

Texas Register

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Texas Register

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Information Available: The eight sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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

TAC stands for the *Texas Administrative Code*;

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



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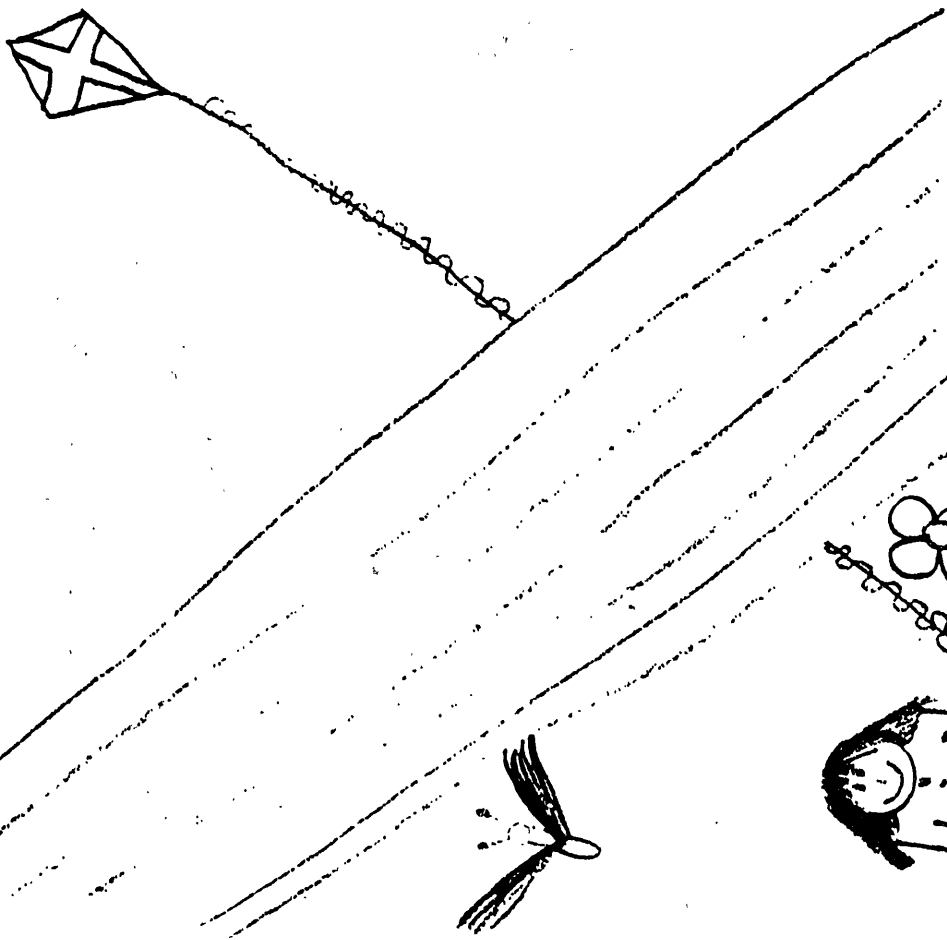
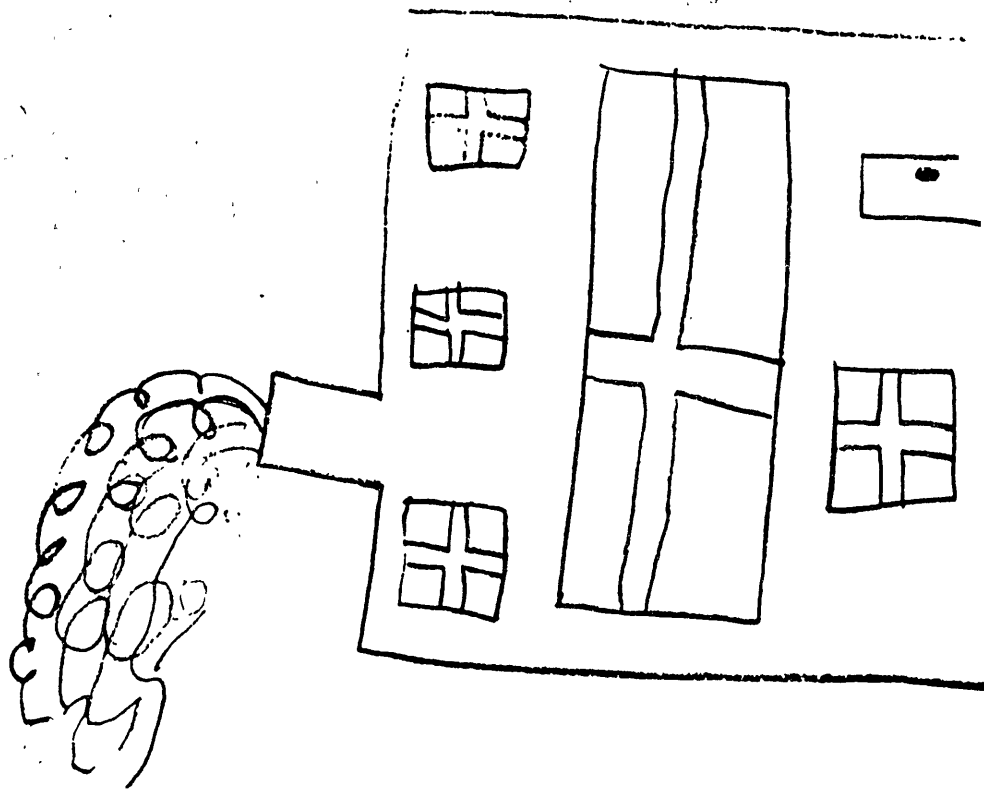
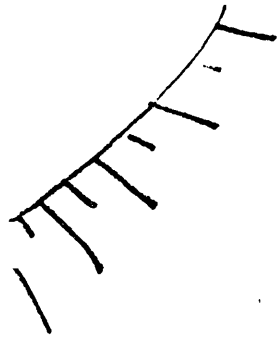
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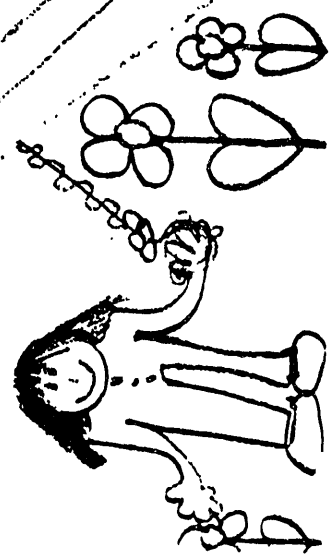
Profiles

Texas Antiquities Committee

3315-Texas Antiquities Committee



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School: Burks Elementary, McKinney



TAC Titles Affected

TAC Titles Affected—July

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas.

16 TAC §5.535—3283

Part IV. Department of Labor and Standards

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16 TAC §§321.21-321.39—3266

16 TAC §§321.61-321.69—3267

16 TAC §§321.101-321.112—3268

TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

22 TAC §161.1—3280

22 TAC §181.1—3280

TITLE 31. NATURAL RESOURCES AND CONSERVATION

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31 TAC §305.64—3297

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Part I. Department of Human Services

40 TAC §3.902—3299

40 TAC §29.112—3299



Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Opinions

JM-1056 (RQ-1614). Request from Tony Hileman, Marion County Attorney, Jefferson, concerning whether a county treasurer may charge a county judge for copies of records maintained by the county treasurer.

Summary of Opinion. A county judge may not be charged by a county treasurer for copies of records on file in the county treasurer's office required by the judge in connection with preparation of the county budget.

TRD-8905559

◆ ◆ ◆
JM-1057 (RQ-1683). Request from Jack Skeen, Jr., Criminal District Attorney for Smith County, Smith County Courthouse, Tyler, concerning the authority to regulate bail bond companies in Smith County.

Summary of Opinion. The sheriff shall accept or approve a bond posted by a licensed bondsman only in accordance with Texas Civil Statutes, Article 2372p-3, and the rules prescribed by the county bail bond board. The sheriff may not refuse to accept a bail bond from a licensed bondsman who meets the requirements of subdivision (4) or (5) of §6(a) of that act. Any person executing a bond, individually or as an agent for a corporation, must be licensed under Texas Civil Statutes, Article 2372p-3. A licensee is subject to regulation by the board. The board's regulatory authority is limited to those powers enumerated in the act. The county bail bond board is not empowered by the act to grant a license to an applicant to act as a bondsman in another county nor does the board have any authority or control

over the collection of a bond in another county.

TRD-8905558

◆ ◆ ◆
JM-1058 (RQ-1686). Request from Charles Stevenson, Acting Commissioner, Texas Department of Human Services, Austin, concerning whether the Texas Open Meetings Act authorizes a governmental body to hold briefing sessions to receive information from staff members without providing notice.

Summary of Opinion. Conferences between members of a governmental body and an employee or employees for the sole purpose of receiving information or asking questions are not meetings or deliberations subject to any requirements of the Open Meetings Act, Texas Civil Statutes, Article 6252-17. Subsection 2(r) of the Act, adopted by Senate Bill 168 of the 70th Legislative Session, removes the conferences it describes from the coverage of the Act.

TRD-8905557

◆ ◆ ◆
JM-1059 (RQ-1698). Request from Johnny W. Actkinson, District Attorney, Bailey County, Farwell, concerning summoning of jurors for justice of the peace court.

Summary of Opinion. The sheriff or constable summons persons for jury service in the justice of the peace court in accordance with the guidelines set forth in the oath administered under the Government Code, §62.402. The officer is not authorized

to draw names of persons from the jury wheel for jury service in the justice of the peace court. A juror need not reside in the precinct for which the justice court was created but must be a resident of the county. The officer may summon prospective jurors for the justice of the peace court orally in person or by calling the individual by telephone. The officer is not authorized to use a written notice to summon persons for jury service in the justice of the peace court.

TRD-8905556

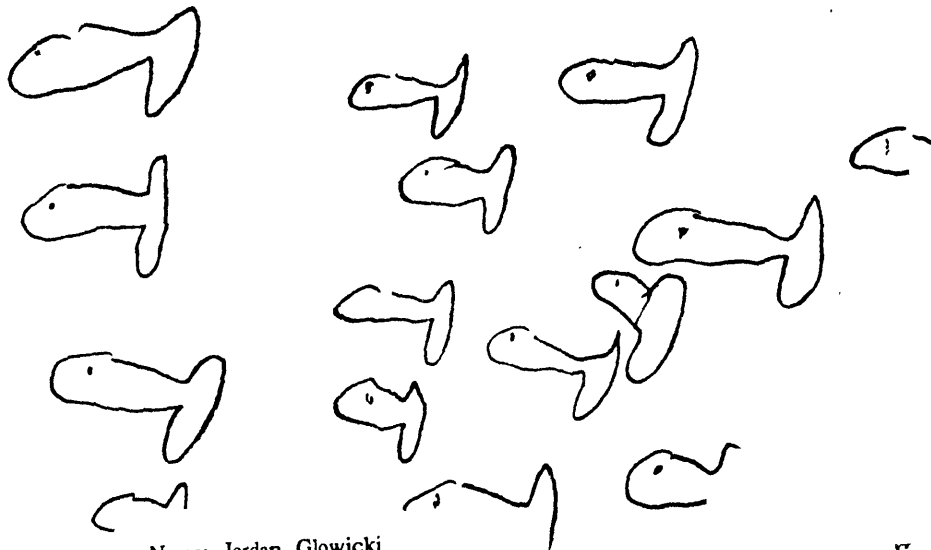
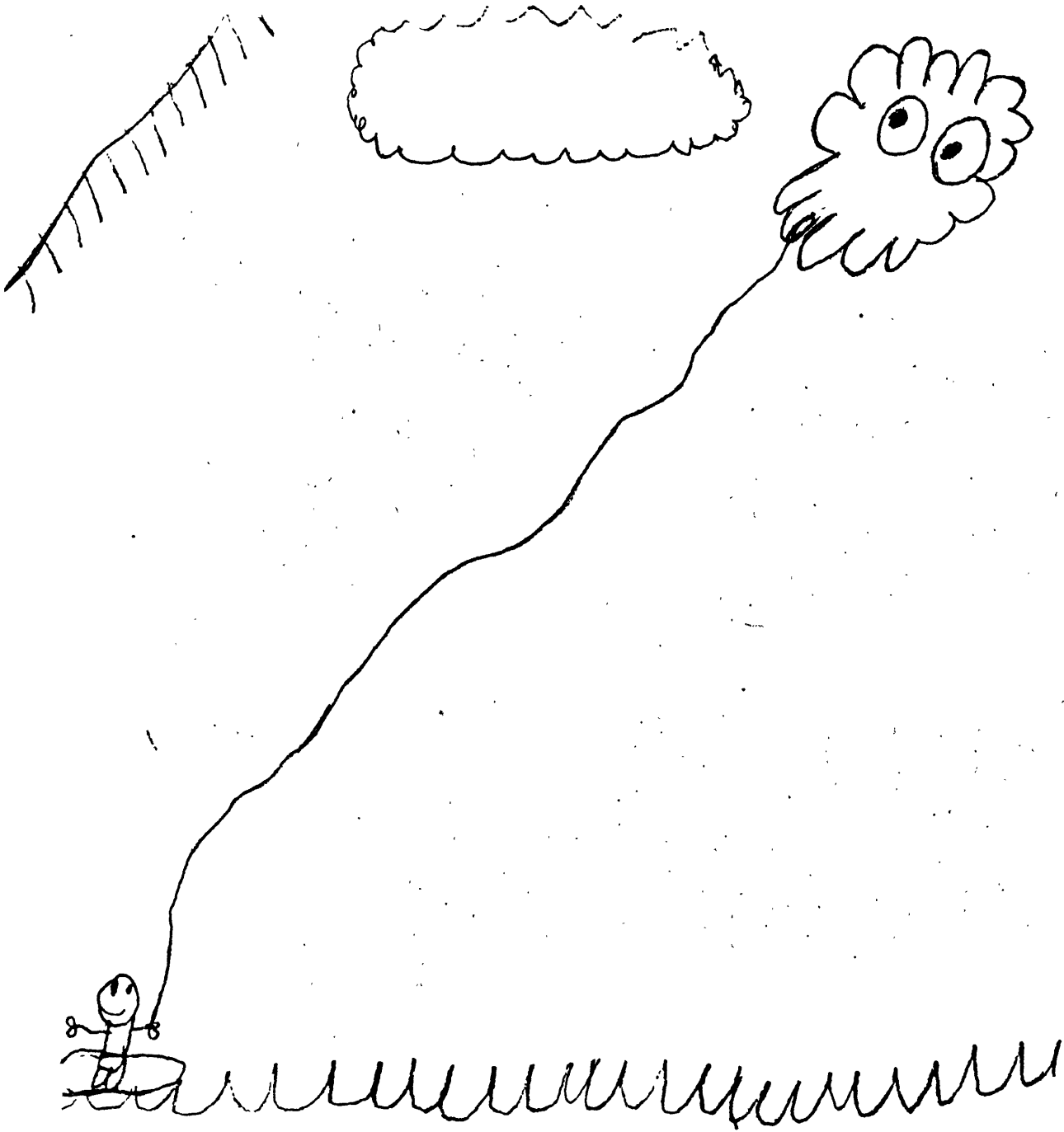
◆ ◆ ◆
JM-1060 (RQ-1650). Request from Mark W. Stiles, Chairman, County Affairs Committee, Texas House of Representatives, Austin, concerning whether an attorney who serves on the board of directors of an appraisal district, contract with a participating taxing unit to collect delinquent taxes.

Summary of Opinion. An attorney who has contracted with a taxing unit to collect its delinquent taxes is not an employee under the Tax Code, §6. 03(a), and is not ineligible under that provision to be a director of the appraisal district which includes that taxing unit.

An appraisal district director's contract to collect delinquent taxes for a local taxing unit does not require him to recuse himself pursuant to the Local Government Code, Chapter 171, from participation in board actions establishing policy to be implemented by the chief appraiser.

The common law doctrine of incompatibility does not bar a director of an appraisal district from contracting under the Tax Code, §6.30, with a local political subdivision to collect its delinquent taxes.

TRD-8905555



Name: Jordan Glowicki

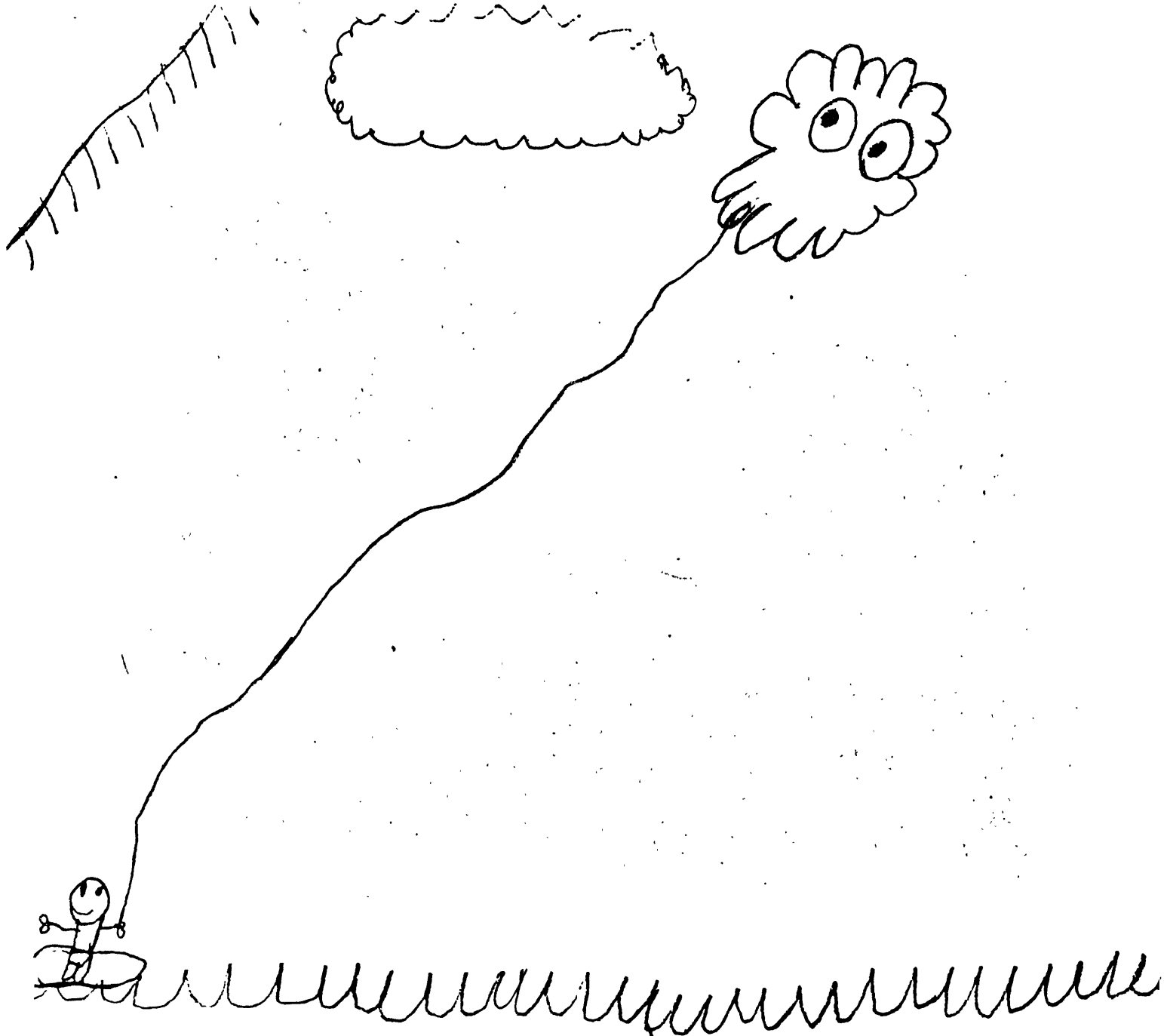
Grade: 2

School: Burks Elementary, McKinney

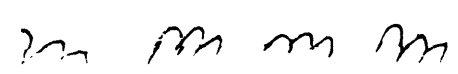


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Grade: 2
School: Burks Elementary, McKinney



Emergency Sections

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

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

TITLE 16. ECONOMIC REGULATION

Part IV. Department of Labor and Standards

Chapter 79. Vehicle Storage Facilities

- 16 TAC §§79.1, 79.3, 79.5, 79.9, 79.13, 79.21, 79.25, 79.29, 79.33, 79.37, 79.39, and 79.41

The Department of Labor and Standards adopts on an emergency basis the repeal of Chapter 79, §§79.1, 79.3, 79.5, 79.9, 79.13, 79.21, 79.25, 79.29, 79.33, 79.37, 79.39, and 79.41, concerning definitions, foreign registered vehicles, vehicle storage facility requirement, vehicle documentation, insurance required, criminal history background denial of license, duplicate license, and forms. The sections are being repealed so reorganized sections may be adopted on an emergency basis. This chapter has been reorganized to conform with a new numbering system which will be used for all the agency's rules. This system will provide for consistency and clarity which will in turn benefit the individuals and businesses the department regulates.

The emergency repeals are adopted pursuant to the Vehicle Storage Facility Act, Texas Civil Statutes, Article 6687-9a, which gives the Department of Labor and Standards the authority to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities.

§79.1. *Definitions.*

§79.3. *Foreign Registered Vehicles.*

§79.5. *Vehicle Storage Facilities Requirements.*

§79.9. *Acceptance of Vehicles for Storage.*

§79.13. *Vehicle Storage.*

§79.21. *Vehicle Transfers.*

§79.25. *Vehicle Transfer Requirements.*

§79.29. *Vehicle Documentation.*

§79.33. *Insurance Required.*

§79.37. *Criminal History Background Denial of License.*

§79.39. *Duplicate License.*

§79.41. *Forms.*

Issued in Austin, Texas, on June 27, 1989.

TRD-8905585 Joseph L. Huertas
Program Manager
Department of Labor and Standards

Effective date: June 27, 1989

Expiration date: October 25, 1989

For further information, please call: (512) 463-2907

- 16 TAC §§79.1, 79.10, 79.20, 79.30, 79.40, 79.60, 79.70, 79.71, 79.72, 79.73, 79.80, 79.90, 79.100, 79.101

The Department of Labor and Standards adopts on an emergency basis Chapter 79, §§79.1, 79.10, 79.20, 79.30, 79.40, 79.60, 79.70, 79.71, 79.72, 79.73, 79.80, 79.90, 79.100 and 79.101, concerning requirements for operation of a vehicle storage facility.

The chapter has been reorganized to conform with a new numbering system which will be used for all the agency's rules. This system, as well as general editing that has been done, will provide for consistency and clarity which will in turn benefit the individuals and businesses the department regulates. In addition, the new sections contain certain changes to accommodate the passage of House Bill 863 by the 71st Legislature.

The new sections are adopted on an emergency basis pursuant to the Vehicle Storage Facility Act, Texas Civil Statutes, Article 6687-9a, which gives the department the authority to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities.

§79.1. *Authority.* These rules are promulgated under the authority of the Vehicle Storage Facility Act (Texas Civil Statutes, Article 6687-9a).

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

The act—The Vehicle Storage Facility Act, Texas Civil Statutes, Article 6687-9a, relating to vehicle storage facilities.

Commissioner—The commissioner of the Texas Department of Licensing and Regulation.

Day—Twenty-four continuous hours.
Department—The Texas Department of Licensing and Regulation.

Fence—An enclosure of wood, iron or other suitable material placed around a space used to store vehicles and designed to protect the stored vehicles.

Principal—An individual who:

(A) holds personally, or as a beneficiary of a trust, or by other constructive means:

(i) 10% of a corporation's outstanding stock; or

(ii) more than \$25,000 of the fair market value of a business.

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, is through share, stock, or any other manner, or includes voting rights;

(D) is a member of the board of directors or other governing body of a business; or

(E) serves as an elected officer of a business.

