an amendment to §309.196, concerning the indi-

viduals who may operate motor vehicles in the stable area during training hours. The amendment clarifies that security personnel, stewards, persons with power of entry under the Texas Racing Act, and jockey's agents at Class 1 racetracks may operate motor vehicles in the stable area during training hours.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

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

section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

§309.196. Traffic in Stable Area.

(a) (No change.)

(b) This section does not apply to:

(1) a person who has power of entry under the Texas Racing Act, §3.03;

(2) the stewards;

(3) security personnel employed by the association;

(4)[(1)] the commission veterinarian;

(5)[(2)] the racing secretary;

(6)[(3)] a veterinarian licensed by the commission;

(7)[(4)] a trainer; or

(8)[(5)] a jockey's agent; or

[(6)] a farrier.

(c) This section does not apply to a jockey's agent at a Class 1 racetrack.

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 May 23, 1989.

TRD-8904547 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
• 16 TAC §§309.198-309.201

The Texas Racing Commission proposes new §§309.198-309.201, concerning the operations of a horse racetrack. The new sections require the publication of an official program for each race day and the establishment and operation of a horsemen's account. The new sections also require racetrack licenses to prohibit the sale of tip sheets unless approved by the commission and to provide stalls to different breeds of horses on an equitable basis.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the sections will be in effect, there will be no fiscal implications for state or local government. Because the costs of providing an official program will vary depending on the size of the racetrack, the number of race days, and the anticipated attendance, it is not possible to determine the cost of compliance by a small business.

Ms. Carter also has determined that for each of the first five years the sections will be in effect the public benefit anticipated as a result of enforcing the sections is that racing with pari-mutuel wagering will be conducted in a manner consistent with the highest integrity. There are no anticipated economic costs to individuals required to comply with the sections.

Comments on the proposed sections may be submitted before June 20, 1989, to Paula Cochran Carter, legal counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711.

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

§309.198. Official Program.

(a) For each race day, an association shall prepare an official program. The official program must contain the order of the races on that day and:

(1) for each race:

(A) the names of the horses in the race;

(B) the conditions of the race;

(C) the distance of the race;

(D) the probable odds on each horse;

(E) the value of the race; and

(F) the claiming prices, if applicable; and

(2) for each horse listed in the program:

(A) the post position;

(B) the age, color, sex, and breeding;

(C) the jockey, trainer, owner or stable name, and racing colors

(D) the weight carried; and

(E) the logo of the appropriate official breed registry, if the horse is eligible for participation in the Texas Bred Incentive Program.

(b) The official program must contain the names of the racing officials serving on that day; the names of the association's management personnel; and any other information required by the commission.

§309.199. Horsemen's Account.

(a) An association shall maintain a separate bank account known as the horsemen's account. The association shall maintain in the account at all times a sufficient amount of money to pay all money owed to horsemen for purses, stakes, rewards, claims, and deposits.

(b) An association shall employ a bookkeeper to maintain records of the horsemen's account. The bookkeeper must post a bond in an amount determined by the commission.

(c) Withdrawals from the horsemen's account may be subject to audit

by the commission.

(d) Except as otherwise provided by this section, an association shall make purse money from a race available to the people who are entitled to the money when a commission staff member, designated by the executive secretary:

(1) certifies to the association that the results of all tests on the participants in the race have been received; and

(2) advises the presiding steward of the test results and the presiding steward declares the official results of the race.

(e) An association may not deduct from the horsemen's account purse money other than jockey fees except on written request from the person to whom the purse money is payable.

(f) Not later than 30 days after the last day of a race meeting, the horsemen's bookkeeper shall mail to each owner with funds in the horsemen's account a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting the owner's racing account.

§309.200. Racing Selections. An association shall prohibit a person from selling or offering for sale on association grounds any racing selection sheet or other racing prediction that is published or prepared by a person without the approval of the commission.

§309.201. Equitable Stabling. If an association conducts thoroughbred and quarter horse races on the same day, the association shall make available an equal number of stalls to each breed of horse.

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 May 23, 1989.

TRD-8904589 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
Chapter 311. Conduct and  
Duties of Individual  
Licensees

Subchapter B. Specific  
Licensees

Licensees for Horse Racing

• 16 TAC §311.155

The Texas Racing Commission proposes new §311.155, concerning the procedure to

be followed by a trainer when taking a horse onto a racetrack to work. The new section requires the trainer to report the horse's name to the morning clocker or the assistant clocker.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the section will be in effect, there will be no fiscal implications for state or local government or for small businesses required to comply with the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the assurance that horses that are working at licensed racetracks are properly identified and that the works are credited to the correct horse. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711.

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

**§311.155. Reporting to Clocker.** When taking a horse onto a racetrack to work, a trainer shall report the horse's name to the morning clocker or an assistant clocker.

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 May 23, 1989

TRD-8904588 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

The Texas Racing Commission proposes new §§311.201-311.208 and 311.221-311.223, concerning testing of individual licensees for alcohol and drug use. The new sections prohibit the use of alcohol and drugs by an individual licensee while on duty and provide for testing and penalizing licensees to ensure compliance.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the sections will be in effect, there will be no fiscal implications for state or local government or for small businesses required to comply with the sections.

Ms. Carter also has determined that for each of the first five years the sections will be in effect the public benefit anticipated as a result of enforcing the sections is that racing with pari mutuel wagering will be conducted safely and that individuals licensed by the commission will be of the highest integrity. The anti-

ipated economic costs to individuals required to comply with the sections is the amount of any penalty that may be imposed for a violation of the sections, not to exceed \$2,500 for each violation.

Comments on the proposed sections may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

## Drugs

### • 16 TAC §§311.201-311.208

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §14.03, which require the commission to adopt rules relating to drug testing for licensees.

#### §311.201. Use Prohibited.

(a) Except as otherwise provided by this section, an individual licensee may not, while performing duties required of the licensee, be under the influence of a dangerous drug as defined by the Texas Dangerous Drugs Act, Texas Civil Statutes Article 4476-14, or a controlled substance as defined by the Texas Controlled Substances Act, Texas Civil Statutes Article 4476-15.

(b) This section does not apply to the use of a prohibited substance obtained with a valid prescription by an individual licensee under orders of a licensed physician acting in the course of the physician's professional practice. If a licensee must use a prohibited substance under a physician's orders, the licensee shall notify the stewards or racing judges before performing any duty required of the licensee.

#### §311.202. Subject to Testing.

(a) The stewards or racing judges may require an individual licensee acting pursuant to the license to submit to a urine test or other non-invasive fluid test at any time while on association grounds.

(b) A licensee who fails to submit to such a test when requested to do so by the stewards or racing judges is subject to discipline by the stewards or racing judges or the commission.

#### §311.203. Method of Selection.

(a) An individual licensee may be selected for testing under this subchapter by a method of random selection, prescribed by the commission. The method may be changed from time to time, and it is not an indication of unfairness if a licensee is selected more frequently than any other, providing there is no manipulation of the selection process.

(b) An individual licensee may be selected for testing at any time while on association grounds on the basis of reasonable cause. The commission shall prescribe criteria on which the stewards and racing

judges may base a selection for reasonable cause.

#### §311.204. Taking of Specimens.

(a) An individual licensee selected for urine testing shall, on request, provide the urine specimen without undue delay, in the presence of or under the supervision of a representative of the commission.

(b) The specimen shall be immediately sealed and tagged on a form provided by the commission, and the licensee shall sign the form. The portion of the form that accompanies the specimen to the laboratory for analysis may not identify the licensee by name.

(c) A licensee shall cooperate fully with the commission and its designees in obtaining a specimen and in witnessing the securing of the specimen.

#### §311.205. Security of Specimens.

(a) The commission shall ensure that specimens obtained for testing under this subchapter are stored and delivered to the testing laboratory in a manner that ensures the integrity of the specimens.

(b) A person may not tamper with or attempt to tamper with a specimen taken for testing under this subchapter.

#### §311.206. Positive Test Results.

(a) The director of a laboratory conducting an analysis under this subchapter shall report in writing to the executive secretary any positive test result.

(b) Not later than five days after receipt of written notice from the laboratory that a specimen has been found positive for a prohibited substance, the executive secretary shall notify the tested licensee, in writing, of the test result.

**§311.207. Confidentiality of Results.** The results of a test under this subchapter are confidential, except for their use with respect to a ruling issued pursuant to this subchapter or in an administrative or judicial hearing regarding the ruling.

#### §311.208. Penalties

(a) For a first violation, the licensee must submit to a mandatory drug test. The licensee may not participate at any racetrack under the control of the commission until the results of the test are returned and the results are negative. A positive result on a test under this subsection is considered a second violation.

(b) For a second violation, a licensee shall be required to enroll in a substance abuse treatment program approved by the commission. The licensee shall provide the commission with written notice of enrollment, weekly status reports, and writ-



ten notice of successful completion of and discharge from the program. The licensee shall also be excluded from all racetracks that are under the control of the commission for six months from the date of the second violation, or until successful discharge from the treatment program, whichever is later.

(c) For a third violation, a licensee shall receive a mandatory suspension of the license for one year, a fine of not more than \$2,500, or both suspension and fine. The licensee is ineligible to apply for another license until the licensee submits to testing of two urine specimens obtained 30 days apart and the test results are negative. All tests under this subsection shall be obtained and tested by the commission, at the expense of the licensee, under conditions properly controlled to guarantee the integrity of the process.

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 May 23, 1989.

TRD-8904580 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

For further information, please call: (512) 475-7223

## Alcohol

### • 16 TAC §§311.221-311.223

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §14.03, which require the commission to adopt rules relating to drug testing for licensees

#### §311.221. Use Prohibited.

(a) An individual licensee may not consume any alcoholic beverage on association grounds during the performance of the licensee's duties.

(b) A licensee who has access to a restricted area on association grounds may not have alcohol in the licensee's body in an amount greater than 0.05%.

#### §311.222. Breathalyzer.

(a) The stewards or racing judges may require an individual licensee acting pursuant to the license to submit to a breathalyzer test or other non-invasive test at any time while on association grounds.

(b) A licensee who fails to submit to such a test when requested to do so by the stewards or racing judges is subject to discipline by the stewards or racing judges, or the commission.

(c) If the results of a test conducted under this section show a reading of more than 0.05% of alcohol in the blood, the

stewards or racing judges shall prohibit the licensee from continuing in the performance of the licensee's duties, and shall require the licensee to leave association grounds immediately.

§311.223. Penalties. An individual licensee who records a blood alcohol reading of more than 0.05% is subject to a fine of not more than \$2,500, suspension, or both a fine and suspension. A licensee who records a reading of more than 0.05% on more than one occasion in any six-month period is subject to a fine, suspension or revocation, or both a fine and suspension or revocation.

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 May 23, 1989.

TRD-8904579 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## Chapter 313. Officials and Rules for Horse Races

### Subchapter A. Officials

The Texas Racing Commission proposes new §§313.1-313.5, 313.21-313.25, and 313.41-313.52, concerning the officials who are to preside at a horse racetrack. The sections outline the titles, qualifications, and general duties of the officials, as well as the specific duties of each official.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the sections.

Ms. Carter 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 is that racing with pari-mutual wagering will be conducted fairly and with the highest integrity. 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 before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

### General Provisions

#### • 16 TAC §§313.1-313.5

The new sections are proposed under the Texas Racing Act, §3.02, Texas Civil Statutes, Article 179e, which authorizes the commission to adopt rules to administer the Texas Racing Act.

#### §313.1. Racing Officials.

(a) Except as otherwise provided by this section, the following officials must be present at each horse race conducted in this state:

- (1) three stewards;
- (2) a commission veterinarian;
- (3) a racing secretary and assistant racing secretary;
- (4) a morning clocker;
- (5) an official timer;
- (6) a paddock judge;
- (7) a clerk of scales;
- (8) at least one placing judge;
- (9) at least one patrol judge;
- (10) a racing veterinarian;
- (11) a starter and assistant starters;
- (12) a horse identifier;
- (13) a horseshoe inspector; and
- (14) a jockey room custodian.

(b) A patrol judge and a placing judge are not required for a race meeting at a Class 2 or Class 3 racetrack.

#### §313.2. Duties.

(a) A racing official is directly responsible to the commission for the performance of the official's duties and shall exercise due diligence in the performance of those duties.

(b) A racing official shall promptly report to the stewards or the commission any observed violation of the Act or a rule of the commission.

§313.3. Wagering Prohibited. A racing official may not wager at a horse race meeting conducted in this state.

#### §313.4. Approval of Racing Officials.

(a) The commission shall approve all racing officials to serve at a race meeting.

(b) The commission shall prescribe the qualifications to serve as a racing official.

#### §313.5. Complaints Against Officials.

(a) A complaint against a racing official other than a steward must be made in writing to the stewards or to the executive secretary. The stewards shall file a written report with the commission regarding each complaint received under this subsection, the stewards' action on the complaint, and any recommendation for commission action on the complaint.

(b) A complaint against a steward

must be made to the executive secretary in writing.

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 May 23, 1989.

TRD-8904600 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## Duties of Stewards

### • 16 TAC §§313.21-313.25

The new sections are proposed under the Texas Racing Act, §3.02, Texas Civil Statutes, Article 179e, which authorizes the commission to adopt rules to administer the Texas Racing Act.

#### §313.21. Eligibility for Appointment.

(a) To be appointed to serve as a steward, an individual must:

- (1) have appropriate experience, as provided by subsection (b) of this section;
- (2) satisfactorily 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 background check to ensure the individual's integrity is above reproach;
- (4) satisfactorily pass a written and oral examination prescribed by the commission;
- (5) attend, at the individual's expense, a school for prospective stewards administered by the commission; and
- (6) demonstrate to the commission's satisfaction that the individual's income from sources other than as a steward is unrelated to patronage of or employment by a licensee of the commission.

(b) Except as otherwise provided by this section, to be appointed to serve as a steward, an individual must:

- (1) have served as a steward, racing secretary, starter, placing judge, patrol judge, paddock judge, or clerk of scales at a race meeting recognized by the commission or another racing jurisdiction for at least 60 race days during three of the five years preceding the appointment;
- (2) have had at least five years experience as a jockey; or
- (3) demonstrate to the satisfaction of the director of racing and the executive secretary that the individual has

sufficient experience in a racing-related field to perform the duties of a steward.

(c) To be appointed to serve as the presiding steward, an individual must have served as a racing official at a pari-mutuel race meeting recognized by the commission or another racing jurisdiction for at least 150 days in the three year period preceding the appointment.

(d) The director of racing shall administer the oral and written examinations for stewards. A passing grade for the oral and written examination is 70 on a scale of 100. The oral examination will consist of 10 questions. The written examination will consist of:

- (1) 50 multiple choice questions;
- (2) 25 true-false questions;
- (3) 25 matching questions; and
- (4) five essay questions.

#### §313.22. General Duties.

(a) In addition to the duties described in Chapter 307 of the title (relating to Practice and Procedure), the stewards have general authority and supervision over the conduct of each licensed race meeting and over all licensees at a racetrack during a race meeting.

(b) The stewards 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 supercede any orders of the association, on racing matters that may change the conduct of a race or 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) approve a substitute jockey, assistant trainer, or other substitute licensees requested by a trainer;
- (5) appoint a substitute racing official;
- (6) require a jockey, trainer, or other licensee to view a film of a race in which the person participated;
- (7) order the examination of a horse or the ownership papers, certificates, or other documents pertaining to a horse's identification;

(8) declare a horse ineligible to race or refuse a horse's entry in a race;

(9) determine the extent of disqualification in the event of a foul or a riding infraction; 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.

§313.23. Supervision of Entries. At least one steward shall be present on association grounds during the taking of entries until the overnight is completed. The stewards shall oversee the taking of entries and supervise all scratches and declarations. The stewards may:

- (1) require proof of a horse's or person's eligibility to participate in a race;
- (2) refuse the entry of a horse in a race;
- (3) refuse to permit a scratch or a declaration; or
- (4) limit entries when necessary to protect the safety or integrity of racing.

#### §313.24. Records and Reports.

(a) The stewards shall prepare a report of all actions taken and observations made during each day's race program. The report must contain the name of the race-track, the date, the weather and track conditions, claims, inquiries, and objections, and any unusual circumstances or conditions. The report must be signed by each steward and be filed with the commission not later than 72 hours after the end of the race day.

(b) The stewards shall maintain a detailed log of the stewards, official activities. The log must describe all questions, disputes, protests, complaints, or objections brought to the attention of the stewards and all interviews, investigations, and rulings made by the stewards. The log must be available at all times for inspection by the commission or a representative of the commission.

(c) Not later than seven days after the last day of a race meeting, the presiding steward shall submit to the commission a written report regarding the race meeting. The report must contain:

- (1) the stewards' observations and comments regarding the conduct of the race meeting and the overall conditions of the association grounds during the race meeting; and
- (2) any recommendations for improvement by the association or action by the commission.

§313.25. Steward's List. The stewards shall maintain a steward's list of the horses that are ineligible to start or be entered in a race because of poor or inconsistent performance or behavior on the race track that endangers the health or safety of other participants in racing.

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 May 23, 1989.

TRD-8904598

Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## Duties of Other Officials

### • 16 TAC §§313.41-313.52

The new sections are proposed under the Texas Racing Act, §3.02, Texas Civil Statutes, Article 179e, which authorizes the commission to adopt rules to administer the Texas Racing Act.

#### §313.41. Racing Secretary.

(a) The racing secretary shall:

(1) inspect all documents relating to the ownership of a horse entered in a race at the racetrack;

(2) write the conditions of all races and publish the conditions in a manner that allows sufficient notice to all interested persons;

(3) act as the official handicapper in all races;

(4) conduct the drawing of all races and post the overnight listing of the horses in each race immediately after the drawing;

(5) maintain the preferred list of horses;

(6) ensure that the information printed in the program and racing forms is accurate;

(7) keep a record of all races; and

(8) perform all other duties imposed on the racing secretary by these rules.

(b) The racing secretary may delegate to the assistant racing secretary any duty imposed on the racing secretary.

(c) When handicapping a race, the racing secretary shall assign weight to each horse and shall post the weights in handicaps before 10:30 a.m. the day set for publication.

#### §313.42. Duties of Morning Clocker.

(a) The morning clocker shall identify each horse that comes on the racetrack to work and shall record the accurate time of the horse's work. Each day, the morning clocker shall prepare a list of works that describes, for that morning's works, the name of the horse, the distance of the work, and the time of the work.

(b) Immediately on completion of the morning works, the morning clocker shall deliver the list of works to:

(1) the stewards; and

(2) the racing secretary.

#### §313.43. Duties of Timer.

(a) At the end of a race, the official timer shall post the official time on the infield totalisator board on instruction by the stewards.

(b) At a racetrack equipped with an appropriate infield totalisator board, the official timer shall post the time in fractions on the infield totalisator board as a race is being run.

#### §313.44. Duties of the Paddock Judge.

(a) The paddock judge shall supervise the assembling of the horses scheduled to race and shall have general supervision over the saddling equipment.

(b) The paddock judge shall supervise the saddling of horses in the paddock and the departure of the horses for the post.

(c) The paddock judge shall maintain a record of all equipment on a horse saddled for a race and shall report to the stewards any change indicated at a subsequent saddling.

(d) The paddock judge shall prohibit any change of saddling equipment without the approval of the stewards.

(e) The paddock judge shall maintain a list of horses that are ineligible to start or be entered in a race because of poor or inconsistent performance or behavior in the paddock that endangers the health or safety of other participants in racing. To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the starter that the horse is capable of performing safely in the paddock.

#### §313.45. Duties of the Clerk of Scales.

(a) The clerk of scales shall report to the stewards any jockeys who are late to weigh out and any jockeys who are having severe problems maintaining their riding weight.

(b) The clerk of scales shall verify the weight of each jockey at the time of weighing out and weighing in, and shall immediately report any discrepancies to the stewards.

(c) The clerk of scales shall notify the stewards of any change of jockeys, alteration of colors, or extra weight declared for a horse.

(d) At the end of each race day, the clerk of scales shall:

(1) provide the association with

report of the a weight carried in each race and the names of the jockeys, specifying any overweight; and

(2) provide to the paymaster of purses an accounting of the riding fees due each jockey.

(e) The clerk of scales shall supervise the conduct of the jockeys and their attendants while they are in the paddock or on the race track.

#### §313.46. Duties of Placing Judges.

(a) The placing judges shall place the horses as they pass the finish line and display the results.

(b) In the event of a photofinish or if the placing judges are not unanimous as to the correct order of finish, the judges shall submit a photograph of the finish to the stewards for examination and a determination of the result. The decision of the stewards under this subsection is final.

§313.47. Duties of the Patrol Judges. The patrol judges shall view the running of each race and report to the stewards each incident occurring during the race.

§313.48. Duties of Racing Veterinarian. The racing veterinarian shall assist the commission veterinarian in performing all duties placed on the commission veterinarian and in supervising the veterinary practices on association grounds.

#### §313.49. Duties of the Starter

(a) The starter shall issue orders and take measures necessary to ensure a fair start.

(b) The starter may appoint assistant starters. The starter shall ensure the assistant starters have adequate training in the safe handling of horses in the starting gate.

(c) The starter shall maintain a list of horses that are ineligible to start or be entered in a race because of poor or inconsistent performance or behavior at the starting gate that endangers the health or safety of other participants in racing. To be removed from the starter's list, a horse must be schooled in the starting gate and demonstrate to the satisfaction of the starter that the horse is capable of standing safely in the starting gate.

(d) The starter shall assign the stall positions to assistant starters at random. The starter may not notify the assistant starters of their respective stall positions for a race more than 10 minutes before post time for the race.

#### §313.50. Duties of the Horse Identifier.

(a) The horse identifier shall inspect each horse for identification before it

departs the pre-race holding area. The horse identifier shall immediately report to the stewards and paddock judge a horse that is not properly identified or that has any irregularities from the official identification record of the commission.

(b) The horse identifier shall inspect, identify, and prepare identification records and photographs of all horses on association grounds that have not been previously identified in Texas.

(c) The horse identifier shall inspect documents of ownership, eligibility, registration, or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting.

(d) The horse identifier shall supervise the tattooing or branding for identification of any horse located on association grounds.

#### *§313.51. Duties of the Horseshoe Inspector.*

(a) The horseshoe inspector shall inspect the horseshoes of each horse before it departs for the post. The inspector shall immediately report to the stewards and paddock judge a horse that is improperly shod.

(b) The horseshoe inspector shall maintain a record of the type of racing plates worn by each horse scheduled to race. With the approval of the stewards, the horseshoe inspector may order adjustments or corrections to the racing plates of a horse.

#### *§313.52. Duties of Jockey Room Custodian*

(a) The jockey room custodian shall supervise the conduct of the jockeys and their attendants while they are in the jockey room.

(b) The jockey room custodian shall:

(1) keep the jockey room clean and safe for all riders;

(2) ensure all jockeys are in the correct colors before leaving the jockey room to prepare for mounting their horses;

(3) keep a daily film list as dictated by the stewards and have it displayed in plain view for all riders,

(4) keep a daily program displayed in plain view for the riders so they may have ready access to mounts that may become available,

(5) keep unauthorized individuals out of the jockey room; and

(6) report to the stewards any unusual occurrences in the jockey room.

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 May 23, 1989

TRD-8904597

Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

### Subchapter B. Entries, Declarations, and Allowances

The Texas Racing Commission proposes new §§313.101-313.110, 313.131-313.136, and 313.161-313.168, concerning the procedures for entering horses, declaring horses out of races, and weight allowances for horses at a horse racetrack. The sections include the eligibility requirements for entering horses in races, the procedures for drawing for post positions, the maintenance of a preferred list, the conditions under which a horse may be declared out of a race, and the types of weight allowance and penalties that will be placed on a horse.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the sections will be in effect, there will be no fiscal implications for state or local government or for small businesses required to comply with the sections.

Ms. Carter also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is that racing with pari-mutuel wagering will be conducted fairly and with the highest integrity. There are no anticipated economic costs to individuals required to comply with the sections.

Comments on the proposed sections may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711.

#### Entries

##### • 16 TAC §§313.101-313.110

The new sections are proposed under the Texas Racing Act, §302, Texas Civil Statutes, Article 179e, which authorizes the commission to adopt rules to administer the Texas Racing Act.

#### *§313.101. Entry Procedure*

(a) The racing secretary is responsible for receiving entries for all races.

(b) Except as otherwise provided by this section, an entry must be in writing on a form provided by the association. The form must be signed by:

(1) the owner of the horse or the owner's authorized agent; or

(2) the trainer or assistant trainer of the horse or an authorized agent of the trainer.

(c) An entry may be made by telephone or telegraph, but must be confirmed

in writing not later than three hours before post time for the first race on the day the entry is to run.

#### *§313.102. Intent And Authority.*

(a) An individual may not enter or attempt to enter a horse for a race unless the individual is authorized under the rules of the commission to make the entry and unless entry is bona fide, made with the intent that the horse compete in the race in which it is entered.

(b) A signed entry form is prima facie evidence that the entry form expresses the desire and intent of the person making the entry.

#### *§313.103. Eligibility Requirements. A horse may not start in a race unless:*

(1) the horse is properly registered with the appropriate national breed registry;

(2) the horse's registration certificate showing the tattoo number of the horse is on file with the racing secretary before scratch time for the race;

(3) the horse is owned by a licensed owner and is in the care of a licensed trainer;

(4) the horse is eligible to enter the race and is entered for the race; and

(5) the horse is present on association grounds at least four hours before post time for the first race on the day of the race in which the horse is entered.

#### *§313.104. Registration Certificates.*

(a) A certificate of registration or eligibility certificate filed with an association to establish eligibility of a horse to be entered in a race must accurately reflect the correct and true ownership of the horse.

(b) The name of the owner printed on the program must conform to the ownership declared on the certificate of registration or eligibility certificate, unless a stable name has been registered for the owner.

(c) An individual may not alter or forge a certificate of registration, certificate of eligibility, or other document relating to ownership or registration.

(d) The racing secretary shall ensure that registration certificates are secured in a manner that prevents access by unauthorized individuals.

#### *§313.105. Changes in Ownership.*

(a) All entries and rights of entry survive when a horse is sold with engagements duly transferred. If a horse is sold with engagements, the seller may not strike the horse out of the engagements.

(b) An entry or right of entry re-

mains valid on the death of the nominator unless the conditions of the race state otherwise.

**§313.106. Excessive Entries.** If the number of entries exceeds the number of horses that may start in a race, due to track limitations, the association may split the race and the starters determined by lot, in the presence of the individuals who have made an entry in the race.

**§313.107. Draw For Post Position.**

(a) After the entries are closed, the racing secretary shall designate an owner or trainer who is present in the entry office to draw the entry sheets and post position numbers.

(b) The draw shall be held in public. A horse drawn is entitled to a position at the post corresponding to the number drawn. The number must be exhibited on the saddlecloth and printed in the program with the name of the jockey.

**§313.108. Preferred List.**

(a) The racing secretary shall maintain a preferred list of entered horses eliminated from starting by a surplus of entries.

(b) The racing secretary shall update daily the preference designation for each horse, based on the races for which the horse has been entered, started, or declared out of the race. The racing secretary shall post the preferred list after updating. A trainer or owner may file any claim of error in the list with the racing secretary.

(c) The racing secretary may not use the star system of recording preferences.

**§313.109. Change In Conditions.** After the racing secretary has received an entry to a race for which conditions have been published, the secretary may not change or supplement the conditions for the race.

**§313.110. Coupled Entries.**

(a) Two or more horses entered in a race owned in whole or in part by the same individual or entity shall be coupled as a single wagering interest. The owner of the horses must indicate at the time of entry which horse has first preference.

(b) If two or more horses entered in a race are trained by the same trainer, only one horse may start, unless the race is split. The trainer must indicate at the time of entry which horse has first preference.

(c) This section does not apply to a stakes or handicap race.

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 May 23, 1989.

TRD-8904596

Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
**Declarations**

• **16 TAC §§313.131-313.136**

The new sections are proposed under the Texas Racing Act, §3.02, Texas Civil Statutes, Article 179e, which authorizes the commission to adopt rules to administer the Texas Racing Act.

**§313.131. Declaration Procedure.**

(a) A declaration must be in writing on a form provided by the association. The form must be signed by:

(1) the owner of the horse or the owner's authorized agent; or

(2) the trainer of the horse or an authorized representative of the trainer.

(b) A horse may not be declared out of a race without the approval of the stewards.

**§313.132. Scratch Time.**

(a) The stewards shall designate a scratch time for each race day.

(b) Except as otherwise provided by this subchapter, a horse may not be declared out of a race after scratch time for that race.

**§313.133. Declaration Irrevocable.** The declaration of a horse from a race is irrevocable.

**§313.134. Obligation to Start.**

(a) A horse who is entered in a race is obligated to start the race, unless the horse is declared out of the race in accordance with this subchapter.

(b) A person who fails to start a horse when the horse is obligated to start is subject to disciplinary action by the stewards or the commission.