Vehicle—A motor vehicle subject to registration under the Certificate of Title Act, Texas Civil Statutes, Article 6687-1, or any other device designed to be self-propelled or transported on a public highway and which is towed or transported to a Vehicle Storage facility without the owner's consent. This term includes foreign registered vehicles.

Vehicle owner—A vehicle owner is:

(A) a person in whose name the vehicle is registered under the Certificate of Title Act, Texas Civil Statutes, Article 6687-1;

(B) a person in whose name the vehicle is registered under General Laws, Acts of the 41st Legislature, Second Called Session, 1929, Chapter 88, Texas

Civil Statutes, Article 6675a-2, or a member of the person's immediate family;

(C) a person who holds the vehicle through a valid lease agreement; or

(D) an unrecorded lienholder with a right to possession.

Vehicle storage facility—A garage, parking lot, or any facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles. Ten or more vehicles shall mean the capacity to park or store 10 or more vehicles a year.

§79.20. Licensing Requirements.

(a) person must hold a current license issued by the department in order to operate a vehicle storage facility.

(b) A license to operate a vehicle storage facility is not transferable or assignable.

(c) A license to operate a vehicle storage facility issued by the department is valid only for the physical location indicated on the license.

(d) An application for a license to operate a vehicle storage facility must be made under oath and must contain:

(1) a list of felony convictions and misdemeanor convictions for which the maximum punishment is confinement in jail or a fine exceeding \$200, that were obtained against the applicant, a partner, a principal, or the general manager or an officer of the applicant, during the three years immediately preceding the date of the application;

(2) the name and address of each partner, if the applicant is a partnership;

(3) the name and address of each corporate officer, if the applicant is a corporation;

(4) the names of all owners of the vehicle storage facility and the percentage of ownership interest each holds in the facility;

(5) the name of the operator of the vehicle storage facility if it is not operated by one of the owners;

(6) the facility's physical address, mailing address, and telephone number;

(7) the name and address of the property owner if the operator of the vehicle storage facility is a lessee;

(8) the vehicle storage facility's storage capacity;

(9) if applicable, the height of the fence enclosing the vehicle storage facility and the date it was installed;

(10) a statement indicating whether or not the facility has an all weather surface;

(11) a statement indicating whether or not the facility has the signs required by the Vehicle Storage Facility Act posted in the proper locations; and

(12) a statement indicating whether or not the facility has the lighting required by the vehicle Storage Facility Act and department rules.

(e) A corporation's application must be signed and sworn to by its president and secretary.

(f) Each license issued by the department under this Act expires on December 31 of the year in which it is issued.

(g) A licensee may apply annually, on a form provided by the department, to renew the license.

(h) If a renewal application is not submitted before the 31st-day after a license expires, the license may not be renewed.

(i) An individual, partnership, or corporation whose license expires and is not renewed must apply for a new license if the vehicle storage facility is still in business.

§79.30. Exemptions. The Act and the department's rules do not apply to:

(1) a vehicle parked or stored at a vehicle storage facility with the consent of the vehicle's owner; or

(2) a vehicle storage facility operated by a person licensed pursuant to the Texas Motor Vehicle Commission Code, Texas Civil Statutes, Article 4413(36).

§79.40. Insurance Requirements.

(a) Each license applicant shall file with the department satisfactory proof of garagekeeper's legal liability insurance for the vehicle storage facility.

(b) The insurance the vehicle storage facility must include coverage for comprehensive and/or specified perils and collision per incident and must be written by a company duly authorized to do business in the state of Texas.

(c) Insurance coverage shall be in an amount of not less than \$9,000 for injury to or destruction of property of others if the vehicle storage facility has space to store not more than 50 motor vehicles; \$18,000 if the facility has space to store 51 to 99 motor vehicles; and \$25,000 if the facility has space to store 100 or more motor vehicles.

(d) The vehicle storage facility's insurance policy shall provide that the insurance company will give the department 30 days written notice of any policy cancellation or expiration.

(e) The vehicle storage facility's in-

surance policy shall be kept in full force and effect for the entirety of the facility's license period.

§79.60. Responsibilities of the Department.

(a) If the department denies an original or renewal application for a license under the Act, the department shall send the applicant written notice as prescribed in the Act, §8 before the eighth day after the date of the decision.

(b) If the department revokes a license under the Act, the department shall send the licensee written notice as prescribed in the Act, §10, before the eighth day after the date of the decision.

§79.70. Responsibilities of the Licensee—Accepting Vehicles for Storage.

(a) When the licensee, his agent, or his employee accepts a vehicle towed without the vehicle owner's consent, such person shall inspect the vehicle and note as an addition on the wrecker slip or wrecker ticket any from the information previously set out thereon, but shall not write over or deface any prior writing on the slip or ticket. If the license plate number or vehicle identification number on the wrecker ticket or wrecker slip was incorrect, the storage facility shall note on its records the correct number and notify every previously advised person within 48 hours of the correct information.

(b) When accepting for storage a vehicle registered in Texas, the vehicle storage facility must notify the vehicle's registered owner all recorded lienholders by certified/registered mail within seven calendar days. Notification for a foreign registered vehicle shall be sent within 14 calendar days, and shall be sent to the agency, division, department, or other governmental entity responsible for vehicle registration in the state, as indicated by the license plate, where the vehicle is registered. The vehicle storage facility operator may not charge an owner more than \$25 for this notification. Notification will be considered to have occurred when the United States Postal Service places its postmark upon the written notice. All notifications shall state:

(1) the full name of the vehicle storage facility where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(2) the daily storage rate, the type and amount of all other charges assessed and the total amount of fees which must be paid before the vehicle will be released;

(3) the date the vehicle will be moved from the vehicle storage facility if it is not claimed by the vehicle owner;

(4) the date the vehicle was ac-

cepted for storage and from where, when, and by whom the vehicle was towed; and

(5) the vehicle storage facility number preceded by the words Texas Department of Licensing and Regulation Vehicle Storage Facility License Number.

(c) A vehicle storage facility accepting a nonconsent towed vehicle towed from private property must report that tow to the local law enforcement agency, sheriff's department, or Department of Public Safety office within two hours of receiving the vehicle, giving the vehicle's license plate number, vehicle identification number, and location from which it was towed.

§79.71. Responsibilities of the Licensee-Storage Requirements.

(a) No vehicle may be stored or kept at any licensed storage facility unless it is kept inside the fenced or enclosed area at all times.

(b) Except as stated to the contrary herein, no parts shall be removed from any vehicle, and no vehicle shall be dismantled or demolished within in the storage area of a licensed vehicle storage facility. Vehicles may be dismantled or demolished, however, if the storage lot has a certificate of title, certificate of authority to demolish, police auction sales receipt, or transfer document issued by the State of Texas for the vehicle being demolished.

(c) No stored vehicle may be used by the vehicle storage lot owner, operator, or its employee(s) for personal or business use.

(d) A vehicle accepted for storage in a facility must be secured and have doors, windows, and/or hatchbacks closed, convertible tops raised or covered, etc. A preservation fee of up to \$10 may be charged for this service if doors, windows, etc. are broken or inoperative and require the use of materials such as plastic or canvas tarpaulins.

(e) A vehicle accepted for storage may not be repaired, altered, or have parts replaced without the vehicle owner's or authorized representative's consent.

§79.72. Responsibilities of the Licensee-Documentation.

(a) Each licensee shall keep written records on each vehicle kept or stored at the vehicle storage facility. These records shall contain:

(1) the year, make, model, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;

(2) the date, time, and location from which the vehicle was towed;

(3) the name of the wrecker driver, the wrecker truck, and tow truck

license plate numbers and the name of the company that towed the vehicle;

(4) the date the vehicle was released and the name of the individual to Whom the vehicle was released;

(5) the date of any vehicle transfer along with the address of the location to which it was transferred along with the name of the wrecker company and wrecker driver who made the transfer;

(6) a copy of any certificate of title issued after the vehicle came into the possession of the vehicle storage facility, any certificate of authority to demolish, any police auction sales receipt, or any transfer document issued by the State of Texas for the vehicle if vehicle ownership has been transferred due to any action of the vehicle storage facility or the vehicle has been disposed of or demolished; and

(7) all amounts received at the time the vehicle was released, including the specific nature of each charge.

(b) Documentation may be kept in the form of wrecker tickets and wrecker slips if all required information is recorded on those tickets and slips.

(c) All required documentation shall be made available by the licensee, his agent, or his employee for inspection and copying upon request by department personnel during the same hours the vehicle storage facility must ensure that vehicles are available for release to the vehicle owner.

(d) Required records shall be kept under the care and custody of the licensee for two years.

(e) When a person claims ownership or right to possession of a motor vehicle stored at a vehicle storage facility, the person or his/her authorized representative shall be entitled to inspect the wrecker slip or wrecker ticket for the motor vehicle and shall not be required to pay any fees or charges before doing so. The registered motor vehicle owner, or the owner's authorized representative, shall have access to, and be allowed to remove, any personal belongings in the vehicle, unless otherwise indicated by a peace officer. The storage facility may require a receipt from the person to whom the personal belonging are released for any such property removed from the stored vehicle by the vehicle owner or authorized representative.

§79.73. Responsibilities of Licensee-Vehicle Transfers.

(a) When a motor vehicle has been delivered to a storage facility, the vehicle may not be moved from that facility within the first 31 days of storage without the vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of storage facility capacity problems, neither the regis-

tered vehicle owner or recorded lienholder(s) may be assessed an additional charge. The vehicle storage facility must send notice in accordance with §79.70(b).

(b) If a vehicle is moved from a storage facility, the licensee shall:

(1) charge only those fees otherwise permitted by §79.100(e) of this title (relating to Technical Requirements) after the vehicle is towed to another location without the vehicle owner's permission;

(2) comply with all provisions of Texas Civil Statutes, Article 6701g-3, relating to the rights of the owner of a stored vehicle;

(3) allow the vehicle owner or his/her authorized representative to obtain possession of the vehicle upon presentation of a notarized power-of-attorney, department-approved affidavit, court order, title, tax collector's receipt, license plate renewal card, or notarized proof of loss or other notarized evidence of a claim of theft from an insurance company to show a right to possession, and payment of all fees, at any time between the hours posted on the sign at the location where the vehicle is stored;

(4) retain records and inform the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the vehicle storage facility until such time as the vehicle is recovered by the vehicle owner or a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document issued by State of Texas is issued; and

(5) maintain a record of the ultimate disposition of vehicle, including the date and name of the person to whom the vehicle is released or a description of the document under which the vehicle was sold or demolished.

§79.80. Fees.

(a) The fee for an original license to operate a vehicle storage facility is \$100.

(b) The annual renewal fee for a license to operate a vehicle storage facility is \$75.

(c) A late fee of \$25 will be charged for renewal applications post-marked between midnight December 31 and midnight January 31.

(d) A \$25 fee will be charged for issuing duplicate license.

§79.90. Sanctions.

(a) If a licensee, a partner of a licensee, a principal in the licensee's business, or an employee of the licensee, with the licensee's knowledge, violates the Act, or a department rule or order promulgated under the Act, the commissioner may:

(1) issue a written warning to the licensee specifying the violation;

(2) deny, revoke, or suspend a license;

(3) place a person on probation whose license has been suspended; or

(4) assess an administrative penalty in an amount not to exceed \$1,000 for each violation, with each violation considered a separate offense.

(b) The commissioner may revoke or suspend a license issued under the Act, or place a person on probation whose license has been suspended, if the commissioner determines that a licensee, a partner of the licensee, a principal in the licensee's business, or an employee of the licensee has been finally convicted of:

(1) a felony; or

(2) a misdemeanor that:

(A) is punishable by confinement or by a fine exceeding \$500; and

(B) directly relates to a duty or responsibility of a vehicle storage facility operator.

(c) If it appears that a person in violation of, or is threatening to violate, the Act or a department rule or order promulgated under the Act, the commissioner, or the attorney general at the commissioner's request, may institute an action for injunctive relief, to recover a civil penalty not to exceed \$1,000 for each violation, or for both injunctive relief and the civil penalty. If the commissioner or the attorney general prevails in an action under this subsection, the commissioner or the attorney general is entitled to recover reasonable attorney's fees and court costs.

(d) A peace officer or license and weight inspector for the Department of Public Safety may make an arrest for a violation of a department rule adopted under the Act.

§79.100. Technical Requirements.—Each vehicle storage facility:

(1) if not enclosed by a five foot high fence on or before September 1, 1985, shall be completely enclosed by a fence at least six feet high with a gate which is locked at all times the licensee or an agent or employee is not at the storage lot;

(2) shall have an all-weather surface such as concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, or caliche, that makes delivery and release of vehicles feasible in all weather conditions;

(3) shall have a clearly visible and readable sign at its main entrance setting out the name of the storage lot, the street address, the telephone number, the

hours vehicles will be released to vehicle owners, and the storage lot's state license number;

(4) must have vehicles available for release 24 hours a day within one hour's notice if it is open 24 hours a day;

(5) if not open 24 hours a day, must have vehicles available for release within one hour between the hours of 8 a.m. and 12 midnight Monday-Saturday and from 8 a.m.-5 p.m. on Sundays except for nationally recognized holidays;

(6) shall post on its sign a 24-hour number for the vehicle owner to contact in order to obtain release of the vehicle;

(7) shall have a sign setting out the per diem charge for storage and all other fees which may be charged by the storage lot. This sign shall be located so it is clearly visible to a vehicle owner prior to paying the fees;

(8) shall have publicly listed and operable telephone where the licensee can be contacted. If the telephone number is changed from the number set out in the vehicle storage license application, the licensee shall give the department written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number; and

(9) shall maintain illumination levels adequate for night time release of vehicles. Adequate shall mean sufficient to allow inspection of a vehicle for damage at the time of release. At a minimum, there must be one lighting fixture containing at least a 250 watt element for each 1/4 acre of storage area.

§79.101. Technical Requirements—Storage Fees/Charges.

(a) vehicle storage facility operator may not charge an owner more than \$25 for notification under §79.70(b) of this title (relating to Accepting Vehicles for Storage).

(b) A vehicle storage facility operator may not charge an owner more than \$10 for preservation of a stored motor vehicle.

(c) A vehicle storage facility operator may not charge less than \$5 or more than \$15 for each day or part of a day for storage of a vehicle.

(d) A vehicle storage facility operator may not charge any additional fees that are similar to notification, preservation, or administrative fees.

(e) This section controls over any conflicting municipal ordinance or charter provision.

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Department of Labor and

Standards

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TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 301. Definitions

• 16 TAC §301.1

The Texas Racing Commission adopts on an emergency basis an amendment to §301.1 concerning definitions. The amendment adds definitions for the age of horses, chief veterinarian, entry, greyhound race, horse, horse race, jockey, locked in the gate, no race, off time, race day, race meeting, recognized race meeting, stallion owner, and straight pool. The amendment also deletes definitions for clerk of the scales, outrider, paddock judge, patrol judge, placing official, racing secretary, and amends definitions for cool out coupled entry, established weight, kennel, mutuel field, racetrack official, scratch, starter, tout, weigh in, and weigh out. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Age of a horse—Determined as beginning on the first day of January in the year in which the horse is foaled.

Chief veterinarian—An employee of the commission responsible for the supervision of veterinary practices and drug testing at racetracks.

[Claiming race—A race in which a horse that starts in the race may be claimed and purchased after the race.]

[Clerk of the scales—The racing official responsible for weighing the jockeys or greyhounds.]

Cool out—An employee of a kennel owner who feeds and cares for the greyhounds [To allow a horse or greyhound to gradually cool down after a race, primarily through walking or bathing].

Coupled [Mutuel] entry—Two or more horses entered in a race that, because of common ties of ownership or training, the stewards join to be a single betting

interest in that race.

Entry—A horse, or horses in the case of a coupled entry, made eligible to run in a race.

Established weight—The racing weight for a [horse or] greyhound established in accordance with rules of the commission.

[**Futurity**—A race for which the purse money is accrued by periodic deposits by owners.]

Greyhound race—A contest among greyhounds for purse, stakes, premium, or wager for money, run in the presence of the racetrack officials, including the following.

(A) **Hurdle race**—A race over a course in which jumps or hurdles are used.

(B) **Match race**—A race between two or more greyhounds, each the property of different owners, on terms agreed on by the owners and approved by the commission.

(C) **Overnight race**—A race for which entries close 96 hours or less before the time set for the first race of the day on which the race is to be run.

(D) **Purse race**—A race for money or other prize to which the owners of the greyhounds engaged in the race do not contribute an entry fee.

(E) **Race on the flat**—A race over a course in which no jumps or other obstacles are placed.

(F) **Stakes race**—A race in which all money is to be deposited by the owners of the greyhounds engaged in the race, including a race in which money or other prize is added, and in which nominations must close more than 72 hours before the time for the first race of the day on which the stakes race is to be run.

[**Handicap**—A race in which the weights to be carried by the race animals are assigned by the association to equalize the chances of winning for each horse.]

Horse—An equine of any breed, including a stallion, gelding, mare, colt, filly, or ridgling.

Horse race—A running contest between horses [or greyhounds] for entry fees, purse, prize, or other reward, [.] including the following:

(A) **Claiming race**—A race in which a horse may be claimed in accordance with the rules of the commission.

(B) **Derby race**—A race in which the first condition of eligibility is

to be three years old.

(C) **Futurity race**—A race in which the first condition of eligibility is to be two years old.

(D) **Guaranteed race**—A race for which the association guarantees by its conditions a specified purse, which is the limit of its liability.

(E) **Handicap race**—A race in which the weights to be carried by the entered horses are adjusted by the racing secretary for the purpose of equalizing their respective chances of winning.

(F) **Match race**—A race between only two horses that are owned by different owners.

(G) **Maturity race**—A race in which the first condition of eligibility is to be four years of age or older.

(H) **Optional claiming race**—A race restricted to horses entered to be claimed for a stated price and those entered to be claimed by the option designated in the conditions of the race.

(I) **Progeny race**—A race restricted to the offspring of a specific stallion or stallions.

(J) **Purse or overnight race**—A race for which entries close less than 72 hours before the time set for the race to be run and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(K) **Stakes race**—A race to which nominators of the entries contribute to a purse.

(L) **Starter race**—An overnight race under allowance or handicap conditions, restricted to horses which have previously started for a designated claiming price or less, as stated in the conditions of the race.

(M) **Walkover race**—A race for which only one of the owners who has nominated a horse for a race qualifies the horse to start.

(N) **Weight for age race**—A race in which weights are assigned in keeping with the scale of weights in these rules.

In today horse—A horse that is in the body of a race program and is also entered in an upcoming overnight race,

and who has no preference when entering a race.

Jockey—A race rider, including apprentice jockeys.

Kennel—An area for the [breeding,] boarding[,] or training of greyhounds.

Locked in the gate—A horse or greyhound that is prevented from leaving the starting gate or box due to the failure of the front door of the gate to open simultaneously with the other doors.

[**Match race**—A race between only two horses or greyhounds on terms agreed by the owners of the animals.]

Mutuel field—A group of horses joined as a single betting interest in a race due to the high odds on those horses and the limited numbering capacity of the totalisator [on which a single wager may be placed in accordance with rules of the commission].

No race—A race that is canceled after being run due to a malfunction at the starting gate or box or any other mechanical failure.

Off time—The moment when, on signal from the starter, the horses or greyhounds break from the starting gate or box and run the race.

[**Outrider**—An employee of an association who assists and supervises jockeys and horses in moving from the paddock to the starting gate.]

[**Overnight race**—A race for which entries close not more than 72 hours before the time set for the first race of the day on which the race is to be run.]

[**Paddock judge**—A racing official who supervises horses or greyhounds that are gathered in the paddock.]

[**Patrol judge**—A racing official who is stationed along the racetrack to monitor the running of a race.]

[**Placing official**—A racing official who records the order of the finish of a horse race.]

Race day—A day in which a numerical majority of scheduled races is conducted and is a part of the association's allocated race days.

Race meeting—A group of days on which horse or greyhound racing is conducted at a racetrack.

Racetrack [Racing] official—An individual appointed by the commission to officiate at a race meeting.

[**Racing secretary**—An employee of an association who drafts the conditions for a race.]

Recognized race meeting—A race meeting held under the sanction of a turf authority having reciprocal relations with the commission for the mutual enforcement of rulings imposed on licensees.

Scratch—To withdraw an entered [a] horse or greyhound from a race after the closing of entries [have been closed or to withdraw a greyhound from a race after the post positions have been drawn].

[**Stakes race**—A race in which nominators of the entries contribute to a purse]

for the winners.]

Stallion owner—A person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

Starter—A horse or greyhound entered in a race when the stall doors of [official starter opens] the starting gate or box[,] open in front of the horse or greyhound at the time the official starter dispatches the horses or greyhounds.

Straight pool—A mutuel pool that involves wagers on a horse or greyhound to win, place, or show.

Tout—An individual licensed to furnish [furnishing] selections on a race [to a patron] in return for a set fee [portion of the money won].

Weigh in—The process by which a jockey is weighed after [before] a race or by which a greyhound is weighed before being placed in the lockout kennel.

Weigh out—The process by which a jockey or greyhound is weighed before [after] a race [or by which a greyhound is weighed immediately before a race].

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Chapter 303. General Provisions

Subchapter B. Powers and Duties of the Commission

• 16 TAC §303.42

The Texas Racing Commission adopts on an emergency basis new §303.42, concerning the approval of charity race days. The section outlines the procedures for applying for and conducting charity race days in accordance with the Texas Racing Act. A similar section was proposed by the commission in May 30, 1989, issue of the *Texas Register* (14 TexReg 2569).

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

The section is adopted on an emergency basis under Texas Civil Statutes, Article 149e, §8.02, which require the commission to adopt rules relating to the conduct of charity race days.

§303.42. Approval of Charity Race Days.

(a) An association shall conduct charity days as required by the commission. 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, out of its share of the pari-mutuel handle, at least 2.0% of the total pari-mutuel handle generated on the charity race day.

(d) At least one of the charity days must be conducted for a charity that directly benefits the persons who work on the backside of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health and safety of race animals.

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Subchapter D. Texas Bred Incentive Programs

General Provisions

• 16 TAC §303.84, §303.85

The Texas Racing Commission adopts on an emergency basis new §303.84 and §303.85, concerning mailings to membership and background investigations. The sections require the breed registries participating in the Texas bred incentive programs to include the Texas Racing Commission on their mailing lists and to submit to background investigations on order by the commission. The sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§303.84. Mailings to Membership. An official breed registry designated by the Act or the commission or another organization recognized by the commission for any purpose shall provide to the commission on an ongoing basis;

(1) a current list of the officers, directors, and members of the organization;

(2) a copy of the organization's charter, by-laws, or other organizational documents, including all amendments to those documents; and

(3) a copy of the minutes from each regular or executive meeting or convention, each resolution adopted by the directors or the membership, and each newsletter, memorandum, announcement, or other information provided to the members of the organization, other than correspondence relating solely to the business of an individual member.

§303.85. Background Investigations.

(a) The commission may require the officers or directors of an official breed registry or other organization recognized by the commission to submit to a background investigation conducted by the Department of Public Safety or the commission.

(b) The commission may condition the organization's recognition by the commission on a satisfactory report on the investigation.

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Subchapter E. Regulation of Nonpari-mutuel Racing

• 16 TAC §303.151

The Texas Racing Commission adopts on an emergency basis an amendment to §303.151, concerning the requirement for registration of nonpari-mutuel racetracks. The amendment permits the conduct of racing without registration if the races are part of an annual exhibition sponsored by a charitable organization at which racing is not the primary event. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2569).

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e-4, which require the commission to reg-

ulate racing without pari-mutuel wagering.

§303.151. Registration Required.

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

(e) Subject to the approval of the commission, this subchapter does not apply to the conduct of races at an annual exhibition sponsored by a charitable organization at which racing is not the primary event for the exhibition.

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Chapter 305. Licenses for Pari-mutuel Racing

Subchapter A. General Provisions

• 16 TAC §305.6

The Texas Racing Commission adopts on an emergency basis an amendment to §305.6, concerning the fees paid for licenses to participate in pari-mutuel racing. The amendment requires that a license fee be submitted in the form of a money order instead of cash. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2570).

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §7.05, which require the commission to adopt a fee schedule by rule.

§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.

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• 16 TAC §305.13

The Texas Racing Commission adopts on an emergency basis an amendment to §305.13, concerning the effect of accepting a license issued by the commission. The amendment expands the type of consent to drug testing given through accepting a license and corrects a cross-reference to another subchapter in the commission's rules. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2570).

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering 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]).

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Subchapter B. Individual Licenses

General Provisions

• 16 TAC §305.33

The Texas Racing Commission adopts on an emergency basis an amendment to §305.33, concerning the license badge for individual licensees. The amendment eliminates the requirements for the applicant's city and state of residence, date of birth, weight, height, gender, and hair and eye color, and adds the requirement of color codes relating to the racetrack at which the license was issued and whether the licensee has access to the stable or kennel area of a racetrack. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2571).

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering 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.)

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• 16 TAC §305.35

The Texas Racing Commission adopts on an emergency basis new §305.35, concerning the license fees for individual licenses. The new section specifies the amount of the license fee to be paid by an individual applying for and receiving a license to participate in pari-mutuel racing. A similar section was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2571).

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

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§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	\$ 50
Jockey	\$ 50
Apprentice Jockey	\$ 50
Exercise Rider	\$ 20
Groom	\$ 20
Hotwalker	\$ 20
Stable Foreman	\$ 20
Veterinarian	\$ 50
Veterinarian Asst.	\$ 20
Jockey Agent	\$ 50
Authorized Agent (if not licensed in another capacity)	\$ 50
Farrier	\$ 40
Tattooer	\$ 40
Cool-out	\$ 20
Pony person	\$ 20
Valet	\$ 20

Owner-trainer	\$100
Director of Racing	\$ 50
Racing Secretary	\$ 50
Assistant Secretary	\$ 30
Handicapper	\$ 20
Paddock Judge	\$ 30
Starter	\$ 40
Asst. Starter	\$ 20
Patrol Judge	\$ 30
Placing Judge	\$ 30
Clerk of Scales	\$ 30
Jockey Room Custodian	\$ 30
Track Superintendent	\$ 40
Stable Superintendent	\$ 30
Lure Operator	\$ 20
Brakeman	\$ 20
Horseman's Bookkeeper	\$ 40
Official Timer	\$ 30
Chart-writer	\$ 30
Announcer	\$ 40
Outriders	\$ 20
Test Barn Technician	\$ 20
Morning Clocker	\$ 30
Association President	\$ 75
General Manager	\$ 75
Asst. General Manager	\$ 75

Dir. of Public Relations	\$ 50
Dir. of Security	\$ 50
Association - other	\$ 50
Admissions person	\$ 20
Entry clerk	\$ 20
Parking attendant	\$ 20
Maintenance	\$ 20
Lead-out	\$ 20
Kitchen employee	\$ 20
Security Guard	\$ 20
Kennelmaster	\$ 20
Mutuel Manager	\$ 50
Mutuel Clerk	\$ 20
Mutuel - other	\$ 20
Vendor/concessionaire	\$ 50
Vendor employee	\$ 20
Multiple owner	\$ 10
Authorized Agent (if licensed in another capacity)	\$ 10
Duplicate license	\$ 10

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TRD-8905669 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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

◆ ◆ ◆
• 16 Tac §305.36

The Texas Racing Commission adopts on an emergency basis new §305.36, concerning examinations for individual license applicants. The new section authorizes the commission to require an applicant for an individual license to pass an examination designed by the commission to demonstrate the applicant's knowledge, qualifications, and proficiency for the license. The new section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§305.36. *Examinations.* The commission may require the applicant for an individual license to demonstrate the applicant's knowledge, qualifications, and proficiency for the license applied for by an examination prescribed by the commission.

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TRD-8905644 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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476-7223

◆ ◆ ◆
Specific Licenses

◆ ◆ ◆
• 16 TAC §305.47, §305.48

The Texas Racing Commission adopts on an emergency basis new §305.47 and §305.48, concerning jockeys and apprentice jockeys. The new sections describe the qualifications for being licensed by the commission as a jockey or an apprentice jockey. The new sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The new section is adopted on an emergency

basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

◆ ◆ ◆
§305.47. *Jockeys.*

(a) To be licensed as a jockey, and individual must:

(1) be at least 16 years of age; and

(2) submit with the application proof of a satisfactory physical examination during the 12-month period preceding the date of the application.

(b) An examination required by this section must be performed by a licensed physician and include tests for visual acuity and hearing. The commission or the stewards may require a jockey to be re-examined at any time and may refuse to permit a jockey to ride until proof of a satisfactory examination is submitted.

◆ ◆ ◆
§305.48. *Apprentice Jockeys.*

(a) An apprentice jockey is a rider of thoroughbreds who:

(1) is permitted to ride with the apprentice weight allowance in accordance with Chapter 313 of this title (relating to Officials and Rules of Horse Racing); and

(2) is otherwise qualified to be licensed as a jockey.

(b) To be licensed as an apprentice jockey, an individual must submit with the application:

(1) a health certificate as required for a jockey's license; and

(2) a certificate of proficiency issued by a starter licensed in this state.

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TRD-8905643 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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476-7223

◆ ◆ ◆
Subchapter D. Suspension and Revocation of Licenses

◆ ◆ ◆
• 16 TAC §305.247

The Texas Racing Commission adopts on an emergency basis an amendment to §305.247, concerning the suspension or revocation of a license for debt or liens. The amendment authorizes the commission to suspend or revoke a racetrack license if the licensee fails to pay a tax assessment that is secured by a lien or if a notice of public sale of the racetrack site is posted. The amendment adopted on an emergency basis is con-

temporaneously proposed for public comment in this issue of the *Texas Register*.

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

◆ ◆ ◆
§305.247. *Debt or Liens.*

(a) The commission may suspend or revoke a license if the commission determines that the licensee owes a fee to the state or a penalty imposed under the Act or a rule of the commission.

(b) The commission may suspend or revoke a racetrack license if the commission determines:

(1) the licensee has failed to timely pay and tax assessment, the payment of which is secured by any lien or encumbrance against the racetrack site; or

(2) a notice has been posted of the public sale of any portion of the racetrack site or the holder of any lien or security interest on any part of the racetrack site has instituted foreclosure or other proceedings of the enforcement of remedies under the terms of any instrument creating such a lien or security interest.

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TRD-8905642 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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476-7223

◆ ◆ ◆
Chapter 309. Operation of Racetrack

◆ ◆ ◆
Subchapter A. General Provisions

◆ ◆ ◆
Facilities and Equipment

◆ ◆ ◆
• 16 TAC §309.12

The Texas Racing Commission adopts on an emergency basis an amendment to §309.12, concerning the comfort and safety for patrons at a racetrack. The amendment requires an association to provide a nonsmoking area in each portion of the public areas on association grounds. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2576).

The amendment is adopted on an emergency basis to expedite the receipt of state revenue

from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering 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.

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TRD-8905868 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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Expiration date: September 25, 1989

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



• 16 TAC §309.26

The Texas Racing Commission adopts on an emergency basis an amendment to §309.26, concerning the internal communication system at a racetrack. The amendment requires the internal communication system to provide an outlet in the clocker's stand. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.26. *Internal Communication System.* An association shall provide an internal telephone communication system with outlets in:

(1)-(12) (No change.)

(13) the clocker's stand;

(14)[(13)] the location of the ambulances; and

(15)[(14)] other locations designated by the commission.

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TRD-8905841 Paula Cochran Carter
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Texas Racing Commission

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• 16 TAC §309.32

The Texas Racing Commission adopts on an emergency basis new §309.32, concerning automatic banking machines. The section prohibits a racetrack from permitting the placement of an automatic banking machine on its grounds. A similar section was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2576).

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

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §11.04, which require the commission to adopt a rule prohibiting the placement of automatic banking machines on association grounds.

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

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TRD-8905867 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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



Operations

• 16 TAC §309.53

The Texas Racing Commission adopts on an emergency basis an amendment to §309.53, concerning the records an association is required to maintain. The amendment requires an association to provide on commission request any financial statements regarding the management and operations of the racetrack. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.53. *Records.*

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

(e) The commission may require an association to submit, not later than 48 hours after making such a request, financial statements regarding the management and operation of the racetrack, to determine whether the association continues to be financially viable and capable of performing the duties of an association.

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TRD-8905840 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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• 16 TAC §309.56

The Texas Racing Commission adopts on an emergency basis an amendment to §309.56, concerning temporary passes to enter the stable or kennel area. The amendment restricts the people to whom a temporary pass may be issued to guests of the racetrack, a commission employee, or a trainer or kennel owner licensed by the commission. The amendment also permits a temporary pass to be valid for not more than 24 hours. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2577).

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering 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) an [(A) 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.)

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TRD-8905668 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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

◆ ◆ ◆
• 16 TAC §309.66

The Texas Racing Commission adopts on an emergency basis new §309.66, concerning the staff for taking fingerprints. The section requires a racetrack association to provide a member of its security staff, who is qualified to take fingerprints, to assist the commission in taking applications for licenses. A similar section was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2577).

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

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering 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.

(a) 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.

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TRD-8905665 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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

◆ ◆ ◆
• 16 TAC §309.67

The Texas Racing Commission adopts on an emergency basis new §309.67, concerning the sale of money orders at racetracks. The section requires a licensed racetrack to make money orders available for sale during all hours the commission licensing office is open for licensing. The section adopted on an emergency basis is contemporaneously pro-

posed for public comment in this issue of the *Texas Register*.

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

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

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

◆ ◆ ◆
§309.67. *Sale of Money Orders.* During all hours that the commission licensing office is open for licensing, an association shall have money orders available for sale in an area approved by the commission.

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TRD-8905639 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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◆ ◆ ◆
Subchapter B. Horse
Racetracks

◆ ◆ ◆
• 16 TAC §309.102

The Texas Racing Commission adopts on an emergency basis an amendment to §309.102, concerning track length. The amendment clarifies that the length of the back chute on a racetrack is measured from the starting gate to the finish line. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

◆ ◆ ◆
§309.102. *Track Length.*

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

(d) The length of a chute on the back side, measured from the starting gate to the finish line, must be:

(1)-(3) (No change).

(4) for a 5/8 mile track at a Class 3 racetrack, at least four furlongs long.

(e)-(f) (No change.)

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TRD-8905638 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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◆ ◆ ◆
• 16 TAC §309.114

The Texas Racing Commission adopts on an emergency basis an amendment to §309.114, concerning official's stands. The amendment requires a licensed horse racetrack to be equipped with a clocker's stand. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2577).

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering 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 racetracks.

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TRD-8905664 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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◆ ◆ ◆
• 16 TAC §309.116

The Texas Racing Commission adopts on an emergency basis an amendment to §309.116, concerning distance markers. The amendment requires the 1/2 mile poles to be painted with blue and white stripes. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2578)

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering 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:

1/16 poles	Black and white stripes
1/8 poles	Green and white stripes
1/4 poles	Red and white stripes
<u>1/2 poles</u>	<u>Blue and white stripes</u>
220 yards	Green and white stripes
250 yards	Blue
300 yards	Yellow
330 yards	Black and white stripes
350 yards	Red
400 yards	Black
440 yards	Red and white stripes
550 yards	Black and white stripes
660 yards	Green and white stripes
770 yards	Black and white stripes
870 yards	Blue and white stripes

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Legal Counsel
Texas Racing Commission

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Facilities for Horses

• 16 TAC §309.155

The Texas Racing Commission adopts on an emergency basis an amendment to §309.155, concerning equine ambulances. The amendment requires the equine ambulance at licensed racetracks to be equipped with a front leg Kimzey brace, to be covered as well as enclosed, and to be available for each day the track is open for racing or training. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules

necessary for horse racing are in place.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.155. Equine Ambulance.

(a) An association shall provide an equine ambulance and trained personnel on association grounds on each day that the racetrack is open for racing or training [exercising].

(b) (No change.)

(c) The ambulance must be a large, covered and enclosed vehicle that is low to the ground. The ambulance must be able to:

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

(d) The ambulance must be equipped with:

(1)-(7) (No change.)

(8) a storage area for supplies; [and]

(9) a front leg Kimzey brace or an equivalent approved by the com-

mission veterinarian; and

(10)[(9)] a water supply to treat heat exhaustion.

(e) (No change.)

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TRD-8905637 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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Facilities for Employees

• 16 TAC §309.181

The Texas Racing Commission adopts on an emergency basis an amendment to §309.181, concerning the commission veterinarian's office. The amendment requires the office to be secured and be equipped with two file cabinets, a freezer equipped with a lock, and a storage area equipped with a lock. The amendment also requires the locks to be of a type approved by the commission. The amendment adopted on an emergency basis is contemporaneously proposed for

public comment in this issue of the *Texas Register*.

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.181. *Commission Veterinarian's Office.*

(a) An association shall provide a secured [an] office area for the commission veterinarians [veterinarian].

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

(e) The office must be equipped with:

(1) (No change.)

(2) a desk and two [a] filing cabinets [cabinet], both of which may be locked;

(3) a refrigerator with at least 10 cubic feet of inside space and [or] a freezer, in a size as required by the commission, both equipped with locks [as required by the commission]; and

(4) a [locked] storage area, which may be locked for specimens; and

[(5) a storage area for supplies].

(f) All locks must be of a type approved by the commission or its executive secretary.

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TRD-8905636 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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Operations

• 16 TAC §309.193

The Texas Racing Commission adopts on an emergency basis an amendment to §309.193, concerning saddle cloths. The amendment eliminates the requirement that a racetrack provide a head number and racing colors, making the provision of those items permissive with the racetrack. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission

to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.193. *Saddle Cloth.*

(a) An association shall provide a saddle cloth and may provide a head number to each horse scheduled in a race. The saddle cloth must have a number printed on the side that is large enough to be read clearly from the stewards' stand and the photofinish tower.

(b) The association may [shall] provide to each jockey racing colors and shall provide a sleeve number or helmet number.

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Legal Counsel
Texas Racing Commission

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• 16 TAC §309.196

The Texas Racing Commission adopts on an emergency basis an amendment to §309.196, concerning traffic in the stable area. The amendment clarifies that people with power of entry, the stewards, and security personnel are exempt from the prohibition of driving motor vehicles in the stable area. A similar amendment was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2578)

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

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering 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;

(8)[(5)] a jockey's agent at a

Class 1 racetrack; or

(9)[(6)] a farrier.

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TRD-8905662 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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• 16 TAC §§309.198-309.201

The Texas Racing Commission adopts on an emergency basis new §§309.198-309.201, concerning operations at horse racetracks. The sections describe the requirements for the official programs, the horsemen's book-keeper, racing selections, and equitable stabling. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2579).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.198. *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;

(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 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 Bookkeeper.*

(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 not later than 10 days after 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 any money other than jockey fees except on written request from the person to whom the 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.

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TRD-8905661 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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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 adopts on an emergency basis new §311.155, concerning reporting to clocker. The new section requires a trainer or assistant trainer who takes a horse on a racetrack to work to report the horse's name and the distance to be worked to the morning clocker. A similar section was proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2579).

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

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act

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

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• 16 TAC §311.156

The Texas Racing Commission adopts on an

emergency basis new §311.156, concerning jockeys. The new section describes certain specific restrictions on the conduct of jockeys and apprentice jockeys at licensed racetracks. The new section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§311.156. *Jockeys.*

(a) The rules of the commission relating to jockeys apply to apprentice jockeys.

(b) A jockey may not ride under an assumed name.

(c) A jockey may not use an attendant on a race day other than one supplied by the association.

(d) A jockey may not smoke in public while wearing racing colors.

(e) A jockey shall pay any fine imposed on the jockey and may not permit another person to pay the fine for the jockey.

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Chapter 313. Operation of Racetrack

Subchapter A. General Provisions

Facilities and Equipment

• 16 TAC §§313.1-313.5

The Texas Racing Commission adopts on an emergency basis new §§313.1-313.5, concerning officials at horse racetrack. The sections describe the types of officials and the procedure for approving and complaining against the officials. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register*.

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The section is adopted on an emergency

basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.1. Racetrack and Association Officials.

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

- (1) three stewards;
- (2) at least two commission veterinarians;
- (3) a horse identifier; and
- (4) any other officials having responsibilities to the commission.

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

- (1) a director of racing;
- (2) a racing secretary and handicapper;
- (3) an assistant racing secretary;
- (4) a mutuel manager;
- (5) a starter and assistant starters;
- (6) a track superintendent;
- (7) at least one placing judge;
- (8) at least one patrol judge;
- (9) a paddock judge;
- (10) a clerk of scales;
- (11) a jockey room custodian;
- (12) an official timer;
- (13) a stable superintendent;
- (14) an announcer;
- (15) at least one morning clock-er;
- (16) a horseshoe inspector;
- (17) at least two outriders;
- (18) test barn technicians;
- (19) a horsemen's bookkeeper; and
- (20) any other officials having responsibilities to the association.

(c) 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 racetrack 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) An association official is directly responsible to the association for the performance of the administrative duties and shall exercise due diligence in the performance of those duties.

(c) An 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. An official may not wager at a horse race meeting conducted in this state.

§313.4. Approval of Association Officials.

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

(b) The commission may require the association to submit a brief job description for each of the association officials for approval by the commission.

§313.5. Complaints Against Officials.

(a) A complaint against an 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.

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TRD-8905659 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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

◆ ◆ ◆
• 16 TAC §313.6

The Texas Racing Commission adopts on an emergency basis new §313.6, concerning officials at horse racetrack. The section requires the commission to approve the per diem compensation of certain officials. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.6. Approval of Compensation. The commission shall approve the amount of per diem compensation to be paid to:

- (1) the stewards;
- (2) the commission veterinarians;
- (3) the horse identifier; and
- (4) the test barn technicians.

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Legal Counsel
Texas Racing Commission

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◆ ◆ ◆
Duties of Stewards

• 16 TAC §§313.21-313.25

The Texas Racing Commission adopts on an emergency basis new §§313.21-313.25, concerning officials at horse racetracks. The sections describe requirements for appointment as a steward and the various duties of the stewards. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2582).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.21. Eligibility For Appointment.

(a) Except as otherwise provided by this section, 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 examination prescribed by the commission;

(5) attend, at the individual's expense, at least 100 hours of training for prospective stewards administered or approved 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) To be appointed to serve as a steward, an individual must:

(1) have served as an official at a race meeting recognized by the commission or another racing jurisdiction; or

(2) demonstrate to the satisfaction of the director of racing and executive secretary for the commission 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 for at least 150 days in the three year period preceding the appointment.

(d) The director of racing for the commission shall administer the written examination for stewards. A passing grade for the written examination is 70 on a scale of 100. 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.

(e) An association may request stewards from an approved steward list on file with the director of racing for the commission.

§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. In the event a question arises during a race meeting regarding the operations of a racetrack or the conduct of racing that is not covered by the Act or a rule of the commission, the stewards shall resolve the questions in conformity with justice and the best interest of racing.

(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 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) determine whether a disqualification is warranted in the event of a foul or a riding infraction; and

(9) 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.

(c) One steward shall be present in the paddock for the saddling of the horses for a race.

§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 presiding steward 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 racetrack, the date, the weather and track conditions, claims, inquiries, 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 presiding steward 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 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.

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Texas Racing Commission

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

◆ ◆ ◆ • 16 TAC §313.26

The Texas Racing Commission adopts on an emergency basis new §313.26, concerning officials at horse racetracks. The section requires the stewards to post the condition of the track surface during each race day. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The section is adopted on an emergency basis under Texas Civil Statutes, Article 719e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.26. Posting of Track Condition. The stewards shall post on the tote board a description of the condition of the track surface and shall update the description during the race day as the track condition changes.

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Duties of Other Officials

• 16 TAC §§313.41-313.52

The Texas Racing Commission adopts on an emergency basis new §§313.41-313.52, concerning to officials at horse racetracks. The sections describe the duties of the racetrack officials other than the stewards, including the racing secretary, the morning clocker, the official timer, the paddock judge, the clerk of scales, the placing judges, the patrol judges, the commission veterinarians, the starter, the horse identifier, the horseshoe inspector, and the jockey room custodian. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2583).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.41. Racing Secretary

(a) The racing secretary is an association official who shall supervise the operations of the racing office and its employees. 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, including Texas-bred races as required by the Act, 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) supervise the drawing of all races and post the overnight which lists the horses in post position order, the jockeys, the weight to be carried, and the conditions and purse of 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;

(8) allocate stalls in accordance with the Act and the rules of the commission; and

(9) perform all other duties imposed on the racing secretary by these rules or the association.

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

(c) In handicap races, the racing secretary shall assign weight to each horse

and shall post the weights in handicaps before 10:30 a.m. on 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 Official 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 quarter times (splits) for thoroughbred races in fractions on the infield totalisator board as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(c) For back-up purposes, the official timer shall also use a stop watch to time all races and in time trials, the official timer shall ensure that at least two stop watches are used by the stewards or their designees.

§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 saddling stalls 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 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. At the end of each race day, the paddock judge shall provide a copy of the list to the stewards. To

be removed from the paddocks judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards 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 for the day's races 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 a report of the weight carried in each race and the names of the jockeys, specifying any overweight; and

(2) provide to the horsemen's bookkeeper a program that indicates all jockey changes and the complete order of finish for each race.

(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.

(f) The clerk of scales shall maintain a record of applicable winning races on all apprentice certificates. At the end of the race meeting or on the departure of an apprentice jockey, the clerk of scales shall deliver the appropriate apprentice certificate to the apprentice jockey.

(g) The clerk of scales shall notify the mutual manager of any late scratches for a performance.

§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 from the appropriate patrol tower and report to the stewards each incident occurring during the race.

§313.48. Duties of Commission Veterinarians. The commission veterinarians shall supervise all veterinary practices on association grounds, advise the commission and the stewards on all veterinary matters, and perform all other duties required by the commission or these rules. When appointing the commission veterinarians for a race meeting, the commission shall designate one of the veterinarians to be ultimately responsible for the proper performance of the duties of the commission veterinarians.

§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 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.

(e) The starter shall assess the ability of each individual, applying for an apprentice jockey's license for the first time, in breaking from the starting gate and working a horse in the company of other horses.

§313.50. Duties of the Horse Identifier.

(a) The horse identifier shall identify each horse while it is in 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 in a manner prescribed by the commission on all horses that race at a race meeting and 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 paddock. 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 unusual types of racing plates worn by each horse scheduled to race. At the end of each race day, the horseshoe inspector shall deliver a copy of the record to the stewards. 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 jockeys;

(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 jockeys;

(4) keep a daily program displayed in plain view for the jockeys 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.

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Legal Counsel
Texas Racing Commission

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

◆ ◆ ◆
• 16 TAC §§313.53-313.61

The Texas Racing Commission adopts on an emergency basis new §§313.53-313.61, concerning officials at horse racetracks. The sections describe the duties of the racetrack officials other than the stewards, including the mutuel manager, the track superintendent, the assistant racing secretary, the stable superintendent, the assistant racing secretary,

the stable superintendent, the announcer, the outriders, the assistant starters, the test barn technicians, and the horsemen's bookkeeper. The sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorizes the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.53. Mutuel Manager. The mutuel manager shall supervise the operations of the pari-mutuel department of the association and its employees. The mutuel manager shall ensure the accuracy of the amounts in all pools and the amounts to be paid on winning wagers.

§313.54. Track Superintendent. The track superintendent shall ensure that the race-track is properly maintained. The track superintendent shall ensure that all track equipment is operable for all races and during training hours.

§313.55. Assistant Racing Secretary. The assistant racing secretary shall perform any duty assigned by the racing secretary and shall assist the racing secretary in the performance of the racing secretary's duties.