**§313.135. Declaration by Stewards.**

(a) The stewards may declare a horse out of a race when, in the opinion of the commission veterinarian, the horse cannot give its best efforts to win the race due to a physical disability or other physical cause. A horse declared out of a race under this subsection is ineligible for entry in a race in Texas until:

(1) at least 48 hours have elapsed since the time of the declaration;

and

(2) the commission veterinarian has examined the horse and has determined the horse is fit to race.

(b) The stewards may declare a horse out of a race without penalty to the horse or its owner or trainer when the stewards determine the declaration of the horse is in the best interests of racing.

**§313.136. Declaration in Stakes Races.** A horse entered in a stakes race may be declared out of the race at any time before one hour before post time the race.

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 May 23, 1989.

TRD-8904595

Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
**Allowances and Penalties**

• **16 TAC §§313.161-313.168**

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

**§313.161. Responsibility for Correct Weight.** The owner and trainer of a horse entered in a race shall ensure that the horse carries the correct weight for that race.

**§313.162. Claim for Allowance.**

(a) A claim for a weight allowance must be made at the time the horse is entered in a race.

(b) Failure to claim an allowance at entry is not grounds to disqualify a horse.

**§313.163. Improper Claim for Allowance.**

(a) A person may not claim a weight allowance for a horse to which the horse is not entitled.

(b) An improper claim for an allowance in violation of this section is not grounds to disqualify a horse unless the horse actually carries the incorrect weight in the race.

(c) A person making an improper claim for an allowance in violation of this section is subject to disciplinary action by

the stewards or the commission.

**§313.164. Records Conclusive.** In determining the eligibility, weight penalties, and right to allowances for a horse, the records of the racing secretary, in conjunction with the statistics and records of a racing form company approved by the commission, are conclusive.

**§313.165. Sex Allowance.** Except in a race for which the conditions expressly state otherwise:

- (1) a filly or mare that is two years old is allowed three pounds;
- (2) a filly or mare that is three

years or older is allowed:

(A) five pounds, between January 1 and August 31; and

(B) three pounds, between September 1 and December 31.

**§313.166. Apprentice Allowance.** An apprentice jockey is entitled to a five-pound weight allowance in all races other than a quarter horse race.

**§313.167. Prohibited Allowances.**

(a) Except as otherwise provided by this section, a horse may not be allowed an

extra weight reduction solely for having been beaten in a race.

(b) A racing secretary may permit an allowance to:

- (1) a maiden in a winners, race;
- or
- (2) a horse that has not won a race within a specified period of time or of specified value.

**§313.168. Scale of Weights for Age.** Except for a race in which the conditions expressly provide otherwise, the weight to be carried by a horse in a race shall be determined in accordance with the following scale.

Distance	Age	Jan	Mar	May	Jun	Jul	Aug	Sep	Oct	Nov
		Feb	Apr							Dec
1/2 mile	2	-	-	-	-	-	105	108	111	114
	3	117	119	121	123	125	126	127	128	129
	4	130	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
3/4 mile	2	-	-	-	-	-	102	105	108	111
	3	114	117	119	121	123	125	126	127	128
	4	129	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
1 mile	2	-	-	-	-	-	-	96	99	102
	3	107	111	113	115	117	119	121	122	123
	4	127	128	127	126	126	126	126	126	126
	5 & up	128	128	127	126	126	126	126	126	126
1 1/4 mile	2	-	-	-	-	-	-	-	-	-
	3	101	107	111	113	116	118	120	121	122
	4	125	127	127	126	126	126	126	126	126
	5 & up	127	127	127	126	126	126	126	126	126
1 1/2 mile	2	-	-	-	-	-	-	-	-	-
	3	98	104	108	111	114	117	119	121	122
	4	124	126	126	126	126	126	126	126	126
	5 & up	126	126	126	126	126	126	126	126	126
2 miles	3	96	102	106	109	112	114	117	119	120
	4	124	126	126	126	126	125	125	124	124
	5	126	126	126	126	126	125	125	124	124

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 May 23, 1989.

TRD-8904604 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

### Subchapter C. Claiming Races.

#### • 16 TAC §§313.301-313.309

The Texas Racing Commission proposes new §§313.301-313.309, concerning the conduct of claiming races at a horse racetrack. The new sections describe the procedures for entering a claim for a horse, the conditions of a claim, and the results of making a claim.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the section will be in effect, there will be no fiscal implications for state or local government or for small businesses required to comply with the sections.

Ms. Carter also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is that racing with pari-mutuel wagering will be conducted fairly and with the highest integrity. There are no anticipated economic costs to individuals required to comply with the sections.

Comments on the proposed sections may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179a, § 3.02, which authorize the commission to adopt rules to administer the Texas Racing Act.

#### §313.301. Eligibility To Claim.

(a) Except as otherwise provided by this section, in a claiming race, each horse is subject to a claim for its entered price by:

(1) a licensed owner or an authorized agent acting on behalf of the owner; or

(2) a person who has applied for an owner's license and has been granted approval by the stewards to make claim.

(b) A claim may not be made:

(1) directly or indirectly, by an owner for his or her own horse; or

(2) by a lessee or lessor under the lessee or lessor license.

#### §313.302. Claim Procedure.

(a) A claim must be made in writing on a form approved by the commission. The form must include an affidavit stating that the claimant is acting in the claimant's own behalf and that no other person is directly or indirectly interested in the claim.

(b) A claim must be deposited in a locked box provided by the racing secretary not later than 10 minutes before post time of the race in which the horse being claimed is to start.

(c) Before the deadline for filing claims for a race, a person may not:

(1) open the box in which claims are deposited; or

(2) reveal information regarding the filing of a claim.

(d) After the deadline for filing claims for a race, a steward or a designee of the stewards shall open the box, examine the claims, and supervise the delivery of the horses claimed. If more than one person enters a claim for a horse, the steward or the designee shall determine the disposition of the horse by lot.

§313.303. *Effective Time Of Claim.* A person who has a valid claim to a horse becomes the owner of the horse when the stall door of the starting gate opens in front of the horse. This subsection applies regardless of subsequent injury to the horse during or after the race.

#### §313.304. Claim Irrevocable.

(a) Except as otherwise provided by this section, a claim that is filed in accordance with this subchapter is irrevocable.

(b) If a horse is left at the post due to the mechanical failure of the starting gate, a claim for that horse is invalid.

(c) If the stewards declare a claiming race a no race, all claims for that race are invalid.

§313.305. *Amounts On Deposit.* To make a valid claim, a person must have on deposit with the horseman's bookkeeper an amount equal to the amount of the claim, plus all applicable sales tax or other transfer fees.

#### §313.306. Transfer Of Claimed Horse.

(a) A horse that has been claimed in a claiming race shall be taken after the race to the paddock for delivery to the claimant.

(b) A person may not refuse to deliver a claimed horse.

(c) The engagements of a claimed horse automatically transfer to the new owner. A claimed horse is ineligible for entry in a future race unless the entry is

made on behalf of the new owner.

§313.307. *Responsibility For Testing.* The trainer losing a horse through a claim is nevertheless responsible for the results of any drug tests performed on specimens obtained from the horse. The trainer or a representative of the trainer may be present during the testing procedures in accordance with Chapter 319 of this title (relating to Veterinary Practices and Drug Testing).

§313.308. *Restrictions On Subsequent Sale.* During the 30-day period after a person claims a horse in a claiming race:

(1) the claimant of a horse may not sell or transfer any ownership interest in the horse by any method other than a claiming race; or

(2) the horse is ineligible to enter a claiming race for a price less than 25% more than the price at which the horse was claimed.

§313.309. *Ineligible Entry.* A person may not enter or allow to be entered in a claiming race a horse against which a claim, lien, or other security interest is outstanding unless, on entering the horse, the person submits written consent to the entry by the person holding the claim, lien or other security interest.

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 May 23, 1989.

TRD-8904601 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

### Subchapter D. Running of the Race.

#### Jockeys

The Texas Racing Commission proposes new §§313.401-313.409, 313.421-313.425, and 313.441-313.450, concerning the running of races at a horse racetrack. The new sections describe the duties, fees, and equipment for jockeys, the procedure for moving the horses from the stable area to the starting gate before the race, the procedures for the horses and jockeys after the race, and the procedures for declaring the race finish official and for challenging the results of the race.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the section will be in effect, there will be no fiscal implications for state or local government or for



small businesses required to comply with the sections.

Ms. Carter also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is that racing with pari-mutuel wagering will be conducted fairly and with the highest integrity. There are no anticipated economic costs to individuals required to comply with the sections.

Comments on the proposed sections may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711.

◆ 16 TAC §§313.401-313.409

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179c, §3.02, which authorizes the commission to adopt rules to administer the Texas Racing Act

§313.401. *Jockeys To Report.*

(a) A jockey engaged to ride in a race shall report to the jockey room at least one hour before post time of the first race and shall weigh out at the appointed time.

(b) After reporting, a jockey may not leave the jockey room except to ride in a race until all the jockey's engagements for the day have been fulfilled or until the jockey is excused by the stewards.

§313.402. *Weighing Out.*

(a) Each jockey participating in a race must be weighed out by the clerk of scales not more than one hour before the time set for the race.

(b) The owner or trainer may substitute a jockey when the engaged jockey weighs out with an overweight of more than two pounds.

(c) The clerk of scales shall have the overweight or change of jockeys posted immediately and announced over the public address system.

(d) A jockey who weighs out seven pounds or more than the appropriate weight shall be taken off the mount.

§313.403. *Maximum Overweight.* A horse may not carry more than two pounds overweight without the consent of the owner or an authorized agent for the owner.

§313.404. *Items Included In Weight.* A jockey's includes the riding clothing, saddle, and pad, but excludes the safety helmet, whip, and horse's bridle.

§313.405. *Whips And Other Equipment.*

(a) A jockey may not use a whip that weighs more than one pound or a bridle that weighs more than two pounds.

(b) A whip used in races must be at least 1/4 inch in diameter and may not exceed one pound in weight or 31 inches in length, including the popper.

(c) If a jockey is to ride without a whip, the stewards shall ensure that fact is announced over the public address system.

(d) A jockey may not whip a horse on the head or use the whip excessively or brutally at any time.

(e) Except on permission of the stewards, blinkers may not be placed on a horse until after the horse has been identified by the horse identifier.

§313.406. *Colors And Number.*

(a) A horse starting in a race must carry a conspicuous saddle cloth and head number corresponding to its number of the official program.

(b) The jockey for a horse starting in a race shall be properly attired for riding in the race and wear:

(1) the colors of the owner of the horse the jockey is to ride; and

(2) the appropriate sleeve number or helmet number.

(c) If an owner does not have colors, the jockey shall wear colors in accordance with the post position of the horse as follows:

- (1) red;
- (2) white;
- (3) blue;
- (4) yellow;
- (5) green;
- (6) black;
- (7) orange;
- (8) purple;

(9) pink; and

(10) light blue.

§313.407. *Duty to Fulfill Jockey Engagements.*

(a) A jockey engaged for a certain race or for a specified time may not fail or refuse to abide by the engagement agreement, unless excused by the stewards.

(b) A trainer or owner may demand a written confirmation of an engagement from a jockey or jockey agent.

(c) The stewards shall decide conflicting claims for the services of a jockey.

§313.408. *Jockey Agents.*

(a) A jockey agent shall maintain a record of all engagements for each jockey the agent represents. The record must specify first, second, or third calls for each race.

(b) The stewards or racing secretary may require a jockey agent to file first, second, or third calls with the racing secretary, and may require the agent to display the record of engagements.

(c) A jockey is bound by engagements made by the jockey's agent on the jockey's behalf.

§313.409. *Jockey Mount Fees.*

(a) If a jockey and owner or trainer reach an agreement regarding the fee to be paid a jockey, the parties to the agreement shall ensure that a written agreement, signed by the parties, is delivered to the horsemen's bookkeeper before post time of the race in which the jockey is to ride. The agreement must state the agreed upon fee for a winning mount, a second place mount, a third place mount, and a losing mount.

(b) After a race, the horsemen's bookkeeper shall debit the owner's account for the amount of the appropriate jockey mount fee as specified in the written agreement. If there is no written agreement, the horsemen's bookkeeper shall debit the owner's account for the appropriate jockey mount fee specified in subsection (c) of this section.

(c) In the absence of a written agreement, the following jockey mount fees apply:

<u>Purse</u>	<u>Winning Mount</u>	<u>Second Mount</u>	<u>Third Mount</u>	<u>Losing Mount</u>
\$ 499 & under	\$ 27	\$ 19	\$ 17	\$ 16
\$ 500 - 599	\$ 30	\$ 20	\$ 17	\$ 16
\$ 600 - 699	\$ 36	\$ 22	\$ 17	\$ 16
\$ 700 - 999	10% Win Purse	\$ 25	\$ 22	\$ 20
\$ 1,000 - 1,499	10% Win Purse	\$ 30	\$ 25	\$ 22
\$ 1,500 - 1,999	10% Win Purse	\$ 35	\$ 30	\$ 28
\$ 2,000 - 3,499	10% Win Purse	\$ 45	\$ 35	\$ 33
\$ 3,500 - 4,999	10% Win Purse	\$ 55	\$ 45	\$ 35
\$ 5,000 - 9,999	10% Win Purse	\$ 65	\$ 50	\$ 40
\$10,000 - 14,999	10% Win Purse	5% Place Purse	5% Show Purse	\$ 45
\$15,000 - 24,999	10% Win Purse	5% Place Purse	5% Show Purse	\$ 50
\$25,000 - 49,999	10% Win Purse	5% Place Purse	5% Show Purse	\$ 60
\$50,000 - 99,999	10% Win Purse	5% Place Purse	5% Show Purse	\$ 75
\$ 100,000 & Up	10% Win Purse	5% Place Purse	5% Show Purse	\$ 100

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 May 23, 1989.

TRD-8904545 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## Pre-race Procedure

### • 16 TAC §§313.421-425

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

#### §313.421. Horses To Pre-Race Holding Area.

(a) The trainer of a horse entered in the first race of a race day must ensure that the horse is present in the pre-race holding area at least 45 minutes before post time for the race.

(b) The horses in subsequent races must report to the pre-race holding area at the time designated by the stewards.

(c) The commission veterinarian shall report to the stewards the failure of a horse to report to the pre-race holding area at the appropriate time. The stewards shall declare a horse out of the race if the horse is reported under this subsection.

#### §313.422. Saddling.

(a) A horse entered in a race must be saddled in the paddock, unless the stewards have granted permission for the horse to be saddled elsewhere.

(b) A trainer or assistant trainer having care and custody of a horse entered in a race shall be present in the paddock to supervise the saddling of the horse and to give instructions necessary to ensure the best performance by the horse.

(c) Spurs, steels, twitches, war bridles, and other appliances not considered regular racing equipment may not be used on a horse, except with the permission of the stewards. If the stewards permit the use of a piece of equipment under this subsection, the stewards shall report that fact to the commission and provide the reasons for the use.

#### §313.423. Parade.

(a) The horses are under the control of the starter from the time the horses enter

the racetrack until dispatched at the start of the race.

(b) Except as otherwise provided by this section, each horse entered in a race shall parade, carrying the appropriate weight and equipment, from the paddock to the starting gate. The lead pony for a horse shall be ridden in a manner that permits adequate viewing of the horse by the patrons and stewards. The stewards may declare a horse out of the race if the horse fails to parade in accordance with this section.

(c) The stewards may excuse a horse from the parade, but shall require such a horse to pass the stewards, stand on its way to the starting gate.

(d) After the horses have passed the stands once, the horses may break formation and warm up until directed to proceed to the starting gate. The parade of the horses to the starting gate may not last more than 14 minutes, except in a case of unavoidable delay.

(e) If a jockey is injured during the parade or at the starting gate, the horse must return to the paddock and be resaddled with the replacement jockey's equipment. The horse must return to the starting gate carrying the replacement jockey.

(f) If a jockey is thrown on the way to the starting gate, the jockey must remount the horse at the point where the jockey was thrown.

#### §313.424. Leaving The Race Course.

(a) A horse that leaves the race course during the parade to the starting gate shall return to the race course at the nearest practical point to where the horse left the race course and continue the parade to the starting gate.

(b) The stewards shall declare a horse out of the race if the horse leaves the race course:

(1) to the extent that the horse is out of the vision of the stewards; or

(2) cannot be returned to the race course within a reasonable period of time.

(c) A horse that leaves the race course or loses its jockey during a race may be disqualified and placed last or may be unplaced.

#### §313.425. At The Starting Gate.

(a) When the horses have reached the starting gate, the starter shall ensure that the horses are promptly placed in their stalls in the order of their post positions when instructed to do so.

(b) The starter shall promptly report to the stewards any reason for a delay in the start.

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 May 23, 1989.

TRD-8904602 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## The Race

### • 16 TAC §§313.441-313.450

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

#### §313.441. The Start.

(a) A horse is considered a starter for all purposes when the stall doors of the starting gate open in front of the horse at the time the starter dispatches the horses in a valid start.

(b) The stewards may declare a horse a non-starter if the stewards determine the horse was left at the post because the horse was not in the starting gate stall or the starting gate malfunctioned.

#### §313.442. Interference

(a) A horse may not interfere with or cause another horse to lose stride, lose ground, or lose position.

(b) The stewards may disqualify a horse who interferes with another horse in violation of this section and may place the horse behind the horse interfered with.

(c) The stewards shall display the inquiry sign on the infield tote board immediately on observing possible interference.

#### §313.443. Action By Jockeys.

(a) A jockey may not ride carelessly or willfully so as to permit the mount to interfere with or impede another horse in the race.

(b) A jockey may not willfully strike or attempt to strike another horse or jockey so as to impede, interfere with, intimidate, or injure the other horse or jockey.

(c) A jockey may not exchange whips during the running of a race.

(d) A jockey who acts in violation of this section is subject to discipline by the stewards or the commission and the jockey's mount may be disqualified.

**§313.444. Dismounting.**

(a) After the race, each jockey shall return the horse to the finish, salute the stewards, and receive permission of the stewards to dismount.

(b) Except on the permission of the stewards, a jockey may not permit another person to assist the jockey in removing the equipment that is included in the jockey's weight.

(c) The jockey shall go immediately on dismount and removal of equipment to the clerk of the scales to weigh in.

**§313.445. Weigh In.**

(a) On weighing in, a jockey may not weigh less than one pound under the jockey's proper weight nor weigh more than two pounds over the jockey's proper weight.

(b) The stewards may disqualify a horse whose jockey weighs in at a weight in violation of this section and may discipline a person responsible for the weight violation. In determining a violation under this subsection, the stewards shall take into account any excess weight due to rain or mud.

(c) The stewards may excuse a jockey from weighing in if the jockey is unable to weigh in due to accident, injury, or other good cause.

**§313.446. Claim Of Interference.**

(a) A jockey, trainer, or owner of a horse may make a claim of interference with the stewards before race is declared a official if the jockey, trainer, or owner has reasonable grounds to believe the horse was interfered with or impeded during the running of the race or that a jockey violated a rule of the commission during the race. On receiving a claim of interference, the stewards shall display the objection sign on the infield tote board.

(b) A person may not make a claim of interference if the person knows the claim is inaccurate or false.

(c) An individual who makes a frivolous claim of interference is subject to discipline by the stewards or the commission.

**§313.447. Ramifications Of Disqualification.**

(a) If the stewards disqualify a horse in a race, each horse in the race that is owned, in whole or in part, by the same owner or that is trained by the same trainer may be disqualified.

(b) If a horse is disqualified for interference in a time trial race, the horse shall receive the time of the horse it is place behind, plus .01 of a second penalty, or more exact measurement if photofinish

equipment permits. The horse is eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

**§313.448. Dead Heat.**

(a) If a race results in a dead heat, the race may not be run off.

(b) The association shall distribute the purse equally among the winning horses and any prize that cannot be duplicated shall be distributed by lot.

**§313.449. Official Order Of Finish.**

(a) The stewards shall declare the order of finish in a race is official when the stewards have determined:

- (1) the order of finish is correct;
- (2) the jockeys have been properly weighed in, unless excused; and
- (3) the race was run in accordance with the Act and the rules of the commission.

(b) On declaring the official order of finish, the stewards shall require:

- (1) the order of finish posted and announced to the public; and
- (2) the official sign posted on the infield tote board.

**§313.450. Time Trail Qualifiers.**

(a) When two or more time trial contestants have the same qualifying time, to a degree of .01 of a second, or more exact measurement if photofinish equipment permits, for fewer positions in the finals or consolations necessary for all contestants, the stewards shall conduct a draw by lot.

(b) A contestant may not draw into the finals or consolations instead of a contestant that finished ahead of the contestant.

(c) When scheduled races are trial heats for futurities or stakes races electronically timed from the starting gates, an association may not move the starting gates or allow the starting gates to be moved until all trial heats are complete, except in an emergency as determined by the stewards.

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 May 23, 1989.

TRD-8904603 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

**Chapter 319. Veterinary Practices and Drug Testing**

**Subchapter B. Treatment of Horses**

**Authorized Medication**

**• 16 TAC §319.131**

The Texas Racing Commission proposes new §319.131, concerning the authorized medication for race horses. The new section permits the presence of phenylbutazone in the body of a race horses, provided the total level of the medication does not exceed five micrograms per milliliter of plasma.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, 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 or small businesses as a result of enforcing or administering the section.

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

Comments on the proposal may be submitted may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under the Texas Racing Act, Texas Civil Statutes, Article 179c, §14.03, which requires the commission to adopt rules to prohibit the illegal influencing of races through medication.

**§319.131. Authorized Medication.** A horse may run in a race with phenylbutazone in its body, provided the test level of the medication does not exceed five micrograms per milliliter of plasma.

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 May 23, 1989.

TRD-8904578 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

**Chapter 321. Pari-mutuel Wagering**

**Subchapter A. Regulation and Totalisator Operations**

**General Provisions**

The Texas Racing Commission proposes new §§321.1-321.7, 321.31-321.39, and

321.61-321.69, relating to the conduct and regulation of pari-mutuel wagering. The new sections provide for the operation of the totalisator system, the issuance and cashing of mutual tickets, and the regulation of wagering by the commission.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the sections will be in effect, there will be no fiscal implications for state or local government or for small businesses required to comply with the sections.

Ms. Carter also has determined that for each of the first five years the sections will be in effect the public benefit anticipated as a result of enforcing the sections is that racing with pari-mutuel wagering will be of the highest integrity. There are no anticipated economic costs to individuals required to comply with the sections.

Comments on the proposed sections may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

## General Provisions

### • 16 TAC §§321.1-321.7

The new sections are proposed under Article 11, the Texas Racing Act, Texas Civil Statutes, Article 179e, which require the commission to adopt rules to regulate pari-mutuel wagering.

#### §321.1. Conduct of Wagering.

(a) An association shall conduct pari-mutuel wagering in accordance with the Act and the rules of the commission.

(b) In conducting pari-mutuel wagering, an association shall use a totalisator system licensed by the commission.

#### §321.2. Pari-Mutuel Auditor.

(a) The pari-mutuel auditor is a representative of the commission at a racetrack.

(b) The pari-mutuel auditor shall supervise and verify the wagering pool totals for each race performance. The verification of the pari-mutuel auditor is the basis for computing the amount of money to be set aside from each pool for the purses, for the state, and for the association.

(c) The pari-mutuel auditor shall also assist the commission, the stewards or racing judges, and the comptroller in investigating alleged violations of the Act or the rules of the commission or the comptroller relating to the totalisator system and pari-mutuel operations.

#### §321.3. Investigations.

(a) If the pari-mutuel auditor, the stewards or racing judges, or the comptroller determines that a certain cashed or cancelled ticket is needed to conduct an investigation, the investigating official shall

make a written request for the ticket to the mutual manager of the association that issued the ticket.

(b) On receipt of a request under this section, the mutual manager shall make the ticket available to the investigating official.

(c) If the ticket is not available for inspection, the mutual manager shall provide to the investigating official the cashier history of the ticket.

(d) After the investigation is completed, the investigating official shall notify the association in writing that the ticket may be stored or disposed of in accordance with §321.35 of this title (relating to Cashed Tickets).

#### §321.4. System Failure.

(a) If during a racing performance, the totalisator system is unable to record wagers received or to guarantee the integrity of the pari-mutuel pools, the totalisator system licensee shall immediately notify the association's mutual manager, the pari-mutuel auditor, the stewards or racing judges, and the comptroller. The totalisator system licensee shall state whether the problem causing the system failure can be corrected and if so, the estimated time needed to correct the problem.

(b) If the totalisator system licensee determines that the problem cannot be corrected before the scheduled end of the race performance, the licensee shall notify the pari-mutuel auditor and the stewards or racing judges of that determination. The stewards or racing judges, after consulting with the association and after considering the amount of purses and wagers involved and the time required to repair the totalisator system, may permit any of the remaining races in the performance to be run as exhibitions without wagering.

#### §321.5. Access To Tapes.

(a) An association shall store all magnetic log tapes and the computer log library tapes in chronological order in a locked disaster-proof facility.

(b) An association shall prohibit the association's mutual manager and employees of the pari-mutuel department, other than the computer operators, from having access to the magnetic log tapes and the computer log library tapes.

#### §321.6. Pari-Mutuel Track Report.

(a) An association shall prepare a pari-mutuel summary track report for each race performance authorized by the commission.

(b) The pari-mutuel summary track report is the association's record of wagering activities at the racetrack.

(c) The association shall deliver a copy of the report to the commission not later than the 10th day after the date of the performance for which the report was prepared.

§321.7. Computer Printouts. An association shall make available to the pari-mutuel auditor for inspection all computer printouts generated by the totalisator system and shall, on request, supply the auditor with a copy of a printout.

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 May 23, 1989.

TRD-8904578

Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

## Mutuel Tickets

### • 16 TAC §§321.31-321.39

The new sections are proposed under Article 11, the Texas Racing Act, Texas Civil Statutes, Article 179e, which require the commission to adopt rules to regulate pari-mutuel wagering.

§321.31. Mutuel Ticket. Each mutuel ticket issued must have printed on it:

- (1) the name of the racetrack or association;
- (2) the number of the race;
- (3) the unique computer-generated ticket number;
- (4) the date the ticket was issued;
- (5) the date of the race for which the ticket was issued;
- (6) the expiration date of the ticket;
- (7) when appropriate, the designation of night or matinee performance;
- (8) the number of the ticket-issuing machine;
- (9) the type of pool;
- (10) the number of each entry on which the wager was placed; and
- (11) the dollar amount of the wager.

#### §321.32. Expiration Date.

(a) A mutuel ticket purchased for a horse race expires and may not be cashed 60 days after the date the race was conducted.

(b) A mutuel ticket purchased for a greyhound race expires and may not be cashed on or after April 1 of the year after the year in which the ticket was purchased.

(c) An association may not permit an expired ticket to be cashed.

**§321.33. Refusal to Cash.** An association may refuse to cash a mutuel ticket if the association determines the ticket has been recorded as previously cashed, cancelled, or non-existent.

**§321.34. Claim for Payment.**

(a) 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. The claim must be sworn and be made on a form prescribed by the commission. The original of the claim shall be promptly forwarded to the commission.

(b) If a claim is made for payment of a mutilated ticket that does not contain the information required under §321.31 of this title (relating to Mutuel Tickets), the association shall make a recommendation to accompany the claim forwarded to the commission as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

(c) If a claim is made for the payment of a mutuel ticket, the commission shall adjudicate the claim and may order payment from the pari-mutuel pool or by the association, may deny the claim, or may enter any other order the commission determines appropriate.

(d) A claim may not be made for a lost or destroyed mutuel ticket.

**§321.35. Cashed Tickets.**

(a) An association shall maintain facilities and use procedures that ensure the security of cashed tickets and the integrity of records of outstanding tickets.

(b) The association shall store cashed tickets in a locked disaster-proof facility.

(c) The association shall store a cashed ticket until the commission and the comptroller certify to the licensee that the ticket is no longer needed for an audit.

(d) The association shall prohibit individuals other than the association's mutuel manager or the manager's designee from having access to the cashed tickets or to storage areas for outstanding ticket records.

**§321.36. Altering Cashed Tickets.** The mutuel manager of an association shall ensure that each cashed or refunded ticket is altered in a manner that indicates the ticket

has been cashed or refunded but that does not destroy the identity of the ticket.

**§321.37. Cashing Outstanding Tickets.**

(a) An association shall designate one ticket window at which a patron may cash an outstanding ticket that is dated 20 or more days before the date it is presented for payment. The association may not permit such a ticket to be cashed at a ticket window other than the designated window.

(b) Before the end of each race day, the mutuel manager shall deliver to the pari-mutuel auditor:

(1) a list of the outstanding tickets that were cashed on the previous race day; and

(2) a photostatic copy of each outstanding ticket cashed on the previous race day that was dated 20 or more days before the date on which it was cashed.