§313.56. Stable Superintendent.

(a) The stable superintendent shall supervise the systematic placement of horses in stalls. The stable superintendent shall maintain a log of all horses arriving and departing the stable area.

(b) The stable superintendent shall collect the health certificates of horses as they arrive on association grounds and deliver the certificates and records of arrival to the commission veterinarian.

§313.57. Announcer. The announcer shall promptly make all announcements to the patrons that are required by the rules of the commission, including announcements regarding scratches, jockey changes, jockey overweight, and other information pertinent to the running of the race. The announcer shall make all announcements from the stewards regarding objections and inquiries regarding a race.

§313.58. Outriders. The outriders shall ensure the post parade is conducted in an orderly manner. The outriders shall retrieve loose horses or horses that run off during racing or training hours.

§313.59. Assistant Starters. The assistant

starters shall be supervised by the starter. The assistant starters shall load the horses into the starting gate and, when required, head the horses in the starting gate.

§313.60. Test Barn Technicians. The test barn technicians shall perform any duty required by the commission veterinarian and shall assist in the collection of urine specimens for testing and in the maintenance of the test barn facilities.

§313.61. Horsemen's Bookkeeper. The horsemen's bookkeeper shall maintain the horsemen's account and maintain an accurate record of each owner's account. The horsemen's bookkeeper shall promptly credit each account with all earnings, awards, or deposits and deduct all payments as directed by an owner or authorized agent. Issued in Austin, Texas, on June 26, 1989.

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

• 16 TAC §§313.101-313.110

The Texas Racing Commission adopts on an emergency basis new §§313.101-313.110, concerning entries at licensed racetracks. The sections describe the procedure for taking entries and restrictions on eligibility to enter a race. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2584).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§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.

(d) If a horse is being entered for the first time at a race meeting, the horse must be identified on the entry by stating its name, color, sex, age, and the name of its sire and dam, as registered with the appropriate breed registry.

(e) A horse which, during the 12-month period preceding the date of a race, has started in a race where past performance lines are available but which are not on file with the daily racing form or the American Quarter Horse Association, may not be entered at a racetrack licensed in this state unless the owner of the horse has furnished performance records to the racing secretary at the time of entry.

§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) A horse may not start in a race unless:

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

(2) the horse has been properly tattooed and 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, unless the stewards authorize the certificate to be filed at a later time;

(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;

(5) the horse is present on association grounds not later than 8 a.m. on the day of the race;

(6) the horse has had two published workouts and been approved by a licensed starter for proficiency in the starting gate, if the horse is to start for the first time;

(7) the horse has had one published workout, if the horse has not started in the 45-day period preceding the date of the race; and

(8) the horse has had two published workouts, if the horse has not started in the 60-day period preceding the date of the race.

(b) A horse that has been disqualified in any racing jurisdiction is ineligible to start or be entered in a race without the approval of the stewards.

(c) To be eligible to enter a Texas-bred race, the horse must be an accredited Texas-bred horse and be registered with the appropriate breed registry.

(d) A horse may not be entered in more than one race scheduled for one race day.

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

§313.106. Closing Entries

(a) The racing secretary shall close entries at the advertised time and may not accept any entries after that time. The racing secretary may postpone the closing of overnight races.

(b) After entries are closed, an entry may not be altered, other than to correct an error.

(c) If the number of entries exceeds the number of horses that may start in a race, due to track limitations, the racing secretary may split the race and the starters will be determined by lot.

(d) A racing secretary may withdraw any endorsed race. If a race is declared off because of insufficient entries,

the racing secretary may split any overnight race or write a substitute race in place of the cancelled race.

(e) The owner or trainer of a horse that has been entered in a race who does not wish the horse to participate in the race must withdraw the horse from the race before entries are closed.

§313.107. Draw For Post Position.

(a) After the entries are closed, the racing secretary shall designate two people who are owners or trainers who are present in the racing 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.

(c) No later than the time a horse is drawn into a race, the owner or trainer of the horse shall designate the jockey who will ride the horse in the race.

§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 preferred 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) Not more than two horses that have common ties through ownership, training, or lease may be entered in a purse race.

(b) When a person makes a double entry, the person must make a preference for one horse. The second choice has no preference over a single entry in a purse race, but a second choice has preference over an in-today horse.

(c) If two horses entered in a race are owned in whole or in part by the same individual or entity, or if the trainer owns an interest in either horse, the entry shall be coupled as a single wagering interest. At the time of entry, the person making the entry must indicate a preference so that each horse may be entered in a division of the

race if the race is divided.

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

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• 16 TAC §313.111

The Texas Racing Commission adopts on an emergency basis new §313.111, concerning age restrictions for horses' eligibility to start in races in Texas. The section restricts the ability of two-year-olds, three-year-olds, and four-year-olds to start in races of certain distances, the ability of a maiden to start, and the maximum age for starting horses. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.111. Age Restrictions.

(a) A yearling is not eligible to start in a race.

(b) A two-year-old horse may not start in a race before March 1 of the two-year-old year.

(c) A two-year-old quarter horse may not start in a race longer than 350 yards before May 1 of the two-year-old year. A two-year-old quarter horse may not start in a race longer than 400 yards before September 1 of the two-year-old year.

(d) A two-year-old thoroughbred may not start in a race longer than 4 1/2 half furlongs before May 1 of the two-year-old year. A two-year-old thoroughbred may not start in a race around more than one turn before September 1 of the two-year-old year.

(e) After December 31, 1990, a maiden that is more than seven years of age may not start in a race in this state. After December 31, 1990, and before January 1, 1992, a maiden that is more than six years of age may not start in a race in this state. After December 31, 1991, a maiden that is more than five years of age may not start in a race in this state.

(f) A horse that is more than 12 years of age may not start in a race in this

state.

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• 16 TAC §§313.131-313.136

The Texas Racing Commission adopts on an emergency basis new §§313.131-313.136, concerning declarations and scratches in races at licensed racetracks. The sections describe the procedure for making declarations, and scratches and the conditions under which they may be made. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2585).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.131. Declaration and Scratch Procedure.

(a) A declaration or scratch must be in writing on a form provided by the association. A declaration may be made by the owner or trainer of the horse or by the authorized agent of the owner.

(b) A horse may not be declared out of or scratched from 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) The owner or trainer of a horse that has drawn into or is also eligible for a race who does not wish the horse to start in the race must scratch the horse from the race before scratch time.

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

(d) An association may adopt a policy setting a minimum number of horses remaining in the body of a race before a veterinary reason is required to scratch a horse. The policy may not restrict the right of an owner or trainer to scratch a horse from a stakes race before scratch time for any reason.

§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 or scratched from 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.

§313.135. *Declaration or Scratch by Stewards.*

(a) The stewards may declare out or scratch a horse from 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 or scratched from a race under this subsection shall be placed on the veterinarian's list and is ineligible for entry in a race in Texas until removed from the list by the commission veterinarian.

(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 and Scratches in Stakes Races.*

(a) A horse entered in a stakes race may be declared out of or scratched from the race at any time before one hour before post time for the race.

(b) A horse that is not named through the entry box at the time designated by the racing secretary is automatically declared out of the stakes race.

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◆ ◆ ◆ Allowances and Penalties

• 16 TAC §§313.161-313.168

The Texas Racing Commission adopts on an emergency basis new §§313.161-313.168, concerning weight allowances and penalties for races at licensed racetracks. The sections describe the types of weight allowances that are permitted and the scale of weights permit-

ted by age of the horse. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2585).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §9.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.161. *Responsibility For Correct Weight.*

(a) The owner and trainer of a horse entered in a race shall ensure that the horse carries the correct weight for that race.

(b) Weight penalties are obligatory.

§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 ground to declare a horse out of the race.

§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.

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

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

(1) a filly that is two years old is allowed three pounds;

(2) a filly that is three years of age 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.*

(a) An apprentice jockey is entitled to ride with a five-pound weight allowance in all thoroughbred races beginning with the jockey's first mount and continuing for 12 months after the date of the jockey's fifth winning amount.

(b) If during the 12-month period after an apprentice jockey rides the jockey's fifth winning mount the apprentice jockey fails to ride at least 40 winners, the jockey may continue to ride with the five-pound allowance for a second 12-month period after riding the fifth winning mount or until the jockey has ridden 40 winners, whichever occurs first.

(c) If an apprentice jockey is unable to ride for a period of at least 14 consecutive days after the date of the jockey's fifth winning mount, because of service in the armed forces of this country or because of physical disability, the commission may extend the time during which the apprentice weight allowance may be claimed. An extension granted under this subsection may not exceed the total number of days during which the apprentice jockey was unable to ride.

(d) This section does not apply to jockeys in:

- (1) a quarterhorse race;
- (2) a mixed race between quarterhorses and thoroughbreds; or
- (3) a handicap 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) The racing secretary may provide 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 a 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	105	105	105	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	102	102	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

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Subchapter C. Claiming Races

• 16 TAC §§313.301-313.309

The Texas Racing Commission adopts on an emergency basis new §§313.301-313.309, concerning to claiming races at licensed racetracks. The sections describe the procedures for conducting claiming races and the restrictions on the eligibility of horses in claiming races and of horses that have been claimed. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2588).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorizes the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.301. Eligibility to Claim

(a) Except as otherwise provided by this section, in a claiming race, each horse is subject to be claimed 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 a 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 steward or a designee of the stewards shall supervise the making of claims and ensure the accuracy of all claims made in a race.

(b) A claim must be made in writing on forms and in envelopes 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. The form and envelope must be filled out completely and must be

accurate in every detail. For purposes of this section, the name of the horse as it appears in the official program governs.

(c) The person making a claim is responsible for determining the sex of the horse.

(d) 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. A person may not place money or its equivalent in the claim box.

(e) 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.

(f) 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 notify the stewards of all accurate claims. The steward or designee will then notify the horsemen's bookkeeper of the claims to determine whether the appropriate amount is on deposit with the bookkeeper and to debit the claimant's account for the amount of the claim, plus all applicable and fees. If more than one person enters a claim for a horse, a steward or a designee of the stewards shall determine the disposition of the horse by lot.

§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 the stewards excuse a horse before it is a starter, 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.

(a) 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 transfer fees.

(b) A person who files a claim may not exhaust the person's account with the association during the two-hour period after the claim was filed.

§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, unless the horse is designated for testing.

(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.

(d) A horse may not be delivered to a successful claimant without written authorization from a steward or a designee of the stewards.

§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 is responsible for the horse during the testing procedures and may not deliver the horse to the successful claimant in the test barn until the commission veterinarian informs the trainer or representative that all testing procedures are complete.

§313.308. *Restrictions on Subsequent Use.* 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;

(2) the horse is ineligible to enter a claiming race, including a starter handicap, for a price less than 25 % more than the price at which the horse was claimed; and

(3) the horse is ineligible to start in a race outside this state.

§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.

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• 16 TAC §§313.310-313.314

The Texas Racing Commission adopts on an

emergency basis new §§313.310-313.314, concerning claiming races at licensed racetracks. The sections describe the restrictions on claims, the right to claim by depleted stables, protests on claims, removal to avoid claims, and disclosure of a mare in foal in a claiming race. The sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.310. Restrictions on Claims.

(a) A horse that is claimed may not remain in the care or custody of the owner or trainer from whom the horse was claimed.

(b) A person may not claim more than one horse in a race nor submit more than one claim for a race.

(c) A person may not offer or agree to claim or refrain from claiming a horse. A person may not prevent or attempt to prevent another person from claiming a horse.

(d) A person may not prevent or attempt to prevent a horse from racing in a claiming race for the purpose of avoiding a claim.

(e) A protection claim is prohibited and a person making such a claim is subject to disciplinary action by the stewards.

§313.311. Right to Claim by Depleted Stables.

(a) Except as otherwise provided by this section, an owner whose stable is totally depleted during a race meeting by sale or removal from the association grounds loses the right to make claims at the race meeting.

(b) An owner whose stable is totally depleted by claims is entitled to make claims until the later of;

(1) the end of the race meeting at which the stable was depleted; or

(2) the 31st race day after the date the stable was depleted.

(c) An owner who wishes to make a claim at a subsequent race meeting under subsection (a)(2) of this section must file with the claim a certificate from the stewards of the meeting at which the stable was depleted.

(d) The stewards may permit an owner whose stable was totally depleted due to fire or other hazard to make claims under this section.

§313.312. *Protests.* A person wishing to protest the claim of a horse must file the protest with the stewards not later than 48 hours after the time the stewards declared the race in which the horse was claimed to be official.

§313.313. *Removal to Avoid Claim.* A person may not remove a horse from association grounds for the purpose of avoiding a claim.

§313.314. Disclosure of Mare in Foal.

(a) Except as otherwise provided by this section, a person may not enter a mare or filly in a claiming race if the person knows the mare is pregnant.

(b) A person may enter a mare or filly that has been serviced in a claiming race, provided:

(1) the owner files with the racing secretary a certificate from a licensed veterinarian, dated not more than 40 days after the date the mare or filly was last serviced, that states the mare or filly is not pregnant; or

(2) before entering the mare or filly;

(A) full disclosure of the servicing of the mare or filly is on file with and posted in the office of the racing secretary;

(B) the owner files with the racing secretary a signed statement agreeing to deliver without cost to a successful claimant the valid stallion service certificate regarding the servicing of the mare or filly; and

(C) all payments due for the stallion service or for any resulting live foal are paid in full.

(c) A successful claimant of a mare or filly in a claiming race may file with the stewards, not more than 30 days after the date of the claim, a petition to rescind the claim if:

(1) the claimant learns the mare or filly is pregnant; and

(2) the owner has not complied with subsection (b) of this section.

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Subchapter D. Running of the Race

Jockeys

• 16 TAC §§313.401-313.409

The Texas Racing Commission adopts on an emergency basis new §§313.401-313.409, concerning to jockeys participating in races at licensed racetracks. The sections describe the procedures and restrictions relating to jockeys reporting to the jockey room, weighing out, maximum overweight, items included in the weight, whips and other equipment, colors and number, duty to fulfill jockey engagements, jockey agents, and jockey mount fees. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2588).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorizes the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.401. Jockeys to Report.

(a) Except on permission of the stewards, 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 clerk of scales shall have the overweight or change of jockeys posted immediately and announced over the public address system.

(c) 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 trainer or an authorized agent for the owner.

§313.404. *Items Included in Weight.* A jockey's weight includes the riding clothing, boots, 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 number, and may carry a 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;
- (10) light blue;
- (11) brown; and
- (12) gold.

§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) At a given time, a jockey agent may represent not more than two jockeys and one apprentice jockey. A jockey agent shall maintain a record of all engagements

for each jockey the agent represents and make the records available for examination by the stewards at any time. The record must specify first, second, or third calls for each race.

(b) The stewards or racing secretary shall 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.

Purse	Winning Mount	Second Mount	Third Mount	Losing Mount
\$ 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

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◆ ◆ ◆
• 16 TAC §313.410

The Texas Racing Commission adopts on an emergency basis new §313.410, concerning contracts and certificates for jockeys participating in races at licensed racetracks. The section describes the requirements and restrictions relating to jockey contracts and apprentice certificates. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

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

The section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§313.410. *Contracts and Certificates for Jockeys.*

(a) An employment contract with a jockey for a period of more than 31 days shall be in writing. The jockey shall file a copy of the contract with the commission.

(b) An apprentice jockey may execute a written contract for a period not to exceed three years. If the apprentice jockey is not of legal age to execute contracts, the apprentice jockey may execute the contract only with written consent of the jockey's

parent or legal guardian. The apprentice jockey shall file a copy of the contract with the commission.

(c) The stewards may issue an apprentice certificate to an apprentice jockey in lieu of a traditional apprentice contract. The stewards shall file a copy of the certificate with the commission. An apprentice certificate is valid for not more than three years and terminates at the time the apprentice jockey loses the right to ride with an apprentice allowance as provided by this chapter.

(d) A jockey or apprentice jockey who is under an employment contract may not ride a horse against the contract employer.

(e) A person employing a jockey or apprentice jockey under an employment contract may not take or accept any interest in the earnings of the jockey or apprentice jockey.

(f) An official or an assistant or employee of an official may not buy or sell, either directly or indirectly, a contract for a jockey or apprentice jockey.

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Pre-race Procedures

• 16 TAC §§313.421-313.425

The Texas Racing Commission adopts on an emergency basis new §§313.421-313.425, concerning the pre-race procedure for races at licensed racetracks. The sections describe the requirements and restrictions relating to the horses moving to the pre-race holding area, saddling, the parade, leaving the race course, and activities at the starting gate. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2591).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§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 a saddling stall, 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) 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) For purposes of the schooling list, 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 or during the warm-up 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, during the parade or warm-up, the horse leaves the race course to the extent that the horse is out of the vision of the stewards or the horse cannot be returned to the race course within a reasonable period of time.

(c) If a horse leaves the race course or loses its jockey during a race, the stewards shall disqualify the horse and place it last.

§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 stipulated by the starter when instructed to do so by the stewards.

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

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The Race

• 16 TAC §§313.441-313.450

The Texas Racing Commission adopts on an emergency basis new §§313.441-313.450, concerning the running of races at licensed racetracks. The sections describe the requirements and restrictions relating to the start, interference, actions by jockeys, dismounting, weighing in, claims of interference, ramifications of disqualification, dead heats, official order of finish, and time trial qualifiers. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2591).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§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 shall 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 leading horse is entitled to any part of the course; however, when another horse is attempting to pass in a clear opening, the leading horse may not impede the passing horse by crossing over so as to compel the passing horse to shorten its

stride.

(b) A horse may not interfere with or cause another horse to lose stride, lose ground, or lose position in a part of the race where the horse interfered with loses the opportunity to place where the horse might be reasonably expected to finish.

(c) 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.

(d) 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 a race is declared 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.

§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 placed behind, plus .01 of a second penalty, or more exact measurement if photofinish equipment permits. The horse may be 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 direct:

- (1) the order of finish to be posted and announced to the public;
- (2) the "official" sign to be posted on the infield tote board; and
- (3) the mutuel manager to ensure the accuracy of the pools for the race are correct and ready to be paid.

§313.450. Time Trial 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 consolation: 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.

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Chapter 319. Veterinary Practices and Drug Testing

Subchapter A. General Provisions

• 16 TAC §319.13, §319.14

The Texas Racing Commission adopts on an emergency basis new §319.13 and §319.14, concerning general provisions regarding veterinary practices and drug testing at licensed racetracks. The sections describe the procedures and restrictions relating to the use and possession of disposable syringes and controlled substances on association grounds. The sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§319.13. Disposable Syringes. All veterinarians shall use single-use disposable syringes while on association grounds and shall dispose of the syringes off the association grounds.

§319.14. Possession of Controlled Substances.

(a) A veterinarian may not possess on association grounds a controlled substance, as defined by the Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, without the written approval of the chief veterinarian for the commission on a form prescribed by the commission.

(b) The commission veterinarian may not approve the possession of a controlled substance unless the person requesting approval submits documentation in recognized veterinary journals or by recognized veterinary experts that the substance has a beneficial, therapeutic application for a horse or greyhound in race training.

(c) A person may not prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver a controlled substance to or for a race animal solely for training or racing purpose.

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Subchapter B. Treatment of Horses

Veterinary Practices

• 16 TAC §§319.109-319.112

The Texas Racing Commission adopts on an emergency basis new §§319.109-319.112, concerning veterinary practices at licensed horse racetracks. The sections describe the procedures and restrictions relating to the destruction of horses, the coggins test, bleeders, and unlicensed veterinary practices. The sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§319.109. Destruction of Horses.

(a) If a horse becomes disabled on the racetrack, the rider shall dismount and unsaddle the horse without passing the stands.

(b) If the condition of the horse requires its destruction within the view of the patrons, the commission veterinarian

shall ensure that a screen is placed in a manner that shields the horse from the view of the patrons.

(c) The commission veterinarian may order a horse to be destroyed if the veterinarian determines the horse is seriously injured to the extent that destruction is in the best interest of the horses and racing. By accepting a license from the commission, an owner or trainer consents to the authority of the commission veterinarian under this subsection.

§319.110. Coggins Test.

(a) Except as otherwise provided by this section, a horse that arrives on an association's grounds shall have:

(1) a valid negative ager gel immunodiffusion test for equine infectious anemia (Coggins test) issued in the six-month period preceding the horse's arrival; and

(2) a health certificate issued in the 30-day period preceding the horse's arrival.

(b) The stable superintendent may permit a horse without a health certificate to be admitted to association grounds, provided:

(1) the horse is admitted only to an isolated stall; and

(2) the trainer of the horse files a health certificate with the commission veterinarian not later than 24 hours after arrival.

(c) The stable superintendent may permit a horse without a Coggins test to be admitted to association grounds, provided a Coggins test is drawn not later than 24 hours after arrival.

(d) A horse that does not have the certificates required by this section on file with the commission veterinarian is ineligible to start in a race.

§319.111. Bleeders.

(a) A bleeder is a horse that demonstrates in the presence of the commission veterinarian visible external evidence of exercise-induced pulmonary hemorrhage or exhibits post-exercise hemorrhage in the trachea on endoscopic examination performed in the presence of the commission veterinarian.

(b) A horse that is seen by the commission veterinarian to bleed during the running of a race or within one hour after the race must be certified as a bleeder by the commission veterinarian, on a form prescribed by the commission.

(c) For the first confirmed incident of bleeding in this state, the horse shall be placed on the veterinarian's list and is not eligible to enter a race before the 11th day after the date the horse is placed on the

list.

(d) For the second confirmed incident of bleeding in this state, the horse shall be placed on the veterinarian's list and is not eligible to enter in a race before the 30th day after the date the horse is placed on the list.

(e) For the third confirmed incident of bleeding in this state, the horse shall be placed on the veterinarian's list and is not eligible to enter in a race before the 180th day after the date the horse is placed on the list.

(f) For the fourth confirmed incident of bleeding in this state, the horse is barred from pari-mutuel racing in this state.

§319.112. Unlicensed Veterinary Practices.

(a) A person other than a licensed veterinarian may not perform, conduct, or participate in veterinary practices, including equine dentistry, chiropractic, and acupuncture, unless the practices are performed by the order of and under the direct supervision of a veterinarian licensed by the commission who has established a veterinarian-client-patient relationship with the animal being treated.

(b) A person who observes an unlicensed person performing, conducting, or participating in veterinary practices on association grounds shall immediately report that fact to the stewards.

(c) The stewards shall report to the Texas State Board of Veterinary Medical Examiners any person reported under this section.

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Chapter 321. Pari-mutuel Wagering

Subchapter A. Regulation and Totalisator Operations

General Provisions

• 16 TAC §§321.1-321.7

The Texas Racing Commission adopts on an emergency basis new §§321.1-321.7, concerning general provisions regarding pari-mutuel wagering at licensed horse racetracks. The sections describe the procedures and restrictions relating to the conduct of wagering, the pari-mutuel auditor, investigations, system failure, the pari-mutuel track report, and computer printouts. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14

TexReg 2592).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§321.1. Conduct of Watering.

(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 that is operated by a person licensed by the commission and approved by the comptroller.

(c) An association shall make a written application to the commission for approval to offer the types of wagers the association wishes to offer. An association may offer only the types of wagers the commission approves for that association.

§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 request for the ticket to the mutuel manager of the association that issued the ticket.

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

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

(d) After the investigation is com-

pleted, the investigating official shall notify the association that the ticket may be stored 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 mutuel manager, the pari-mutuel auditor, and the stewards or racing judges. 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. For a race run as an exhibition under this subsection, the association shall pay the purses in accordance with the rules of the commission.

§321.5. Access to Tapes.

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

(b) An association shall prohibit the association's mutuel 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.

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Mutuel Tickets

• 16 TAC §§321.31-321.39

The Texas Racing Commission adopts on an emergency basis new §§321.31-321.39, concerning mutuel tickets for pari-mutuel wagering at licensed horse racetracks. The sections describe the procedures and restrictions relating to mutuel tickets, the expiration date of tickets, a refusal to cash a ticket, a claim for payment, cashed tickets, altering cashed tickets, cashing outstanding tickets, cancellation of tickets, and cashier's records. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2593).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§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 number of the ticket-issuing machine;
- (7) the type of pool;
- (8) the number of each entry on which the wager was placed; and
- (9) 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 last day of the race meeting in which the ticket was purchased.

(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.

(d) For each race meeting, an association shall post in a conspicuous place the expiration date of mutuel tickets sold during that meeting.

§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, canceled, 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 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 was purchased for a race performance held 10 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 purchased for a race performance held 10 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 canceled 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 canceled because of a scratch in a race.

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

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Paula Cochran Carter
Legal Counsel
Texas Racing Commission

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

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Regulation of Wagering

• 16 TAC §§321.61-321.69

The Texas Racing Commission adopts on an emergency basis new §§321.61-321.69, concerning regulation of pari-mutuel wagering at licensed horse racetracks. The sections describe the procedures and restriction relating to actions by stewards or racing judges, errors in posted payoff, probable odds, wagering explanations, wagering interests, minimum wagers, activities by minors, wagers by employees of the commission, and prohibited wagers. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2594).

The sections are adopted on an emergency

basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 170e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§321.61. Actions by Stewards or Racing 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 totalisator 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 declaring the race to be official.

§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 set and print in the official program the morning line odds for each wagering interest in each race.

§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 wager 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 coupled 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 odds in

the morning line are the mutual field.

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

(d) In a race with a coupled entry or a mutual field, the racing secretary may assign wagering numbers to entries that are different from the post position numbers.

§321.66. Minimum Wager.

(a) The minimum wager on win, place, show, exacta, and quinella wagers is \$2.00. The minimum wager on all other wagers is \$1.00.

(b) An association may accept wagers only in multiples of \$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 mail or by telephone, other than a data communications link.

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

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Subchapter B. Distribution of Pari-mutuel Pools

• 16 TAC §§321.101-321.112

The Texas Racing Commission adopts on an emergency basis new §§321.101-321.112, concerning the distribution of pari-mutuel pools at licensed horse racetracks. The sections describe the procedures and restrictions relating to distribution of pools, payoff on minus pool, straight pools, the win, place, and

show pools, and the daily double, exacta, quinella, trifecta, twin trifecta, and pick six wagers. Similar sections were proposed by the commission in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2595).

The sections are adopted on an emergency basis to expedite the receipt of state revenue from pari-mutuel racing by ensuring the rules necessary for horse racing are in place.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§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 mutual 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 wagering in any race in which there are five or more separate wagering interests which are scheduled to start.

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

(c) An association shall provide win wagering in a race in which three or less wagering interests are scheduled to start.

(d) The association, with the permission of 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 total wagered in the win 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 in the place pool. If there are no tickets on the animal in the place pool, the win shall be

distributed among the holders of tickets on that animal in the show pool. If there are no tickets on the animal in the show pool, the money in the win pool shall be refunded.

(d) If a race ends in a two-animal dead heat for first place, the pool shall be calculated as a place pool. If a race ends in a multiple-animal dead heat for first place, the pool shall be distributed to the holders of tickets on any of the animals finishing first.

§321.105. Place Pool.

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

(b) The amount wagered in the place pool on the race animals that 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 a race ends in a dead heat for first place, the place pool shall be distributed in accordance with subsections (c) and (d) of this section. If a race ends in a dead heat for second place, tickets on the first place animal shall be paid in accordance with subsection (c) of this section, and the remaining half of the place pool shall be distributed to holders of tickets on any of the animals finishing in the dead heat for second place.

(g) 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. If no money was wagered to place on either of the animals finishing first or second in a race, the place pool shall be distributed among the holders of tickets on the first and second place animals in the show pool. If the place pool cannot otherwise be distributed in accordance with this section,

the money in the place pool shall be refunded.

§321.106. Show Pool.

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

(b) 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 a race ends in a dead heat for first or second place, the show pool shall be distributed in accordance with subsections (c)-(e) of this section. If a race ends in a dead heat for third place, tickets on the first and second place animals shall be paid in accordance with subsection (c) and (d) of this section, and the remaining third of the show pool shall be distributed to holders of tickets on any of the animals finishing in the dead heat for third place.

(h) 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. If no money was wagered in the show pool on any of the animals finishing first, second, or third in a race, the money in the show pool shall be refunded.

§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) If any part of a coupled 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, regardless of whether any part of the entry or field failed to start. If either race in the daily double ends in a dead heat for first place, the pool shall be calculated as a place pool in proportion to the number of animals in the dead heat.

(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 ticket which include the winner of the first race of the daily double in combination with any animal in the second race.

(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 daily double shall be awarded. All tickets which select an animal in the first race with the affected animal in the second race shall be deducted from the daily double pool and the

remainder shall be placed in a consolation daily double pool. The pool shall be distributed as a straight pool to the holders of tickets who correctly selected the winner of the first race with the affected animal in the second race.

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

(k) If the daily double pool cannot otherwise be distributed in accordance with this section, the money in the daily double pool shall be refunded.

§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) If any part of a coupled 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, regardless of whether any part of the entry or field failed to start. 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 or field 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 winning animal and all quinella tickets bearing the number of the second place animal are considered winning tickets and the payoff shall be calculated in the same manner 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 as a place pool.

(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 in an exacta race shall be calculated as a separate pool.

(b) When purchasing an exacta ticket, the patron shall designate the exact order of finish for the first and second place animals.

(c) If any part of a coupled entry or mutual field is a starter, the association may not refund money wagered under this section to persons wagering on the entry or field, regardless of whether any part of the entry or field failed to start. 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 or field 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 animal to win coupled with any of

the second place animals are winners and the pool shall be distributed as a place pool.

(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 coupled entry or mutual 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 requires distribution under subsection (e) of this section, the net pool shall be distributed equally among the holders of tickets selecting the first and third animals.

(g) If no ticket is sold that requires distribution under subsections (e) or (f) of this section, 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)-(h) of this section, 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)-(i) of this section, 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 any 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.

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

§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) To participate in a twin trifecta, a person must purchase a trifecta ticket for the first race of the twin trifecta. In purchasing that ticket, the person must select the three animals in the race which will finish first, second, and third and designate the exact order in which the first three will finish. After the finish of the first race of the twin trifecta is official, the holders of first-half twin trifecta tickets correctly selecting the exact order of the first three finishers for the first race must, before the second race is run, exchange the winning ticket for the money as determined by this section and a 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. A person who fails to exchange a winning ticket before the second race is run is entitled to receive only the money distri-

bution for the first race and forfeits all rights to participate in the pool for the second half of the twin trifecta. If no ticket is sold that correctly selected the exact order of the first three finishers in the first race, one-half of the net pool which is to be paid in the first race shall be calculated in accordance with subsections (f)-(k) of this section, no exchange tickets may be issued for the second race, and the pool shall be carried over to the next race day.

(c) A coupled 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 on the last day of the race meeting, 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 subsections (f)-(k) of this section. If no winning tickets result from subsections (f)-(k) of this section, the second race pool shall be distributed to anyone holding exchange tickets from the first race.

(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) of this section, 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) of this section, 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) of this section, 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) of this section, 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) of this section, 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. If the first race of the twin trifecta ends in a dead heat, any ticket that selects the correct order of finish, counting an animal in a dead heat as finishing in any of the first three positions, may be exchanged for a second half ticket and the first half pool shall be paid as a place pool. If the second race of the twin trifecta ends in a dead heat, all tickets selecting the correct order of finish, counting an animal in a dead heat as finishing in any of the first three positions, shall be paid one common price.

(p) If the first race of the twin trifecta is canceled or declared no contest or no race, the association shall cancel the twin trifecta and refund all money wagered on the twin trifecta for that performance. 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 no race, or if fewer than three animals finish, the second race pool for that performance 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 coupled 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 a major pool (75%) and a minor pool (25%). The major pool 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 pool, otherwise known as the consolation pick six pool, 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. If no ticket is sold that designates the winner in each of the six races, the major pool shall be held over to the next performance to be paid in the major pool of that performance.

(e) If a pick six ticket designates a selection and the selection is scratched, declared 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. If there are two or more identical favorites in the win pool, the animal with the lower numbered post position will be substituted for the nonstarting selection.

(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 race three or more of the pick six races, the pick six is canceled and the association shall refund all pick six tickets. If one or two races in the pick six are canceled or declared as no race, 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) If on the last day of the race meeting at which the pick six is offered no distribution of the major pool is made under subsection (d) of this section, that portion of the distributable pool and all money carried over into that pool from previous perfor-

mances shall be combined with the minor pool and distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the pick six for that day.

(i) A pick six ticket may not be sold, exchanged, or canceled after the close of wagering on the first of the pick six races.

(j) 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.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905822

Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Effective date: June 27, 1989

Expiration date: September 25, 1989

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



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 IV. Department of Labor and Standards

Chapter 79. Vehicle Storage Facilities

- 16 TAC §§79.1, 79.3, 79.5, 79.9, 79.13, 79.21, 79.25, 79.29, 79.33, 79.37, 79.39, 79.41

(Editor's Note: The Department of Labor and Standards 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 Department of Labor and Standards proposes the repeal of §§79.1, 79.3, 79.5, 79.9, 79.13, 79.21, 79.25, 79.29, 79.33, 79.37, 79.39, and 79.41, concerning definitions, foreign registered vehicles, vehicle storage facility requirement, acceptance of vehicles for storage, vehicle storage, vehicle transfers, vehicle transfer requirements, vehicle documentation, insurance required, criminal history background denial of license, duplicate license, and forms. These sections are being repealed to allow for the adoption of edited, renumbered and reorganized sections.

Joseph L. Huertas, program manager, has determined that for the first five-year period the proposed repeals 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 repeals.

Mr. Huertas also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be increased consistency of enforcement and improved awareness of the provisions, requirements, and prohibitions of Texas Civil Statutes, Article 6687-9a, and the administrative rules promulgated thereunder. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Joseph L. Huertas, Program Manager, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 6687-9a, which provide the Department of Labor and Standards with the authority to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities.

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 June 27, 1989.

TRD-8905583

Joseph L. Huertas
Program Manager
Department of Labor and Standards

Earliest possible date of adoption: August 4, 1989

For further information, please call: (512) 463-2907

- 16 TAC §§79.1, 79.10, 79.20, 79.30, 79.40, 79.60, 79.70, 79.71, 79.72, 79.73, 79.80, 79.90, 79.100, 79.101

(Editor's Note: The Department of Labor and Standards 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 Department of Labor and Standards proposes new §§79.1, 79.10, 79.20, 79.30, 79.40, 79.60, 79.70, 79.71, 79.72, 79.73, 79.80, 79.90, 79.100, and 79.101, concerning requirements for operation of a vehicle storage facility. The new sections have been reorganized to conform with uniform department number system which will provide for greater consistency and clarity. The new sections also contain certain changes to accommodate the passage of House Bill 863 by the 71st Legislature.

Joseph L. Huertas, program manager, 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 section.

Mr. Huertas also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased consistency of enforcement and improved awareness of the provisions, requirements, and prohibitions of Texas Civil Statutes, Article 6687-9a, and the administrative rules promulgated thereunder. 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 Joseph L. Huertas, Program Manager, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6687-9a, which provide the Department of Labor and Standards with the authority to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities.

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 June 27, 1989.

TRD-8905584

Joseph L. Huertas
Program Manager
Department of Labor and Standards

Earliest possible date of adoption: August 4, 1989

For further information, please call: (512) 463-2907

Part VIII. Texas Racing Commission

Chapter 301. Definitions

- 16 TAC §301.1

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

The Texas Racing Commission proposes an amendment to §301.1, concerning definitions. The amendment adds definitions for the age of horses, chief veterinarian, entry, greyhound race, horse, horse race, jockey, locked in the gate, no race, off time, race day, race meeting, recognized race meeting, stallion owner, and straight pool. The amendment also deletes definitions for clerk of the scales, outrider, paddock judge, patrol judge, placing official, racing secretary, and amends definitions for cool out, coupled entry, established weight, kennel, mutual field, racetrack official, scratch, starter, tout, weigh in, and weigh out.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that for each of the first five years the amendments are 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 amendments.

Ms. Carter also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be assurance that all persons affected by the rules of the commission understand the terms

of art used in the sections. There is no anticipated economic cost to individuals who are required to comply with the amendment.

Comments on the proposal may be submitted before July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905800 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Chapter 303. General Provisions

Subchapter D. Texas Bred Incentive Programs

General Provisions

• 16 TAC §303.84, §303.85

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

The Texas Racing Commission proposes new §303.84 and §303.85, concerning mailings to membership and background investigations. The sections require the breed registries participating in the Texas bred incentive programs to include the Texas Racing Commission on their mailing lists and to submit to background investigations on order by the commission.

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 fiscal implications for state government and small businesses. The fiscal implications for state government for each of the first five years the sections are in effect cannot be determined at this time, because they will vary depending on the number of individuals on whom background investigations must be conducted. The fiscal implications for small businesses for each of the first five years the sections are in effect cannot be determined at this time, because they will vary depending on the number of documents each breed registry or other organization must mail or deliver to the commission. There are no fiscal implications for local government.

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

effect the public benefit anticipated as a result of enforcing the sections will be assurance that the commission is apprised of all activities of organizations receiving money through the Texas bred incentive programs and that the persons responsible for administering the program for a particular organization are of the utmost 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The sections are proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905809 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Chapter 305. Licenses for Pari-mutuel Racing

Subchapter B. Individual Licenses

General Provisions

• 16 TAC §305.36

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

The Texas Racing Commission proposes new §305.36, concerning examinations for individual license applicants. The new section authorizes the commission to require an applicant for an individual license to pass an examination designed by the commission to demonstrate the applicant's knowledge, qualifications, and proficiency for 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 will be the assurance that all persons licensed by the commission to participate in pari-mutuel racing will be highly qualified. There is no anticipated eco-

nomic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905811 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Specific Licenses

• 16 TAC §305.47, §305.48

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

The Texas Racing Commission proposes new §305.47 and §305.48, concerning jockeys and apprentice jockeys. The new sections describe the qualifications for being licensed by the commission as a jockey or an apprentice jockey.

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 the assurance that all jockeys and apprentice jockeys involved in pari-mutuel racing will be highly qualified 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

adopt.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905612

Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Subchapter D. Suspension and Revocation of Licenses

• 16 TAC §305.247

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

The Texas Racing Commission proposes an amendment to §305.247, concerning the suspension or revocation of a license for debt or liens. The amendment authorizes the commission to suspend or revoke a racetrack license if the licensee fails to pay a tax assessment that is secured by a lien or if a notice of public sale of the racetrack site is posted.

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 the assurance that racetracks licensed to conduct pari-mutuel wagering are financially solvent and 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905599

Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Chapter 309. Operation of Racetrack

Subchapter A. General Provisions

Facilities and Equipment

• 16 TAC §309.26

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

The Texas Racing Commission proposes an amendment to §309.26, concerning the internal communication system at a racetrack. The amendment requires the internal communication system to provide an outlet in the clocker's stand.

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 will be the assurance that pari-mutuel racing will be conducted with 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905613

Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Operations

• 16 TAC §309.53

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

The Texas Racing Commission proposes an amendment to §309.53, concerning the records an association is required to maintain. The amendment requires an association to provide on commission request financial statements regarding the management and operations 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 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 the assurance that the commission is fully apprised of changes in the financial condition of pari-mutuel racetracks. 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905598

Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

• 16 TAC §309.67

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

The Texas Racing Commission proposes new §309.67, concerning the sale of money orders at racetracks. The section requires a licensed racetrack to make money orders available for sale during all hours the commission licensing office is open for licensing.

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 the assurance that the licensing process for individuals is

administratively sound 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P. O. Box 12080, Austin, Texas 78711.

The section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905601 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Subchapter B. Horse Racetracks

Racetracks

• 16 TAC §309.102

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

The Texas Racing Commission proposes an amendment to §309.102, concerning track length. The amendment clarifies that the length of the back chute on a racetrack is measured from the starting gate to the finish line.

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 assurance that the rules of the commission are easily understood by the persons who are affected by them. 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905621 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Facilities for Horses

• 16 TAC §309.155

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

The Texas Racing Commission proposes an amendment to §309.155, concerning equine ambulances. The amendment requires the equine ambulance at licensed racetracks to be equipped with a front leg Kimzey brace, to be covered as well as enclosed, and to be available for each day the track is open for racing or training.

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 the assurance that the facilities for pari-mutuel racing will be safe for the race animals. 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905597 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Facilities for Employees

• 16 TAC §309.181

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

The Texas Racing Commission proposes an amendment to §309.181, concerning the commission veterinarian's office. The amendment requires the office to be secured and be equipped with two file cabinets, a freezer equipped with a lock, and a storage area equipped with a lock. The amendment also requires the locks to be of a type approved by the commission.

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 effect on small business for the first five-year period the section is in effect will be approximately \$200.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the facilities for the commission veterinarians will be of the highest quality. 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905598 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

• 16 TAC §309.193

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

The Texas Racing Commission proposes an amendment to §309.193, concerning saddle cloths. The amendment eliminates the requirement that a racetrack provide a head number and racing colors, making the provi-

sion of those items permissive with the racetrack.

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 the assurance that pari-mutuel racing is conducted with the utmost 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905620 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Subchapter C. Greyhound Racetracks

Operations

• 16 TAC §309.351

The Texas Racing Commission proposes an amendment to §309.351, concerning kennel contracts. The amendment requires an association to use specific criteria in awarding kennel contracts.

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 sections is in effect the public benefit anticipated as a result of enforcing the sections will be the assurance that kennel contracts for pari-mutuel greyhound racetracks are awarded uniformly and fairly. 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas

78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.351. Kennel Contracts.

(a)-(e) (No change).

(f) In awarding contracts to kennels, an association shall consider the following criteria:

(1) the past performance of the kennel in races at that racetrack or at other licensed racetracks;

(2) the degree to which the kennel owner and the employees treat the greyhounds in a safe and humane manner; and

(3) the degree to which, through its operations, the kennel encourages greyhound breeding in Texas.

(g) In awarding contracts to kennels, an association may not consider a kennel owner's participation or nonparticipation in a racing industry organization.

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 June 26, 1989.

TRD-8905608 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

• 16 TAC §309.363

The Texas Racing Commission proposes new §309.363, concerning the number of greyhounds in a pari-mutuel greyhound race. The section limits the number of greyhounds in a race to not more than eight greyhounds.

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 the assurance that pari-mutuel greyhound races are conducted safely and fairly. 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas

78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.363. Number of Greyhounds. An association may not permit more than eight greyhounds to start in a 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 June 26, 1989.

TRD-8905607 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 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 §311.156

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

The Texas Racing Commission proposes new §311.156, concerning jockeys. The new section describes certain specific restrictions on the conduct of jockeys and apprentice jockeys at licensed racetracks.

Paula Cochran Carter, legal counsel for the Texas Racing Commission, has determined that for the first five-year period the proposed new 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 new section is in effect the public benefit anticipated as a result of enforcing the sections will be the assurance that all jockeys and apprentice jockeys involved in pari-mutuel racing will be highly qualified 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for con-

ducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905819 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Chapter 313. Officials and Rules for Horse Races

Subchapter A. Officials

General Provisions

• 16 TAC §313.6

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

The Texas Racing Commission proposes new §313.6, concerning officials at horse racetracks. The section requires the commission to approve the per diem compensation of certain officials.

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 will be the assurance that racetrack officials appointed by the commission will be highly qualified 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing, P.O. Box 12080, Austin, Texas 78711.

The section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905818 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Duties of Stewards

• 16 TAC §313.26

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

The Texas Racing Commission proposes new §313.26, concerning officials at horse racetracks. The section requires the stewards to post the condition of the track surface during each race day.

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 the assurance that pari-mutuel racing will be of the highest quality and conducted with the utmost 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905595 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Duties of Other Officials

• 16 TAC §§313.53-313.61

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

The Texas Racing Commission proposes new §§313.53-313.61, concerning officials at horse racetracks. The sections describe the duties of the racetrack officials other than the

stewards, including the mutual manager, the track superintendent, the assistant racing secretary, the stable superintendent, the announcer, the outriders, the assistant starters, the test barn technicians, and the horsemen's bookkeeper.

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 will be the assurance that the racetrack officials for pari-mutuel racing will be highly qualified and of 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The sections are proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905594 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Subchapter B. Entries, Declarations, and Allowances

Entries

• 16 TAC §313.111

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

The Texas Racing Commission proposes new §313.111, concerning age restrictions for horses' eligibility to start in races in Texas. The section restricts the ability of two-year-olds, three-year-olds, and four-year-olds to start in races of certain distances, the ability of a maiden to start, and the maximum age for starting horses.

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 the assurance 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 section as proposed.

Comments on the proposal may be submitted before July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905610 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Subchapter C. Claiming Races

• 16 TAC §§313.310-313.314

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

The Texas Racing Commission proposes new §§313.310-313.314, concerning claiming races at licensed racetracks. The sections describe the restrictions on claims, the right to claim by depleted stables, protests on claims, removal to avoid claims, and disclosure of a mare in foal in a claiming race.

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 section.

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 will be the assurance 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 section as proposed.

Comments on the proposal may be submitted before July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The sections are proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize

the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905617 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Subchapter D. Running of the Race

Jockeys

• 16 TAC §313.410

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

The Texas Racing Commission proposes new §313.410, concerning contracts and certificates for jockeys participating in races at licensed racetracks. The section describes the requirements and restrictions relating to jockey contracts and apprentice certificates.

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 the assurance that all jockeys and apprentice jockeys involved in pari-mutuel racing will be highly qualified 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 July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905593 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4,

1989

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

Chapter 319. Veterinary Practices and Drug Testing

Subchapter A. General Provisions

• 16 TAC §319.13, §319.14

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

The Texas Racing Commission proposes new §319.13 and §319.14, concerning general provisions regarding veterinary practices and drug testing at licensed racetracks. The sections describe the procedures and restrictions relating to the use and possession of disposable syringes and controlled substances on association grounds.

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 will be the assurance 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 sections as proposed.

Comments on the proposal may be submitted before July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The sections are proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905615 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

Subchapter B. Treatment of Horses

Veterinary Practices

• 16 TAC 319.109-319.112

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

The Texas Racing Commission proposes new §§319.109-319.112, concerning veterinary practices at licensed horse racetracks. The sections describe the procedures and restrictions relating to their destruction of horses, the Coggins test, bleeders, and unlicensed veterinary practices.

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 section.

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 will be the assurance 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 sections as proposed.

Comments on the proposal may be submitted by July 14, 1989, to Paula Cochran Carter, Legal Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The sections are proposed under Texas Civil Statutes, Article 179a, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas, on June 26, 1989.

TRD-8905616 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: August 4, 1989

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

TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 161. General Provisions

• 22 TAC §161.1

The Texas State Board of Medical Examiners proposes an amendment to §161.1, concerning two parts to the rules on general provisions. One part states that the executive

director shall be compensated as provided in the Medical Practice Act. The executive director compensation is actually stated in the Appropriations Act. The second portion states that the board may go into executive session pursuant to the Open Records Act. The amendment also includes authority by way of the Medical Practice Act.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, 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. Davis 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 clarification regarding the executive director's method of compensation and the authority under which the board may enter into executive sessions. 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 to Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing is expected at a later date.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§161.1. Meetings.

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

(h) The board shall contract with an executive director to act as the chief executive and administrative officer of the board. The executive director's duties shall be to assist in conducting meetings of the board and to carry out other responsibilities as provided by the Medical Practice Act. The executive director shall be compensated as provided in the Appropriations [Medical Practice] Act. Any responsibilities or authority of the secretary-treasurer of the board described in any rules of the board may be exercised by the executive director unless the board assigns specific duties or prerogatives exclusively to the secretary-treasurer.