**§321.38. Cancellation of Tickets.** An association may cancel a ticket if:

(1) the cashier made an error in issuing the ticket and the patron requests that the ticket be cancelled before the patron leaves the seller's window and before the ticket-issuing machines are locked; or

(2) the stewards or racing judges order tickets to be cancelled because of a change in the conditions of the race.

**§321.39. Cashier's Records.** Each cashier for an association shall retain and account for all tickets refunded or cancelled by the cashier.

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 May 23, 1989.

TRD-8904575 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

◆ ◆ ◆  
**Regulation of Wagering**

• 16 TAC §§321.61-321.69

The new sections are proposed under Article 11, the Texas Racing Act, Texas Civil Statutes, Article 179e, which require the commission to adopt rules to regulate pari-mutuel wagering.

**§321.61. Actions by Stewards or Judges.**

(a) The decision of the stewards or racing judges regarding the order of finish is final at the time the stewards or judges order the official sign displayed on the to-

taliser board.

(b) Except as otherwise provided by this section, a ruling of the commission or the stewards or racing judges, made after the result of the race has been declared official, regarding the order of finish or an award of purse money does not affect the distribution of the pari-mutuel pools.

(c) The stewards or racing judges may correct an inadvertent mistake in the posting of the official order of finish before the beginning of cashing tickets for the race.

**§321.62. Errors in Posted Payoff.** If an error is discovered in the payoff amounts posted on the totalisator board, the association shall correct the amounts immediately and announce the existence of the error and the subsequent correction over the public address system. The corrected amounts shall be used in the payoff.

**§321.63. Probable Odds.** The association shall calculate and print in the official program the probable win odds for each wagering interest in each race. Probable odds are subject to approval by the stewards or racing judges.

**§321.64. Wagering Explanation.**

(a) An association shall print in the official program a general explanation of pari-mutuel wagering and an explanation of each type of pari-mutuel pool offered.

(b) The association shall post the explanation in conspicuous places on the association grounds.

(c) The explanation must be approved by the commission before publication.

**§321.65. Wagering Interests.**

(a) If the stewards or racing judges determine that two or more race animals entered in a race have common ties through ownership or training, the stewards or judges shall join the animals as a mutuel entry.

(b) If the number of race animals competing in a race exceeds the numbering capacity of the totalisator system, the animals that are assigned the highest numbers within the capacity of the totalisator system are a mutuel field.

(c) A mutuel entry or a mutuel field is a single wagering interest and a wager on one animal in a mutuel entry or mutuel field is a wager on all animals in the mutuel entry or mutuel field.

**§321.66. Minimum Wager.** The minimum wager to be accepted by an association is \$1.00.

### §321.67. Activities By Minors Restricted.

(a) An association may not permit an individual who is less than 16 years old to enter the public area of the association grounds unless the individual is accompanied by the individual's parent or legal guardian.

(b) An association may not accept a wager from an individual who has not attained the minimum age required to purchase alcoholic beverages in this state.

§321.68. *Wagers By Employees of Commission.* A member of the commission or an employee of the commission may not place or cause to be placed a wager on a race conducted in this state.

### §321.69. *Certain Wagers Prohibited.*

(a) An association may not accept a wager made by telephone or mail.

(b) An association may not accept a wager made on credit.

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 May 23, 1989.

TRD-8904594 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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



## Subchapter B. Distribution of Pari-mutuel Pools

### • 16 TAC §§321.101-321.112

The Texas Racing Commission proposes new §§321.101-321.112, concerning the distribution of pari-mutuel pools to patrons at racetracks. The new sections provide for the calculation of the pari-mutuel pools and the distribution of the wagers, portions.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that, for each of the first five years the sections will be in effect, there will be no fiscal implications for state or local government or for small businesses required to comply with the sections.

Ms. Carter also has determined that for each of the first five years the sections will be in effect the public benefit anticipated as a result of enforcing the sections is that racing with pari-mutuel wagering will be of the highest integrity. There are no anticipated economic costs to individuals required to comply with the sections.

Comments on the proposed sections may be submitted before June 20, 1989, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin,

Texas 78711.

The new sections are proposed under Article the Texas Racing Act, Texas Civil Statutes, Article 179e, which require the commission to adopt rules to regulate pari-mutuel wagering.

§321.101. *Distribution of Pools.* After the stewards or racing judges have declared a race to be official, an association shall distribute the pari-mutuel pools to the holders of mutuel tickets who are entitled to share in the respective pools in accordance with the Act and this chapter.

§321.102. *Payoff on Minus Pool.* Regardless of whether a pari-mutuel pool contains sufficient money, an association shall pay to the holder of a ticket that entitles the holder to participate in the distribution of a pari-mutuel pool the amount wagered by the holder plus a minimum of 5.0% of the wager.

### §321.103. *Straight Pools.*

(a) An association shall provide win, place, and show pools in any race in which there are five or more separate wagering interests which are scheduled to start.

(b) An association shall provide only win and place pools in a race in which there are four separate wagering interests which are scheduled to start.

(c) An association shall provide only a win pool in a race in which less than four separate wagering interests are scheduled to start.

(d) The stewards or racing judges may waive the requirement for a place or show pool in any race.

### §321.104. *Win Pool.*

(a) The takeout authorized by law is deducted from the sum total wagering in the straight pool. The balance is the net pool.

(b) The amount wagered on the winner is divided into the net pool. The quotient is the payoff price on the winner for each dollar wagered, and it includes the dollar wagered on the winner.

(c) If a race animal wins and no money was wagered on the animal to win, the win pool shall be distributed among the holders of tickets on that animal to place. If there are no holders of place tickets, the win pool shall be distributed among the holders of tickets on that animal to show.

### §321.105. *Place Pool.*

(a) The takeout authorized by law is deducted from the sum total wagered in the place pool. The balance is the net pool.

(b) The sum total of the amount wagered in the place pool on the race ani-

mals placed first and second is deducted from the net pool. The remaining profits are divided into two equal parts, between the wagers on the winner in the place pool and the wagers on the animal that finished second.

(c) With the amount wagered in the place pool on the winner as the divisor and one-half of the profits of the place pool as the dividend, the quotient is the profit-per-dollar wagered in the place pool on the winner.

(d) With the amount wagered in the place pool on the animal finishing second as the divisor and one-half of the profits of the place pool as the dividend, the quotient is the profit-per-dollar wagered in the place pool on the animal finishing second.

(e) The profit-per-dollar wagered is the resultant. Because the amounts wagered on the animals finishing first and second must be returned, the amount subtracted from the net pool under subsection (b) of this section is added to the quotient. The result is the payoff price for each dollar wagered on the animals finishing first and second in the place pool.

(f) If no money was wagered to place on an animal finishing first or second in a race, the place pool shall be distributed among the holders of the place tickets on the other animal that finished first or second.

### §321.106. *Show Pool.*

(a) The takeout authorized by law is deducted from the sum total wagered in the show pool. The balance is the net pool.

(b) The sum total of the amount wagered in the show pool on the race animals finishing first, second, and third is deducted from the net pool. The remaining profits are divided into three equal parts, among the wagers in the show pool on the winner, the animal finishing second, and the animal finishing third.

(c) With the amount wagered in the show pool on the winner as a divisor and one-third of the profits of the show pool as a dividend, the quotient is the profit-per-dollar wagered in the show pool on the winner.

(d) With the amount wagered in the show pool on the animal finishing second as the divisor and one-third of the profits of the show pool as the dividend, the quotient is the profit-per-dollar wagered in the show pool on the animal finishing second.

(e) With the amount wagered in the show pool on the animal finishing third as the divisor and one-third of the profits of the show pool as the dividend, the quotient is the profit-per-dollar wagered in the show pool on the animal finishing third.

(f) The profit-per-dollar wagered is the resultant. Because the amounts wagered

on the animals finishing first, second, and third must be returned, the amount subtracted from the net pool under subsection (b) of this section is added to the quotient. The result is the payoff price for each dollar wagered on the animals finishing first, second, and third in the show pool.

(g) If no money was wagered in the show pool on an animal finishing first, second, or third in a race, the show pool shall be distributed among the holders of the show tickets on the other animals that finished first, second, or third.

#### §321.107. Daily Double.

(a) The daily double is not a parlay and has no connection with or relation to the win, place and show pools shown on the totalisator board. All daily double tickets shall be calculated in a separate pool.

(b) A mutuel entry or mutuel field in a race that is part of a daily double shall race as a single wagering interest for the purpose of mutuel pool calculations and payoffs to the public. If any part of a mutuel entry or mutuel field is a starter, the association may not refund money wagered under this section to persons wagering on the entry or field.

(c) If no ticket is sold including the winner of the first race of the daily double, the entire daily double pool, minus the takeout and the breakage, shall be distributed equally to the holders of tickets which include the winner of the second race of the daily double.

(d) If no ticket is sold including the winner of the second race of the daily double, the entire daily double pool, minus the takeout and the breakage, shall be distributed equally to the holders of tickets which include the winner of the first race of the daily double.

(e) If no ticket is sold including the winner of either race of the daily double, the entire daily double pool, minus the takeout and the breakage, shall be distributed equally to holders of tickets which include the animals finishing second in the two races of the daily double.

(f) If no ticket is sold that would require the distribution of the daily double pool under subsections (c)-(e) of this section, the association shall provide a complete refund of the daily double pool.

(g) 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.

(h) 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.

(i) 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 double shall be awarded. All tickets including the affected animal shall be deducted from the daily double pool and the remainder shall be distributed as a straight pool to the holders of tickets combining the winner of the first half with the affected animal.

(j) If either race in a daily double ends in a dead heat, the total daily double pool shall be distributed as a place pool.

#### §321.108. Quinella.

(a) The quinella is not a parlay and has no connection with or relation to the win, place, and show pools on the totalisator board. All tickets on the quinella shall be calculated as a separate pool.

(b) A quinella ticket is for the win and place combination only. When purchasing a quinella ticket, the patron shall select the two animals to be the top two finishers.

(c) A mutuel entry or mutuel field in a quinella race shall race as a single wagering interest for the purpose of mutuel pool calculations and payoffs to the public. If any part of a mutuel entry or mutuel field is a starter, the association may not refund money wagered under this section to persons wagering on the entry or field. For purposes of this section, if a part of the entry or field finishes first, the order of finish of the other animals in the entry shall be disregarded in determining which animal finished second.

(d) If after wagering has begun an animal entered in a quinella race is scratched, declared out, or prevented from racing, all money wagered on the affected animal shall be deducted from the quinella pool and refunded to the holders of tickets on the affected animal.

(e) If no ticket is sold on the winning combination in a quinella race, all quinella tickets bearing the number of the winner animal and all quinella tickets bearing the number of the second place animal are considered winning tickets and the payoff shall be calculated as a place pool.

(f) If no ticket is sold on the winning combination in a race and no quinella tickets bear the number of the winner, all quinella tickets bearing the number of the second place animal are considered winning tickets and the payoff shall be calculated as a win pool.

(g) If no ticket is sold on the winning combination in a race and no quinella

tickets bear the number of the second place animal, all quinella tickets bearing the number of the winner are considered winning tickets and the payoff shall be calculated as a win pool.

(h) If only one animal finishes in a quinella race, the entire pool is distributed as a win pool for the persons who wagered on the winner.

(i) If a quinella race ends in a dead heat for first place, all animals finishing first are the winners of the race and the pool shall be distributed accordingly.

(j) If a quinella race ends in a two-animal dead heat for second place, the entire pool is distributed as a place pool. If a quinella race ends in a multiple-animal dead heat for second place, all combinations that couple the winning animal with any of the second place animals are winners of the quinella and the pool shall be distributed accordingly.

(k) If no ticket is sold on the winning combination in a quinella race and no quinella tickets bear the number of either the winner or the second place animal, the quinella is considered no contest and the association shall refund all money wagered in the quinella.

#### §321.109. Exacta.

(a) The exacta is not a parlay and has no connection with or relation to the win, place, and show pools shown on the totalisator board. All tickets on the exacta shall be calculated as a separate pool.

(b) An exacta ticket is for the win and place combination only. When purchasing an exacta ticket, the patron shall designate the exact order in which the first two animals will finish.

(c) A mutuel entry or mutuel field in an exacta race shall race as a single wagering interest for the purpose of mutuel pool calculations and payoffs to the public. If any part of a mutuel entry or mutuel field is a starter, the association may not refund money wagered under this section to persons wagering on the entry or field. For purposes of this section, if a part of the entry or field finishes first, the order of finish of the other animals in the entry shall be disregarded in determining which animal finished second.

(d) If after wagering has begun an animal entered in an exacta race is scratched, declared out, or prevented from racing, all money wagered on the affected animal shall be deducted from the exacta pool and refunded to the holders of tickets on the affected animal.

(e) If no ticket is sold on the winning combination in an exacta race, the net pool shall be distributed equally among the holders of tickets selecting the winner to finish first and the holders of tickets selecting the second place animal to finish second.



(f) If a race ends in a dead heat for first place, the net pool shall be calculated and distributed as a place pool to holders of the winning combination.

(g) If a race ends in a dead heat for second place, all tickets designating the appropriate horse to win coupled with any of the second place animals are winners and the pool shall be distributed accordingly.

(h) If a race ends in a dead heat for second place and no ticket is sold on any of the winning combinations, the net pool shall be calculated and distributed to the holders of tickets that designated the winner or any of the second place animals according to their respective interest in the net pool.

(i) If a race ends in a dead heat for first among more than two animals, the net pool shall be calculated and distributed to holders of tickets designating any two of the animals participating in dead heat according to their respective interest in the net pool.

(j) If no ticket is sold that would require distribution under this section, the exacta is considered no contest and the association shall refund all money wagered in the exacta pool.

#### §321.110. Trifecta.

(a) The trifecta wager is not a parlay and has no connection with or relation to the win, place, and show pools shown on the totalisator board. All tickets on the trifecta shall be calculated as a separate pool.

(b) A person purchasing a trifecta ticket must select the three animals in a race which will finish first, second, and third and designate the exact order in which the first three will finish.

(c) A mutuel entry or mutuel field may not start in a race on which there is trifecta wagering.

(d) If after wagering has begun an animal entered in an trifecta race is scratched, declared out, or prevented from racing, all money wagered on the affected animal shall be deducted from the trifecta pool and refunded to the holders of tickets on the affected animal.

(e) If no ticket is sold on the winning combination, the net pool shall be distributed equally among the holders of tickets selecting the first and second place animals.

(f) If no ticket is sold that selects the first and second place animals, the net pool shall be distributed equally among the holders of tickets selecting the first and third horses.

(g) If no ticket is sold that selects the winning combination or the first and second place animals, the net pool shall be distributed equally among the holders of

tickets selecting the second and third animals with other animals.

(h) If no ticket is sold requiring distribution under subsections (e)-(g) of this section, the net pool shall be distributed equally among the holders of tickets selecting the animal finishing first.

(i) If no ticket is sold requiring distribution under subsections (e)-(i), the net pool shall be distributed equally among the holders of tickets selecting the animal finishing second.

(j) If no ticket is sold requiring distribution under subsections (e)-(j), the net pool shall be distributed equally among the holders of tickets selecting the animal finishing third.

(k) If a trifecta race ends in a dead heat for first place, the winning combination shall include the first two animals as finishing in either first or second and the animal finishing third. If a trifecta race ends in a dead heat for second place, the winning combinations shall include the animal finishing first and the two animals finishing in a dead heat as finishing either second or third. If a trifecta race ends in a dead heat for third place, the winning combinations include the animals finishing first and second and either of the animals finishing in the dead heat as finishing third. In all combinations paid under this subsection, the net pool shall be divided into separate pools, calculated as a place pool, and paid out accordingly.

(l) If a trifecta race ends in a triple dead heat or double dead heats, the net pool shall be divided by the number of all win, place, and show combinations formed, calculated as separate pools, and paid out accordingly.

#### §321.111. Twin Trifecta.

(a) The twin trifecta wager is not a parlay and has no connection with or relation to the win, place, and show pools shown on the totalisator board. All tickets on the twin trifecta shall be calculated as a separate pool.

(b) A person purchasing a twin trifecta ticket must select the trifecta in each of two consecutive races designated by the association. The purchaser of a twin trifecta ticket selects the trifecta of the first of the twin trifecta races before the first twin trifecta is run. After the finish of the first twin trifecta race is official, the holder of a twin trifecta ticket with the winning combination must, before the second race is run, exchange the winning ticket for the money as determined by this section and a twin trifecta ticket that selects the trifecta for the second race. The association may not require the payment of additional money to exchange a ticket under this subsection.

(c) A mutuel entry or mutuel field may not start in a race on which there is

twin trifecta wagering.

(d) The twin trifecta pool shall be calculated in accordance with this subsection. Fifty percent of the net amount in that day's pool shall be distributed equally among the holders of tickets selecting the trifecta of the first twin trifecta race, unless otherwise provided by this section. Fifty percent of the net amount in the pool shall be distributed equally among the holders of exchange tickets selecting the trifecta of the second twin trifecta race, unless otherwise provided by this section.

(e) If no winning exchange ticket is issued in the second twin trifecta race, the second race pool shall not be distributed but shall be carried over and included in the twin trifecta second race pool for the next succeeding race performance. If no distribution is made from the second race pool at least once a year, the association shall distribute the accumulated money in the second race pool equally among the holders of exchange tickets selecting the finishing animals in the second race in the priority provided in subsection (1)-(1) of this section.

(f) If no ticket is sold on the winning combination in the first race of the twin trifecta, the first race pool shall be distributed equally among the holders of tickets selecting the horses finishing first and second.

(g) If no ticket is sold on the winning combination in the first race of the twin trifecta and no ticket is sold which selects the animals finishing first and second, the first race pool shall be distributed equally among the holders of the tickets selecting the animals finishing first and third.

(h) If no ticket is sold that requires distribution under subsections (f) or (g), the first race pool shall be distributed equally among the holders of tickets selecting the animals finishing second and third.

(i) If no ticket is sold that requires distribution of the first race pool under subsections (f)-(h), the first race pool shall be distributed equally among the holders of tickets selecting the animal finishing first.

(j) If no ticket is sold that requires distribution under subsections (f) -(i), the first race pool shall be distributed equally among the holders of tickets selecting the animal finishing second.

(k) If no ticket is sold that requires distribution under subsections (f) -(j), the first race pool shall be distributed equally among the holders of tickets selecting the animal finishing third.

(l) If no ticket is sold that requires distribution under subsections (f) -(k), the association shall refund all twin trifecta tickets for that performance. The twin trifecta races shall end and the pool shall be closed for the day.

(m) If after wagering has begun an

animal entered in the first twin trifecta race is scratched, declared out, or prevented from racing, all money wagered on the affected animal shall be deducted from the twin trifecta pool and refunded to the holders of tickets on the affected animal.

(n) If an animal entered in the second twin trifecta race is scratched, declared out, or prevented from racing, the holders of tickets on the affected animal may exchange the tickets for another selection. The association shall make public announcements, the windows shall be reopened if necessary and reasonable time shall be given for exchange of tickets.

(o) If either race of the twin trifecta ends in a dead heat in any of the first three positions, the pool shall be divided among all tickets selecting the correct order of finish, counting an animal in a dead heat as finishing in any of the first three positions.

(p) If the first race of the twin trifecta is canceled or declared no contest, the association shall cancel the twin trifecta and refund all money wagered on the twin trifecta. Any amount in the pool that was carried over from a previous performance shall be carried over to the next performance. If the second race of the twin trifecta is canceled or declared no contest, or if fewer than three animals finish, the second race pool shall be distributed equally among the holders of twin trifecta exchange tickets.

### §321.112. Pick Six.

(a) The pick six wager is not a parlay and has no connection with or relation to the win, place, and show pools shown on the totalisator board. All tickets on the pick six shall be calculated as a separate pool.

(b) The pick six pari-mutuel pool consists of amounts contributed for a selection to win only in each of six races designated by the association. Each person purchasing a pick six ticket shall designate the winning animal in each of the six races comprising the pick six.

(c) A mutuel entry or mutuel field in a race that is part of the pick six races shall race as a single wagering interest for the purpose of mutuel pool calculations and payoffs to the public.

(d) The pick six pool shall be distributed as provided by this section. The net pool in the pick six pool is divided into the major share (75%) and the minor share (25%). The major share shall be distributed among holders of pick six tickets which correctly designate the winner in each of the six races comprising the pick six. The minor share shall be distributed among holders of pick six tickets which correctly designate the most winners, but fewer than six, of the races comprising the pick six.

(e) If a pick six ticket designates a selection and the selection is scratched, de-

clared out, or prevented from racing, the favorite, as determined by the amounts wagered in the win pool at the start of the race, will be substituted for the nonstarting selection for all purposes, including mutuel pool calculations and payoffs to the public.

(f) If a race in the pick six ends in a dead heat for first place, all animals in the dead heat are winners for purposes of calculating the pick six pool.

(g) If the stewards or racing judges cancel or declare as a no contest three or more of the pick six races, the pick six is canceled and the association refund all pick six tickets. If one or two races in the pick six are canceled or declared as no contest, the net amount of the pick six pools shall be distributed among the holders of the tickets that designate the most winners in the remaining races.

(h) A pick six ticket may not be sold, exchanged, or canceled after the close of wagering on the first of the pick six races.

(i) A person may not disclose the number of pick six tickets sold or the number or amount of tickets selecting winners in the pick six races before the stewards or racing judges have declared the last race of the pick six races to be official.

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 May 23, 1989.

TRD-8904593 Paula Cochran Carter  
Legal Counsel  
Texas Racing Commission

Earliest possible date of adoption: June 30, 1989

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

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## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 75. Curriculum

#### Subchapter A. General Provisions

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

The Texas Education Agency proposes amendments to §75.2, and §75.151, concerning high school graduation requirements. The amendment to §75.2 would require school districts to inform students and their parents or guardians annually of courses recommended for students preparing to attend college. The amendment to §75.151 would prescribe specific courses in the core areas of English language arts, mathematics, science, social studies, and other languages

recommended for students planning to attend college. In addition, they would require a board of trustees in a school district that offers more than one unit of reading improvement for state graduation credit to adopt policies to identify students in need of remedial reading instruction.

Lynn Moak, deputy commissioner for research and information, 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 or small businesses as a result of enforcing or administering the sections.

Mr. Moak and Oscar A. Rodriguez, Planner I, have 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 is the improved preparation of high school students for college. 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 Oscar A. Rodriguez, Office of Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

### • 19 TAC §75.2

The amendment is proposed under the Texas Education Code, §21.101, which authorizes the State Board of Education to make rules concerning the well-balanced curriculum.

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 May 22, 1989.

TRD-8904556 W. N. Kirby  
Commissioner of Education

Proposed date of adoption: July 8, 1989

For further information, please call: (512) 463-9212

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## Subchapter F. Graduation Requirements

### • 19 TAC §75.151

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

The amendment is proposed under the Texas Education Code, §21.101, which authorizes the State Board of Education to make rules concerning the well-balanced curriculum.

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 May 22, 1989.

TRD-8904557 W. N. Kirby  
Commissioner of Education

Proposed date of adoption: July 8, 1989

For further information, please call: (512) 463-9212

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**Chapter 121. Public School  
Finance-Personnel**

**Subchapter C. Years of  
Service for Salary Increment  
Purposes**

• **19 TAC §121.31**

The Texas Education Agency proposes an amendment to §121.31, concerning valid certification as a prerequisite for creditable service under certain circumstances. The amendment would allow an individual who was employed outside of Texas when the testing requirement was initiated in the 1986-1987 school year or thereafter to be granted credit for service outside the state as long as the service was in an entity recognized for creditable service and the testing requirement was successfully completed within six months of being employed in a Texas public elementary or secondary school.

Lynn Moak, deputy commissioner for research and information, 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 or small businesses as a result of enforcing or administering the section.

Mr. Moak and Oscar A. Rodriguez, Planner I, have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section is that individuals who could not have reasonably been expected to take the certification examination would receive credit for salary increment purposes for creditable service under certain circumstances. There is no anticipated economic cost for individuals who are required to comply with the section.

Comments on the proposal may be submitted to Oscar A. Rodriguez, Office of Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

**§121.31. General Provisions Concerning Years of Service.**

(a)-(d) (No change.)

(e) For persons employed during the 1986-1987 school year or any year

thereafter in an entity outside the State of Texas that is recognized for creditable service, the years of experience may be recognized for salary increment purposes provided the person performed satisfactorily on the Texas examination of current administrators and teachers within six months of employment in a Texas public elementary or secondary school.

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 May 22, 1989

TRD-8904570 W. N. Kirby  
Commissioner of Education

Proposed date of adoption: July 8, 1989

For further information, please call: (512) 463-9212

◆ ◆ ◆  
**TITLE 25. HEALTH  
SERVICES**

**Part I. Texas Department of  
Health**

**Chapter 1. Board of Health**

• **25 TAC §1.151**

The Texas Department of Health proposes new §1.151, concerning the Medical Advisory Board. The new section covers the operation of the Medical Advisory Board and the Medical Standards on Motor Vehicle Operations Division. The Medical Advisory Board advises the Texas Department of Public Safety on the driving capabilities of persons with medical limitations. The board also is administratively attached to the Department's Medical Standards on Motor Vehicle Operations Division, which in turn provides administrative support for the board. The proposed new section will cover requirements concerning the administration and operation of the board and the division.

Stephen Seale, chief accountant III, has determined that for each year of the first five years that the proposed new section will be in effect there will be no fiscal implications to state or local government, or small businesses.

Mr. Seale also has determined that for the first five-year period that the section will be in effect the public benefits anticipated as a result of enforcing the new section as proposed will be that the general public will be aware of the organization and administrative requirements governing the operation of the Department's Medical Standards on Motor Vehicle Operations Division and the Medical Advisory Board. There is no anticipated additional economic cost to individuals who are required to comply with the new section.

Comments on the proposal may be submitted to Charles English, Medical Standards on Motor Vehicle Operations Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after the proposed rules are published in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 6687b, §21A, which authorizes the Texas Board of Health to adopt rules concerning the operation of the Medical Standards on Motor Vehicle Operations Division and the Medical Advisory Board; and Article 4414b, §1.05, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

**§1.151. Operation of the Medical Advisory Board and the Medical Standards on Motor Vehicle Operations Division.**

(a) Purpose. The purpose of this section is to establish the requirements governing the operation and administration of the Medical Standards on Motor Vehicle Operations Division and the Medical Advisory Board.

(b) Definitions. The following words and terms when used in this section, shall have the following meanings, unless the text clearly indicates otherwise.

(1) Board—The Medical Advisory Board (MAB) is the body of physicians and optometrists established under authority of Texas Civil Statutes, Article 6687b, to advise the Texas Department of Public Safety regarding the driving capability of persons with medical limitations.

(2) Medical standards on Motor Vehicle Operations (MSMVO) Division—A division of the Texas Department of Health which is responsible for administering board activities.

(3) TDH—The Texas Department of Health.

(4) DPS—The Texas Department of Public Safety.

(5) Commissioner—The Commissioner of Health.

(6) Current medical information—The medical information from a licensed practitioner or a licensed medical facility which is less than six months old. Medical information which is more than six months old is acceptable if the examiner clearly shows the condition is cured and no further treatment is recommended.

(7) Quorum—Three members are required to be present to meet and conduct board duties.

(8) Examining physician—A person who is licensed by the Texas Board of Medical Examiners to practice medicine in the State of Texas or who is licensed by the state in which he/she resides and who furnishes medical information to the board concerning a driver license applicant.

(9) Board member—A physician or optometrist appointed by the Commissioner to make medical recommendations to DPS regarding an applicant's ability to drive.

(10) Board review—The process

involved in determining a recommendation regarding an applicant's ability to drive safely.

(11) Case—All records obtained by TDH on an individual driver license applicant and assigned a unique number by MSMVO Division staff.

(12) Opinion—A formal written recommendation by the board to DPS regarding an applicant's ability to drive safely.

(13) Approval—A board recommendation to DPS to approve the license requested.

(14) Denial—A board recommendation to DPS to deny the license requested.

(15) Applicant—An individual referred by DPS to the board for medical review.

(16) Minutes—The minutes of a board meeting, which consist of the computer opinion summary printout and the individual opinion sheets.

(17) Counselor—A trained worker in a licensed medical facility working under the supervision of a medical doctor.

(18) Psychologist—A person trained in psychology and licensed by the state in which he/she lives to offer counseling to the general public.

(19) Optometrist—A person who is licensed by the Texas Optometry Board to practice Optometry in the State of Texas or who is licensed by the state in which he or she resides.

Chiropractor—A person trained in chiropractic and licensed to practice by the state in which he or she resides.

(c) Appointment and terms of office.

(1) The present board is divided into four groups: Group 1's term of office will expire July 1, 1989; Group 2's term will expire January 1, 1990; Group 3's term will expire July 1, 1990; and Group 4's term will expire January 1, 1991.

(2) Upon the expiration of the term of office for each group as described in paragraph (1) of this subsection, the commissioner will appoint the new group for a term of two years. When a vacancy occurs on the board, the commissioner will appoint a new member for a two year term. The commissioner may appoint an existing member to serve for another term.

(d) Meetings.

(1) A quorum is necessary to conduct a meeting. Failure to attend scheduled meetings may result in dismissal from the board.

(2) The board normally meets in Austin, but may meet in any other Texas city approved by the commissioner.

(3) The board will meet in executive session to discuss records, reports, or testimony relating to the medical condition of an applicant or licensee. All such records, reports, and testimony are for the confidential use of the board and DPS and may not be disclosed to others except as authorized by Texas Civil Statutes, Article 6687L.

(4) The board will keep minutes of its meetings.

(e) Official records.

(1) Current medical information must be provided to the board and to the MSMVO Division which is pertinent to the medical condition(s) for which the DPS requested the review. Information must be provided by a licensed physician or a licensed medical facility, with the following exceptions.

(A) A psychologist or licensed counselor may provide information regarding treatment for a mental condition and/or drug or alcohol abuse.

(B) A chiropractor may provide information regarding treatment for back and/or neck pain.

(C) An optometrist may provide vision information.

(2) In its deliberations, the board panel may examine any medical records or reports containing material which may be relevant to the ability of the applicant to operate a motor vehicle safely. Additional information supplied to TDH or DPS may be utilized. When supplemental information is deemed necessary and is requested of the applicant, the MSMVO Division must receive the information in order for the board to act.

(3) All records provided to and created by the board shall be kept confidential. An examining provider may request and be mailed a copy of any medical information he or she provided. Certifications of board proceedings will be prepared for DPS upon request.

(4) Photocopies of a complete case file may be requested by an applicant, the applicant's attorney, or DPS exclusively for use in a court proceeding in accordance with Texas Civil Statutes, Article 6687b, §22 or §31. Upon written request and by advance payment of the cost per page as set by the State Purchasing and General Services Commission and the department, photo copies of the records will be released to the applicant or his/her legal representative.

(f) Required administrative information. In order for an applicant's case to be processed, the examining provider's signature and the applicant's or legal guardian's signature on the authorization to

release medical information form must be received by the MSMVO Division. While not mandatory, the examining provider's address and telephone number, the applicant's social security number, and the date of examination may also be requested. All information will be obtained with the permission and knowledge of the applicant and remain confidential. The applicant is responsible for payment of any professional fees connected with the examination. The information must be returned to the Medical Standards on Motor Vehicle Operations Division, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(g) Impartiality. Any board member who is unable to be impartial in any case before the board shall so declare this partiality to the members present and shall not participate in any board proceedings involving that case.

(h) License responsibility. The members on the board will issue opinions only. The final decision to issue, renew, restrict, or revoke a license will rest entirely with DPS.

(i) Meeting attendance fees. Board members will be paid a meeting attendance fee in an amount as authorized by state law.

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 May 23, 1989.

TRD-8904538

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

Proposed date of adoption: August 2, 1989.

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

◆ ◆ ◆  
Chapter 37. Maternal and  
Child Health Services  
Chronically Ill and Disabled  
Children's Services

• 25 TAC §37.90

The Texas Department of Health proposes an amendment to §37.90, concerning chronically ill and disabled children's services. The section covers approved providers and facilities. The amendment will establish the criteria and procedures for cleft/craniofacial care facilities for program use.

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

Mr. Seale also has determined that for the first five years that the section will be in effect the public benefit will be the establishment of

procedures for approving cleft/craniofacial care facilities. There is no anticipated economic cost to individuals who are required to comply with section as proposed.

Comments on the proposal may be submitted to Gene Pipkin, Acting Chief, Bureau of Chronically Ill and Disabled Children's Services, 1100 West 49th Street, Austin, Texas 78756. Public comments will be accepted for 30 days after this proposed section has been published in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4419c, §8, which provide the Texas Board of Health with the authority to adopt rules concerning the chronically ill and disabled children's services; and Texas Civil Statutes, Article 4414b, §1.05, which provide 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)-(3) (No change.)

(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) (No change.)

(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 on three years. Applications may include an application form, pro-

vider agreements, resumes of active C/C team participants, and a description of team composition and process.

(ii) Location. The C/C team will physically meet in a clearly identified location. Meetings should be held where adequate examination facilities and record processing and storage facilities are available.

(iii) Administrative responsibilities of the C/C team.

(I) Coordination. The administrator of the C/C team is clearly identified and is responsible for:

(-a-) specifying the mechanism for accepting referrals and providing community and patient education;

(-b-) scheduling meetings of the C/C team members and scheduling patient appointments;

(-c-) summarizing the C/C team's decisions;

(-d-) assisting patients with CIDC Program eligibility requirements;

(-e-) assuring confidentiality;

(-f-) requesting required authorization for covered services from CIDC Program;

(-g-) maintaining centralized records; and

(-h-) maintaining communication (including team reports) with the patient's local physician/dentist and other local resources involved in order to facilitate interim and follow-up care.

(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) Frequency of C/C team reviews. Each child should be discussed by the team in a joint meeting

at least one time per year; on the recommendation of the C/C team, some single cases, after six-seven years of age, may be seen every other year.

(iv) C/C team responsibilities to the CIDC Program. An approved C/C team agrees to:

(i) abide by the CIDC Program rules and regulations; and

(ii) submit an annual report with content as specified by the CIDC Program (due 30 days after the end of the state fiscal year).

(v) 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.

(vi) Composition of a comprehensive C/C team.

(I) A comprehensive C/C team must be composed of the following active participants:

(-a-) a plastic surgeon;

(-b-) an oral surgeon;

(-c-) an otolaryngologist;

(-d-) a pediatrician;

(-e-) an orthodontist and a pedodontist (one of these members should have experience in prosthodontics);

(-f-) a speech language pathologist (CCC);

(-g-) an audiologist (CCC);

(-h-) a social worker (MSW); and

(-i-) a registered nurse.

(II) Consultants in the following areas must be available to the team:

- (a-) neurology;
- (b-) neurosurgery;
- (c-) ophthalmology;
- (d-) radiology (should be board certified but CDC Program approval not required);
- (e-) genetic counseling;
- (f-) nutritional counseling; and
- (g-) psychology.

(III) Physicians and dentists must be approved as CDC Program providers, with the exception of radiologists.

(vii) 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.
- (viii) Case coordination.

(1) Each member of the C/C team, in cooperation with other members of the C/C team, will be responsible for his/her specific area of management.

(II) One member of the C/C team will be designated as the case manager. The case manager will be responsible for the coordination of services for each patient.

(III) The 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 the C/C team. A copy of the plan will be given to the family, referring physician, and upon request, to the TDH regional social worker. The plan should include specific treatments and time frames for all disciplines and agencies involved.

(IV) When appropriate, a CDC Program approved physician, in the child's home community,

should be designated for follow-up and emergencies.

(V) Some care, other than surgery, may be delivered by providers other than the named team members. These providers may be from a different geographic area than the team. However, there must be communication between the independent providers and the team, and services must be consistent with the team treatment plan. All providers must meet CDC Program guidelines in accordance with this section. The plan should be monitored by the C/C team who will provide appropriate follow-up.

(VI) Communication, including 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 team must 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.

(ix) 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)-(v) and (viii) of this subparagraph. All of the members must meet the CDC Program provider enrollment requirements of this section. Affiliated C/C teams must be composed of a minimum of:

- {-1-} a surgeon
- {-2-} an orthodontist
- {-3-} a speech therapist

(-b-) An affiliated C/C team must consult with and coordinate treatment plan development with a comprehensive C/C team. Such coordination must occur face to face or through teleconferencing with C/C team members present.

(-c-) In the application process, an affiliated C/C team must specify the comprehensive C/C team with which it is linked. A letter of agreement between the two C/C teams must accompany the application. The letter must verify the linkage between the C/C two teams and must specify the following:

- {-1-} the area
- {-2-} the area
- {-3-} the area

(II) Corresponding members.

(-a-) Any CDC 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 of the treatment plan established by the comprehensive C/C team.

(-c-) Regular communication between the C/C team and the corresponding member must occur.

(x) Implementation.

(I) Comprehensive C/C teams and affiliated C/C teams shall be designated no later than February 1, 1990. After February 1, 1990, the CDC Program will provide authorization and reimbursement for invasive procedures for patients with cleft lip/palate and/or craniofacial anomalies only if performed by approved teams. Teams that obtain CDC approval after February 1, 1990, and prior to September 1, 1990, may appeal denied claims for invasive procedures performed within the transition period (February 1, 1990 to September 1, 1990). After September 1, 1990, only approved C/C teams will be reimbursed for invasive procedures and the special appeals provision will be removed. Corresponding members may be reimbursed for non-invasive follow-up and interim care only.

(II) The final decision regarding approval will only be made when the CDC 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. 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 CDC Program required reports and documentation. In addition to required reports and documentation, the CDC Program may verify compliance with the standards in this subparagraph through site visits.

(C) [(B)] Other types of centers. The 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)-(7) (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 May 23, 1989.

TRD-8904523

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

Proposed date of adoption: August 12, 1989.  
For further information, please call: (512)  
458-7355

◆ ◆ ◆  
**Chapter 289. Occupational  
Health and Radiation  
Control**

**Texas Regulations for Control  
of Radiation**

• 25 TAC §289.113

The Texas Department of Health proposes an amendment to §289.113, concerning the Texas regulations for control of radiation. Section 289.113 adopts by reference Part 21 of the Texas Regulations for the Control of Radiation titled "Standards for Protection Against Radiation".

Part 21 will be amended as follows. A new section 21.017 will be added, concerning the implementation of a memorandum of understanding (MOU) on radioactive wastewaters between the department and the Texas Water Commission. A new appendix, 21-F, will be added which contains the MOU. The memorandum provides for the coordination of requirements of the agencies in their licensing and permitting programs, and for a consistent and integrated approach to avoid duplication in licensing and permitting of radioactive wastewaters.

Stephen Seale, chief accountant III, has determined that for the first five-year period that the proposed section will be in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the section.

Mrs. Ruth E. McBurney, C.H.P., director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, 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 as proposed will be to formalize cooperation between the Texas Department of Health and the Texas Water Commission. The MOU will institute an integrated approach for licensing, permitting, inspection, and compliance of wastewaters that contain radioactive material. Because the MOU provides for cooperation in license or application review, as well as joint inspections, there may be a time and cost savings due to collective expertise of both agencies and to those required to comply with the section.

Comments on the proposal may be presented in writing to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 30 days following publication of this proposed amendment in the *Texas Register*. In addition, a public hearing will be held at 10 a.m. on June 21, 1989, in the conference room of the Bureau of Radiation Control, 1212 East Anderson Lane, Austin.

The amendment is proposed under Texas Civil Statutes, Article 4590f, §§4(d)(3), 4(d)(5), and 4(d)(12), which provide the Texas Board of Health with the authority to adopt rules which provide for licensing and registration relating to control and transport of

sources of radiation within the State of Texas; to advise, consult, and cooperate with other agencies of the state; and to adopt as a rule any memorandum of understanding between the department and any other state agency. The amendment is also proposed under Texas Civil Statutes, Article 4414b, §1.05, 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.

*§289.113. Standards for Protection Against Radiation.*

(a) The Texas Department of Health adopts by reference Part 21, Standards for Protection Against Radiation, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in August 1989 [May 1987].

(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 May 23, 1989.

TRD-8904539      Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: August 12, 1989.

For further information, please call: (512)  
835-7000

◆ ◆ ◆  
**Asbestos Exposure Abatement  
in Public Buildings**

• 25 TAC §289.143, §289.144

*(Editor's Note: The Texas Department of Health proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments are in the Emergency Rules section of this issue.)*

The Texas Department of Health proposes amendments to §289.143 and §289.144, concerning asbestos exposure abatement in public buildings. The sections cover licensure, and licensing standards.

The amendments reduce the schedule of fees for the restricted licenses of building owners or managers and their asbestos activity supervisors to enable them to perform small-scale, short-duration operations or maintenance or repair activities involving asbestos materials. The amendments also enable individuals who are employees of a building owner or manager, and who are otherwise qualified, to apply for restricted licenses as asbestos supervisors without having previous experience with asbestos abatement practices and procedures.

Stephen Seale, Chief Accountant III, has determined that for the first five years that the sections as proposed are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on

state government will be an estimated additional cost of \$39,000 for fiscal year 1989, \$60,000 for fiscal year 1990, \$72,000 for fiscal year 1991, and \$80,000 each year for fiscal years 1992 and 1993. It is estimated that the fees will generate an estimated increase in revenue of \$57,000 for fiscal year 1989, \$85,000 for fiscal year 1990, \$102,000 for fiscal year 1991, \$125,000 for fiscal year 1992, and \$135,000 for fiscal year 1993. The cost to small businesses will be the fees described in §289.143. The fees for employees of small businesses will be the same as that for employees of large businesses. There is no anticipated fiscal implications to local government.

Mr. Seale also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the amendments will be a substantial reduction in the number of exposures to airborne asbestos fibers in buildings accessible to the public. The possible economic cost to individuals who are required to comply with the sections as proposed will be a licensing and compliance fee of \$475 for each year of fiscal year 1989 - 1993.

Written comments on the proposed sections may be submitted to Jerry Lauderdale, P.E., Director, Occupational Safety and Health Division, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The amendments are proposed under authority of Texas Civil Statutes, Article 44577-3a, §11, which provides the Board of Health with the authority to adopt rules covering the licensure of persons who remove or encapsulate asbestos in buildings; and Texas Civil Statutes, Article 4414b, §1.05, which provide the board with the authority to perform every duty imposed on the board, the commissioner, and the department.

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 May 23, 1989.

TRD-8904540      Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: August 12, 1989.

For further information, please call: (512)  
458-7287

◆ ◆ ◆  
**Chapter 337. Water Hygiene**

**Drinking Water Standards  
Governing Drinking Water  
Quality and Reporting  
Requirements for Public  
Water Supply Systems**

• 25 TAC §§337.1, 337.3, 337.7,  
337.12

The Texas Department of Health proposes amendments to §337.1, §337.3, §337.7, and

§337.12, concerning the drinking water standards governing drinking water quality and reporting requirements for public water supply systems. The amendments cover purpose, standards of chemical quality, turbidity sampling and analytical requirements, and approved laboratory.

These amendments are necessary to update the sections for clarity and conformity with federal regulations as required in the Department's primacy agreement with the United States Environmental Protection Agency. In addition, the amendment to §337.3 will revise the public notification requirements by establishing various options for public notification when drinking water standards are violated.

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

Mr. Seale also has determined that for the first five years that the sections are in effect the public benefit will be that the sections will be updated and amended for clarification; and the public notification requirements modified so that they will be compatible with the notification requirements as promulgated by the United States Environmental Protection Agency. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposed amendments may be submitted to Charles R. Maddox, P. E., Chief, Bureau of Environmental Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7542. Comments will be accepted for 30 days after publication of the proposed amendments in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4477-1, §23, which authorize the Texas Board of Health to adopt rules concerning drinking water and water systems; and Article 4414b, §1.05, which provide 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.

**§337.1. Purpose.** The purpose of these standards is to assure the safety of public water supplies with respect to bacteriological, chemical, and radiological quality and to further efficient processing through control tests, laboratory checks, operating records, and reports of public water supply systems. These standards are written so as to comply with the requirements of Public Law 93-523, the Federal "Safe Drinking Water Act," and the "[Interim] Primary Drinking Water Regulations" which have been promulgated by the Environmental Protection Agency, under the authority granted by Public Law 93-523.

**§337.3 Standards of Chemical Quality.** All analyses to determine compliance shall be performed by laboratories approved by the department. Analyses shall be per-

formed on treated water as furnished to the customer.

(1)-(6) (No change)

(7) **Variations and exemptions.** Variations and exemptions shall be defined as follows.

(A)-(E) (No change)

(F) **Procedures for public comment and public hearings on variations, exemptions, and compliance schedules as a condition of a variance or exemption, will be as stated in the Environmental Protection Agency National [Interim] Primary Drinking Water Regulations, of 40 Code of Federal Regulations, §141.4 and §142.20.**

(8) **Public notification requirements.**

(A) **Maximum contaminant level (MCL), treatment technique, and variance and exemption schedule violations. The owner or operator of a public water system which fails to comply with an applicable MCL or treatment technique established by these standards or which fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, shall notify persons served by the system as follows. [Status reports are required of any public water supply systems which:]**

(i) **Except as provided in clause (iii) of this subparagraph, the owner or operator of a public water system must give notice: [violates maximum allowable levels:]**

(I) **by publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than 14 days after notification from the department of the violation or failure. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and**

(II) **by mail delivery (by direct mail or with the water bill), or by hand delivery, not later than 45 days after the violation or failure. The department may waive mail or hand delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the 45-day period. The department must make the waiver in writing and within the 45-day period; and**

(III) **for violations of the MCLs of contaminants that may pose an acute risk to human health, by fur-**

ishing a copy of the notice to the radio and television stations serving the area served by the public water systems as soon as possible but in no case later than 72 hours after the violation. The following violations are acute violations:

(-a-) any violations specified by the department as posing an acute risk to human health;

(-b-) violation of the MCL for nitrate as defined in paragraph (1) of this section and determined according to paragraph (6)(B) of this section.

(ii) **Except as provided in clause (iii) of this subparagraph, following the initial notice given under clause (i) of this subparagraph, the owner or operator of the public water system must give notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation or failure exists. [fails to use prescribed treatment techniques:]**

(iii) **Alternate notification requirements shall be as follows. [is granted a variance or exemption:]**

(I) **In lieu of the requirements of clause (i)(I) of this subparagraph, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must give notice within 14 days after notification from the department of the violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.**

(II) **In lieu of the requirements of clauses (i) and (II) of this subparagraph, the owner or operator of a noncommunity water system may give notice within 14 days after notification from the department of the violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.**

[(iv) fails to comply with a variance or exemption schedule; or]

[(v) fails to perform required monitoring.]

(B) **Other violations, variations, exemptions. The owner or opera-**



tor of a public water system which fails to perform monitoring required by these standards, fails to comply with a testing procedure established by these standards, or is subject to a variance or exemption granted under paragraph (7) of this section, shall notify persons served by the system as follows: [Status reports shall conform to the following requirements.]

(i) Except as provided in clause (iii) of this subparagraph, the owner or operator of a public water system must give notice within three months of the violation or granting of a variance or exemption by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area. [Notices given shall be written in a manner reasonably designated to inform fully the users of the system.]

(ii) Except as provided in clause (iii) of this subparagraph, following the initial notice given under clause (i) of this subparagraph, the owner or operator of the public water system must give notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists. Repeat notice of the existence of a variance or exemption must be given every three months for as long as the variance or exemption remains in effect. [Notices shall be conspicuous and shall not use unduly technical language, unduly small print, or other methods which would frustrate the purpose of the notice.]

(iii) Alternate notification requirements shall be as follows. [Notices shall disclose all material facts regarding the subject, including the nature of the problem, and where appropriate, a clear statement that a primary drinking water regulation has been violated and any preventive measures that should be taken by the public.]

(I) In lieu of the requirements of clauses (i) and (ii) of this subparagraph, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must give notice, within three months of the violation or granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places with the area served by the system. Posting must continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery must be repeated at least every three months for as long as the violation exists or a variance or exemption remains in effect.

(II) In lieu of the requirements of clauses (i) and (ii) of this subparagraph, the owner or operator of a noncommunity water system may give notice, within three months of the violation or the granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation exists, or a variance or exemption remains in effect. Notice by hand delivery must be repeated at least every three months for as long as the violation exists or a variance or exemption remains in effect.

[(iv) Bilingual notice shall be given where designated by the department.]

(C) Notice to new billing units. The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins. [Status reports required under subparagraph (A) of this paragraph must be issued as follows:]

[(i) with the next water bill or by written notice if water bill is issued quarterly or not issued at all, and quarterly thereafter;

[(ii) in such other form as may be prescribed by the department, including posting of conspicuous notice for noncommunity systems;

[(iii) in the case of a failure to comply with a maximum contaminant level which is not corrected promptly after discovery, the supplier of water must give other general public notice of the failure, in addition to notice by direct mail, in a manner specified by the department. Such notice may consist of newspaper advertisement, press release, or other appropriate means.

[(iv) The requirements of clause (iii) of this subparagraph may be waived by the Department if it determines that the violation has been corrected promptly after discovery and the cause of the violation has been eliminated.]

(D) General content of public notice. Each notice required by this paragraph must provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the

consumer should take until the violation is corrected. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall include the telephone number of the owner, operator, or designee of the public water system as a source of additional information concerning the notice. Where appropriate, the notice shall be multi-lingual. [Example copies of all status reports required under this subsection must be sent to the department within 10 days of its distribution as proof of notification.]

(E) Mandatory health effects language. In complying with subparagraph D of this paragraph, the owner or operator of a public water system shall include the language specified for each contaminant in 40 Code of Federal Regulations, §141.32. Specified language is available from the department.

(F) Proof of public notification. Example copies of all notifications required under this paragraph must be submitted to the department within 10 days of its distribution as proof of public notification.

#### §337.7 Turbidity Sampling and Analytical Requirements.

(a) (No change)

(b) If the result of a turbidity analysis indicates that the maximum allowable level has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour. If the repeat sample confirms that the maximum allowable limit has been exceeded, the supplier of water shall report to the Department within 48 hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two samples taken on consecutive days exceeds 5 TU, the supplier of water shall report to the Department and notify the public in accordance with §337.3(8) of this title (relating to Standards of Chemical Quality).

(c) (No change.)

#### §337.12. Approved Laboratory.

(a)-(b) (No change)

(c) Methods of analysis shall be as specified in 40 Code of Federal Regulations, §141.21(a) (microbiological), §141.22(a) (turbidity), §141.23(f) (inorganics), §141.24(e), (f), and (g) (organics), and §141.25 (radionuclides) of the national [Interim] primary drinking water regulations, or by any alternative analytical technique as specified by the department [State] and

approved by the Administrator under 40 Code of Federal Regulations §141.27.

(d) (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 May 23, 1989.

TRD-8904524 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: August 12, 1989.

For further information, please call: (512) 458-7542

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 29. Purchased Health Services

##### Subchapter L. General Administration

###### • 40 TAC §29.1126

The Texas Department of Human Services (DHS) proposes new §29.1126, concerning in-home total parenteral hyperalimentation services in its Purchased Health Services chapter. Section 29.1126 specifies that the Texas Medical Assistance Program will cover in-home total parenteral hyperalimentation.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect is an estimated additional cost of \$366,375 in fiscal year 1990; \$382,848 in fiscal year 1991; \$398,253 in fiscal year 1992; \$429,348 in fiscal year 1993; and \$471,787 in fiscal year 1994. There is no anticipated effect on local government or small businesses as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the availability of total parenteral hyperalimentation services in an in-home arrangement for recipients who require long-term support of these services. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-262, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Hu-

man Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

##### §29.1126. In-home Total Parenteral Hyperalimentation Services.

(a) Subject to the specifications, conditions, limitations, and requirements established by the department, in-home total parenteral hyperalimentation services are available to eligible recipients who require long-term support because of extensive bowel resection and/or severe advanced bowel disease in which the bowel cannot support nutrition. Covered services must be reasonable, medically necessary, and prescribed by the recipient's physician (M.D. or D.O.). The physician must be licensed in the state where services are rendered.

(b) The department or its designee must prior authorize the services. Prior authorization requests must include all pertinent medical records as required by the department or its designee to justify the medical necessity of the long-term total parenteral hyperalimentation. Prior authorization is a mandatory requirement for payment.

(c) Covered services include, but are not necessarily limited to:

(1) parenteral hyperalimentation solutions and additives as ordered by the recipient's physician.

(2) supplies and equipment including refrigeration, if necessary, that are required for the administration of prescribed solutions and additives;

(3) education of the recipient and/or appropriate family members/support persons regarding the in-home administration of total parenteral hyperalimentation before administration initially begins. Education must include the use and maintenance of required supplies and equipment.

(4) visits by a registered nurse appropriately trained in the administration of hyperalimentation. The nurse must visit the recipient at least once per month to monitor the recipient's status and to provide ongoing education to the recipient and/or family members/support persons regarding the administration of hyperalimentation;

(5) customary and routine lab work required to monitor the recipient's status;

(6) enteral supplies and equipment, if medically necessary, in conjunction with total parenteral hyperalimentation.

(d) Providers of in-home total parenteral hyperalimentation must:

(1) comply with all applicable federal, state, and local laws and regulations;

(2) be enrolled in and participating in Medicare as a supplier of inhome

total parenteral hyperalimentation;

(3) be enrolled and approved for participation in the Texas Medical Assistance Program;

(4) sign a written provider agreement with the department or its designee. By signing the agreement, the provider agrees to comply with the terms of the agreement and all requirements of the Texas Medical Assistance Program including regulations, rules, handbooks, standards, and guidelines published by the department or its designee; and

(5) bill for covered services in the manner and format prescribed by the department or its designee.

(c) The department or its designee reimburses each provider on a monthly basis. Reimbursement is based on one-twelfth of the maximum yearly fee established by the department. The department or its designee does not reimburse more than a one-week supply of solutions and additives if the solutions and additives are shipped and not used because of the recipient's loss of eligibility, change in treatment, or inpatient hospitalization. The provider must exclude from its monthly billing any days that the recipient is an inpatient in a hospital or other medical facility or institution. Payment for partial months will be prorated based upon actual days of administration. Hospital outpatient departments furnishing in-home total parenteral nutrition must be separately enrolled as a provider meeting all requirements stipulated in subsection (d) of this section. Reimbursement to hospital outpatient departments furnishing in-home total parenteral nutrition may not exceed the maximum yearly fee established by the department.

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 May 24, 1989.

TRD-8904583 Charles Stevenson  
Acting Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: September 1, 1989.

For further information, please call: (512) 450-3765

## Chapter 48 Community Care for Aged and Disabled

### Eligibility

#### • 40 TAC §48.2914

The Texas Department of Human Services (DHS) proposes an amendment to §48.2914, concerning eligibility for special services to handicapped adults, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to require that successful applicants have appropriate characteristics

that match the services available through the program. Failure to meet the requirement, that is, a change in the client's need for a specific service, is currently specified in §48.3903 of this title (relating to Denial, Reduction, and Termination of Benefits) as a reason to terminate services.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that clients' needs will be appropriately met, and services are less likely to be misdirected. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-223, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

**§48.2914. Special Services to Handicapped Adults.** To be eligible for special services to handicapped adults, clients must score at least nine on the client needs assessment questionnaire. Applicants may be admitted to the 24-hour attendant care program only if their needs do not exceed the program's available services.

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 May 24, 1989.

TRD-8904564

Charles Stevenson  
Acting Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: September 1, 1989.

For further information, please call: (512) 450-3765

## Eligibility

### § 40 TAC §48.2940

The Texas Department of Human Services (DHS) proposes new §48.2940, concerning adult protective emergency client services, in its Community Care for Aged and Disabled chapter. The purpose of the proposal is to define services, establish eligibility requirements, define limitations to services, and explain the availability of funds.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that adult protective services clients will have access to services needed to alleviate abuse, neglect, or exploitation. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-203, Texas Department of Human Services 222-E P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

**§48.2940. Adult Protective Emergency Client Services.**

(a) Emergency client services are services provided in accordance with the Human Resources Code, §48.002(5), including, but not limited to, emergency shelter, medical and psychiatric assessments, in-

home care, residential care, heavy house-cleaning, minor home repairs, money management, transportation, emergency food, medication, and other supplies. Specific emergency client services are only available in a community if those specific services are not available through other state and local resources.

(b) To be eligible for emergency client services, an elderly or disabled adult must be receiving adult protective services from DHS in accordance with the Human Resources Code, §§48.002(5) and 48.021(a), and have a service plan developed by the department under these sections which indicates that emergency client services are needed to remedy abuse, neglect, or exploitation. All other available resources must be used where feasible before emergency client services are initiated.

(c) All services are not available in all geographic areas of the state. The department may limit the units of service or length of time that clients can receive emergency client services based upon service plans, availability of funds, and availability of service providers.

(d) If the region does not have sufficient funds to serve all eligible clients, or if the provider agency in an eligible client's area is operating at capacity, the client will not be able to receive services at the time he is determined eligible. Clients who are still in need of services when services are again available will be given priority based upon the date of the service plan indicating the need for emergency client services.

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 May 24, 1989.

TRD-8904565

Charles Stevenson  
Acting Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: September 1, 1989.

For further information, please call: (512) 450-3765



Name: Livi Overstreet

Grade: 8

School: T.H. McDonald Middle School, Mesquite

# 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 within 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 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 33. State Board of Education

##### Subchapter C. Investment of the Permanent School Fund

###### • 19 TAC §33.54

The Texas Education Agency has withdrawn from consideration for permanent adoption an emergency amendment which appeared in the March 31, 1989, issue of the *Texas Register* (14 TexReg 1621). The effective date of this withdrawal is June 12, 1989.