(i)-(j) (No change.)

(k) Meetings of the board and of its committees are open to the public unless such meetings are conducted in executive session pursuant to Texas Civil Statutes, Article 6252-17[,] and the Medical Practice Act, Article 4495b. In order that board meetings may be conducted safely, efficiently, and with decorum, members of the public shall refrain at all times from smoking or using tobacco products, eating, or reading newspapers and magazines. Members of the public may not engage in disruptive activity that interferes with board

proceedings, including excessive movement within the meeting room, noise or loud talking, and resting of feet on tables and chairs. The public shall remain within those areas of the board's offices designated as open to the public. Members of the public shall not address or question board members during meetings unless recognized by the board's presiding officer pursuant to a published agenda item.

(l) (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 June 26, 1989.

TRD-8905577 G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: August 4, 1989

For further information, please call: (512) 452-1078

Chapter 181. Mentally Ill and/or Insane Physicians

• 22 TAC §181.1

(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 State Board of Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Medical Examiners proposes the repeal of §181.1, concerning mentally ill and/or insane physicians. This section is repetitive of the Medical Practice Act §3.08(17) and is not currently in use.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, 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. Davis, 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 repeal of the rule will have no affect on the public, other than clarification by omission. 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 to Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

The repeal is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

§181.1. Cancellation, Revocation, or Suspension.

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 June 28, 1989.

TRD-8905578

G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: August 4, 1989

For further information, please call: (512) 452-1078

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TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 25. Membership Credit Compensation

• 24 TAC §25.21

The Teacher Retirement System of Texas (TRS) proposes an amendment to §25. 21, concerning compensation subject to deposit and credit. The amendment as proposed by TRS would add a limitation on the annual compensation that may be used as the basis for calculation of retirement benefits.

Wayne Fickel, TRS controller, 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. Fickel 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 the retirement system's benefit plan will continue to be considered a qualified plan under the Internal Revenue Code, §401(a), of 1986 (26 United States Code §401(a)) and that members will continue to have the tax advantages of participation in a qualified plan. TRS anticipates that there will be some economic cost to some individuals whose annual compensation exceeds the limits allowable for the purpose of calculating retirement benefits. However, TRS anticipates that only a very small number of members will be affected since existing TRS and IRS regulations already limit the annual compensation used to calculate member contributions and the benefits to be paid. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposed section may be submitted to Bruce Hineman, Executive Secretary, Teacher Retirement System of Texas, 1001 Trinity Street, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Title 110B, §35.506, which authorize the TRS Board of Trustees to adopt rules that modify the system's benefit plan to

the extent necessary for the retirement system to be a qualified plan.

§25.21. Compensation Subject to Deposit and Credit.

(a)-(e) (No change.)

(f) Annual compensation and a member's best three years' average compensation is limited to the maximum amount permitted by United States Internal Revenue Code, §401(a)(17), as modified by federal regulations and determinations authorized by that section. These limits on annual compensation apply to calculations of benefits made for any person retiring after August 31, 1989. Member contributions for any year will be made on all compensation otherwise eligible for TRS credit until the applicable limit for that year is reached. No benefit will be reduced by the application of this rule below the amount that the member would have received had the member retired on August 31, 1989.

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 June 28, 1989.

TRD-8905679

Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Proposed date of adoption: August 11, 1989

For further information, please call: (512) 397-6400

◆ ◆ ◆
Chapter 29. Benefits

Service Retirement

• 34 TAC §29.11

The Teacher Retirement System of Texas (TRS) proposes an amendment to §29. 11, concerning actuarial tables adopted by reference and used for early age retirement and for retirement options. These new tables are proposed to meet the requirements of a statutory amendment that will allow the annuity of a retiree who has elected an Option 1 or Option 2 annuity to be increased to a standard annuity if the designated beneficiary predeceases the retiree. Also, the new tables update the early age reduction factors to reflect a statutory amendment that will allow some early age retirees to receive a larger percentage of the standard annuity.

Wayne Fickel, TRS controller, 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. Fickel also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to have tables that will allow TRS to implement the automatic increase or pop-up feature authorized

by statute for certain retirees and that will allow TRS to implement the new statutory early age retirement reduction factors.

The anticipated economic cost to individuals who are required to comply with the section as proposed will be that there will be a slight decrease in the annuity amount that would otherwise be available to a retiree who chooses Option 1 or Option 2. The amount of the decrease will vary, depending on the retiree's and beneficiary's ages. Also, under the new tables, some early age retirees will receive a larger annuity payment while the annuity for others will not be affected.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Title 110B, §35.102, which provide the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, administer the funds of the retirement system, and conduct its business; §35.105, which authorize the board to adopt actuarial tables for benefit calculations; §34.204(f), which require the TRS Board to adopt tables to be used to reduce the optional service retirement annuity in order to implement the pop-up feature; and §34.202(d) and (c), which authorize the board to adopt tables for early age retirement reduction factors.

§29.11. Actuarial Tables. Actuarial tables furnished by the Wyatt Company, Consulting Actuaries, will be used for computation of benefits. Factors for ages or types of annuities not included in the tables will be computed from the same data by the same general formulas. The Teacher Retirement System adopts by reference the Wyatt Company's June 18, 1986, factors for retirement options 3 and 4 and the June 14, 1989, factors for retirement options 1 and 2 and for the early age reduction factors based on 8. 0% interest. These actuarial tables shall be effective beginning October 1, 1986, except for the tables containing the factors for retirement options 1 and 2 and for early age reduction, which shall be effective September 1, 1989. Information regarding and/or copies of these tables may be obtained by contacting Teacher Retirement System of Texas, 1000 Red River [1001 Trinity] Austin, Texas 78701, (512) 397-6400.

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

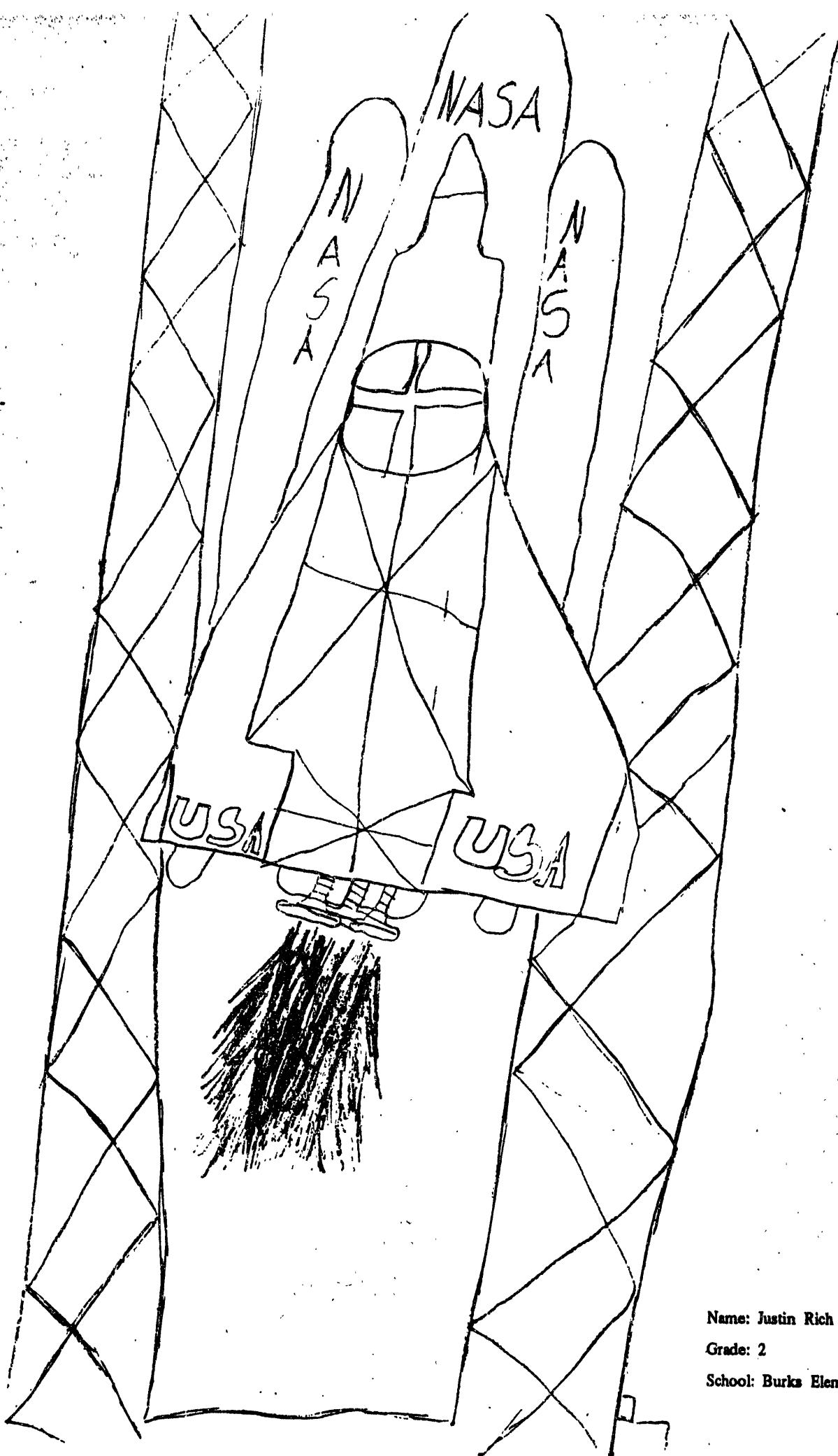
Issued in Austin, Texas, on June 28, 1989.

TRD-8905680

Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Proposed date of adoption: August 11, 1989

For further information, please call: (512) 397-6400



Name: Justin Rich

Grade: 2

School: Burks Elementary, McKinney

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 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter X. Agricultural Permits

• 16 TAC §5.535

The Railroad Commission of Texas adopts an amendment to §5.535, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6385). The amendment is adopted to expand the definition of eligible agricultural commodities to include cottonseed meal, cottonseed hulls, and sugar beet pulp. The section also clarifies that the exemption only applies to those commodities when transported for the original producer or grower of the cotton or sugar beets.

The amendment will grant operators of motor vehicles who transport cottonseed meal, cottonseed hulls, and sugar beet pulp for the original producer or grower, and who also meet all other statutory requirements, an exemption from the necessity of obtaining a certificate of public convenience and necessity. Such operators must instead obtain an agricultural permit.

Jackye Greenlee, assistant director of central operations, 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. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Numerous comments were received by the commission. Comments in favor of the proposed amendment were received primarily from companies seeking to take advantage of the proposed exemption for shipments which they produce. One comment was received in opposition to the section, stating that the proposed exemptions were beyond the legislative intent of the statute.

Comments in favor of the section were received from the Texas Agricultural Cooperative Council.

The commission disagrees with the comments received in opposition to the section, and with many of the comments in favor of the section. The proposal is carefully drawn to remain within the legislative intent of the statute. Accordingly the exemption is limited to transportation for the original producer or

grower of the cotton or sugar beets, or a cooperative association of which the original producer or grower is a member. Many of the comments in favor of the section were filed by businesses which appear to be subsequent owners of the commodities, and who would accordingly not be subject to the proposed exemption. Further, the application of the exemption to agricultural cooperatives is provided by the statute, not commission rule.

The amendment is adopted under Texas Civil Statutes, Article 911b, §5b(a)(3), which provide the commission with the authority to prescribe regulations for operations under authority of agricultural permits.

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 June 26, 1989.

TRD-8905552
Kent Hance
Chairman
Railroad Commission of
Texas

Effective date: July 17, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 463-7094

Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter D. Texas Bred Incentive Programs

Programs for Greyhounds

• 16 TAC §303.102

The Texas Racing Commission adopts new §303.102, without changes to the proposed text as published in the March 14, 1989, issue of the *Texas Register* (14 TexReg 1344).

The new section is adopted to ensure that the Texas Bred Incentive Program for greyhounds is operated fairly and uniformly.

The new section adopts by reference the rules of the Texas Greyhound Association, the official breed registry for greyhounds in Texas.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize

the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905604
Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Effective date: July 18, 1989

Proposal publication date: March 14, 1989

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

Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Operations

• 16 TAC §309.63

The Texas Racing Commission adopts new §309.63, without changes to the proposed text as published in the March 14, 1989, issue of the *Texas Register* (14 TexReg 1344).

The section is adopted to ensure that pari-mutuel racing is of the highest integrity.

The section prohibits the officers and directors of a racetrack from racing horses that they own at the racetracks for which they serve.

No comments were received regarding adoption of the new section.

The section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905605
Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Effective date: July 18, 1989

Proposal publication date: March 14, 1989

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

◆ ◆ ◆
**Subchapter C. Greyhound
Racetracks
Operations**

• 16 TAC §309.362

The Texas Racing Commission adopts new §309.362, without changes to the proposed text as published in the April 18, 1989, issue of the *Texas Register* (14 TexReg 1861).

The section is adopted to ensure that purses on greyhound races are paid in a timely fashion.

The section requires the purse for a greyhound race to be paid within seven days after the race, subject to the results of drug tests performed on the greyhounds in the race.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905608 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Effective date: July 18, 1989

Proposal publication date: April 18, 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 §311.153

The Texas Racing Commission adopts new §311.153, with changes to the proposed text as published in the January 3, 1989, issue of the *Texas Register* (14 TexReg 28). The change in the proposed text authorizes a trainer to provide equivalent insurance to workers' compensation insurance.

The new section is adopted to ensure that employees of trainers are adequately insured against injuries that occur in the scope of their employment.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize

the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§311.153. Workers' Compensation.

(a) A trainer shall provide workers' compensation or other equivalent insurance for each of the trainer's employees.

(b) If a trainer contracts with an individual to be a jockey or exercise rider, the contract must require the trainer to provide workers' compensation or other equivalent insurance for the individual.

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 June 26, 1989

TRD-8905603 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Effective date: July 18, 1989

Proposal publication date: January 3, 1989

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

◆ ◆ ◆
**Licensees for Greyhound
Racing**

• 16 TAC §311.172

The Texas Racing Commission adopts new §311.172, with changes to the proposed text as published in the April 18, 1989, issue of the *Texas Register* (14 TexReg 1861). The change in the proposed text requires the racing secretary to notify the racing judges of any kennel owner who fails to keep the appropriate percentage of Texas-bred greyhounds on the kennel's active list, and authorizes the racing judges to delete the appropriate number of non-Texas Bred greyhounds from the kennel's active list.

The new section is adopted to aid in the development and furtherance of the Texas greyhound breeding industry.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§311.172. Use of Texas-Bred Greyhounds.

(a) Except as otherwise provided by this section, a kennel owner shall ensure that at least 30% of the greyhounds on the active list of the kennel are accredited Texas-bred greyhounds.

(b) During the first two years in which a kennel is under contract with an association, the kennel owner shall ensure that the following percentage of the greyhounds on the active list of the kennel are accredited Texas-bred greyhounds:

(1) for the first year, 5.0%; and

(2) for the second year, 15%.

(c) The racing secretary of an association shall maintain the records necessary to enforce this section. If the racing secretary determines that a kennel owner is in violation of this section, the racing secretary shall notify the racing judges. The racing judges may require the racing secretary to delete from the active list for that kennel the appropriate number of greyhounds that are not Texas-bred to achieve the appropriate percentages.

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 June 26, 1989.

TRD-8905602 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Effective date: July 18, 1989

Proposal publication date: April 18, 1989

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

◆ ◆ ◆
**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION**
**Part II. Parks and Wildlife
Department**

Chapter 65. Wildlife

Subchapter P. Alligators

• 31 TAC §§65.352, 65.354-65.359,
65.361, 65.363, 65.364, 65.368

The Texas Parks and Wildlife Commission adopts §§65.352, 65.354, 65.359, 65.361, 65.368, and new §§65.363 and 65.364. Sections 65.354 and 65.357 are adopted with changes to the proposed text as published in the April 25, 1989, issues of the *Texas Register* (14 TexReg 2008). The other sections are adopted without changes and will not be republished.

The adopted amendments provide rules to enhance alligator farming operations, increase alligator hunter's license and import permit fees, add new fees for hatchling tag and nest stamp, remove minimum size for harvested alligators, establish minimum facility requirements for alligator farming, control commerce in wild alligator eggs and hatchlings, streamline necessary reporting requirements, and permit wildlife management areas to study various methods of alligator take.

The changes to the proposed text were: §65.354, the alligator hide tag fee was left at \$5 rather than being increased to \$20; and §65.357, the proposed general 24-day alligator season starting September 7 was withdrawn. The alligator season will be retained as is starting the first Friday in September.

The amendments and new sections provide an expanded alligator industry for Texas; improved controls on production and harvest of alligators; and conformance with federal requirements concerning species subject to the

Texas Parks and Wildlife Department Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The new amendments and new sections will permit a competitive alligator farming industry to develop in Texas with established minimum facility requirements while ensuring adequate controls by the Department. Amendments to previous rules will enhance clarity of rules, implement increased fees for additional costs of harvest program development, and simplify reporting requirements consistent with harvest and marketing procedures.

Comments by the public concerning the proposed amendments were presented to the Parks and Wildlife Commission in the form of petitions, letters, and summaries of telephone calls. The comments made concern: the hide tag and hatchling tag fees are too high; support for egg and hatchling collection; petition of 446 signatures to keep existing season dates; and the proposed sections are within federal requirements.

The Anahuac Chamber of Commerce, Representative Mark Stiles, and Chambers County Judge Oscar Nelson requested that the alligator season opening date remain the same as in previous years so as to not interfere with a planned Alligator Fest. The United States Fish and Wildlife Service verified that the proposed sections remained within requirements for international marketing under CITES as previously approved for Texas alligators.

The commission agreed with the public to keep the existing September harvest season dates for the alligator season and to withdraw the proposed increase of the alligator hide tag. The commission disagreed that the hatchling tag fee was too high as this fee is intended for resource users to pay a substantial part of the necessary management costs associated with monitoring expanded alligator farming practices and egg/hatchling collection consistent with the wild resource. The sections as adopted are based upon scientific studies and investigations which track trends in relative abundance and permit optimum sustained-yield harvest of the resource.

The amendments and new sections rules are adopted under the Texas Parks and Wildlife Code, Chapter 65, which provides the Texas Parks and Wildlife Commission with authority to adopt regulations for the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators or parts of alligators as considered necessary to manage the species.

§65.354. Licenses, Permits, and Fees.

(a) The licenses and fees required for activities authorized by this subchapter are as prescribed under provisions of the Texas Parks and Wildlife Code, Chapter 65, or as prescribed in this subsection, and are:

- (1) \$35 for a resident alligator hunter's license;
- (2)-(4) (No change.)
- (5) \$5 for an alligator import permit fee;
- (6) (No change.)

(7) \$5 for each alligator hide tag fee;

(8) \$200 for a resident alligator parts dealer permit fee;

(9) (No change.)

(10) \$50 for each alligator nest stamp fee; and

(11) \$10 for each alligator hatchling tag fee.

(b) No person may take, attempt to take, possess, or accompany another person who is attempting to take an alligator in this state during the open season established in this subchapter for taking alligators or collect, attempt to collect, possess, or accompany another person who is attempting to collect hatchling alligators unless he or she has acquired and possesses an alligator hunter's license.

(c) (No change.)

(d) An alligator farmer permit must be acquired by any person possessing one or more live alligators or alligator eggs.

(e) (No change.)

(f) No person may remove and possess alligator eggs from wild nests or accompany anyone removing eggs from wild nests unless he or she has acquired and possesses an alligator hunter's license and an alligator egg collector's validation. Egg collector's validations will only be issued to those persons who demonstrate competency in egg collection and handling, have necessary equipment accessible, and complete the prescribed application form provided by the department.

(g) All licenses and permits prescribed in this subchapter are valid from September 1 or from the date of issuance, whichever is later, until the following August 31 unless otherwise provided in this subchapter.

(h) Applicants for an alligator buyer's license and alligator parts dealer permit must comply with federal licensing and permit requirements to engage in commerce involving alligators, alligator hides, and parts.

§65.357. Open Seasons, Open Areas, and Bag Limits.

(a) Open seasons are as follows.

(1) The general open season for taking alligators in the wild shall run for 17 consecutive days beginning on the first Friday in September.

(2)-(3) (No change.)

(4) Hatchling alligators and eggs may be taken only during periods specified on department authorization forms.

(b) The open areas are.

(1) (No change.)

(2) Alligators in the wild in the remainder of the state may be taken only under provisions as prescribed by the department.

(c) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905548

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: July 17, 1989

Proposal publication date: April 25, 1989

For further information, please call: (512) 389-4505

Part III. Texas Air Control Board

Chapter 101. General Rules

• 31 TAC §101.1

The Texas Air Control Board (TACB) adopts an amendment to §101.1, with changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6424). The definitions are amended in response to the Environmental Protection Agency (EPA) requirements associated with revisions to the State Implementation Plan for inhalable particulate matter (PM10)

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

The EPA testified against the proposed amendment. There were no commenters in favor of the amendment.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

EPA outlined several concerns regarding the proposed definitions related to PM10. EPA noted that the TACB had used the terms "inhalable particulate matter" and "PM10" interchangeably and suggested that the term "PM10" be used consistently throughout the definitions. EPA also had comments on terms related to the definition of major modification in the general rules. The commenter noted that the term "particulate matter" should be used instead of "particulate" in the table within the definition; the definition should specify that it applies to new source review, except Part C/Prevention of Significant Deterioration (PSD) Rules, under the provisions of the Federal Clean Air Act; and the definition should be revised so that it is based on actual net emissions increases rather than a net increase in the potential to emit.

The staff agrees that the term "PM10" should be used consistently. However, EPA's assertions regarding the term "major modification" do not appear reasonable. Since PM10 regulations are administered under federal PSD rules which have been adopted by reference by the TACB, the staff sees no need for any changes to the TACB's existing definition of major modification. All new major PM10 sources or modifications must undergo PSD review. Additionally, the staff maintains that basing the definition on potential, rather than actual, emissions is more stringent and protective of air quality. Therefore, the previously-proposed change (listing a significant level of PM10 for major modification review) is withdrawn and no changes related

AIR CONTAMINANT

INHALABLE PARTICULATE MATTER (PM₁₀)

SULFUR DIOXIDE

NITROGEN DIOXIDE

CARBON MONOXIDE

to PM10 are made to this definition. Finally, a specific EPA test reference method is added to the definition of "particulate matter emissions" in order to ensure strict adherence to established sampling procedures.

The amendment is adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§101.1. Definitions. Unless specifically defined in the Act or in the rules of the

ANNUAL 24-HOUR 8-HOUR 3-HOUR 1-HOUR

1.0 ug/m ³	5 ug/m ³			
1.0 ug/m ³	5 ug/m ³		25. ug/m ³	
1.0 ug/m ³				
		0.5 mg/m ³		2 mg/m ³

Domestic wastes - Particulate matter (No change).

Particulate matter emissions—All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Reference Method 5, as specified at Part 60, Appendix A of 40 Code of Federal Regulations, modified to include particulate caught by impinger train; by an equivalent or alternative method, as specified at Part 51 of 40 Code of Federal Regulations; or by a test method specified in an approved state implementation plan.

PM10—Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of Part 50 of 40 Code of Federal Regulations and designated in accordance with Part 53 of 40 Code of Federal Regulations, or by an equivalent method designated with that Part 53.

PM10 emissions—Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in Part 51 of 40 Code of Federal Regulations, or by a test method specified in an approved state implementation plan.

Total suspended particulate—Particulate matter as measured by the method described in Appendix B of Part 50 of 40 Code of Federal Regulations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agen-

cy's legal authority.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905575 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1989

For further information, please call: (512) 451-5711 ext. 354

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Chapter 111. Control of Air Pollution from Visible Emissions and Particulate Matter

Outdoor Burning

- 31 TAC §§111.1, 111.2, 111.3, 111.4

The Texas Air Control Board (TACB) adopts the repeal of §§111.1-111.4, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6428). The purpose of the repeals are to remove material superceded by a new undesignated head, which is adopted in concurrent action.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized

board, the terms used by the Board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by Texas Civil Statutes, Article 4477-5, the following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

De minimis impact—A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.

as being for the proposal.