Issued in Austin, Texas, on May 23, 1989

TRD-8904561 Oscar A. Rodriguez  
Planner I  
Texas Education Agency

Effective date: June 12, 1989

For further information, please call: (512) 463-9212



#### Chapter 69. Proprietary Schools and Veterans Education

##### Subchapter E. Guidelines and Minimum Standards for Operation of Texas Proprietary Schools

###### • 19 TAC §§69.122, 69.127, 69.129

The Texas Education Agency has withdrawn from consideration for permanent adoption an emergency amendment which appeared in the April 21, 1989, issue of the *Texas Register* (14 TexReg 1897). The effective date of this withdrawal is June 12, 1989.

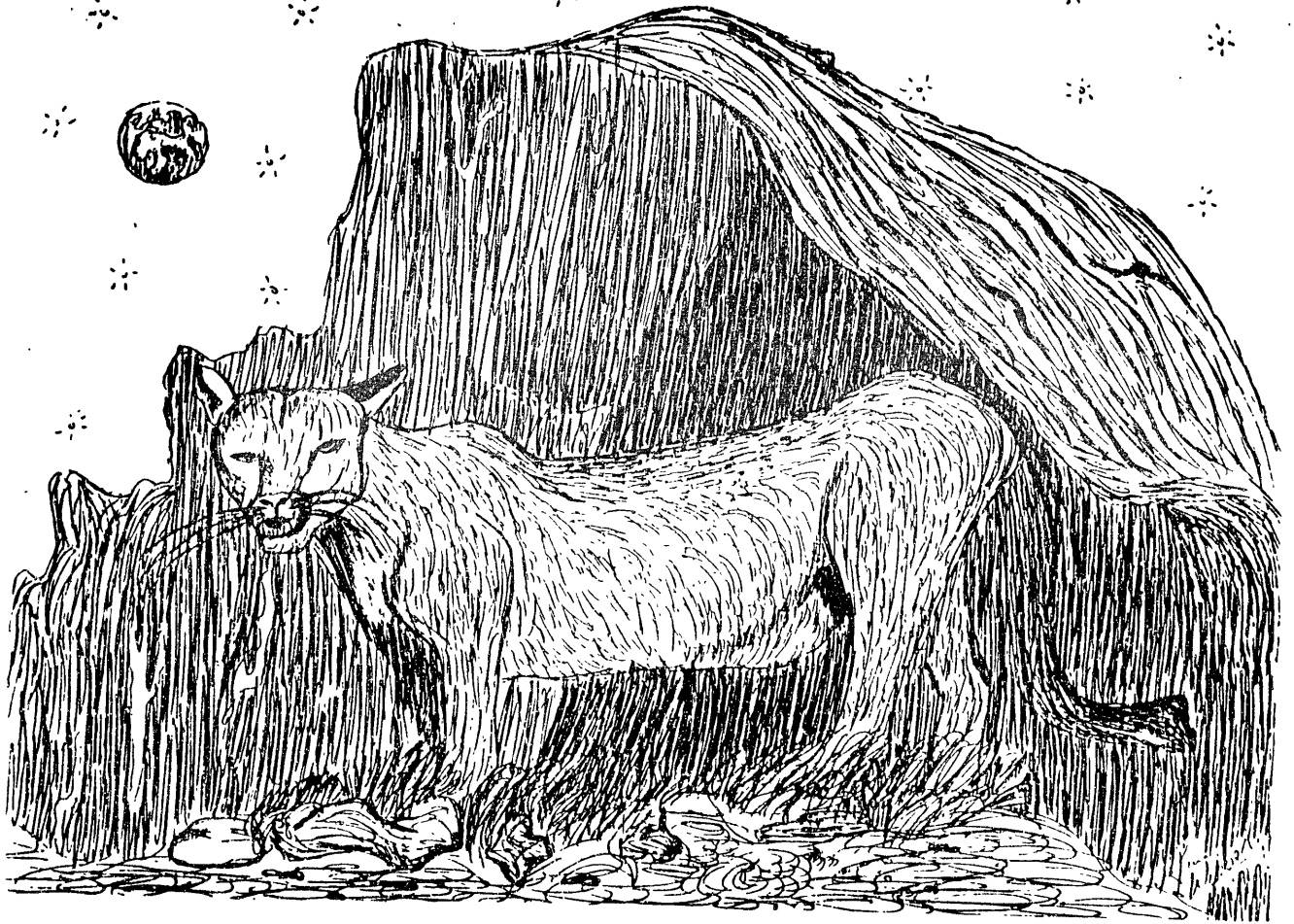
Issued in Austin, Texas, on May 23, 1989

TRD-8904562 Oscar A. Rodriguez  
Planner I  
Texas Education Agency

Effective date: June 12, 1989

For further information, please call: (512) 463-9212





Name: Kim Webber

Grade: 8

School: T.H. McDonald Middle School, Mesquite

# 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 19. EDUCATION Part II. Texas Education Agency

### Chapter 33. State Board of Education

#### Subchapter C. Investment of the Permanent School Fund

##### • 19 TAC §33.54

The Texas Education Agency adopts an amendment to §33.54, with changes to the proposed text as published in the March 31, 1989, issue of the *Texas Register* (14 TexReg 1623). The amendment concerns the membership and tenure of the Investment Advisory Committee to the permanent school fund.

The State Board of Education Ad Hoc Committee on Investment Practices of the Permanent School Fund and the agency's legal counsel have recommended this action due to the broadening of the responsibilities of the Investment Advisory Committee to the permanent school fund that resulted from the creation of the Texas growth fund and the inclusion of the prudent man rule in the Texas Constitution.

Changes to the proposed section include increasing the membership to nine and reducing the length of the terms to two years. These changes were made in an effort to widen the range of expertise available for the operation of the permanent school fund. The language regarding drawing for terms of office was changed to clarify the need for staggered terms.

No comments were received adoption of the amendment.

The amendments is adopted under the Texas Education Code, §15.02, which authorizes the State Board of Education to make rules concerning the investment of the permanent school fund.

§33.54. *Committee.* To administer the affairs of the permanent school fund, the following committees should be established.

(1) (No change.)

(2) Investment Advisory Committee.

(A) A committee of nine members having investment backgrounds and responsibilities, such as representatives of commercial banks, industrial corporations, public utilities, and insurance compa-

nies, shall be appointed by the State Board of Education.

(B) Members of the committee shall be appointed for two-year staggered terms.

(C) If necessary to maintain staggered terms due to unanticipated vacancies on the committee, members will draw to determine term of office.

(D)-(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 May 22, 1989.

TRD-8904502

W. N. Kirby  
Commissioner of Education

Effective date: June 12, 1989

Proposal publication date: March 31, 1989

For further information, please call: (512) 463-9212

### Chapter 61. School Districts

#### Subchapter E. personnel Relationship

##### • 19 TAC §61.145

The Texas Education Agency adopts an amendment to §61.145, with changes to the proposed text as published in the April 7, 1989, issue of the *Texas Register* (14 TexReg 1707). The amendment concerns the request and notification for cancellation or suspension of a certificate of school personnel involved in certain illegal activities. The amendment requires the superintendent or president of a local school board to report to the commissioner of education the termination of a certified employee for reasons involving sexual or physical abuse of children, possession, distribution, or sale of illegal drugs; misappropriation of school property or funds; fraudulent or unauthorized use of a certificate or permit to obtain a position or additional compensation; or commission of any crime occurring in whole or in part on school property or at a school sponsored event. The superintendent or school board president also is required to notify the commissioner whenever the district is made aware that one of its certified employees has been convicted of any felony or convicted of a

misdemeanor involving any of the conditions listed previously.

Changes include new subsection (c) which requires school districts, prior to the acceptance of a resignation as a result of circumstances mentioned Previously, to inform the individual in writing that the commissioner of education will be notified of the circumstances involved and that further investigation leading to possible sanctions against the person's certificate may occur. The language in subsections (b), (d), and (e) also was changed slightly for clarifying purposes and to reflect the new subsection (c).

No comments were received regarding adoption of the amendment. The amendment is adopted under the Texas Education Code, §13.046, which authorizes the commissioner of education to suspend or cancel a teacher's certificate under certain circumstances, and Texas Civil Statutes, Article 6252.13(c), which allows a licensing authority to suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

##### §61.145. *Request and Notification for Cancellation or Suspension of a Certificate.*

(a) The board of trustees of a school district may request the cancellation or suspension of a certificate by filing a complaint with the commissioner of education.

(b) The superintendent or the president of the local board of trustees of a school district shall notify the commissioner of education whenever a certified employee is terminated by action of the board of trustees and the termination is related to the individual's commission of an act which involves:

(1) any form of sexual or physical abuse of a minor child, or any other illegal conduct with a minor child;

(2) possession, transfer, sale, or distribution of a controlled substance or illegal drug;

(3) illegal transfer, appropriation, or expenditure of school property or funds;

(4) an attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit which would entitle the individual to a Professional position or to receive additional compensation associated

with a position; or

(5) commission of a crime occurring in whole or in part on school Property or at a school sponsored event.

(c) The superintendent of a school district shall notify the commissioner of education when a certified employee resigns and reasonable evidence exists which would support a recommendation by the superintendent to terminate the employee for one of the circumstances specified in subsection (b) of this section. Before an employee's resignation which requires notice under this subsection is accepted, the superintendent shall inform the individual in writing that a report will be made to the commissioner of education which may result in sanctions against that employee's certificate. The superintendent shall notify the local board of trustees prior to filing a report with the commissioner of education as required by this subsection.

(d) The superintendent or the president of the local board of trustees of a school district shall notify the commissioner of education when made aware of a certified employee's conviction of any felony, or conviction of a misdemeanor for an act or acts directly related to the categories cited in subsection (b) of this section.

(e) The Division of Teacher Certification, upon considering a request for cancellation or suspension, or upon receiving notification submitted Pursuant to this section, may commence sanction proceedings as provided in Chapter 141, Subchapter 0 of this title (relating to Reprimand, Suspension, Cancellation, and Reinstatement of Certificates) and Chapter 157 of this title (relating to Hearings and Appeals).

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 May 22, 1989.

TRD-8904503 W. N. Kirby  
Texas Education Agency

Effective date: June 12, 1989

Proposal publication date: April 7, 1989

For further information, please call: (512) 463-9212

## Chapter 69. Proprietary Schools and Veterans Education

### Subchapter E. Guidelines and Minimum Standards for Operation of Texas Proprietary Schools

#### • 19 TAC §§69.122, 69.127, 69.129

The Texas Education Agency adopts amendments to §§69.122, 69.127, and 69.129, with changes to the proposed text as published in

the March 31, 1989, issue of the *Texas Register* (14 TexReg 1624). The amendments concern guidelines and minimum operating standards for Texas proprietary schools. New federal regulations provide that in order for students to be eligible to receive the maximum amount of dollars available via federal grants and/or loans, the institution in which the training is offered must measure courses in credit hours. The new federal regulations also make it necessary for the proprietary schools to reapply to the state for credit hour approval and to receive approval prior to July 1, 1989. The amendments allow a proprietary school to measure its courses in credit hours and define the conversion rate from clock hours to credit hours. The rate is based on a standard recommended by the national accrediting agencies for proprietary schools. The amendments also provide definitions for certain terms. The Proprietary School Advisory Commission unanimously recommended the amendments at its meeting on January 10, 1989.

Changes were made to the definitions of "semester" and "quarter" for clarification and to make them consistent with those used by the Texas Higher Education Coordinating Board. The conversion ratios of semester and quarter hours also were changed to allow Texas to be consistent with the national standard.

Comments were received from a proprietary school president who contended that the uniform standard for conversion used by colleges and universities is based on a 15 week semester and a 10 week quarter and urged that the rule not be changed. However, the Texas Education Agency staff called attention to the Texas Higher Education Coordinating Board rule regarding the common calendar. This rule specifies a semester as 16 weeks and one quarter as 11 weeks. Based on this information, the changes were adopted.

The amendments are adopted under the Texas Education Code, §32.22, which authorizes the State Board of Education to adopt policies, regulations, and rules necessary for carrying out the provisions of the Texas Proprietary School Act after consultation with the Proprietary School Advisory Commission.

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

**Clock hour**—Fifty minutes of instruction during a 60-minute period.

**Externship—Practical** off-campus training under direct or indirect instructor supervision.

**Laboratory experience**—A specific experience of observation, experimentation, practice, study, technical investigation, analysis, and practical application of theory or verbal instruction involving hands-on supervised study in a selected vocation or subject.

**Quarter**—At a minimum, normally a quarter shall include at least 10 weeks for instruction and one week for final examinations, or a total of 11 weeks instruction and examination combined.

**Semester**—At a minimum, normally a semester shall include at least 15 weeks for instruction and one week for final examina-

tions, or a total of 16 weeks instruction and examination combined.

Week—Seven calendar days.

#### §69.127. Minimum Standards for Operation of Proprietary Schools.

(a) (No change.)

(b) Schools desiring issuance and renewal of certificates of approval shall adhere to the following standards.

(1)-(5) (No change.)

(6) Instructional programs.

(A)-(G) (No change.)

(H) If the applicant requests approval to measure courses in credit hours for academic purposes, the following conversion table must be used:

(i) schools which schedule their courses on a quarter or semester basis:

(I) one semester credit hour is equal to a minimum of:

(-a-) one hour of classroom lecture per week for a semester or the equivalent number of hours; or

(-b-) two hours of laboratory experience per week for a semester or the equivalent number of hours; or

(-c-) 45 clock hours of externship.

(II) one quarter credit hour is equal to a minimum of:

(-a-) one hour of classroom lecture per week for a quarter or the equivalent number of hours;

(-b-) two hours of laboratory experience per week for a quarter or the equivalent number of hours; or

(-c-) 30 clock hours of externship.

(ii) schools in which courses are not scheduled on a quarter or semester basis:

(I) one semester credit hour is equal to a minimum of:

(-a-) 15 clock hours of classroom lecture;

(-b-) 30 clock hours of laboratory experience; or

(-c-) 45 clock hours of externship.

(II) one quarter credit hour is equal to a minimum of:

(-a-) 10 clock



- hours of classroom lecture;  
 (-b-) 20 clock  
 hours of laboratory experience; or  
 (-c-) 30 clock  
 hours of externship.  
 (7) (No change.)  
 (8) Minimum progress and attendance standards.

(A) Progress. Appropriate standards must be implemented to ascertain the progress of the students enrolled. Progress standards must meet the following requirements.

(i) Schools approved on a clock hour basis must have a progress evaluation system on a maximum of eight weeks. Schools approved on a credit hour basis must have a progress evaluation system at mid-term and end-of-term for semester or quarter or at least every eight weeks for block hour programs.

(ii)-(v) (No change.)

(B) (No change.)

(9)-(14) (No change.)

**§69.129. Minimum Standards for Operation of Proprietary Schools Which Grant Associate of Applied Arts, Associate of Applied Science, and Associate of Occupational Studies Degrees.**

(a) (No change.)

(b) Definitions. The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(6) (No change.)

(7) Credit hour A measurement of scholastic attainment earned on the following basis:

(A) schools which schedule their courses on a standard quarter or semester basis:

(i) One semester credit hour is equal to a minimum of:

(I)-(II) (No change.)

(III) 45 clock hours of externship.

(ii) one quarter credit hour is equal to a minimum of:

(I)-(II) (No change.)

(III) 30 clock hours of externship

(B) Schools in which courses are not scheduled on a standard quarter or semester basis:

(i) one semester credit hour is equal to a minimum of:

(I) 15 clock hours of classroom lecture;

(II) 30 clock hours of laboratory experience; or

(III) 45 clock hours of externship.

(ii) one quarter credit hour is equal to a minimum of:

(I) 10 clock hours of classroom lecture;

(II) 20 clock hours of laboratory experience; or

(III) 30 clock hours of externship.

(8) Externship-Practical off-campus training under direct or indirect instructor supervision.

(9) General education courses-Language, mathematics, history, economics, science, or behavioral science courses or any other courses approved by the director which meet the general education needs of students and which provide the student with foundation and developmental skills appropriate for the occupational objective of the degree.

(10) Laboratory experience-A specific experience of observation, experimentation, practice, study, technical investigation, analysis, and practical application of theory or verbal instruction involving hands on supervised study in a selected vocation or subject.

(11) Quarter-At a minimum, normally a quarter shall include at least 10 weeks for instruction and one week for final examinations, or a total of 11 weeks instruction and examination combined.

(12) Semester-At a minimum, normally a semester shall include at least 15 weeks for instruction and one week for final examinations, or a total of 16 weeks instruction and examination combined.

(13) (No change.)

(c) Minimum standards.

(1)-(8) (No change.)

(9) For schools offering AAA, AAS, or AOS degree programs, the progress and attendance standards shall include the following:

(A) a progress evaluation

system at least every semester, quarter, or at least every eight weeks in block time programs;

(B)-(G) (No change.)

(10)-(17)(No change.)

(d)-(k) (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 May 22, 1989.

TRD-8904501

W. N. Kirby

Commissioner of Education

Effective date: June 12, 1989

Proposal publication date: March 31, 1989

For further information, please call: (512) 463-9212

## TITLE 22. EXAMINING BOARDS

### Part XXIII. Texas Real Estate Commission

#### Chapter 531. Canons of Professional Ethics and Conduct

##### • 22 TAC §531.18

The Texas Real Estate Commission adopts new §531.18, without changes to the proposed text as published in the March 31, 1989, issue of the *Texas Register* (14 TexReg 1627).

The new section is necessary in order to implement a recommendation made in a recent management audit that the agency provide consumers with information on how to proceed with complaints.

The new section adopts by reference a form detailing how a consumer may direct a complaint to the agency and requires Texas real estate brokers to display the form in a prominent location in each office the brokers maintain in this state.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6573a, §5(e), which provides the Texas Real Estate Commission 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 May 19, 1989.

TRD-8904555

Mark M. Moseley  
 Legal Counsel  
 Texas Real Estate  
 Commission

Effective date: February 1, 1989

Proposal publication date: May 30, 1989

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

◆ ◆ ◆  
**Part XXX. Texas State  
Board of Examiners of  
Professional Counselors**  
**Chapter 681. Professional  
Counselors**

**Subchapter A. The Board**

• **22 TAC §681.22**

The Texas State Board of Examiners of Professional Counselors, with the approval of the Texas Board of Health, adopts an amendment to §681.22 without changes to the proposed text as published in the March 14, 1989, issue of the *Texas Register* (14 TexReg 1348).

The amendment increases fees to cover the current administrative cost to administer this program. The increased fees will be assessed beginning on July 1, 1989.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 312g, §6, which provide the Texas State Board of Examiners of Professional Counselors, with the approval of the Texas Board of Health, with the authority to adopt rules that are necessary to administer the Licensed Professional Counselor Act, and §19, which provides the Texas State Board of Examiners of Professional Counselors with the authority to impose fees.

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 May 22, 1989.

TRD-8904481

Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas State Board of  
Examiners of  
Professional Counselors

Effective date: July 1, 1989.

Proposal publication date: March 14, 1989.

For further information, please call: (512) 458-7511

◆ ◆ ◆  
**TITLE 25. HEALTH  
SERVICES**

**Part I. Texas Department  
of Health**

**Chapter 143. Medical  
Radiologic Technologists**

• **25 TAC §143.6, §143.7**

The Texas Department of Health adopts amendments to §143.6 and §143.7 with changes to the proposed text as published in the January 31, 1989, issue of the *Texas Register* (14 Tex Reg 614).

The amendments update the sections so that

all qualified applicants may be certified or temporarily certified as medical radiologic technologists without having to complete additional educational or examination requirements.

The amendments allow the department to accept proof of an applicant's degree from an accredited junior college, college, or university in lieu of the high school requirement. The amendments also allow an applicant who has met the high school requirement and who has been approved as examination eligible by the American Registry of Radiologic Technologists or the Nuclear Medicine Technologist Certification Board to qualify for a temporary certificate without completing additional educational requirements.

The following comments were received concerning the adoption of the amendments.

One commenter recommended that the department accept as meeting the high school graduation requirement an associate degree from an accredited junior college. In response to this comment, the department has amended §143.6 to allow an associate degree to be accepted instead of a high school diploma or general equivalency diploma.

In §143.6, no changes were proposed in paragraph (3); however, a commenter pointed out that a reference to the Nuclear Medicine Technologist Certification Board was needed in clauses (i) and (ii) in Subparagraph (B) regarding examination results. The department agrees and has made corrections accordingly.

Comments regarding proposed amendments in §143.7(e)(1)(E) and §143.7(e)(3)(A) questioned what evidence an applicant must provide if licensed or otherwise registered as a radiologic technologist in the District of Columbia, another state, or territory of the United States. In response to the concern, the department has added in §143.6 a new paragraph (5) to subsection (c) which sets out what evidence must be provided and prescribes a departmental approved form for this purpose. The form must be completed by the governmental agency which issued the license or other form of registration. The license or other form of registration must be current and in good standing at the time of application to the Texas Department of Health.

Concerning §143.7, a comment was received regarding subsection (d) which had no proposed changes. The commenter suggested alternative wording which was more concise. The department agrees with the suggestion and has made changes accordingly.

Concerning §143.7, a commenter suggested that wording be added in subsection (e) to clarify that no examination or reexamination is required when applicants meet the requirements set out in subsection (d). The department agrees with the suggestion and wording has been added accordingly.

Concerning §143.7(e)(3)(A), a commenter remarked about the vagueness of the wording in the current language which provided no direction or assistance to persons applying under equivalent qualifications. The department agrees with the concern and has deleted clause (ii) and renumbered the subsequent clauses. The concern is currently being studied by the Medical Radiologic

Technologist Advisory Board.

In both §143.6 and §143.7, minor wording changes are included to provide correct and consistent terminology, grammar, and style. Also, in §143.6, the symbology for the subclauses under subsection (c) was corrected.

The amendments are adopted under Texas Civil Statutes, Article 4512m, §2.05, which provide the Texas Board of Health with the authority to adopt rules establishing the minimum standards for the certification of medical radiologic technologists; and Article 4414b, §1.05, which provide 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.

**§143.6 Application Requirements and Procedures.**

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

(c) Required application materials.

(1) (No change.)

(2) Applicants for a certificate who do not qualify under the provisions of §143.7(b) or (c) of this title (relating to Types of Certificates and Applicant Eligibility) must submit the following additional documents:

(A) a photocopy which has been notarized as a true and exact copy of an unaltered official diploma or official transcript indicating graduation from high school; a certificate of high school equivalency issued by the appropriate educational agency; or an official transcript from an accredited college or university indicating that the applicant received a high school diploma or the equivalency or was awarded an associate, baccalaureate or post-baccalaureate degree; and

(B) at least one of the items set out as follows:

(i) a photocopy which has been notarized as a true and exact copy of an unaltered certificate of completion from an approved medical radiologic technologist educational program in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors). The certificate must contain the following items: name of the program; name of the graduate; the exact day and month applicant is recognized as a program graduate; and the signature of the program director or his designate;

(ii) if applying up to 45 days 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 expected graduation statement, the department must receive:

(I) a notarized photocopy of the certificate of completion or letter on letterhead indicating graduation, containing the items set out in paragraph (2)(B)(i) of this subsection,

(II) a notarized statement signed by the program director or registrar indicating that the applicant officially completed the program or

(III) an original letter or other official notification from either the ARRT or the NMTCB that the applicant is considered examination eligible by the ARRT or the NMTCB. A photocopy which has been notarized as a true and exact copy may be submitted in lieu of the original document.

(3) The policy for examination results is as follows.

(A) (No change.)

(B) if an applicant for a general certificate is:

(C) registered by the ARRT or the ARRT or certified by the NMTCB on September 1, 1987, or registered by the ARRT or NMTCB at the time of application, a photocopy of the certificate issued by that agency or organization shall be submitted by the applicant in lieu of examination results; or

(i) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of the applicant's examination results, the applicant shall sign an examination score release form allowing the department to obtain the applicant's examination results from the ARRT, NMTCB, or other agency administering the examination approved by the department

(4) (No change.)

(5) Other license/registration documentation report form requirements are as follows. Persons applying under the provisions of §143.7(e)(1)(E) 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)-(e) (No change.)

### §143.7. Types of Certificates and Applicant Eligibility.

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

(d) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification under these sections who do not meet the requirements of subsections (b) or (c) of this section:

(1)-(6) (No change.)

(e) Specific licensing requirements.

(1) Medical radiologic technologist. To qualify for a general certificate as an MRT, an applicant shall meet at least one of the following requirements in addition to those listed in subsection (d) of this section and such applicants are not required to be examined or re-examined under §143.8 of this title (relating to Examinations):

(A) the applicant must possess current national certification as a Registered Technologist by the ARRT;

(B) the applicant must successfully complete the ARRT's examination in either radiography, radiation therapy technology, or nuclear medicine technology;

(C) the applicant must possess current national certification as a Certified Nuclear Medicine Technologist by the NMTCB;

(D) the applicant must successfully complete the NMTCB's examination in nuclear medicine technology; or

(E) the applicant must 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.

(2) (No change.)

(3) Temporary medical radiologic technologist (general or limited). Prior to successful completion of the required examination, a person who performs radiologic procedures shall be certified as a temporary medical radiologic technologist. To qualify as a temporary medical radiologic technologist (general or limited), an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (d) of this section.

(A) For the general temporary certificate, an applicant must:

(i) have successfully completed or be within up to 45 days of

successful completion of a course of study in radiography, radiation therapy technology, or nuclear medicine technology which is accredited by CAHEA;

(ii) be approved by the ARRT as examination eligible;

(iii) be approved by the NMTCB as examination eligible; or

(iv) 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.

(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 May 22, 1989.

TRD-8904482

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

Effective date: June 12, 1989.

Proposal publication date: January 31, 1989.

For further information, please call: (512) 451-7271

## Chapter 145. Long Term Care

### Subchapter N. Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas

The Texas Department of Health adopts the repeal of existing §§145. 211-145.218 and new 145.211 and 145.212. New §§145.211 and §145.212 are adopted with changes to the proposed text as published in the December 23, 1988, issue of the *Texas Register* (13 TexReg 6319). The repeals are adopted without changes and will not be republished.

The department is adopting the new sections to conform with recently issued federal conditions of participation for intermediate care facilities for the mentally retarded and to identify other minimum licensing requirements. The new sections adopt by reference the federal conditions of participation (Title 42, Chapter IV, Part 483, Subpart D, §§483.400-483.480) and contain some additional items for the protection of the clients' health and safety. These items are consistent with current licensing standards for facilities serving persons with mental retardation and relate to areas such as license application, governing body, physical restraints, pharmacy services, physician's orders, unusual occurrences, and universal precautions.

Several comments were received concerning the adoption of the proposed sections.

In §145.211(f)(5), one commenter said that it is not necessary to have requirements for the character of the chief executive officer. The department has made no changes because the department believes that language covering the character of the chief executive officer is essential to an applicant's qualification.

In §145.211(f)(6), three comments were received regarding the capabilities of the chief executive officer. The department concurs and has removed this requirement.

In §145.212(c)(2), one comment was received requesting a definition of the term "seclusion". The department feels that the term "seclusion" should be defined as placement of a client in a room without staff present from which egress is prevented by a locked door. The department has defined the term as such.

In §145.212(c)(3), four comments were received regarding the physician's order of a physical restraint. The department agrees the language is not clear and has restated the requirement.

In §145.212(c)(6), one comment was received regarding the subsection dealing with oral orders. As written, this would include oral orders for changes in habilitation programs, use of specific rehabilitation modalities, and adaptive equipment. This was not the intent of the department and the language has been clarified to specify medications and medical treatments.

In §145.212(c)(7), two comments were received regarding administration of medication. The department concurs with the comments and has modified this area to incorporate comments that were received.

In §145.212(c)(8), one comment was received regarding written policies and procedures for management of communicable diseases for employees and residents. The department has made no change because the language, as written, is adequate.

It was suggested by the Advisory Committee for Mental Retardation Facilities that the language of the standards be changed to reflect the current language used for persons with mental retardation. This suggestion was accepted and language has been modified throughout the sections. Also the title of the subchapter has been changed to reflect this modification.

The commenters were: Texas Association of Private ICF-MR Providers; The Midland Association of Retarded Citizens; Texas Department of Mental Health and Mental Retardation; Advocacy, Incorporated; and, Rock House, Inc.

All of the commenters were in favor of the proposed sections, but had some recommended changes. In addition, department staff made some minor editorial changes to the sections for purposes of clarification.

• 25 TAC §§145.211-145.218

The repeals are adopted under the Social Security Act, §1902 and §1905 (42 United States Code 1936a and 1936d), which provides the State of Texas with the authority to regulate Medicaid facilities providing services to the mentally retarded; Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to promul-

gate rules relative to its licensing authority; and Texas Civil Statutes, Article 4414b, §1.05, which provide 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 May 24, 1989.

TRD-8904586

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

Effective date: June 14, 1989.

Proposal publication date: December 23, 1988.

For further information, please call: (512) 458-7296

◆ ◆ ◆  
• 25 TAC §145.211, §145.212

The new sections are adopted under the Social Security Act, §1902 and §1905 (42 United States Code, 1936a and 1936d), which provide the State of Texas with the authority to regulate Medicaid facilities providing services to the mentally retarded; Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to promulgate rules relative to its licensing authority and Texas Civil Statutes, Article 4414b, §1.05, which provide 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.

§145.211. Introduction.

(a) Authority. The minimum licensing standards for facilities serving persons with mental retardation in Texas are promulgated under the authority of Texas Civil Statutes, Article 4442c; Article 4414b, §1.05; and Article 4437h; the Social Security Act, §1902 and §1905(c) and (d), (42 United States Code, 1396a and 1396d(c) and (d)); and 42 Code of Federal Regulations, Parts 431, 442, and 483.

(b) Purpose. The purpose is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards:

(1) for the habilitation of individuals based on an active treatment program in institutions defined and covered in this subchapter; and

(2) for the establishment, construction, maintenance, and operation of such institutions which view mental retardation and other developmental disabilities within the context of a developmental model in accordance with the principle of normalization.

(c) Philosophy. Facilities regulated by the standards in these sections are known as facilities serving persons with mental retardation in Texas. Persons in these facilities have the same civil rights, equal liberties, and due process of law as other persons, plus the right to receive active treatment and habilitation. Facilities shall provide and promote services that enhance the development of such individuals, maximize their achievement through an interdisciplinary approach based on developmental principles, and create an environment, to the extent possible that is normalized and normalizing.

(d) Scope.

(1) Persons served by these facilities must have a diagnosis of mental retardation. Facilities serving persons with other developmental disabilities as a primary diagnosis do not fall under the scope of these standards.

(2) These standards will apply to facilities providing 24 hour services in single or multiple facilities which provide the basic support, maintenance, and treatment for four or more persons unrelated to the proprietor. These facilities include institutions covered under Texas Civil Statutes, Article 4442c, which provide services to persons with mental retardation, and include facilities defined in Texas Civil Statutes, Article 5547-201(16) and facilities covered under Texas Civil Statutes, Article 5547-203, if the facilities are under the Social Security Act, Title XIX.

(3) These standards do not apply to residential facilities licensed under the Human Resources Code, Texas Codes Annotated, Chapter 42, or under the authority of Texas Civil Statutes, Title 92 (Mental Health), except as stated in paragraph (2) of this subsection.

(4) Facilities which provide 24-hour services, including basic support and maintenance of a protective or safeguard nature but not offering active treatment may be licensed under more appropriate categories.

(e) General requirements.

(1) Copies of these standards shall be available to all facility personnel, residents, and/or residents' responsible parties. Personnel shall be instructed on the requirements of the law and the regulations pertaining to their respective duties.

(2) The term "hospital," "nursing home," "custodial care home," "personal care home," or similar designation may not be used as part of the name of the facility. The facility may be part of a licensed hospital, nursing home, or custodial care home if established as a separate distinct part.

(f) Application and licensing of institutions serving persons with mental retardation.

(1) This subsection shall apply

only to institutions required to be licensed under Texas Civil Statutes, Article 4442c.

(2) The chief executive officer is the person who shall make application for license and whose name shall be on the license issued by the Texas Department of Health. The chief executive officer shall be the individual appointed by the governing body of the facility to act in its behalf in the overall management of the facility.

(3) Each applicant for state licensure shall make application using the form available from the Texas Department of Health completed in all areas and accompanied by the fee required by Texas Civil Statutes, Article 4442c, §4.

(4) The application for license shall include written approval of the local health authority and the local fire authority having jurisdiction and be based on meeting local applicable health and fire ordinances. Such approval shall be on forms or in a manner determined by the Texas Department of Health.

(5) The applicant shall be of good moral character, be financially responsible, and have physical and mental capability to conduct the operations of the facility pursuant to the standards.

(6) Each license, valid for one year, shall specify the maximum allowable number of residents to be cared for at any one time. No greater number of residents shall be kept than is authorized by the license. The license shall be posted conspicuously in the area where residents are admitted.

(7) Grounds for denial, suspension, or revocation of a license to operate a facility include:

(A) the submission of false information;

(B) subterfuge or other means relating to an original or renewal application;

(C) habitual drunkenness;

(D) addiction to drugs;

(E) disorderly conduct or the violation of any law involving moral turpitude on the part of the facility's owner, chief executive officer, or employee;

(F) willful or repeated action inconsistent with the health and safety of residents;

(G) gross neglect or abuse of the care of the residents; or

(H) repeated or gross failure

to meet the licensing standards on the part of the owner, chief executive officer, or employee of the facility.

#### §145.212. Administrative Requirements.

(a) Governing body.

(1) The governing body shall assume full legal responsibility for the overall conduct of the facility. If the facility does not have an organized governing body, the person(s) legally responsible for the conduct of the facility shall carry out, or have carried out, the functions in this section, pertaining to the governing body.

(2) The ownership of the facility shall be made known to the Texas Department of Health with a list of all individuals exercising control of the facility. The owner(s) shall provide:

(A) the certificate and the articles of incorporation, by laws, and charter to do business in Texas if a corporation;

(B) the partnership agreement if a partnership; and

(C) a deed or lease for the facility's real property.

(3) The governing body shall be responsible for compliance with applicable laws, regulations, and standards.

(b) Provision of services. Each facility described in §145.211(d)(2) of this title (relating to Introduction) shall comply with regulations promulgated by the United States Department of Health and Human Services in 42 Code of Federal Regulations Part 483, Subpart D, §§483.400-483.480, titled Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, which the Texas Department of Health adopts by reference. Copies of the regulations are located in the Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(c) Additional requirements.

(1) In the area of unusual occurrences, the facility shall have policies which address unusual occurrences and include notifying the Texas Department of Health, Bureau of Long Term Care, Austin, Texas of such occurrences. Unusual occurrences are any events or situations which significantly affect the health status or well-being of residents, including emergencies, serious illness, incidents, death, etc.

(2) In the area of behavior management, seclusion of clients shall not be used. Seclusion is defined as placement of a client in a room without staff present from which egress is prevented by a locked door.

(3) In the area of physical re-

straints, the following applies.

(A) When physical restraints are used as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied, a physician must participate on the interdisciplinary team that authorizes the use of restraint and must concur with the team's decision concerning its use.

(B) When physical restraints are used as an emergency measure to protect the client or others from injury, a physician must authorize its use or the extension of its use.

(4) In the area of kitchen sanitation, a mechanical dishwasher shall be provided.

(5) In the area of pharmacy services, all pharmacy services shall be in compliance with the Texas State Board of Pharmacy requirements in the Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, and rules adopted thereunder.

(6) In the area of physician's orders, only a licensed nurse, pharmacist, or another physician may take oral orders for medications or medical treatments from a physician. These orders shall be immediately reduced to writing and signed by the individual taking the order.

(7) In the area of administration of medication, the following applies.

(A) Medications may be administered only by physicians, licensed nursing personnel, or by non-licensed personnel who have completed a training program in medication administration which conforms to curriculum established by the Texas Department of Health. Institutions licensed under Texas Civil Statutes, Article 4442c, must comply with applicable laws and regulations concerning medication aides.

(B) Clients who have demonstrated the competency for self-administration of medications shall have access to and maintain their own medications. They shall have an individual storage space that permits them to store their medications under lock and key.

(C) Clients may participate in a self-administration of medication habilitation training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Clients participating in a self-administration of medication habilitation training program shall have training in coordination with, and as part of the client's total active treatment program. The client's training plan shall be evaluated as necessary by a licensed nurse.

The supervision and implementation of a self-administration of medication habilitation program may be conducted by non-licensed personnel and is not limited to personnel who have completed an approved training program in medication administration.

(8) In the area of communicable diseases, the facility shall have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility shall report in accordance with the Communicable Disease and Prevention Act, Texas Civil Statutes, Article 4419b-1, or as specified in §§97.1-97.13 of this title (relating to Control of Communicable Diseases) and §§97.131-97.136 of this title (relating to Sexually Transmitted Diseases) and in the publication title *Reportable Diseases in Texas*, Publication 6-10/a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing their duties. The facility shall have written policies and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control (CDC).

(9) Facilities shall comply with Subchapter O of this chapter (relating to Architectural Manual of Facilities Serving the Mental Retarded).

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 May 24, 1989.

TRD-8904587

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

Effective date: June 14, 1989.

Proposal publication date: December 23, 1988.

For further information, please call: (512) 458-7296

## Chapter 151. Nurse Aides

The Texas Department of Health adopts amendments to §§151.1-151.7, §151.9, and §151.10; new §151.8; the repeal of existing §§151.12-151.14; and new §151.11 and §151.12, concerning nurse aides. Amendments to §151.2, §151.3, §151.6, §151.7, §151.9, and new §151.8, are adopted with changes to the proposed text as published in the March 14, 1989, issue of the *Texas Register* (14 TexReg 1349). Amendments to §151.1, §151.4, §151.5, §151.10, and new §§151.11 and 151.12 are adopted without changes and will not be republished.

The sections cover definitions, registry requirements, skills and written/oral examina-

tions, program approval, program requirements, and qualifications of instructors. The sections establish procedures for and assure that nurse aides employed by nursing facilities in Texas will be trained, evaluated for competency, and placed on a state-wide registry in accordance with the Omnibus Budget Reconciliation Act of 1987 (the Act).

The department received a number of public comments which were reviewed by department staff, the Nursing Home Affairs Committee, and the Ad Hoc Committee for Nurse Aide Training and Registry. Following is a summary of comments. In this summary of comments, all comments to which the department responded received the concurrence of the Ad Hoc Committee.

Concerning §151.2, definitions, the following comments were received.

A commenter suggested that the definition of nurse aide clarify the duties that are the responsibility of and must be performed by a licensed nurse. The definition has been expanded to address supervision by a licensed nurse and to limit duties of nurse aides to those functions that do not require a license, certification, or registration under state or federal law. The definition of nursing and nursing-related services has been deleted.

Another commenter wanted the definition of licensed health professional expanded to include dentists, audiologists, registered or licensed dietitians, pharmacists, and podiatrists. The department cannot expand the definition as defined in the Act but did include the commenter's request in §151.9 which pertains to trainers.

Several commenters requested clarification of the definition of a trainee. Each commenter felt that the words "is enrolled" must be added to the definition. The department agrees and has made this change.

Another commenter felt that the definitions for program trainer and team instructor were confusing and should be combined. The department agrees and has combined the two previous definitions into one category entitled trainer.

Concerning §151.3, requirements for placement on registry, the following comments were received.

One commenter felt the time limit to complete skills and written examinations should be more clearly defined. The department agrees and has added the requested language.

One commenter requested that facility-based programs be allowed to give examinations in facilities. The current language does not prevent examinations from being given in a facility, so the department has made no change.

A commenter felt that the requirement for a certificate to be kept on file by the facility and the statement that a certificate is nontransferable were confusing due to their placement in the same paragraph. The department agrees and has placed the two requirements in separate paragraphs.

Another commenter felt picture I.D.s should be required for admission in examinations and for employment. The department agrees to the first point and has instituted this procedure as a requirement for admission to all test

sites. No rule change is requested to implement this procedure. Employment practices are not addressed in these rules, therefore, the second point of the comment has not been incorporated.

Another commenter wanted additional language added to allow nurse aides who are employed in non-certified facilities prior to July 1, 1989, to be able to take the competency evaluation examinations and be placed on the registry. The commenter also wanted non-certified facilities to be able to provide training programs after July 1, 1989 and use their non-certified facilities for the clinical portion of the training. The department has requested clarification from the Department of Health and Human Services concerning non-participating facilities training their nurse aides and complying with all aspects of nurse aide training and registry rules on a voluntary basis. If statutorily possible, the department will implement rules based on the Department of Health and Human Services' response. This response was requested because the department's only authority is under the Act and there is no state statutory authority for nurse aide competency evaluation and placement on the registry.

Several commenters requested that the words "four calendar months" listed in §151.3(a) be changed to "four months." These commenters also asked for clarification of the four month period. The department agrees, made the deletion, and has requested clarification from the Department of Health and Human Services.

Several commenters requested that §151.3(e)(4) be changed by deleting the word "failed" and by clarifying that the four month period does not apply to retests of nurse aides employed prior to July 1, 1989. The department agrees and has made the requested changes.

Concerning §151.5, registry, findings; inquiries, one commenter wanted additional language developed to address how an employer inquires of the registry on weekends and holidays. The Act requires that a facility make inquiry of the registry before the facility can use an individual as a nurse aide. The department has requested clarification from the Department of Health and Human Services as to what type of inquiry will satisfy this requirement. Until further direction is received, the department must utilize the terminology used in the Act.

Concerning §151.6, training and competency evaluation program application and approval, the following comments were received.

One commenter recommended deleting some of the application requirements. The department agrees and deletions have been made.

Another commenter felt the term "if applicable" would clarify the application information desired about trainers. The department agrees and has added the term.

Another commenter asked that a complete description of the portions of the classroom facilities to be reviewed be added. The department agrees and appropriate language has been added.

A commenter pointed out the omission of a letter showing singular possessive. The department agrees and has added the letter.

Concerning §151.7, training and competency evaluation program requirements, the following comments were received.

One commenter wanted certain repetitive language removed. The department agrees and has made the appropriate deletions.

Another commenter requested that language be added to set a more positive tone. The department agrees and has added the requested language.

Another commenter felt the word "hired" should be changed to "used" as a nurse aide. The department agrees and has made the change.

Several commenters requested that the words "within a program" be deleted from §151.7(j), as this training could also occur outside a program. The department agrees and has made the deletion.

Concerning §151.8, reapproval of training and competency evaluation programs, one commenter felt language used in this section was repetitive. The department agrees and has deleted the repetitive language.

Concerning §151.9, approval of program coordinator, primary instructor, and skills examiner, the following comments were received:

One commenter felt that the duties of a program coordinator should be clarified. The department agrees and has made the change.

Another commenter asked that each time the rules said "registered or licensed nurse," that the wording "licensed in Texas" should be added. The department feels the definitions clearly require licensing in Texas so no change has been made.

Another commenter felt some of the requirements in this section were repetitive with previous sections and should be deleted. The department agrees and the deletions have been made.

Because of a previous comment addressed under §151.2, program trainers and team instructors were combined and appropriate wording changes were made.

A commenter felt that a skills examiner should be able to attend a training seminar held by the department or its designee. The department agrees and has added the language.

Several commenters requested that in §151.9(c)(2), the words "licensed nurses" be changed to "licensed vocational nurses." The department agrees and has made the change.

Several commenters wanted new language added to §151.9(e)(2) to extend the approval period for a skills examiner to complete a skills seminar. The department agrees and new language has been added.

When additions or deletions were made in these sections, relettering or renumbering of subsections was required. In addition, minor editorial changes were made throughout the rules to clarify language and intent.

The following agencies, organizations, and groups commented on the adoption of the proposed sections: Texas State Board of Nurse Examiners; Texas Health Care Association; and the Texas Association of Homes for the Aging. None of the commenters were

opposed to the sections in their entirety; however, commenters expressed concerns, offered suggestions, made comments, and raised questions concerning specific provisions as outlined in the summary of comments.

#### ◦ 25 TAC §§151.1-151.10

The amendments and new section are proposed under Texas Civil Statutes, Article 4414b, §1.05, which provide 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; and the Omnibus Budget Reconciliation Act of 1937, Public Law 100-203, §§4201-4214, amending the Social Security Act, §1819 and §1919 (42 United States Code, §1395i-3 and §1396r), which requires the Board of Health to adopt rules that specify the training and competency evaluation programs it approves and to establish and maintain a nurse aide registry.

**§151.2. Definitions.** The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

**Examination**—A competency evaluation which includes manual (clinical) skills and written evaluations.

**Facility**—A nursing facility (Medicaid) or a skilled nursing facility (Medicare).

**Instructional certification program**—A program of instruction in teaching adult learners approved by the department under §151.10 of this title (relating to Instructional Certification Program Application and Approval).

**Licensed health professional**—A physician; physician assistant; physical, speech, or occupational therapist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; or certified social worker.

**Licensed nurse**—A registered nurse or licensed vocational nurse.

**Misappropriation of resident property**—The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

**Nurse aide**—An individual providing nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, who volunteers such services without monetary compensation, or who is exempt under §151.3(a) of this title (relating to Requirements for Placement on Registry). A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license, certification, or

registration is required under state or federal law.

**Primary instructor (PI)**—An individual approved by the department as described in §151.9 of this title (relating to Approval of Program Coordinator, Primary Instructor, and Skills Examiner).

**Program coordinator (PC)**—An individual approved by the department as described in §151.9 of this title (relating to Approval of Program Coordinator, Primary Instructor, and Skills Examiner).

**Skills examiner**—An individual approved by the department in accordance with §151.9 of this title (relating to Approval of Program Coordinator, Primary Instructor, and Skills Examiner).

**Trainee**—An individual who is enrolled and has begun, but not completed a program.

**Trainer**—Qualified personnel who may participate in teaching a program in accordance with §151.9 of this title (relating to Approval of Program Coordinator, Primary Instructor, and Skills Examiner).

**Training and competency evaluation program**—A program approved by the department to instruct and evaluate individuals to act as nurse aides.

#### **§151.3. Requirements for Placement on Registry.**

(a) A person may not act as a nurse aide on or after January 1, 1990, unless the person complies with this chapter. A person used by a facility as a nurse aide for any period of time within any four months or less is exempt from this chapter; provided, however, if such a person is enrolled in or has completed a program, the individual shall be subject to this chapter.

(b) A person used as a nurse aide by a facility as of July 1, 1989, must successfully complete a competency evaluation program (a skills and a written examination) approved by the department by January 1, 1990. If such a person does not meet this requirement by January 1, 1990, such a person must comply with subsection (d) of this section.

(c) A person used as or desiring to be used as a nurse aide on or after July 1, 1989, must comply with subsection (d) of this section in order to be placed on the registry.

(d) Unless a person complies with subsection (b) of this section or is exempt under subsection (a) of this section, a person used or desiring to be used as a nurse aide in a facility on or after January 1, 1990, shall:

(1) successfully complete a training and competency evaluation program;

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

(5) successfully complete the skills and written examinations no later than four months after the initial date of employ-

ment as a trainee or as a nurse aide.

(e) The requirements for examinations shall be as follows.

(1) A person desiring to take the skills and written examinations as given by the department or its designees shall apply on forms prescribed by the department or its designees.

(2) The skills examination shall be given by an approved skills examiner after the successful completion of the classroom and clinical portions of a program and shall:

(A) be a demonstration by the trainee of a minimum of five tasks, all of which are included in the performance record;

(B) be selected for each trainee from a pool of evaluation items (tasks) which have been ranked by the department according to degree of difficulty; and

(C) be a random selection of tasks with at least one from each degree of difficulty.

(3) The written examination shall be given by the department or its designee after successful completion of the skills examination.

(4) A person who fails the skills examination or the written examination may retest twice on the examination. All retests must be completed no later than four months after the initial date of employment; provided, however, a person used as a nurse aide by a facility as of July 1, 1989, and examined under subsection (b) of this section, must complete all retests by January 1, 1990. The department is not required to set special examination schedules for those who request reexamination.

(5) The examinations shall be administered as follows.

(A) For nurse aides employed as of July 1, 1989, the examinations will be administered by the department or its designee(s).

(B) For nurse aides trained in facility-based programs, the examinations will be administered by the department or its designee(s).

(C) On or after July 1, 1989, for nurse aides trained in nonfacility-based programs, examinations may be administered by the department or its designee(s) or the department may approve a nonfacility-based program to administer examinations to its own trainees in accordance with procedures developed by the department.

(6) The responsibility for examinations shall be as follows.

(A) For nurse aides employed in a facility as of July 1, 1989, it is the responsibility of the facility to schedule the examinations with the department or its designee(s) and to provide the facility where the skills examination will be given.

(B) On or after July 1, 1989, it is the responsibility of a facility-based program to schedule examinations with the department or its designee(s) and to provide the facility where the skills examination will be given to trainees.

(C) On or after July 1, 1989, it is the responsibility of a nonfacility-based program to schedule examinations with the department or its designee(s) or to schedule and administer examinations to its own trainees in accordance with procedures developed by the department. The program shall provide the facility where the skills examination will be given to trainees.

(D) It is the responsibility of a trainee to verify that a program makes the arrangements required under subparagraphs (B) and (C) of this paragraph.

(E) If a trainee who has successfully completed an approved program fails either the skills examination or the written examination, it is that trainee's responsibility, or if employed by a facility, it is the facility's responsibility to reschedule the failed examination(s).

(f) A person who complies with subsections (b), (c), or (d) of this section shall be placed on the registry, effective on the date of issuance by the department of a certificate of registry approval.

(g) A copy of the certificate shall be kept on file by a facility employing the person.

(h) A certificate is not transferable.

(i) Upon written documentation that a person successfully completed a competency evaluation program or training and competency evaluation program conducted in another state pursuant to the requirements of the Act and is currently on the registry in that state, said person shall be placed on the registry without requiring compliance with subsections (b), (c) or (d) of this section.

*§151.6. Training and Competency Evaluation Program Application and Approval.*

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

(c) An application shall be submitted to the department prior to the proposed starting date of a program. An application must be signed by the person or authorized

representative of the entity desiring to offer a program.

(1) (No change.)

(2) An original of the entire application and supporting documentation must be submitted with all pages clearly legible.

(3) The application filed must be an original.

(4)-(5) (No change.)

(6) The application shall include:

(A) the proposed starting and ending date of the initial program and, if known, subsequent programs;

(B) the names of the program coordinator, primary instructor(s), and if applicable, trainer(s);

(C) the daily hours of the initial classroom and clinical program and, if known, subsequent programs;

(D) the location of the classroom course;

(E) a list of clinical facilities, and letters of agreement from clinical facilities signed by the chief executive officer or administrator of the facility;

(F) verification that the program shall follow the curricula established by the department;

(G) the projected number of trainees in the initial program;

(H) a description of the classroom and skills training facilities including temperature controls, clean and safe conditions, adequate space to accommodate all students, and adequate lighting;

(I) a list of the equipment to be used in the program, including audiovisual equipment and any equipment for simulating resident care; and

(J) a list of the textbooks to be used in the program.

(7) The department may conduct an inspection of the program site.

(8) If an entity or person desires to offer more than one program for which the information required by paragraph (6) of this subsection differs from program to program, the entity or person shall file a separate application for each of these separate programs.

(d) Each program shall follow the



curricula established by the department.

(1) The program shall include, but shall not be limited to, the following instruction and training:

(A) introduction to long term care including resident's rights;

(B) mental health and social service needs;

(C) restorative services;

(D) personal care skills; and

(E) basic nursing skills.

(2) The program shall consist of 60 academic hours of classroom instruction and training and 20 clock hours of clinical experience training in a facility. A classroom hour shall constitute 50 clock minutes of actual classroom time.

(e) The department shall consider whether the proposed program complies with the Act and this chapter.

(f) Notice of approval or proposed disapproval of the application will be given to the entity within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Act or this chapter, the reasons for disapproval shall be given in the notice.

(g) A facility-based program or a facility to be used for the clinical experience in a program shall not be approved by the department if, in the prior two years, the facility's participation in the Medicare and/or Medicaid program(s) has been terminated under the Social Security Act.

(h) An applicant may request a hearing on a proposed disapproval in writing within 10 days of receipt of the notice of the proposed disapproval. The hearing shall be scheduled to commence within 30 days of the department's receipt of the applicant's request for a hearing and 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. If no request is made, the entity is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(i) No program shall be operated and no trainee shall be solicited or enrolled until the department has approved the program.

#### *§151.7. Training and Competency Evaluation Program Requirements.*

(a) At least seven days prior to the commencement of each individual program, the program coordinator shall notify the

department in writing of the starting date, the ending date, the daily hours of the program, and the projected number of trainees.

(b) The facility used for the clinical experience shall cease to be utilized by a program if the facility is terminated by the department or other appropriate federal or state agency from participation in the Medicare and/or Medicaid program(s) under the Social Security Act.

(c) A program is subject to inspection by personnel authorized by the department at any reasonable time. An inspector will file a written report with the department which will specify strengths and, if applicable, deficiencies of the program. Such report will be provided to the program. The department may direct a program to comply with the requirements of the Act and this chapter.

(d) Each trainee shall be clearly identified as a trainee during the clinical experience portion of the program.

(e) The ratio of instructors to trainees in skills training must ensure that each trainee is provided safe and effective assistance and supervision during the clinical experience training.

(f) Each program shall primarily provide educational and training opportunity for the trainee(s) rather than primarily provide nursing or nursing-related services to the entity, its residents, or clients.

(g) A change in any information presented by a program in an approved application including, but not limited to, ownership, location, instructorship, and content shall be approved by the department prior to the program's effective date of the change. If, due to special circumstances, a program cannot notify the department of a change prior to the effective date of the change, the department shall be notified immediately and shall approve the change if the change complies with the Act and this chapter.

(h) Each program shall use a performance record developed by the department of major duties/skills taught. This record will consist of, at a minimum, a listing of the duties/skills expected to be learned in the program, space to record when the trainee performs this duty/skill, and spaces to note satisfactory or unsatisfactory performance, and the instructor supervising the performance. At the completion of the program, the trainee and his/her employer (if applicable) will receive a copy of this record.

(i) The graduates' success rate on the examinations will be monitored by the department and may be utilized as a criteria for withdrawing program approval.

(j) After completion of the initial 16 introductory hours of a program, a trainee may be used by a facility only to provide care for which the trainee has re-

ceived training and has demonstrated competency as documented on the performance record of the trainee.

(k) An orientation program required under federal or state law, other than the Act, given by a facility to a nurse aide employed in the facility shall be separate from and shall not constitute a part of a program.

#### *§151.8. Reapproval of Training and Competency Evaluation Programs.*

(a) Within one year of initial program approval, the department shall review the program's implementation of and compliance with the requirements set forth in this chapter.

(b) Following the review described in subsection (a) of this section, a program shall be reviewed on-site every two years. Programs not meeting the requirements of this chapter may be subject to further site reviews. A plan to correct deficiencies noted during the review shall be presented by the program for approval by the department.

(c) For each year in which a program is not reviewed on-site, the program shall file a self-assessment report on a form provided by the department.

#### *§151.9. Approval of Program Coordinator, Primary Instructor, and Skills Examiner.*

(a) Program coordinator (PC). A PC has overall responsibility for administering a program. The PC shall be a registered nurse. A PC may coordinate more than one program at a time.

(1) In a nonfacility-based program, the PC shall have the following qualifications:

(A) a minimum of two years of experience in caring for the elderly and/or chronically ill of any age. Such experience may be obtained through employment in a nursing facility/unit, geriatrics department, chronic care hospital, or other long-term care setting and should include varied responsibilities such as direct resident care, supervision, and staff education; and

(B) have attended a course on teaching adult learners or have demonstrated competency in teaching adult learners. Courses attended may include an instructional certification program, a college level course in teaching adult learners or a continuing education course in teaching adult learners. Demonstrated competency in teaching adult learners may be verified by a letter of reference. Teaching experience may include formal or informal teaching of varied subjects to adult learners.

(2) In a facility-based program,

the PC shall have the following qualifications:

(A) a minimum of one year of experience in caring for the elderly and/or chronically ill of any age. Such experience may be obtained through employment in a nursing facility/unit, geriatrics department, chronic care hospital, or other long-term care setting and should include varied responsibilities, such as direct resident care, supervision, and staff education; and

(B) have attended a course on teaching adult learners or have demonstrated competency in teaching adult learners. Courses attended may include an instructional certification program, a college course in teaching adult learners or a continuing education course in teaching adult learners. Demonstrated competency in teaching adult learners may be verified by a letter of reference. Teaching experience may include formal or informal teaching of varied subjects to adult learners; and

(C) if a director of nursing services is used as the PC, qualified assistance must be available so that the nursing responsibilities of the director of nursing services are covered.

(3) (No change.)

(4) After verification by the department of the information submitted by the applicant, the applicant who meets the requirements in paragraphs (1) or (2) of this subsection shall be approved as a PC.

(b) Primary instructor (PI). The PI conducts a program under the general direction of the PC.

(1) In a nonfacility-based program:

(A) (No change.)

(B) an individual applying for PI approval shall:

(i) be a registered nurse; and

(ii) have a minimum of two years experience in caring for the elderly and/or chronically ill of any age. Such experience may be obtained through employment in a nursing facility/unit, geriatrics department, chronic care hospital, or other long-term care setting and should include varied responsibilities, such as direct resident care, supervision, and staff education; and

(iii) have attended a course on teaching adult learners or have demonstrated competency in teaching adult learners. Courses attended may include an instructional certification program, a college level course in teaching adult learners or a

continuing education course in teaching adult learners. Demonstrated competency in teaching adult learners may be verified by a letter of reference. Teaching experience may include formal or informal teaching of varied subjects to adult learners.