No comments were received regarding adoption of the repeals.

Copies of the hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

The repeals are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905567 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

◆ ◆ ◆
Incineration

- 31 TAC §111.11, §111.12

The Texas Air Control Board (TACB) adopts the repeal of §111.11 and §111.12, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6428). The purpose of the repeals are to remove material super-

ceded by a new undesignated head, which is adopted in concurrent action.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

No comments were received regarding adoption of the repeals.

Copies of the hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

The repeals are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

This agency hereby certifies that the rules as repealed have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905568 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711 ext. 354

Visible Emissions

- 31 TAC §§111.21, 111.22, 111.23, 111.24, 111.25, 111.26, 111.27, 111.28

The Texas Air Control Board (TACB) adopts the repeal of §§111.21-111.28, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6428). The purpose of the repeals are to remove material superceded by a new undesignated head, which is adopted in concurrent action.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

No comments were received regarding adoption of the repeals.

Copies of the hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

The repeals are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the gen-

eral intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905569 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Particulate Matter from Materials Handling, Construction, Roads, Streets, and Alleys

- 31 TAC §§111.41, 111.42, 111.43, 111.44, 111.45

The Texas Air Control Board (TACB) adopts the repeal of §§111.41-111.45 without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6428). The purpose of the repeals are to remove material superceded by a new undesignated head, which is adopted in concurrent action.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

No comments were received regarding adoption of the repeals.

Copies of the hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

The repeals are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905570 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Particulate Matter

- 31 TAC §§111.51, 111.52, 111.53

The Texas Air Control Board (TACB) adopts the repeal of §§111.51-111.53, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6428). The purpose of the repeals are to remove material superceded by a new undesignated head, which is adopted in concurrent action.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

No comments were received regarding adoption of the repeals.

Copies of the hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

The repeals are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905571 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Particulate Matter from Agricultural Processes

- 31 TAC §§111.71, 111.72, 111.73, 111.74, 111.75, 111.76

The Texas Air Control Board (TACB) adopts the repeal of §§111.71-111.76, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6428). The purpose of the repeals are to remove material superceded by a new undesignated head, which is adopted in concurrent action.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

No comments were received regarding adoption of the repeals.

Copies of the hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

The repeals are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905572 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Exemptions

• 31 TAC §§111.81, 111.82, 111.83

The Texas Air Control Board (TACB) adopts the repeal of §§111.81-111.83, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6428). The purpose of the repeals are to remove material superceded by a new undesignated head, which is adopted in concurrent action.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

No comments were received regarding adoption of the repeals.

Copies of the hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

The repeals are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905573 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Compliance

• 31 TAC §§111.91, 111.92

The Texas Air Control Board (TACB) adopts the repeal of §§111.91-111.92, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6428). The purpose of the repeals are to remove material superceded by a new undesignated head, which is adopted in concurrent action.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

No comments were received regarding adoption of the repeals.

Copies of the hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

The repeals are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905574 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Outdoor Burning

• 31 TAC §§111.101, 111.103, 111.105, 111.107

The Texas Air Control Board (TACB) adopts new §§111.101, 111.103, 111.105, and 111.107. New §111.103 is adopted with changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6432). New §§111.101, 111.105, and 111.107 are adopted without changes and will not be republished. In concurrent action, the TACB adopts the repeal of previous §§111.1-111.4, concerning outdoor burning.

The new §111.101 establishes a restriction on outdoor burning and disallows the disposal or disposition of materials capable of igniting spontaneously. The new §111.103 enumerates circumstances under which outdoor

burning can take place providing certain conditions are met. The new §111.105 stipulates additional conditions to be dealt with prior to conducting outdoor burning. The new §111.107 specifies that the authority to conduct outdoor burning does not excuse any person from the responsibility for the consequences.

The new sections are part of a series of substantial revisions to Chapter III, concerning control of air pollution from visible emissions and particulate matter. Since the changes are extensive, the staff has determined that it would be administratively more efficient to concurrently repeal Chapter 111 in its entirety and add a new Chapter 111.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal. Six commenters (two private citizens, Texas Oil & Gas Company (TXO), Houston Lighting & Power (HL&P), the Electric Reliability Council of Texas (ERCOT), and TU Electric) questioned the proposed rules concerning outdoor burning. (The TU Electric testimony was in support of all ERCOT comments.) There were no commenters in favor of the proposal.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

HL&P and ERCOT requested clarification that the proposed prohibition against storing materials capable of igniting spontaneously not include routine storage of solid fuels at facilities such as power plants.

The proposed section concerning the storage of materials capable of spontaneous combustion contains no substantive change in language from that which had been in effect for over 10 years. Previously there was no intent to apply the section to the storage of solid fossil fuels, and there is no change in intent now.

Both private citizens suggested that fire-fighting training and salt-marsh fires be prohibited during the months of May-September when ozone levels are traditionally highest.

The ozone season is generally considered to be the period April-October. Most salt-marsh grass burning takes place in the fall in order to better establish new spring growth. Consequently, there is little or no contribution at the time of higher ozone concentrations. Furthermore, such burning does not relate well to ozone formation, and both marsh grass burning and fire-fighter training require approval by the local program or the TACB. Approval can be withheld if episodic conditions are imminent.

TXO asserted that notifying the TACB about fire-fighting training when less than 25 individuals were involved was an unnecessary paperwork burden and suggested that such situations be exempted. ERCOT noted that there is no provision for whom to notify when there is no local air pollution control agency or health unit in the area and suggested that

the TACB Regional Office be notified in such cases. HL&P and ERCOT also suggested that separate written notification for repetitive, routine fire-fighting training is unnecessary and should be replaced by a yearly notification with 24-hour advance telephone contact prior to each training session. Finally, HL&F and ERCOT noted that the proposed section prohibits such training within city limits and suggested rule language to correct this oversight.

The staff believes that it makes little difference how many fire-fighters are being trained. It is the fire and the resulting emissions that are of concern and the TACB needs to be informed of such activities. Furthermore, the proposed section does not represent a change from previous policy. ERCOT's suggestion that the TACB Regional Office be notified when no local air pollution control agency or health unit exists appears useful. The staff also believes that a yearly notification and advance 24-hour telephone notice is sufficient in cases of routine, repetitive fire-fighting training, and that the prohibition of fire-fighting training within city limits should be removed, especially as it may cause hardships for municipalities conducting such training. To this end, the staff withdraws all references to §111.105, concerning general requirements for allowable outdoor burning, from the section in question (§111.103(b)(1)).

Both private citizens argued against an exemption for domestic waste burning in counties near or within ozone nonattainment areas. One citizen also noted that the rule language should specify that only clean-burning materials can be burned in campfires and other recreational fires. Both citizens also asserted that municipal solid waste burning should be banned. TXO maintained that having to notify the TACB executive director of plans to burn oil spills may cause delays in dealing with upset conditions that could be detrimental to public health, and that a quick, on-the-scene response by igniting oil or gas leaks or spills is often necessary to mitigate potential health or environmental damage. TXO suggested adding rule language allowing emergency responses to be made in such situations. Finally, TXO noted that the proposed distance requirements for allowable outdoor burning are vague and unworkable, because nearly all property can have either residential, recreational, commercial, or industrial use. They suggested language that would limit such burning in the cases of residential and recreational property and allow burning necessitated by emergency pipeline breaks or leaks.

The limits on domestic waste burning will largely restrict the allowance to rural areas where there is no practical alternative. These circumstances are limited in number and represent insignificant pollution sources. In addition, most ozone nonattainment areas are either urbanized or affected by transport from an urban area. However, the restrictions on domestic waste burning listed in §111.103 are limited to those which are consistent with the existing rule language. Campfires are already limited as to the types of materials which must not be burned (see §111.105(7)). Municipal solid waste burning will soon be eliminated by the Federal Resource Conservation and Recovery Act. In the meantime, the section restricts the circumstances under which such burning can occur. However, the

restrictions on municipal solid waste burning listed in §111.103 are limited to those which are consistent with the existing rule language. There appears to be little merit to TXO's argument that changes to the proposed rule language are necessary to provide companies the necessary freedom to promptly ignited oil or gas spills or leaks when such action is needed to mitigate potential health or environmental damage. The section, which has been in effect for over 10 years, allows for such burning if the situation is warranted, provided the TACB is notified consistent with §101.6. This section simply requires that notice be provided as soon as possible after the event occurs. The agency reserves the option, pursuant to §101.11(a), to subsequently determine whether the spill or leak was dealt with appropriately in the context of §101.11(a), igniting the spill or leak might then be considered to be necessary corrective action to minimize the consequences of the event. TXO's statement that distance requirements for allowable outdoor burning are unworkable is not supported by experience. These requirements have been in effect since 1975 with no history of being unreasonably restrictive to outdoor burning.

The new sections are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§111.103. Exceptions to Prohibition of Outdoor Burning.

(a) Outdoor burning may be authorized by written permission from the executive director of the Texas Air Control Board (TACB) if there is no practical alternative and if the burning will not cause or contribute to a violation of any federal primary or secondary ambient air standard. The executive director may also specify procedures or methods to control or abate emissions from outdoor burning authorized pursuant to this section by requiring that trenches be dug to align with prevailing winds, specifying time for burning, and other related factors. Authorizations to burn may be revoked by the executive director at any time if the burning is causing nuisance conditions, is not conducted in accordance with the specified conditions, violates any provision of an applicable permit, or causes a violation of any air quality standard.

(b) Outdoor burning shall also be authorized in each of the following instances:

(1) training of fire-fighting personnel when requested by certified mail and when authorized in writing by the local air pollution control agency or local health unit. In the absence of such local entities, the nearest TACB Regional Office shall be notified. The burning shall be authorized if notice of denial from the local air pollution control agency, local health unit, or TACB Regional Office is not received within 10 days of the request. In cases of repetitive, routine fire-fighting training, a yearly writ-

ten notification, with 24-hour advance telephone notice for each training session is sufficient. Authorization to conduct outdoor burning under this provision may be revoked by the executive director if this provision is used to circumvent §111.101 of this title (relating to General Prohibition) and §111.103 of this title (relating to Exceptions to Prohibition of Outdoor Burning);

(2) domestic waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property;

(3) campfires and fires used solely for recreational or ceremonial purposes, or in the noncommercial preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Such burning shall be subject to the requirements of §111.105(7) of this title (relating to General Requirements for Allowable Outdoor Burning);

(4) diseased animal burning when such burning is the most effective means of controlling the spread of disease;

(5) rural area on-site burning of trees, brush, grass, and other dry plant growth when no practical alternative to burning exists for right-of-way maintenance, land-clearing operations, and for those forest, crop, and range management purposes not specifically governed by orders issued pursuant to subsection (a) of this section. Such burning shall be subject to the requirements of §111.105 of this title (relating to General Requirements for Allowable Outdoor Burning);

(6) salt-marsh grass management burning may be conducted only in Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio counties and only if the following requirements are met.

(A) All land on which burning is to be conducted shall be registered with the appropriate regional office of the TACB and its location identified on a United States geological survey map or equivalent. The person who owns or controls the land must also submit a legal description of the land boundaries and identify significant points such as roads, canals, lakes and streams, add the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks not larger than a section, with numerical identification for each defined block. The information must be provided for review at least 15 days before the burning takes place.

(B) Prior to any burning, approval must be obtained from the appropriate regional office. Notification of the burning may be verbal or written and must identify the specific area and block to be burned, estimated acreage, start and end time of the burn, and a person who can be contacted during the burn period.

(C) The person responsible for the burning must provide access and transportation to the burn site upon request by the regional office.

(D) Such burning shall be subject to the requirements of §111.105 of this title (relating to General Requirements for Allowable Outdoor Burning).

(7) hydrocarbon burning from pipeline breaks and oil spills may be allowed upon proper notification as set forth in §101.6 of this title, (relating to Notification Requirements for Major Upset), if the executive director determines that the burning is necessary to protect the public welfare;

(8) municipal solid waste burning may be conducted until such time as it is eliminated by the Federal Resource Conservation and Recovery Act and as long as the following conditions are met.

(A) Municipal solid waste burning may be conducted at Texas Department of Health (TDH) permitted Type II or III landfill sites (sites serving less than 5,000 population equivalent) located in any county with a population of 100,000 or less as determined by the latest United States population census if authorization is obtained from the executive director of the TACB. Any authorization provided hereunder must be consistent with all TDH regulations and in accordance with 40 Code of Federal Regulations 257, criteria for classification of solid waste disposal facilities and practices.

(B) Brush and demolition or construction wood waste burning may be conducted at TDH permitted Type IV landfill sites, as defined by the TDH, located in the counties described in subparagraph (A) of this paragraph if authorization is obtained from the executive director of the TACB. Any authorization provided hereunder must be consistent with the criteria referenced in subparagraph (A) of this paragraph.

(C) Such burning shall be subject to §111.105(7) of this title (relating to General Requirements for Allowable Outdoor Burning).

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 June 26, 1989.

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Allen El Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext. 354

Visible Emissions

• 31 TAC §111.111, §111.113

The Texas Air Control Board (TACB) adopts new §111.111 and §111.113. New §111.111 is adopted with changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6433). New §111.113 is adopted without changes and will not be republished. In concurrent action, the TACB adopts the repeal of previous §§111.21-111.28, concerning visible emissions.

The new §111.111 lists a compliance date, the types of sources from which visible emissions are allowed, and enumerates opacity limits for each. It also specifies reference methods for opacity monitor performance testing, requires facilities to keep records of such testing for two years, and outlines certification requirements for opacity readers. The new §111.113 enables a facility to operate under higher opacity rates if applicable emissions limitations can not be met, ambient air quality standards will not be exceeded, and the facility can prove it would be technically impractical or economically unreasonable to comply with established opacity limits.

The new sections are part of a series of substantial revisions to Chapter 111, concerning control of air pollution from visible emissions and matter. Since the changes are extensive, the staff has determined that it would be administratively more efficient to concurrently repeal Chapter 111 in its entirety and add a new Chapter 111.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

Eight commenters (the Environmental Protection Agency (EPA), the Texas Forestry Association (TFA), two private citizens, Houston Lighting and Power (HL&P), the Electric Reliability Council of Texas (ERCOT), the American Lung Association (ALA), and Chevron) raised questions regarding the proposed visible emissions rules. There were no commenters in favor of the proposal.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and hearing transcript are available for inspection at the central office of the TACB, 8330 Highway 290 East, Austin.

HL&P and ERCOT recommended that the term "stationary" be added to the proposed language regarding vents to be consistent

with the previously-used term "stationary flues" and to avoid confusion with mobile and other sources. They also suggested that the proposed rule language be modified to specify that new source performance standards (NSPS) or TACB permit provisions apply if such provisions are different from the opacity averaging periods listed in the rules. HL&P and ERCOT stated that, while they agreed that the averaging times should be changed from five to six-minute periods as proposed, many TACB permits contain the five-minute time period. They suggested that the TACB issue guidance through simple permit revisions that will allow these averaging periods to be changed.

The addition of the word "stationary" to the proposed rules regarding vents to avoid confusion with mobile sources appears advantageous. However, HL&P and ERCOT's assertions that proposed opacity averaging periods need to be changed because of differing NSPS and permit provisions appear to have little merit. In cases where the averaging period in Regulation 1 differs from those in individual permits (governed by Regulation VI) or NSPS, all will have to be met. If necessary, a facility can petition the TACB for a permit amendment. The change from five to six-minute averaging times was proposed in order to be consistent with federal requirements.

One private citizen recommended lowering the 30% opacity limit because of potential health impacts. Another citizen noted that weather conditions often interfere with opacity readings and suggested the TACB investigate the use of more precise measurement methods, such as "Lidar." EPA and the TFA pointed out that the proposed section does not specify an allowable opacity for use with continuous monitoring systems and suggested that limits be added to the section. EPA further noted that the language concerning certification of visible emission evaluators should be relocated to indicate that the requirements apply to all opacity determinations (§111.111 (A)-(D)). Finally, EPA suggested that the continuous opacity monitoring systems be required to undergo periodic performance testing as specified in the Code of Federal Regulations and that compliance records be furnished to the TACB.

The 30% opacity limit applies to sources constructed before 1972. Agency experience indicates that the 30% limit represents a reasonable standard of control for these older sources. While it is true that weather conditions may sometimes impede nonmechanical opacity readings, this method remains an effective tool in enforcement actions. "Lidar" is useful for research applications, but is too expensive for widespread application. The staff believes the rule language requiring certification of opacity monitors will be more enforceable than the previous section and thus should contribute to improvements in air quality. EPA and TFA comments about the need to specify opacity limits for use with continuous monitoring systems appear to be useful in order to ensure that the correct opacities are achieved. Additionally, EPA suggestions that language concerning certification of visible emission evaluators apply to all opacity determinations, and that continuous monitors be required to undergo periodic performance testing, appear to be meritorious. However, there does not appear to be a need for facil-

ties to furnish the TACB with records of compliance testing, as long as such records are kept on-site for two years.

TFA, HL&P, and ERCOT noted that the proposed six-month time period for achieving compliance with the opacity monitoring requirement was insufficient because of the scarcity of the vendors selling the equipment. TFA requested that the compliance data be extended to one year. HL&P and ERCOT asserted that reference to compliance determination based on an opacity monitor should be deleted because it is inconsistent with federal NSPS regulations which specify methods based on factors such as source type, age, and size and with proposed language regarding test methods (§111.111(a)(1)(F)). They also maintained that installing or replacing monitors with new systems will result in significant economic costs and suggested deleting the requirement for opacity monitors but retaining the proposed Test Method 9, except where it differs from federal NSPS regulations. EPA contended that any variation from the specified test method must be approved by both EPA and the TACB.

There appears to be a limited number of vendors producing opacity monitoring equipment. Therefore, extending the compliance date for meeting continuous monitoring requirements from six months to one year appears to be reasonable. However, the staff does not believe that adding the provision for determining compliance with a certified opacity monitor is inconsistent with NSPS regulations. Part of the purpose for the proposed revisions was to add test methods and otherwise make the rules more consistent with federal requirements. This was the basis for the proposed change in averaging time from five to six minutes. Furthermore, the use of opacity monitors was previously implied. The language simply clarifies this intent. The staff believes that variations to the standard test methods which the executive director would typically approve would be identified at pre-test meetings and would constitute minor changes necessary to adapt to unique conditions at a specific facility. The time required to gain EPA approval of such variations would create unwarranted delays, hinder compliance efforts, and involve unnecessary staff resources for both agencies.

One private citizen asserted that the six-minute 30% opacity limits should be reduced to three minutes, with a 20% opacity limit, and that the six-minute allowance during soot-blowing is a health hazard and should be phased out through retrofitting of facilities. Chevron recommended deletion of the proposed language requiring facilities to meet the emission mass rate standard during soot-blowing activities because compliance is impossible to demonstrate.

The 30% opacity allowance during soot-blowing applies only to facilities built before 1972 and is the opacity level such sources should be able to comply with if they are properly maintained. The six-minute average is consistent with the federal averaging time for opacity readings. Additionally, the staff maintains that exempting excess emissions from certain necessary start-up and maintenance activities to six minutes per hour and/or six hours in any 10-day period is sufficiently stringent to protect air quality. This is

especially true since the clarification has been made that the hourly mass rate standard must be complied with at all times, even during periods when short-term higher emissions result from certain maintenance activities. Soot-blowing or any of the other activities listed in the section have not led to difficulties with compliance demonstrations. This is because the sampling protocol averages the temporary higher mass levels during the short-term soot-blowing with normal lower operating levels in a one-hour emission measurement.

ERCOT recommended that language regarding emissions from motor vehicles be clarified to note that the section applies to emissions from vehicle exhaust systems. A private citizen explained that this section could not be enforced because enforcement officers can no longer get vehicle-owner information from license plates because of a change in the state privacy laws. Both citizens opposed the proposed 30% opacity rate from structures. One said that no emissions should be allowed because of enforcement difficulty. The other, however, recommended a 20% opacity limit with a three-minute maximum to protect public health. ERCOT recommended deleting the proposed rule regarding visible emissions from "other sources" because of inflexibility. ERCOT argued that the rule was so all-inclusive that it could apply to sources such as dust from fields, roads, and fireplaces which are already controlled by TACB permit and nuisance provisions or other rules.

There appears to be merit in ERCOT's recommendation that the rule concerning motor vehicles be clarified by specifying that emissions limits are applicable to vehicle exhaust systems. This would avoid confusion with potential emissions from other parts of vehicles, which are addressed in §111.143(3) and §111.145(3). Limits on vehicle opacity do not appear to be unenforceable because of the difficulty of getting vehicle ownership information from license plates. The change in the privacy law applies only to private citizens, not to state and local governmental entities seeking the information for enforcement purposes. The comment that the 30% opacity rate from structures should be disallowed or reduced to 20% was predicated on the perception that the proposal was too lenient. At the present time, the agency has no data to indicate that a stricter limit is necessary. Moreover, the proposal was designed to substantially improve enforceability relative to the previous section. The term "building" was replaced by the more inclusive "structure," and the 30% opacity limit replaced the ill-defined term "excessive emissions." Contrary to ERCOT's assertion that proposed language limiting emissions from "other sources" is inflexible, the staff believes that the broad applicability of the section provides considerable flexibility by establishing a definitive limit for a variety of sources and an additional enforcement tool for regulators.

EPA, ERCOT, ALA, and both private citizens also commented on the proposed alternate opacity provisions. EPA noted that such provisions need to have EPA, as well as TACB, approval. ERCOT suggested that the proposed 180-day application period may not be long enough because seasonal conditions may affect opacity testing. They asked that an option for time extensions be made available for completeness determinations. ALA

and both private citizens maintained that the alternate opacity provisions are unnecessary, not in the best interest of public health, and should be deleted.

Under existing circumstances, EPA may disapprove a TACB-approved alternate opacity application submitted as an SIP revision if the demonstration appears inadequate. EPA will also be notified concerning, and may become a party to, adjudicative hearings prior to board action. Consequently, there appears to be little need to recommend a change to the proposal in response to EPA's comment. The staff does not believe that the 180 day application period should be extended to allow for fluctuating weather conditions. Facilities can perform appropriate opacity testing before they submit an alternate opacity application, or they can schedule the submission of the application to coincide with the general climatic conditions they prefer. The staff believes that six months is a reasonable amount of time in which to make a decision. The application time limit was designed to prevent unnecessary delays which can result in excessive emissions while the application is being processed. The alternate opacity provisions specifically require a demonstration that it is technically impractical or economically unreasonable for the facility to meet established opacity limits, that all ambient air quality standards will be met, and that no nuisance conditions will occur. Consequently, the argument that alternate opacity is not in the best interest of public health appears to be of limited concern.

The new sections are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§111.111. Requirements for Specified Sources.

(a) Visible emissions. No person may cause, suffer, allow, or permit visible emissions from any source, except as follows.

(1) Stationary vents. Visible emissions from any vent shall not exceed the following opacities and must meet the following requirements.

(A) Opacity shall not exceed 30% averaged over a six-minute period.

(B) Opacity shall not exceed 20% averaged over a six-minute period for any source on which construction was begun after January 31, 1972.

(C) Opacity shall not exceed 15% averaged over a six-minute period for any source having a total flow rate greater than or equal to 100,000 actual cubic feet per minute (acfm) unless an optical instrument capable of measuring the opacity of emissions is installed in the vent in accordance with subparagraph (D) of this paragraph. Facilities utilizing such instruments

shall meet opacity limits outlined in subsection (a)(1)(A) or (B) of this section as applicable. Records of all such measurements shall be retained as provided for in §101.8 of this title (relating to Sampling). This provision shall not apply to vents having gas streams containing moisture which interferes with proper instrument operation, if so determined by the executive director.