(2) In a facility-based program:

(A) the program coordinator may be approved as the PI; however, in no case may the director of nursing services be approved as the PI unless:

(i) said director is not used as the DON at the time he or she is acting as PI; and

(ii) another individual is acting as DON during the time said director is acting as the PI;

(B) an individual applying for PI approval shall:

(i) be a licensed nurse; and

(ii) have a minimum of one year of experience caring for the elderly and/or chronically ill of any age. Such experience may be obtained through employment in a nursing facility/unit, geriatrics department, chronic care hospital, or other long-term care setting and should include varied responsibilities, such as direct resident care, supervision, and staff education; and

(iii) have attended a course on teaching adult learners or have demonstrated competency in teaching adult learners. Courses attended may include an instructional certification program, a college level course in teaching adult learners or a continuing education course in teaching adult learners. Demonstrated competency in teaching adult learners may be verified by a letter of reference. Teaching experience may include formal or informal teaching of varied subjects to adult learners.

(3) (No change.)

(4) After verification by the department of the information submitted by the applicant, the applicant who meets the requirements of paragraphs (1) or (2) of this subsection shall be approved as a PI.

(c) Trainers. Qualified personnel from the health field may participate as trainers and may include registered nurses, licensed vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech/language/hearing therapists, dentists, doctors, and podiatrists.

(1) Qualified resource personnel, upon the request of the program coordinator, may conduct specific classes based upon an expertise in a given subject area. These personnel should be licensed (if ap-

plicable) with the appropriate professional regulatory board or agency and should meet the following qualifications:

(A) have at least one year of current experience in caring for the elderly and/or chronically ill of any age as an employee or consultant; or

(B) be other persons such as residents, experienced nurse aides, and ombudsmen, if these persons are needed to meet the planned program objectives.

(2) Licensed vocational nurses, under the general direction of the PI, may provide classroom and skill training instruction and supervision, if they have a minimum of two years of experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

(d) Skills examiner. A skills examiner is an individual who conducts the skills examination under the direction of the department.

(1) A skills examiner shall:

(A) (No change.)

(B) not be an employee of:

(i) the facility where an examination is given by the skills examiner;

(ii) the facility which gave the program completed by the person being examined; or

(iii) a facility with a contractual or corporate relationship to a facility described in clauses (i) or (ii) of this subparagraph.

(C) complete the application for skills examiner approval; and

(D) complete a skills training seminar conducted by the department or its designee.

(2) After verification by the department of the information submitted by the applicant, an applicant who meets the requirements of paragraph (1) of this subsection shall be approved as a skills examiner.

(3) A skills examiner shall be responsible for the following:

(A) adhering to the department's standards for each skill examined;

(B) conducting the examination in an objective manner according to the criteria established by the department;

(C) validating the examination results on form(s) prescribed by the

department; and

(D) submitting prescribed forms and reports to the department or its designee.

(c) Deficiency in application.

(1) (No change.)

(2) Notice of approval or proposed disapproval of the application shall be given to the applicant within 30 days of receipt of a complete application or within 10 days after the applicant's completion of a skills training seminar, whichever occurs last. If the application is proposed to be disapproved due to noncompliance with the requirements of the Act or this chapter, the reasons for disapproval will be given in the notice.

(3) An applicant may request a hearing on a proposed disapproval in writing within 10 days of receipt of the notice. The hearing shall be scheduled to commence within 30 days of the department's receipt of the applicant's request for a hearing and shall be in accordance with §§1.21-1.34 of this title (relating to Formal Hearing Procedures) and the Administrative Procedure and the Texas Register Act, Texas Civil Statutes, Article 6252-13a. If no request is made, the applicant is deemed to have waived the opportunity for a hearing and the proposed action may be taken.

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 May 24, 1989.

TRD-8904583 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: June 14, 1989.

Proposal publication date: March 14, 1989.

For further information, please call: (512) 458-7229

◆ ◆ ◆  
• 25 TAC §§151.11, 151.12

The new sections are adopted under Texas Civil statutes, Article 4414b, §1.05, which provide 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, and the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §§4201-4214, amending the Social Security Act, §1819 and §1919 (42 United States Code, §1395i-3 and §1396r), which requires the Board of Health to adopt rules that specify the training and competency evaluation programs it approves and to establish and maintain a nurse aide registry.

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 May 24, 1989.

TRD-8904584 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: June 14, 1989.

Proposal publication date: March 14, 1989.

For further information, please call: (512) 458-7229

◆ ◆ ◆  
• 25 TAC §§151.12-151.14

The repeals are adopted under Texas Civil statutes, Article 4414b, §1.05, which provide 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; and the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §§4201-4214, amending the Social Security Act, §1819 and §1919 (42 United States Code, §1395i-3 and §1396r), which requires the Board of Health to adopt rules that specify the training and competency evaluation programs it approves and to establish and maintain a nurse aide registry.

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 May 24, 1989.

TRD-8904585 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: June 14, 1989.

Proposal publication date: March 14, 1989.

For further information, please call: (512) 458-7229

◆ ◆ ◆  
TITLE 40. SOCIAL  
SERVICES AND  
ASSISTANCE  
Part I. Texas Department  
of Human Services

Chapter 14. County Indigent  
Health Care Program

Subchapter A. Program  
Administration

The Texas Department of Human Services (DHS) adopts amendments to §14.1 and §14.107. The amendment to §14.107 is adopted with changes to the proposed text as published in the February 10, 1989, issue of the *Texas Register* (14 TexReg 776). The amendment to §14.1 is adopted without changes to the proposed text and will not be republished.

The justification for the amendment to §14.1 is to permit DHS to adequately monitor demand for state assistance funds, and inform

counties when the assistance funds are expended. Section 14.107 is amended to give counties the option to follow or adapt notification and appeals procedures used by DHS, or to establish county notification and appeals procedures.

The sections will function by providing simpler and clearer rules for audit, notification, and appeals. Amendments to the rules for monitoring the expenditure of state matching funds will ensure that counties do not spend more money for indigent health care than they are required to spend.

No comments were received regarding adoption of the amendments. DHS, however, is adopting §14.107(b) with a change to delete the reference to Appendix IX of the County Indigent Health Care Program Handbook. Instead, the section will reference DHS's Fair Hearings, Fraud, and Civil Rights Handbook. Counties may request copies of the handbook from DHS.

◆ ◆ ◆  
• 40 TAC §14.1

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 24, 1989.

TRD-8904568 Charles Stevenson  
Acting Commissioner  
Texas Department of  
Human Services

Effective date: June 26, 1989.

Proposal publication date: February 10, 1989.

For further information, please call: (512) 450-3765

◆ ◆ ◆  
Subchapter B. Providing  
Services

◆ ◆ ◆  
• 40 TAC §14.107

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.

§14.107. Notification and Appeals.

(a) Individuals have the right to appeal denial of their application or eligibility.

(b) Counties may adapt, for use in their program, the DHS fair hearing and notifications procedures contained in DHS's Fair Hearings, Fraud, and Civil Rights Handbook, or develop their own rules and procedures for fair hearing and notifications.

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 May 24, 1989.

Effective date: June 26, 1989.

Proposal publication date: February 10, 1989.

For further information, please call: (512)  
450-3765

## Chapter 41. Utilization Review

### Waiver for Utilization Review Procedures

The Texas Department of Human Services (DHS) adopts the repeal of §§41.101-41.111, and adopts new §§41.101-41.103 and 41.105-41.113. New §§41.108, 41.110, and 41.112 are adopted with changes to the proposed text as published in the January 20, 1989, issue of the *Texas Register* (14 TexReg 449). New §41.104 is not acted upon at this time and remains as an emergency rule pending adoption. Sections 41.101-41.103, 41.105-41.107, 41.109, 41.111, and 41.113 are adopted without changes and will not be republished.

The new sections replace and supplement the repealed sections to allow DHS to administer the utilization review program directly rather than through a contractor, and to make other changes such as specifying that inpatient hospital review may be conducted using a systematic sampling methodology rather than reviewing at 100%. The sections also incorporate policies to allow appropriate review of those children's hospitals recently notified that they will be reimbursed under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) principles of reimbursement; include policies to allow quality-of-care reviews which are necessary to assure that Medicaid recipients receive acceptable quality care in the appropriate setting, and facilitate timely and accurate payment to Title XIX hospital facilities.

The repeals and new sections will function by improving monitoring of the utilization review program to assure quality health care services provided to Medicaid recipients.

DHS received comments on the proposal from the Texas Medical Association. The following are the comments, recommendations, and DHS responses.

**Section 41.102. Case Selection Process. Recommendation:** It is our understanding that the sample size will not exceed 15% of the cases from any hospital. We recommend that this be clearly stated by adding a new §41.102(1)(A)(iii) which states "the sample size shall not exceed 15% of the hospital's Medicaid admissions in any quarter, except in accordance with provisions of subparagraph (B)."

We also recommend that the same clause (iii) be added to paragraph (2)(A).

**DHS Response:** The 15% is minimum for the number of cases to be reviewed. The stratified sample by DRG does not determine a specific percentage of cases for review.

**Section 41.104. TMRP Review Process.** DHS will respond to comments on §41.104 when action is taken to adopt this section.

**Section 41.105. TMRP Hospital Screening Criteria for TMRP and TEFRA Reviewers.**

**Recommendation:** We recommend that TDHS add a subsection (c) which states that TDHS will form a criteria committee, made up of practicing physicians, representative of the various specialties and urban/rural locales of the state, which shall review, update, and approve on an on-going basis, but not less than annually, any changes in the screening criteria, and that criteria changes shall be shared with representatives of the physician and hospital communities, prior to implementation.

**DHS Response:** DHS intends to share any information regarding proposed changes in the screening methodology with representatives of the physician and hospital community prior to implementation of the changes. However, DHS is often federally mandated to implement criteria within a specific time frame and, therefore, does not consider the procedures recommended above to be the most effective manner of administering the program.

**Section 41.109. DRG Changes and Adjustments Recommendation:** We recommend that in the interest of due process and fair consideration, that the last sentence of this section be changed to read: "If the changes cause the DRG to be reassigned to a lower paying DRG, TDHS or its contractor will contact the attending physician to discuss the case and if the attending physician disagrees with the change, the case will be referred to a specialty consultant physician reviewer for a final determination."

**DHS Response:** DHS has reviewed this recommendation and determined that it would not be efficient and/or cost-effective. Other methods of review are already available as indicated in these rules.

**Section 41.112(d). Recommendation.** We recommend that this subsection be amended to state: "When an admission denial or continued stay is recommended by the TDHS physician reviewer, the attending physician will be contacted to discuss the case. If the attending physician disagrees with the denial or cannot be contacted, the case will be referred to a specialty reviewer for final determination. When an admission denial, continued stay denial, or technical denial becomes final, TDHS will recoup all monies paid to the hospital for the admission or actual services provided on the days of stay that were denied."

**DHS Response:** §41.112(d) has been changed to read: "If a physician reviewer determines that the admission or continued stay was not medically necessary, the physician reviewer will attempt to contact the attending physician. If the attending physician disagrees or cannot be contacted, the case will be referred to a specialty consultant physician for a determination." Also, as a result of this recommendation, DHS has substituted this language in §41.108(a)(1). Section 41.112(d), as proposed, has been renumbered (e).

DHS is adopting §41.110(1)(C) with editorial changes to clarify that formal appeal hearings must be requested from DHS's Hearings Division.

## • 40 TAC §§41.101-41.111

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 24, 1989.

TRD-8904566

Charles Stevenson  
Acting Commissioner  
Texas Department of  
Human Services

Effective date: June 14, 1989.

Proposal publication date: January 20, 1989.

For further information, please call: (512)  
450-3765

## • 40 TAC §§41.101-41.103, 41.105-41.113

The new sections are 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.

### §41.108. Denials and Recoupments.

(a) DHS or its contractor may issue two types of denials -- admission denials and technical denials -- as a result of the TMRP review process.

(1) If a physician reviewer determines that the admission was not medically necessary, the physician reviewer will attempt to contact the attending physician. If the attending physician disagrees or cannot be contacted, the case will be referred to a specialty consultant physician for a determination.

(2) If the properly completed attestation or complete medical record is not available or is not made available during the review or, for mail-in hospitals, within the specified timeframes, a preliminary technical denial is issued. The facility will be notified and allowed 30 days to provide the complete medical record, including the completed attestation, to DHS or the contractor. A properly completed attestation statement must include a narrative description of the diagnoses and procedures, the certification statement, the physician's signature, the physician's initials in changes in the sequencing of diagnoses or procedures, and the date the physician signed the statement. If the complete medical record, including the completed attestation, is received by DHS or its contractor within 30 days after the preliminary technical denial, a final technical denial is not issued, and the case is reviewed. If the complete medical record, including the completed attestation, is not received by DHS or the contractor within the 30 days, a final technical denial

is issued and payment is recouped.

(b) Except as otherwise noted in this subsection, when an inpatient admission is not medically necessary and an admission denial is issued, DHS or its contractor recoups all monies paid to the hospital for the admission, and no money is payable for any of the services rendered. An exception is made in the event that the hospital originally placed the patient in an observation area on an outpatient basis, and the hospital submits a revised claim solely for medically necessary outpatient services. When a technical denial becomes final, DHS or its contractor recoups all monies paid to the hospital for admission, and no money is payable for any of the services rendered.

*§41.110. Appeals Requirements under TMRP and TEFRA, and Hospital Notification.* Hospitals may appeal adverse decisions made by DHS or its contractor under the TMRP and TEFRA review programs. The methods for appealing adverse decisions and the specific requirements which must be met by the hospital are:

(1) Appeals of admission denials, continued stay denials, and DRG changes.

(A) If a hospital is dissatisfied with the original medical-necessity decision or DRG change, the hospital may submit to DHS a written request for an informal desk review. The request must include a copy of the complete medical record; the original signed, properly completed, and notarized affidavit in the format provided by DHS or the contractor, for the hospital to certify the record as a business record; and a properly completed physician attestation statement, when applicable. The hospital must ensure that DHS receives the request within 180 days from the date of written notification from DHS or its contractor. Appeals of the medical-necessity decisions or DRG changes are sent to the DHS Hearings Division.

(B) An informal desk review must be conducted and a DHS physician must render an appeal decision and notify the hospital in writing of that decision. If any of the requirements of subparagraph (A) of this paragraph are not met, DHS does not render a medical-necessity or DRG change decision; instead, it considers the previous decision by DHS or its contractor as final.

(C) If the hospital is dissatisfied with the decision in the informal desk review, or if the hospital determines that DHS has not followed its policy concerning due process in its appeal rules, the hospital may request a formal appeal hearing from the DHS Hearings Division. The formal appeal must be submitted in writing and

must be received by DHS no later than 15 days from the hospital's date of receipt of the DHS' notification of:

(i) the results of the medical necessity informal desk review decision;

(ii) the results of the DRG change, informal desk review decision, or

(iii) notification that the informal desk review decision will not be rendered because the requirements of subparagraph (A) of this paragraph have not been met.

(2) Appeals of technical denials.

(A) The hospital may appeal a technical denial to DHS if the hospital determines that DHS or the contractor issuing the denial made an incorrect denial or did not provide proper notification of the technical denial. The hospital must submit a written appeal request stating the reason the denial by DHS or its contractor was incorrect. The hospital may submit copies of any documentation the hospital deems necessary. Appeals of technical denials must be received no later than 15 days from the date of the final technical denial notice from DHS or its contractor and must be sent to the DHS Hearings Division.

(B) If the requirements of subparagraph (A) of this paragraph are met, DHS renders a decision on DHS' or the contractor's technical denial decision. If DHS determines that the technical denial was correct, DHS considers the decision of DHS or the contractor as final. If DHS determines that DHS' or its contractor's decision was incorrect, DHS notifies the hospital that the technical denial has been overturned. A medical necessity review and DRG review will then be performed by DHS or its contractor.

(C) If the hospital determines that DHS has rendered an incorrect decision concerning the technical denial appeal, the hospital may request a formal contract appeal in accordance with the requirements of paragraph (1)(C) of this section.

*§41.112. Inpatient Utilization Review for Hospitals Reimbursed under the Tax Equity Fiscal Responsibility Act (TEFRA) Principles of Reimbursement.*

(a) For all Medicaid admissions identified for review, the TEFRA review process consists of the following three major components:

(1) admission review, which is a determination of the medical necessity of the admission;

(2) continued stay review, which is the determination of the medical necessity of each day of stay;

(3) quality of care review, which is an assessment of the quality of care provided to determine if it meets generally accepted standards of medical and hospital care practices or puts the patient at risk of unnecessary injury or death. Quality of care review includes the use of discharge screens and generic quality screens.

(b) DHS staff will review the complete medical record to make decisions concerning the medical necessity of the admission, continued stay, and quality.

(c) If the complete medical record is not available or is not made available during the review, a preliminary technical denial will be issued. The facility will be notified and allowed 30 days to provide the complete medical record to DHS. If the complete medical record is received by DHS within the 30 days, a final technical denial is not issued and the medical record is reviewed. If the complete medical record is not received by DHS within the 30 days, a final technical denial is issued, and payment is recouped.

(d) If a physician reviewer determines that the admission or continued stay was not medically necessary, the physician reviewer will attempt to contact the attending physician. If the attending physician disagrees or cannot be contacted, the case will be referred to a specialty consultant physician for a determination.

(e) When an admission denial or a denial of continued stay is issued, or when a technical denial becomes final, DHS will recoup all monies paid to the hospital for the admission or for the days of stay that were denied.

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 May 24, 1989.

TRD-8904587

Charles Stevenson  
Acting Commissioner  
Texas Department of  
Human Services

Effective date: June 14, 1989.

Proposal publication date: January 20, 1989.

For further information, please call: (512) 450-3765

## Chapter 48. Community Care for Aged and Disabled

### Eligibility

#### • 40 TAC §§48.2925-48.2927

The Texas Department of Human Services adopts the repeal of §§48.2925-48.2927, without changes to the proposed text as published in the April 4, 1989, issue of the *Texas Register* (14 TexReg 1681).

The repeals are justified to simplify eligibility

procedures for CCAD clients.

The repeals will function by eliminating restrictions on transfers of resources by CCAD applicants and clients, thereby making CCAD policies consistent with Medicaid eligibility policies.

No comments were received regarding adoption of the repeals.

The following repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 23, 1989.

TRD-8904515

Charles Stevenson  
Acting Commissioner  
Texas Department of  
Human Services

Effective date: July 1, 1989.

Proposal publication date: April 4, 1989.

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 has adopted amendments to the *Texas Automobile Manual*.

The board has adopted adjusted physical damage rating symbols for certain 1989 model private passenger automobiles. The symbols adopted were developed from manufacturers list price data and adjusted in accordance with the prescribed vehicle series rating rule contained in the Symbol and Identification Section of the *Texas Automobile Manual*. The amendments are effective at 12:01 on the 60th day after notice of this action is published in the *Texas Register*.

This notification is made pursuant to the In-

surance Code, Article 5.97, 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 May 19, 1989.

TRD 8904505

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: July 29, 1989

Proposal publication date: May 30, 1989

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

# 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 Commission on the Arts

**Thursday, June 8, 1989.** The Texas Commission on the Arts will meet in the Houston Room, Sheraton Dallas Hotel and Towers, 400 North Olive, Dallas. Times and agendas follow.

**9 a.m.** The By-Laws Committee will review by-laws and recommend Liaison Committee to the Governor's Office.

**Contact:** Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

**Filed:** May 23, 1989, 3:30 p.m.

TRD-8904526

**10 a.m.** The commission will consider items for commission consent, individual consideration, and information only. The commission will also meet in executive session.

**Contact:** Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

**Filed:** May 23, 1989, 3:30 p.m.

TRD-8904525

## Automated Information and Telecommunications Council

**Friday, June 2, 1989, 9 a.m.** The Automated Information and Telecommunications Council will meet in Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the council will approve April and May minutes; consider procurements and new business; and new business. The council will also meet in executive session to receive confidential pricing data on item IV. C.

**Contact:** Lynn B. Polson, 510 South Congress Avenue, Austin, (512) 463-5530.

**Filed:** May 24, 1989, 8:06 a.m.

TRD-8904543

## Texas School for the Deaf

**Saturday, June 3, 1989, 10 a.m.** The Governing Board of the Texas School for the Deaf will meet in the Administration Boardroom, 1102 South Congress Avenue, Austin. According to the agenda summary, the board will approve minutes; consider business for information purposes and business requiring board action; and hear comments by board members.

**Contact:** Marilyn Stephan, (512) 440-5335.

**Filed:** May 24, 1989, 10:31 a.m.

TRD-8904606

## Texas Employment Commission

**Wednesday, May 31, 1989, 8:30 a.m.** The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will consider prior meeting notes; executive session on Texas Chapter of the National Staff Leasing Association, et al. v. Mary Scott Nabers, et al.; actions, if any resulting from executive session; consideration for publication of rule regarding staff leasing industry; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission docket 22; and set date of next meeting.

**Contact:** C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

**Filed:** May 23, 1989, 2:39 p.m.

TRD-8904522

## Firemen's Pension Commission

**Monday, June 12, 1989, 3 p.m.** The Administrative Division of the Firemen's Pension Commission will meet in the Arlington Convention Center, I-30 and Convention Center Drive, Arlington. According to the agenda summary, the division will review

and approve 1988 actuarial evaluation; Fair Labor Standards Act; and routine business.

**Contact:** Helen Campbell, 3910 South IH-35, Suite 235, Austin, Texas 78704, (512) 462-0222.

**Filed:** May 24, 1989, 3:46 p.m.

TRD-8904633

## Texas Department of Health

**Wednesday, June 7, 1989, 1 p.m.** The Primary Health Care Services Program Advisory Committee of the Texas Department of Health will meet in Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve minutes of previous meeting and consider: program appropriations and legislative actions; continuation grant applications for the primary health care services program; update on program manuals (administrative and eligibility handbooks); annual primary health care services program meeting; integrated eligibility/presumptive eligibility; and set next meeting date.

**Contact:** John Dombroski, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771.

**Filed:** May 24, 1989, 8:39 a.m.

TRD-8904611

## Texas Housing Agency

**Wednesday, May 24, 1989, 1 p.m.** The Board of Directors of the Texas Housing Agency submitted an emergency revised agenda for a meeting held in the Conference Room, Suite 300, 811 Barton Springs, Austin. According to the agenda summary, the board considered and possibly acted on the low income tax credit program reports; resolution authorizing the issuance, sale, and delivery of agency residential mortgage revenue bonds, series 1989A (prepayment refunding) and establishment of related home mortgage purchase program; resolution authorizing the issuance, sale, and delivery of agency residential mortgage revenue bonds, series 1989B (new money issued

from 1989 allocation) and establishment of related home mortgage purchase program. The emergency status was necessary to develop adequate and timely plans to provide decent, safe, and sanitary housing for Texans of low and moderate income.

Contact: Timothy R. Kenny, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: May 23, 1989, 3:41 p.m.

TRD-8904528

### Industrial Accident Board

Wednesday, May 31, 1989, 9 a.m. The Industrial Accident Board will meet in Room 107, First Floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board will approve minutes; consider action on adoption of amendment to board Chapter 42 concerning medical benefits, Subchapter B concerning medical cost evaluation, and 28 TAC §42.110 (f)(1) concerning hospital cost reports; discuss and consider health care provider advisory committee membership attendance and voting requirements and procedures and master disaster plan on computer data and records management; hear presentation on E-1 procedures; discuss and consider merit raises, board policy for payment of staff moving expenses, procedure implementing early warning system with SBI, personnel matters concerning allocation of personnel for computer acquisition, and board activities. The board will meet in executive session to discuss personnel concerning allocation of personnel for computer acquisition and review for board files in closed session.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7960.

Filed: May 25, 1989, 9:55 a.m.

TRD-8904638

### State Board of Insurance

Wednesday, June 7, 1989, 2 p.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto, Austin. According to the agenda, the board will consider motion for rehearing in the appeal of Savers Annuity Insurance Company from Commissioner's Order 88-0240.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: May 25, 1989, 9:48 a.m.

TRD-8904636

### Texas Low-Level Radioactive Waste Disposal Authority

Wednesday, May 31, 1989, 11 a.m. The Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet in the Texas Medical Imaging Center, 3465 West Alabama, Houston. According to the agenda, the board will approve engineering support contract with Rogers and Associates to provide facility design and performance assessment support and interagency contract with Texas Tech University to develop a rangeland site and condition map.

Contact: L.R. Jacobi, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5295.

Filed: May 23, 1989, 10:16 a.m.

TRD-8904514

### Texas State Board of Examiners of Professional Counselors

Friday, June 2, 1989, 9 a.m. The Texas State Board of Professional Examiners will meet in Room T-607, 1100 West 49th Street, Austin. Agendas follow.

The Complaint Committee will consider complaints processing and pending hearing(s).

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: May 24, 1989, 8:39 a.m.

TRD-8904613

The Professional Relations Committee will consider next newsletter.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: May 24, 1989, 8:39 a.m.

TRD-8904612

The Rules, Supervisors, Specialties, and Reciprocity Committee will consider: art therapy specialty and other specialty designations; development of exam on substance abuse specialty.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: May 24, 1989, 8:39 a.m.

TRD-8904616

The Applications, Ethics, Suspensions, and Revocations Committee will consider: applications, appeals; the taping issue raised by licensed professional counselor, Diana Fielder.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: May 24, 1989, 8:39 a.m.

TRD-8904615

The board will approve minutes of previous meeting and consider: appeal on continuing education matters by licensed professional counselor, Ella L. Schorlemmer; licensure applications/renewals and disapproved files or questions regarding renewals; administrative report; amendments to rules (22 TAC §§681.1-681.260); expenditures; ad hoc testing committee meeting; status of June test cycle; status of renewals; applications; appeals; the taping issue raised by licensed professional counselor, Diana Fielder; complaints processing; pending hearing(s); next newsletter; additional public relations projects; recognition for universities art therapy specialty and other specialty designations; development of exam on substance abuse specialty; AG opinion regarding licensees in exempt work settings; legislation; other matters not involving board action; and hear other persons who wish to appear before board.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: May 24, 1989, 8:39 a.m.

TRD-8904620

The Public Relations Committee will consider: news columns or additional public relations projects; staff recommendation on recognition for universities.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: May 24, 1989, 8:39 a.m.

TRD-8904619

The Testing, Licensing, Continuing Education, and Renewals Committee will consider: meeting of ad hoc testing committee; status of June test cycle; status of renewals.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: May 24, 1989, 8:39 a.m.

TRD-8904618

The Fees and Budget Committee will consider expenditures.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: May 24, 1989, 8:39 a.m.

TRD-8904617

### Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Wednesday, May 31, 1989, 9 a.m. The



commission will consider the following dockets: 8275, 5610, 7630, 7560, 8230, 8491, 8530, 8372, 8376, 8377, 8385, 8451, 8641, and 8363. The commission will consider publication of proposed amendments to substantive rules: §23.45 concerning billing and §23.46 concerning discontinuance of service. The commission will consider final adoption of substantive rule §23.21 concerning cost of service. The commission will also consider publication of a new rule to implement the Texas Enterprise Zone Act.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 23, 1989, 3:10 p.m.

TRD-8904527

Wednesday, May 31, 1989, 2 p.m. The Administrative Division will approve minutes; reports, discussion and action on budget and fiscal matters, report on 71st legislative session, consider procedure to establish public comment file for correspondence received by commissioners on subjects of pending cases, staff presentation of a management audit of Rita Blanca Electric Cooperative; adjournment for executive session to consider litigation and personnel matters. Reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 23, 1989, 3:11 p.m.

TRD-8904529

Monday, June 5, 1989, 10 a.m. The Hearings Division will consider Docket 8806-Application of Southwestern Bell Telephone Company for approval of a two-year renewal of Shell Development Company's Plexar (sm)-custom service.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 23, 1989, 3:12 p.m.

TRD-8904535

Monday, June 12, 1989, 10 a.m. The Hearings Division will consider Dockets 5502 and 5559-Application of Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc., to transfer facilities and certificate rights and application of Southwestern Bell Telephone Company to transfer certificate rights to AT&T.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 23, 1989, 3:11 p.m.

TRD-8904536

Monday, July 10, 1989, 10 a.m. The Hearings Division will consider Docket 8740-

Petition of San Patricio Electric Coop., Inc. to decrease general service rate.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1989, 1:54 p.m.

TRD-8904534

Tuesday, September 12, 1989, 10 a.m. The Hearings Division will consider Docket 8790-Application of Southwestern Bell Telephone Company to offer an experimental optional calling (discounted intraLATA rates).

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 23, 1989, 3:12 p.m.

TRD-8904534

### State Purchasing and General Services Commission

Wednesday, May 31, 1989, 9 a.m. The State Purchasing and General Services Commission will meet in Conference Room 402, Central Services Building, 1711 San Jacinto, Austin. According to the agenda, the commission will consider repeal of §115.62 and final adoption of new §115.62 concerning the elimination of architectural barriers; consider proposed amendments to §§113.1, 113.2, 113.5, and 113.6 concerning purchasing rules; hear Long Range Planning Committee report, monthly legislation report, monthly 3.09 report, monthly operating budget report, monthly construction project report, and monthly division activity report. The commission will also meet in executive session to consider the status of the potential purchase of real property pursuant to the provisions of Texas Civil Statutes, Article 601b; executive session to receive a report from counsel concerning the status of all pending litigation.

Contact: John R. Neel, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3446.

Filed: May 23, 1989, 10:15 a.m.

TRD-8904516

### Secretary of State

Thursday, May 25, 1989, 2 p.m. The State Board of Canvassers of the Secretary of State met in emergency session in the Dave Fox Conference Room, Dallas County Administration Building, 411 Elm Street, Dallas. According to the agenda, the board canvassed returns of second special election for State Representative District 140. The emergency status was necessary because of scheduling conflicts.

Contact: Tom Harrison, P.O. Box 12060,

Austin, Texas 78711, (512) 463-5650.

Filed: May 24, 1989, 4:44 p.m.

TRD-8904630

### Board of Tax Professional Examiners

Sunday, June 11, 1989, 4:30 p.m. The Board of Tax Professional Examiners will meet in the Holidome Holiday Inn, Beaumont. According to the agenda summary, the board will approve minutes of March 20, 1989. Action items include certification and recertification of registrants; report Complaint Committee case of misconduct during exam; report Committee on Complaint Procedures and draft policy and procedure item; approve mapping course for CEU and elective. Discussion items are report of Board Committee on Professional Standards; board appropriations fiscal year 1990-1991; contents of annual letter to each registrant. Information items are statistics on registrant population; status of legislation affecting BTPE activities; exam results for fiscal year 1989 to date; report on move of BTPE offices and planning calendar.

Contact: Sam H. Smith, P.O. Box 15920, Austin, Texas 78761, (512) 834-4982.

Filed: May 23, 1989, 10:37 a.m.

TRD-8904521

### Texas Municipal Retirement System

Friday, June 16, 1989, 7 a.m. The Board of Trustees of the Texas Municipal Retirement System will meet in the Ramada Hotel, 5701 South Broadway, Tyler. According to the agenda summary, the board will hear and approve minutes of March 18, 1989, regular meeting; review and approve service retirements; disability retirements; review and approve supplemental death benefits payments; consider extended supplemental death benefits; review and act on financial statements; presentation of 1988 annual report; audit report; actuarial report; approve 1990 contribution rates, approve supplemental death benefits contribution rates for 1990; selection of auditor for fiscal year 1989 operations; report on pending legislation; report by director; report by legal counsel; consider any other business to come before the board.

Contact: Jimmie L. Mormon, (512) 476-7577.

Filed: May 24, 1989, 11:55 a.m.

TRD-8904609

## University of Texas Health Science Center at Houston

**Thursday, June 1, 1989, noon.** The Animal Welfare Committee, Medical School of the University of Texas Health Science Center at Houston in the G.018 Conference Room, Medical School Building, Houston. According to the agenda summary, the committee will hear presentation of protocols by protocol review group; hear subcommittee reports concerning animal care facilities, program, community affairs, and policy; and discuss USDA proposed regulations.

**Contact:** Kathleen M. Rose, P.O. Box 20708, Houston, Texas 77225, (713) 792-5895.

**Filed:** May 24, 1989, 2:46 p.m.

TRD-8904621

## University of Texas Health Center at Tyler

**Thursday, June 1, 1989, noon** The Animal Research Committee of the University of Texas Health Center at Tyler will meet in the Chaplain's Conference Room, UT Health Center at Tyler, State Highway 155 and US Highway 271, Tyler. According to the agenda, the committee will approve minutes of last meeting; hear chairman's report on activities since last meeting; review protocols concerning effects of pseudomonas bacteria infection in the lungs and antibody production in study of emphysema.

**Contact:** Barry Peterson, P.O. Box 2003, Tyler, Texas 75710, (214) 877-7012.

**Filed:** May 24, 1989, 2:46 p.m.

TRD-8904622

## Texas Board of Veterinary Medical Examiners

**Thursday-Saturday, June 15-17, 1989, 8:30 a.m., daily.** The Texas Board of Veterinary Medical Examiners will meet in the Fourth Floor Conference Room, 1946 IH-35, Austin. According to the agenda summary, the board will conduct disciplinary hearings, consider proposed rules, approve examination results, approve cancellation of lapsed licenses and conduct other general business as reflected on the attached agenda. An executive session will be held on Friday, June 16, 1989.

**Contact:** Don Wilson, 1946 South IH-35, Austin, Texas 78704, (512) 447-1183.

**Filed:** May 24, 1989, 10:36 a.m.

TRD-8904610

## Texas Water Commission

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, unless otherwise noted. Dates, times, and agendas follow.

**Thursday, May 25, 1989, 2 p.m.** The commission met in emergency session to consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary because matters relating to the settlement require immediate action.

**Contact:** Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

**Filed:** May 23, 1989, 10:51 a.m.

TRD-8904520

**Thursday, June 8, 1989, 10 a.m.** The commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

**Contact:** Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

**Filed:** May 23, 1989, 10:51 a.m.

TRD-8904519

**Monday, June 5, 1989, 10 a.m.** The commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

**Contact:** Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

**Filed:** May 23, 1989, 3:13 p.m.

TRD-8904530

**Thursday, June 29, 1989, 9 a.m.** The Office of Hearings Examiner will meet at the Student Hide Out in the Student Center, Alvin Community College, 3110 Mustang Road, Alvin. According to the agenda summary, the office will consider Oak Manor Municipal Utility District, P.O. Box 1481,

Alvin, Texas 77511 application for an amendment to Permit 10700-01 to authorize an increase in the discharge of treated domestic wastewater effluent from a volume not to exceed an average flow of 50,000 gallons per day to a volume not to exceed an average flow of 80,000 gallons per day. The proposed amendment would also add effluent limitations for minimum dissolved oxygen concentration.

**Contact:** Alex Schmandt, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** May 24, 1989, 3:03 p.m.

TRD-8904629

**Thursday, July 6, 1989, 9 a.m.** The Office of Hearings Examiner will meet at Junction City Hall, 102 North Fifth Street, Junction. According to the agenda summary, the office will consider Chem-Pac, Inc., P.O. Box 364, Junction, Texas 76849 application for a permit (Proposed Permit 03055) to authorize disposal of quenched extraction process wastewater and boiler blowdown from a cedarwood oil processing plant by irrigation on 5.5 acres of native grasses. The disposal volume is not to exceed an average of 14,000 gallons per day. The maximum cumulative total volume of effluent applied to the disposal area during any calendar year shall not exceed 2.0 acre-feet/acre. No discharge of pollutants into the waters of the state is authorized by this permit.

**Contact:** Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** May 23, 1989, 3:12 p.m.

TRD-8904532

## Regional Meetings Meetings Filed May 23, 1989

The Bexar Appraisal District, Appraisal Review Board, met at 535 South Main, San Antonio, on May 26, 1989, at 9 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Lee County Appraisal District, Board of Directors, will meet at 218 East Richmond Street, Giddings, on May 31, 1989, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Panhandle Regional Planning Commission, Board of Directors, met in the Conference Room, 2736 West 10th Street, Amarillo, on May 25, 1989, at 1:30 p.m. Information may be obtained from Pamela Nielsen, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381.

The Wise County Appraisal District, Appraisal Review Board, will meet at 206 South State Street, Decatur, on June 6, 1989, at 9 a.m. Information may be obtained from Freddie Dempsey, 206 South

State Street, Decatur, Texas 76234, (817) 627-3081.

TRD-8904517

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**Meetings Filed May 24, 1989**

The Central Texas Economic Development District, Board of Directors, will meet at Bellmead Community Center, 3900 Parrish Street, Bellmead, on June 8, 1989, at 7:30 p.m. Information may be obtained from Bruce Gaines, P. O. Box 4408, Waco, Texas 76705, (817) 799 0258.

The Golden Crescent Regional Planning Commission, Board of Directors, will meet in the Boardroom, Building 102, Regional Airport, Victoria, on May 31, 1989, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Hunt County Tax Appraisal District, Board of Directors, met in the Boardroom, 4801 King Street, Greenville, on May 25, 1989, at 7 a.m. The Appraisal Review Board will meet at the same location on May 30-June 15, 1989, at 9 a.m., daily. Information may be obtained from Joe Pat Davis, Shirley Smith or Linda S. Haynes, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Lavaca County Central Appraisal District, Appraisal Review Board, will meet at 113 North Main, Hallettsville, on

June 7, 1989, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Trinity River Authority of Texas, Central Regional Wastewater System Right-of-Way Committee, will meet at 5300 South Collins, Arlington, on May 30, 1989, at 10:30 a.m. Information may be obtained from Jack C. Worsham, P. O. Box 60, Arlington, Texas 76004, (817) 467-4343.

TRD-8904542

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**Meetings Filed May 25, 1989**

The Cass County Appraisal District, Appraisal Review Board, will meet at 400 North Main Street, Linden, on May 31, 1989, at 9 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Martin County Appraisal District, Appraisal Review Board, will meet at the Junior High Cafeteria, 100 North Gray Street, Stanton, on June 6 and 7, 1989, at 9 a.m. daily. The Board of Directors will meet at 708 West St. Anna, Stanton, on June 13, 1989, at 7 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756 2823.

The Sabine Valley Regional MHMR Center, Board of Trustees, will meet at the Administration Building, 107 Woodbine

Place, Longview, on June 12, 1989, at 7 p.m. Information may be obtained from Ron Cookston.

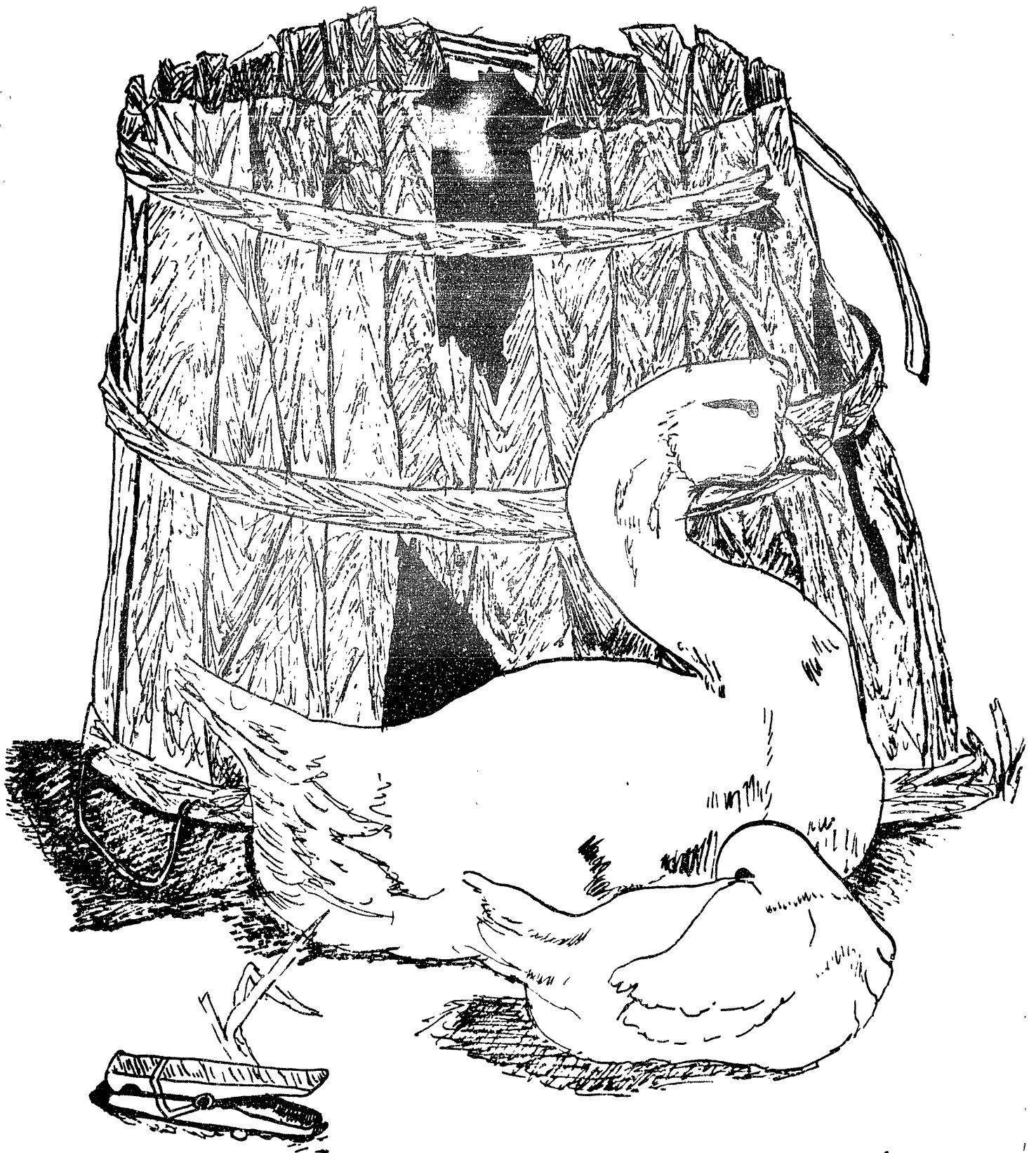
The San Jacinto River Authority, Board of Trustees, will meet in the Evergreen Room, Woodlands Inn and Country Club, The Woodlands, on May 31, 1989, at 1 p.m. Information may be obtained from Jack K. Ayer, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111.

The Tarrant Appraisal District, Appraisal Review Board, will meet at 2309 Gravel Road, Fort Worth, on June 7, 8, 13-15, 19-22, and 26-29, 1989, at 8:30 a.m., daily. Information may be obtained from Linda R. Freeman, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 284-8884.

The Upshur County Appraisal District, Appraisal Review Board, will meet at Warren and Trinity Streets, Gilmer, on June 8, 1989, at 8 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

The Wood County Appraisal District, Appraisal Review Board, will meet in the Conference Room, 217 North Main, Quitman, on June 5-9, 1989, at 9 a.m., daily. Information may be obtained from W. Carson Wages, P.O. Box 951, Quitman, Texas 75783, (214) 763-4946.

TRD-8904634



Christy Fortner  
ART II

Name: Christy Fortner  
Grade: 8  
School: T.H. McDonald Middle School, Mesquite

# 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.

## State Banking Board Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing on Friday, June 30, 1989, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the change of domicile application for Resources Trust Company of the Southwest, Inc., Houston.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on May 22, 1989

TRD-8904544 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: May 23, 1989

For further information, please call (512) 479-1200

## Texas College of Osteopathic Medicine Consultant Proposal Request

Under the provision of Texas Civil Statutes, Article 6252-11c, Texas College of Osteopathic Medicine (TCOM) is currently seeking proposals from experienced private consultants to develop the framework for a comprehensive computing plan that will provide a fully compatible, timely, accurate, and integrated management information system including all elements of teaching, research, service, patient care, and administrative activities. The analysis should include an evaluation of current hardware and software configurations in relation to the needs of the institution. It should also identify areas of need not provided by current systems. Where appropriate, cost estimates should be provided.

The consultants will be asked to present in their proposal specific reference to knowledge of system development and design; experience with higher education systems and operations nationwide; and experience with higher education in the state of Texas. The expected period of the engagement is anticipated to be spread over a three-month period.

The proposal should address how the tasks will be performed. A detailed budget specifying consultant costs, out-of-pocket expenses to be charged, and a not-to-exceed budget should be provided. The proposal should provide a resume of relevant engagements and proposed strengths that demonstrate an ability to provide the services needed. Each reply should also include a list of all state agencies (including higher education) within the State of Texas for which this consultant has performed similar services within the past five years.

TCOM solicits proposals from experienced consultants who will be evaluated on the basis of qualifications,

demonstrated knowledge, and competence. TCOM reserves the right to reject any or all bids, to waive any and all formalities, and to make an award, which in the sole judgment of TCOM, best meets its needs.

Details of the requirements can be obtained from Frank Fomey, Director of Computing and Telecommunications, 3500 Camp Bowie Boulevard, Fort Worth, Texas 76107-2690, (817) 735-2146. Proposals should be submitted to the Purchasing Department.

The deadline for receipt of offers of consulting services is July 10, 1989. Proposals received after 5 p.m. on July 10, 1989, will be returned unopened to the proposer.

Issued in Austin, Texas on May 19, 1989.

TRD-8904537 Jan Dobrin  
Board Secretary  
University of North Texas

Filed: May 23, 1989

For further information, please call (817) 735-2525

## Texas Department of Commerce Invitation to Bid

The Texas Department of Commerce (Commerce) announces an invitation for bids to administer a phone questionnaire.

Detailed information regarding the project is set forth in the invitation for bids which will be available on or after May 19, 1989, at the following location: Texas Department of Commerce, Research and Planning Division, 816 Congress Avenue, Suite 450, Austin, Texas 78701, Darren Rudloff, (512) 320-9656.

The deadline for receipt of bids in response to this invitation will be 4 p.m., Monday, June 5, 1989.

Commerce reserves the right to accept or reject any or all invitations for bids submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractor alternatives. Commerce will base its choice on demonstrated competence, qualifications, and evidence of superior performance with criteria.

Issued in Austin, Texas on May 23, 1989.

TRD-8904531 J. William Lauderback  
Executive Director  
Texas Department of Commerce

Filed: May 23, 1989

For further information, please call (512) 320-9656

## Texas Department of Corrections Consultant Proposal Request

**Invitation:** The Texas Department of Corrections (TDC) invites offers to provide professional architect/engineer services for the site adaptation of the prison unit described as follows. This invitation is made under Texas Civil Statutes, Article 6252.11c.

**Description:** The Texas Department of Corrections intends to build between one and five medium/maximum security prisons in various, yet to be determined locations within the State of Texas.

The architect/engineer services will include the site adaptation of a new prototype to the number of sites directed; bidding phase services; construction phase, including a full-time site representative; and close-out services; and may also include the redesign of an existing prototype 2250 Man Unit to expand the dayrooms of the inmate housing building. The architect/engineer services will also include a new design or the site adapting of an existing design of an industrial building which will be constructed concurrently with each prison unit. In addition to the services previously stated the architect/engineer must provide a complete review of plans and specifications to confirm compliance with current codes, standards, and court ordered stipulations and must approve and seal the construction documents prior to issuance of these documents for bidding purposes.

The scope and format of your proposal will be at your discretion. Brevity will be appreciated. Please submit six copies of your proposal.

Please do not submit printed firm brochures with your proposal. Please do address the following matters: 1. Present size and composition of your staff; 2. Experience in design of detention facilities; 3. Primary areas of expertise of your senior management available for assignment to this project; 4. Current work load, and indication of your schedule for completion thereof; 5. Program for executing work of this magnitude and the manner in which you propose to organize your efforts for such work; 6. Desirability or necessity for inclusion of specialized consultant names and availability of such services.

The firm of Henningson, Durham and Richardson provided the professional services for the design and construction of the original prototype 2250 Man Unit and for the site adaptation of two additional units. The TDC intends to enter into a contract for services with HDR for the previously stated project(s) unless a proposal is received which is more beneficial to the State of Texas.

**Deadline:** Proposals must be received by the Texas Department of Corrections not later than noon on June 5, 1989. Each envelope should be labeled "A/E Selection 2250" and may be mailed or delivered to: The Texas Department of Corrections, Contract Construction Division, 2503 Lake Road, Suite 15, Huntsville, Texas 77340.

Issued in Austin, Texas on May 23, 1989.

TRD-8904533      Michael R. Davis  
Assistant General Counsel  
Texas Department of Corrections

Filed: May 23, 1989

For further information, please call (409) 294-6003



## Texas Education Agency Request for Applications

The Texas Education Agency, the Texas Higher Education Coordinating Board, and the Texas Department of Commerce are requesting applications to conduct three regional planning projects to link occupational education and training with the needs of business and industry to support economic development. These projects are designed to continue implementing regional planning statewide. The projects will be conducted from September 1, 1989-June 30, 1990, for up to \$75,000 each in three separate labor markets of the state which are not currently receiving regional planning funds.

One current project is being conducted by the Upper Rio Grande Private Industry Council in the six counties of the Upper Rio Grande Service Delivery Area. A second project is being jointly conducted by the Region 20 Education Service Center and the Alamo Private Industry Council in the three counties of the San Antonio Metropolitan Statistical Area. A third project is being conducted by Northeast Texas Community College in the nine counties of the Northeast Texas Service Delivery Area. A fourth project is being conducted jointly by the Dallas County Community College District and Interlink, a voluntary planning organization, for the nine counties of the Dallas-Fort Worth Consolidated Metropolitan Statistical Area. A fifth project is being conducted by McLennan Community College for the six counties of the Heart of Texas Service Delivery Area. The sixth project is being conducted by Amarillo College for the 25 counties of the Panhandle Service Delivery Area.

It is anticipated that the six currently funded projects will receive funds to continue their activities through June 30, 1990, provided all contractual obligations are met.

Only public educational institutions (public independent school districts, education service centers, public community colleges, public technical institutes, public colleges, and public universities) and Private Industry Councils in Texas (with public educational institutions serving as the fiscal agent) which are not included in the six currently funded regional planning project regions may apply for project funds. To apply, these entities must form a cooperative within a clearly defined project region based upon one or more multi-county Job Training Partnership Act Service Delivery Areas or State Planning Areas. Entities that previously applied to conduct projects, but were not awarded funds, are urged to consider applying for funds to conduct these additional projects.

The last day on which applications will be accepted is August 4, 1989. Applications will be judged on the basis of the quality of the technical component, the quality of the management component, the adequacy and appropriateness of the project budget, and the quality of the evaluation component.

Copies of the Request for Application (RFA 701-90-007) may be obtained by contacting the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

Three bidders' conferences will be held to allow potential applicants to ask clarifying questions regarding the scope and nature of the work required for the project. The first conference will be held on Wednesday, June 14, 10:30 a.m. - noon, at the Houston Job Training Partnership Council, 1919 Smith Street, Suite 500, Houston. The second conference will be held on Thursday, June 15, 10:30 a.m. - 12 noon, at TSTI-Harlingen, Short Course Center, Loop

499 and Oak Street, Harlingen. The third conference will be held on Friday, June 16, 10:30 a.m.-noon, at Region XVIII Education Service Center, 2811 La Force Boulevard, Midland.

Issued in Austin, Texas on May 19, 1989.

TRD-8904504 W. N. Kirby  
Commissioner of Education

Filed: May 22, 1989

For further information, please call (512) 463-9212

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**Texas Water Commission**  
**Meeting Notice**

A meeting of the Scientific/Technical Committee of the Galveston Bay National Estuary Program is scheduled for: Thursday, June 1, 1989, 10 a.m., University of Houston at Clear Lake, 2700 Bay Area Boulevard, Bayou Building, Room 1-220, Houston.

The committee will consider its functional role in the management conference; reports from subcommittees concerning priority problems and goals; recommended FY 1990 projects; data management strategy; organizational guidelines; peer review; and other business.

Issued in Austin, Texas on May 19, 1989.

TRD-8904518 B. J. Wynno, III  
Chairman Policy Committee  
Galveston Bay National Estuary Program

Filed: May 23, 1989

For further information, please call (512) 475-2161

◆ ◆ ◆  
**Texas Water Development Board**  
**Request for Proposals**

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.13(a), the submission of regional planning proposals from political subdivisions leading to the possible award of a contract to evaluate and determine the most feasible alternatives to meet water supply needs, estimate the costs associated with implementing feasible water supply alternatives, and identify institutional arrangements to provide water services for the service area of the Hill Country Water Supply Corporation and surrounding area in South Central Travis County. In order for a political subdivision to receive a grant, the applicant must have the authority to plan, implement, and operate water supply facilities.

**Description of Planning Objectives.** The purpose of this project is to prepare a plan that documents service needs, identifies feasible alternatives to meet water supply needs, and presents estimates of costs and schedules associated with providing water supply source, conveyance, treatment, and distribution system(s). A water conservation

plan and a drought management plan will be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need.

Discrete phases to implement water supply facilities to meet projected needs will be identified. Cost estimates shall be made for each respective implementation phase to determine the capital, operation, and maintenance requirements during a 30-year planning period. Separate cost estimates shall be made for each supply system component, including the water conservation program. Cost estimates for facilities shall be divided into (1) water supply source(s); (2) conveyance to treatment facilities; (3) water treatment facilities; and (4) storage and distribution facilities. The planning period for the proposed work shall extend from 1990 through the year 2020 and shall include project implementation schedules by service area and by type of service facility and activity for the respective phases.

**Description of Funding Consideration.** The Board has determined that there is an urgent need for regional water supply planning in the Hill Country Water Supply Corporation planning area. Fifty percent state funding for a state amount of up to \$25,000 has been authorized from the Board's research and planning fund. In the event that no acceptable proposal is submitted, the board retains the right to make no award of contract funds as specified by provisions of 31 TAC §355.13(a)(3).

The selected proposer will have 14 days from Board approval to enter into the contract and to demonstrate to the executive administrator that it has its matching share committed and available.

**Deadlines and Contact Person for Additional Information.** Ten copies of the full regional planning proposal must be filed with the Board prior to 5 p.m., June 16, 1989. The application must be directed to M. Reginald Arnold II, Executive Administrator, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Requests for information, regional planning objectives, and applicable planning rules in accordance with 31 TAC §§335.10-335.19, may be directed to John Miloy at the address in the preceding paragraph or by calling (512) 463-7926.

**State of Contract Terms and Required Completion Date.** Procedures for awarding contracts shall comply with the Texas Water Code, §15.406, and with 31 TAC §§355.10-355.19. Contractual agreements and associated funding will terminate on August 31, 1989. Completion date: August 31, 1989.

Issued in Austin, Texas on May 24, 1989.

TRD-8904599 Suzanne Schwartz  
General Counsel  
Texas Water Development Board

Filed: May 24, 1989

For further information, please call (512) 463-7850



*Jay Epps*

**Name: Jay Epps**

**Grade: 8**

**School: T.H. McDonald Middle School, Mesquite**

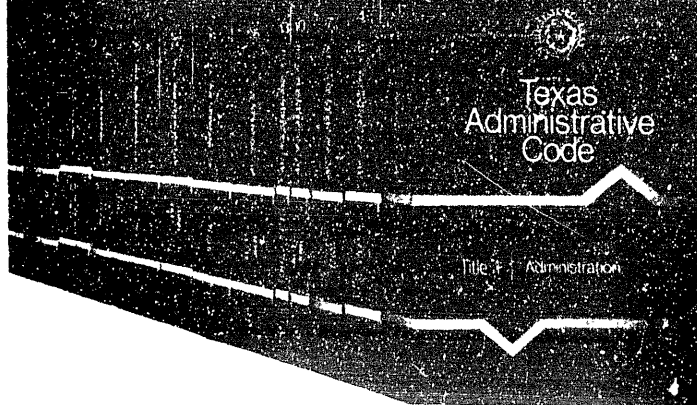


## 1989 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the June, July, and August, 1989 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
Friday, June 2	NO ISSUE PUBLISHED	
Tuesday, June 6	Wednesday, May 31	Thursday, June 1
Friday, June 9	Monday, June 5	Tuesday, June 6
Tuesday, June 13	Wednesday, June 7	Thursday, June 8
Friday, June 16	Monday, June 12	Tuesday, June 13
Tuesday, June 20	Wednesday, June 14	Thursday, June 15
•Friday, June 23	Friday, June 16	Tuesday, June 20
Tuesday, June 27	Wednesday, June 21	Thursday, June 22
Friday, June 30	Monday, June 26	Tuesday, June 27
Tuesday, July 4	Wednesday, June 28	Thursday, June 29
Friday, July 7	NO ISSUE PUBLISHED	
Tuesday, July 11	Wednesday, July 5	Thursday, July 6
Friday, July 14	Monday, July 10	Tuesday, July 11
Tuesday, July 18	Wednesday, July 12	Thursday, July 13
Friday, July 21	Monday, July 17	Tuesday, July 18
Tuesday, July 25	Wednesday, July 19	Thursday, July 20
Friday, July 28	Monday, July 24	Tuesday, July 25
Tuesday, August 1	SECOND QUARTERLY INDEX	
Friday, August 4	Monday, July 31	Tuesday, August 1
Tuesday, August 8	Wednesday, August 2	Thursday, August 3
Friday, August 11	Monday, August 7	Tuesday, August 8
Tuesday, August 15	Wednesday, August 9	Thursday, August 10
Friday, August 18	Monday, August 14	Tuesday, August 15
Tuesday, August 22	Wednesday, August 16	Thursday, August 17
Friday, August 25	Monday, August 21	Tuesday, August 22
Tuesday, August 29	Wednesday, August 23	Thursday, August 24

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