(D) Any opacity monitoring system installed as provided for in subparagraph (C) of this paragraph must satisfy the new source performance standards requirement for opacity continuous emission monitoring systems as contained in 40 Code of Federal Regulations Part 60, Appendix B, Performance Specification 1. In order to demonstrate compliance with Performance Specification 1, the system shall undergo performance specification testing as outlined in 40 Code of Federal Regulation 60.13. The facility will maintain records of all such testing for a period of not less than two years. Compliance determinations may be made based on results of monitoring with a certified opacity monitor or by a currently certified opacity reader, as described in subsection (a)(1)(G) of this section. Compliance for vents with condensable particulate or water vapor shall be determined by a certified opacity reader. Compliance with this provision shall be accomplished within one year of the effective date of this section.

(E) Visible emissions during the cleaning of a firebox or the building of a new fire, soot blowing, equipment changes, ash removal, and rapping of precipitators may exceed the limits set forth in this section for a period aggregating not more than six minutes in any 60 consecutive minutes, nor more than six hours in any 10-day period. This exemption shall not apply to the emissions mass rate standard, as outlined in §111.151(a) of this title (relating to Allowable Emissions Limits).

(F) Compliance with paragraphs (1)(A), (B), and (C) of this subsection shall be determined by applying the following test methods, as appropriate:

(i) Test Method 9 (40 Code of Federal Regulations 60, Appendix A); or

(ii) equivalent test method approved by the executive director.

(G) Current certification of opacity readers for determining opacities outlined in subsection (a)(1)(A), (B), (C), and (D) of this section shall be determined by having completed the Texas Air Control Board visible emissions evaluator's course within 180 days of the opacity reading.

(2) Gas flares.

(A) Visible emissions from a gas flare shall not be permitted for more than five minutes in any two-hour period except as provided in §101.11(a) of this title (relating to Exemptions from Rules and Regulations). Acid gas flares, as defined in §101.1 of this title (relating to Definitions), are exempt from the provisions of this subsection, but are subject to the provisions of paragraph (1) of this subsection.

(B) Compliance with paragraph (2)(A) of this subsection shall be determined by applying the following test methods, as appropriate:

(i) Test Method 22 (40 Code of Federal Regulations 60, Appendix A); or

(ii) equivalent test method approved by the executive director.

(3) Motor vehicles. Motor vehicles shall not have visible exhaust emissions for more than 10 consecutive seconds.

(4) Railroad locomotives or ships. Visible emissions shall not be permitted from any railroad locomotive, ship, or any other vessel to exceed an opacity of 30% for any five-minute period, except during reasonable periods of engine start-up.

(5) Structures. Visible emissions shall not be permitted to exceed an opacity of 30% for any six-minute period from any building, enclosed facility, or other structure.

(6) Other sources. Visible emissions shall not be permitted to exceed an opacity of 30% for any six-minute period from all other sources not specified in this section.

(A) Compliance with paragraph (5) of this subsection shall be determined by applying the following test methods, as appropriate:

(i) Test Method 9 (40 Code of Federal Regulations 60, Appendix A); or

(ii) equivalent test method approved by the executive director.

(b) Compliance determination exclusions. Contributions from uncombined water shall not be included in determining compliance with this section. The burden of proof which establishes the applicability of this subsection shall be upon the person seeking to come within its provisions.

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 June 28, 1989.

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Allen El Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext. 354

Incineration

• 31 TAC §111.121

The Texas Air Control Board (TACB) adopts new §111.121, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6435). In concurrent action, the TACB adopts the repeal of previous §§111.11-111.12, concerning incineration.

The new §111.121 establishes limitations on the burning of garbage or rubbish in residential, publicly-owned, commercial, or hospital/pathological waste incinerators.

The new section is part of a series of substantial revisions to Chapter 111, concerning control of air pollution from visible emissions and particulate matter. Since the changes are extensive, the staff has determined that it would be administratively more efficient to concurrently repeal Chapter 111 in its entirety and add a new Chapter 111.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

Three commenters, all private citizens, testified against the proposed undesignated head. There were no commenters in favor of the proposal.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

One citizen was concerned with incinerators in general and the fact that most are in or near residential areas. The comments of the other two citizens were particularly aimed at hospital incinerators. They noted that the burning of plastics, heavy metals, and organic hazardous materials are particularly dangerous to public health. One of these commenters asserted that all incinerators should be required to undergo permit review and use best available control technology.

The staff believes that there is merit to these comments, and that the section would be more enforceable by being more explicit regarding equivalency with multiple-chamber incinerators. However, this change cannot be effected at this time without conducting additional public hearings. The staff plans to recommend a proposal in the future which would define the temperature, minimum residence time, and destruction efficiency of multiple-chamber incinerators, with single-chamber incinerators being required to maintain equivalency. The staff would also propose adding test methods to aid in evaluating single-chamber incinerators when there is a question of excessive emissions of particulates or hydrocarbons.

The new sections are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 451-5711, ext. 354

Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots

- 31 TAC §§111.141, 111.143,
111.145, 111.147, 111.149

The Texas Air Control Board (TACB) adopts new §§111.141, 111.143, 111.145, 111.147, and 111.149. New §§111.143, 111.145, 111.147, and 111.149 are adopted with changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6435). New §111.141 is adopted without changes and will not be republished. In concurrent action, the TACB adopts the repeal of previous §§111.41-111.45, concerning particulate matter from materials handling, construction, and roads, streets, and alleys.

The new §111.141 establishes areas for which the rules would be applicable (portions of the cities of El Paso, Houston, and Corpus Christi), and a compliance date of December 31, 1991. The new §111.143 outlines dust-control measures on stockpiles and open-bodied trucks, trailers, and railcars, and notes that equipment must be maintained and operated properly. The new §111.145 outlines dust-control measurements for construction, alteration, repairing, sandblasting, demolition, and land-clearing activities. A previously-proposed requirement for wheel-washing in the El Paso area has been deleted. The new §111.147 outlines dust-control measures for major industrial facility roadways, defined as those roads which are designed to accommodate two-way traffic and are at least 30 feet wide at least one point, public thoroughfares, and commercial and residential roads. Unpaved surfaces will be required to apply asphalt, water, or suitable oil or chemicals, and removal of soil and other materials from public paved surfaces will also be required. The new §111.149 specifies that lots with more than five parking spaces will be required to control dust by application of asphalt, water, or suitable chemicals, and that in the City of El Paso, such lots are required to be paved or graveled. Private residential lots and those with less than five parking spaces are exempted from these requirements, while temporary lots will be allowed to substitute wetting for paving.

The new sections are part of a series of substantial revisions to Chapter 111, concerning control of air pollution from visible emissions and particulate matter. Since the changes are extensive, the staff has determined that it would be administratively more efficient to concurrently repeal Chapter 111 in its entirety and add a new Chapter 111.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), require categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

Twenty-one commenters (Featherlite, the Texas Forestry Association (TFA), two private citizens, Texas Aggregates and Concrete Association (TACA), Chevron, El Paso City-County Health District (EPCCHD), El Paso Sand Products (EPSP), Dieter and James, Inc. (Dieter), Saunders Construction Company (Saunders), Ideal Concrete (Ideal), the Environmental Protection Agency (EPA), El Paso Refining Company (EPRC), ASARCO, Pioneer Concrete (Pioneer), Associated General Contractors (AGC), COD Concrete (COD), Houston Lighting and Power (HL&P), the Electric Reliability Council of Texas (ERCOT), Parker Brothers & Company (Parker), and the City of Dallas (Dallas)) expressed concern regarding these proposed rules. There were no commenters in favor of the proposal.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

Featherlite asserted that the El Paso area is being targeted unfairly by the TACB because several of the sections deal specifically with El Paso. Similarly, ASARCO requested that the rule language be revised so that it would not impose stricter control measures in El Paso than on inhalable particulate matter (PM10) sources in the rest of the state. EPRC noted that the required controls are applicable throughout the City of El Paso, even though the state implementation plan (SIP) outlines a specific area along the border as the source of fugitive PM10 emissions. Thus, EPRC stated, these controls should only be required in the border area. Similarly, HL&P and ERCOT contended that measures to reduce PM10 should be required only in areas where the standard is threatened, and noted that many areas covered by the proposed geographic description do not fit that circumstance, and therefore should not be required to comply.

Monitoring data has shown that stricter controls are necessary in El Paso because it is the only area in the state which exceeds the PM10 standard. Portions of Harris and Nueces counties are listed along with El Paso as geographic areas of application because they contain former total suspended particulate nonattainment areas and part of the PM10 strategy assumes that existing particulate controls have helped to maintain the standard. Therefore, existing particulate control measures are retained in these two counties. The only county for which the staff proposed additional dust-control restrictions is El Paso,

because of its Group I status. While controls were proposed for portions of El Paso outside of the Group I area outlined in the SIP, the staff notes that most such controls are being carried over from existing sections. The EPCCHD requested this continuation in order to prevent nuisance conditions and to make enforcement simpler. The only new controls being proposed were provisions for wheel-washing (Group I area only), use of street sweepers on public thoroughfares, paving of small parking lots, and broadening requirements for pavement or covering of public and major implant roads.

EPA maintained that the wording in the proposed sections was vague, and cited examples of undefined terms such as "maximum control," "to the extent practicable," and "as necessary." EPA noted that the language needs to include specific levels of emission reduction using information in the EPA guideline document, *Control of Urban Fugitive Dust Sources*. EPA stated that if the TACB enumerated the percentage of fugitive dust-control required, EPA would, in turn, have a basis for granting an emissions reduction credit when evaluating compliance with federal regulations.

In response to EPA's comments that the proposed sections should include specific, demonstrable levels of emission reductions in order to be granted reduction credits, the staff notes that there was no intent to claim reduction credits as part of the interim SIP because the information necessary to calculate the reductions is currently not available. The staff will consider the addition of emission reduction credits after completion of the special studies being conducted in El Paso and Juarez. The staff agrees that some of the terms in the sections are vague regarding the calculation of reduction credits, but does not believe that will result in enforcement problems. Such terms have previously been utilized in TACB regulations without serious enforcement difficulty.

A private citizen, TFA, TACA, COD, Pioneer, Parker, EPSP, Dieter, and Ideal all objected to the proposed requirement for application of water, chemicals, or covering of stockpiles. The private citizen suggested that the sections relating to materials handling should have a reference requiring that all equipment be maintained and operated properly. TFA noted that there can be unusual conditions such as hurricane-force winds which may create airborne dusts and requested that the term "under normal conditions" be added to the provisions regarding watering or covering of stockpiles. TACA, COD, Pioneer, Parker, and Ideal noted that watering of stockpiles would be costly and difficult to comply with because most of their stockpiles are small and watering them would damage the consistency of the aggregate, which would, in turn, lead to problems with meeting Highway Department specifications. Additionally, in the case of limestone stockpiles, runoff from such watering could be carried via trucks onto public thoroughfares. EPSP wrote that the covering or wetting of all their stockpiles is "physically impossible." Ideal noted that in addition to runoff problems, watering limestone would "not lend itself to handling the material with a front-end loader," which most batch plants use. However, a private citizen asserted that such concrete batch plants are capable of operating with sprinklers on their

stockpiles if they are properly designed, and the water can be recycled and thus prevented from being tracked onto streets. He also noted that such plants can be extremely dirty and that citizens should not have to be exposed to the nuisance conditions they can cause.

The comment that the same section should contain a reference that all equipment must be maintained and operating properly would strengthen the control measure and thus appears to have merit. The term "under normal conditions" is vague and undefined. By deleting the phrase, the staff intended to make the section more enforceable. However, the staff agrees that conditions may occur which would make watering or covering of stockpiles impossible. These conditions are outlined in the Texas Clean Air Act, §4.05, which states: "The liabilities which could otherwise be imposed by the Act or any rule, regulation, variance, determination, or order issued under this Act shall not be imposed due to any violation caused by an act of God, war, strike, riot, or other catastrophe." The staff does not believe that this language needs to be repeated in the section. The response to comments that watering stockpiles is costly, difficult to comply with, and can damage the consistency of the aggregate being stored is two-fold: (1) the requirement is a carry-over from existing section that have been in effect for over 10 years and which have proven to be a useful and enforceable method of dust control; and (2) the section is flexible to allow facilities to use alternate methods, such as covering or silo storage, to stabilize the stockpile if watering is not feasible. Regarding possible runoff problems with limestone stockpiles, the staff notes that if this is the case, the facility should either recycle the water or use an alternate control such as covering in order to avoid exacerbating the dust problem. Comments that covering or wetting of stockpiles is "physically impossible," and that watering limestone would make the use of front-end loaders difficult do not appear to be substantiated. This section has been in effect since 1979, and the staff is not aware of any problems resulting from its enforcement.

Dallas and Dieter questioned the use of "suitable chemicals or oil" and noted that these chemicals could end up in underground wells. Ideal noted that such chemicals might affect quality and behavior characteristics of raw materials and would also require separate costly system to implement. Dallas further noted that the installation of hoods, fans, and filters would be economically infeasible and would produce "dubious results for outdoor operations."

Chemical or oil sealants are designed to produce a thin crust on the surface being sealed. It is not cost-effective to use the sealants in quantities that would cause run-off or would cause the surfactant to mingle with the material underneath, causing a loss of stockpile. Therefore, if the sealants are used properly, there will be no danger of contamination of wells. Similarly, Ideal's concern that such chemicals might affect the quality of the raw materials being stockpiled is not valid when the chemicals are used properly. It is to the benefit of the facilities using these chemicals that they be applied carefully and correctly. The staff recognizes that it is economically infeasible to install hoods, fans, and filters in

many cases. Consequently, the section was designed to provide options in the control of such emissions. Hoods, fans, and filters can also be the optimum control in other cases.

TACA, EPRC, Ideal, Parker, and ASARCO also commented on proposed requirements for wetting or covering of open-bodied trucks, trailers, and railroad cars. Most commenters stated that this provision is costly and impractical, particularly in the case of railroad cars since the cars are not owned by the industries which ship in them and it is unlikely that the covers could be retrieved for reuse. Parker noted that such covering would hinder railcar owners' competition with off-shore shippers, who are not required to cover shipments. ASARCO maintained that the wetting or covering of open-bodied vehicles should be the obligation of the shippers of dust-causing materials, rather than the receivers of them, and submitted revised rule language to this effect. EPRC further noted that such wetting or covering should be limited to Group I areas. Ideal asserted that coarse aggregates should not have to be wet or covered because they emit little or no airborne dust. They also reiterated problems which can occur when fine aggregates are wet, and noted that the cost of concrete could rise significantly as a result of the proposed controls.

The requirement to cover open-bodied trucks, trailers, and railcars involves no substantive change from the section (§111.42) which has been in effect for more than 10 years and has proven to be a useful method of dust control. The staff also believes that such requirements should be in effect in the geographic areas listed, not just in the Group I area, because the section is designed to reduce nuisance potential and to help control fugitive emissions in areas which have had particulate problems. While coarse aggregate is not as dusty as fine, the amount of dust on the surface of the aggregate depends on when and if the aggregate was washed. The staff anticipated problems with defining "coarse" aggregate and enforcing washing provisions and, therefore, made no change to the proposal.

HL&P, ERCOT, EPRC, Chevron, and a private citizen commented on the proposed sections regarding watering and wet-sandblasting and enclosure during construction and demolition activities. HL&P, ERCOT, EPRC, and Chevron noted that many demolition activities, such as demolition of steel structures, do not produce dust emissions. HL&P and ERCOT requested the phrase "as necessary" be added to the section to apply to dust-producing structures. They also recommended that proposed language relating to wet-sandblasting be modified to exempt operations associated with repair or maintenance of existing facilities, whose exemption would be "consistent with TACB Standard Exemption #70," and noted that the cost of enclosures of outdoor abrasive cleaning operations can exceed the cost of the cleaning operation itself. A private citizen requested that the proposed sandblasting controls be extended to blasting of bridges and road areas where dust is a problem.

Comments that demolition of steel structures does not produce dust and should be exempted from the section governing sandblasting do not appear defensible. If no dust is produced by the demolition, no control

is required. Otherwise, failure to take the dust control precautions is unjustifiable. Regarding HL&P and ERCOT's assertion that the language should be modified to be consistent with TACB's standard exemption list, the controls are called for only in the specific geographic areas outlined in the section. In these areas, controls may be more stringent than any potentially-conflicting standard exemption. The staff also believes that the cost of enclosure of outdoor abrasive cleaning operations is a prudent and cost-effective method of dust control; however, extending such controls to the sandblasting of bridges and road areas is too technically difficult and costly to be required at this time.

Dieter, EPRC, Chevron, AGC, Featherlite, EPCCHD, Saunders, and EPA all commented against the proposed section calling for wheel washing of construction vehicles in the City of El Paso. Dieter, AGC, EPCCHD, and Saunders pointed out that such requirements in the desert terrain of El Paso would be a waste of scarce water resources with little public benefit. AGC, Chevron, Saunders, and EPRC all noted that such requirements would be costly and would include building wheel-washing facilities and adding personnel to oversee them. These commenters also noted that wheel-washing would exacerbate construction site problems by creating muddy bogs through which the trucks would have to pass and which could cause more mud and dirt to be deposited on roadways. Saunders asserted that requiring construction vehicles to be cleaned but not requiring cleaning of other off-pavement vehicles would be discriminatory. Finally, EPA voiced concern that such controls would be difficult to enforce and suggested that the rule instead require paving of access roads near site exits.

The staff recommended that the proposed wheel-washing provisions be withdrawn, agreeing with commenters who noted that water is a scarce resource in El Paso which should not be wasted on activities that may not be effective deterrents to particulate problems. EPA's suggestion of paving access roads near construction sites warrants further consideration. However, this measure was not previously proposed and must undergo public hearings before implementation. The agency plans to closely examine the results of the additional studies being carried out in the El Paso/Juarez area and may propose this and other controls if the studies indicate a beneficial and cost-effective result.

EPSP, Chevron, HL&P, ERCOT, EPRC, EPA, and Dallas commented on proposed sections regarding roads, streets, alleys, and parking lots. EPSP asserted that paving quarry areas would create more dust because of the grinding action on hard surfaces. Chevron noted that sealed gravel chips would provide equivalent dust control with less cost than paving or asphalt and should be added to the sections as an option for major in-plant roads and parking lots. Chevron also requested a definition of "major" in-plant roads and projected that the cost of compliance with this paving requirement would be \$1 million and would take two-three years to complete. They requested an extension of the compliance deadline for the rules in §§111.141-111.149. Chevron further maintained that reducing speeds on such roads to 20 miles per hour for light-duty vehicles and 10 mph for heavy-duty vehicles would be

more beneficial and easier to comply with than paving. Additionally, Chevron stated that they have been unable to find a street-sweeper contractor in El Paso and noted that reducing speeds to 20 mph would eliminate the need for this control requirement for in-plant roads. HL&P and ERCOT argued that the proposed requirements for asphaltting or wetting all major in-plant roads and truck/heavy-duty pathways for roads used infrequently was not warranted and requested that the language be modified to refer only to roads with more than 10 vehicle traversals per hour. Similarly, EPRC stated that the application of dust-control measures without regard to the number of vehicles or their speed was "excessively stringent." EPA noted that the proposed section regarding removal of soil from paved surfaces should be revised to specify the frequency of the removal. Dallas stated that they have several miles of unpaved roads for crew access to levees and that it would be economically impossible to pave them or restrict their usage. Dallas also maintained that the paving of residential roads with more than 10 vehicle traversals per hour was unenforceable and unrealistic. They suggested that if the section was retained, it should only apply to new residential and apartment units. Finally, EPRC asserted that paving or graveling of parking lots with more than five spaces should be limited to the Group I area in El Paso and that alternate dust-control measures such as wetting should be allowed in lots that are infrequently used.

The statement that paving quarry areas would create more dust because of the grinding action on hard surfaces does not appear valid. Paving such areas will reduce the amount of material susceptible to erosion that can be reentrained by vehicular traffic. The TACB has only approved use of gravel, rather than paving or asphalt, in areas with low vehicle speeds and low traffic density. Graveling can help prevent reentrainment of dust, but high speeds and heavy traffic cause erosion of the gravel and subsequently higher dust levels. Therefore, graveling is not allowed for major in-plant roads or parking lots. Chevron's assertion that it would be useful to add a definition of "major" in-plant roads appears reasonable. Major in-plant roads are defined as those designed to accommodate two-way traffic and at least 30 feet wide at any one point, measuring the distance from the edge of the undisturbed earth on either side of the established roadway. A single lane of traffic is usually 10 feet wide, therefore, the staff believes that any road or track that is 30 feet wide can realistically be considered as major. The staff also believes that such a definition will decrease paving costs. The staff also notes that the compliance date for the sections dealing with materials handling is December 31, 1991, and maintains that this should be sufficient time to allow for implementation of needed controls. Requiring reduced speeds on in-plant roads could be beneficial, but the enforcement of speed limits on in-plant roads would be difficult because of the limited number of regulatory staff. The intent of the street-sweeping rule was to require such cleaning for public paved thoroughfares, not private or in-plant roads. The section was clarified to indicate this fact.

Staff resources are also too limited to enforce a rule based on vehicle traversals per hour on private and industrial roadways. Consequent-

ly, exempting such roads with less than 10 vehicle traversals per hour from paving does not appear feasible. Again, the staff believes that a reasonable alternative is to limit the applicability of the requirement to roads at least 30 feet wide. These wider roads are likely to have been built because of a demonstrated need for their existence and will generally be more frequently used. Implementation of EPA's recommendation that the section stipulate the frequency of the removal of soil from paved surfaces would not be expected to result in lower particulate emissions. In El Paso's desert environment, periods of high winds are intermittently interspersed with periods of relative calm and infrequent precipitation. Thus, under dry, windy conditions the specified frequency could be insufficient, while during calms or rainy periods the frequency could result in a waste of time and resources. Consequently, no change in the section was made. The rule language does not require paving of levee roads or roads designed for municipal maintenance. The staff does not believe that this exemption needs to be specifically defined and notes that, in any case, the rules do not apply to the Dallas area. The staff maintains that residential roads are a potential source of dust and as such warrant controls. A survey of affected municipalities indicated that the section will have a minimal impact on affected municipalities, because the majority of residential roads in these areas are already paved. In order to ensure that all reasonable measures are taken to control fugitive dust and to limit the potential for future problems, existing requirements for paving of residential roads were retained. However, upon further analysis, the staff has determined that use of traffic counts on public, commercial, and residential roads would be resource-intensive and difficult to enforce. Therefore, the staff withdrew the references to traffic counts in these rules and changed the definition of public thoroughfares to "all roads and streets to which the public has general access." Again, it should be noted that the section does not apply to the Dallas area. Since dust is not limited solely to the Group I area EPCCHD hopes that by extending such controls citywide, PM10 and particulate levels will not become a more pervasive problem. The staff agrees that wetting would suffice in temporary parking lots where the lifetime of the lot will not exceed one month.

The new sections are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provides the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§111.143. Materials Handling. No person may cause, suffer, allow, or permit any material, except for abrasive material for snow and ice control, to be handled, transported, or stored without taking at least the following precautions to achieve maximum control of dust emissions to the extent practicable:

(1) application of water or suitable chemicals or some other covering on materials stockpiles and other surfaces which can create airborne dusts;

(2) installation, maintenance, and proper use of hoods, fans, and filters to enclose, collect, and clean the emissions of dusty materials; or

(3) application of water or suitable chemicals, or complete covering of materials contained in open-bodied trucks, trailers, or railroad cars transporting such materials which can create airborne particulate matter in areas where the general public has access.

(A) Suitable wetting may be used as an alternative to covering in all areas except the City of El Paso.

(B) Complete covering, at a minimum, is required in the City of El Paso.

§111.145. Construction and Demolition. For the purpose of this section, the following restrictions apply if the area of land affected by the listed activities is more than one acre in size. No person may cause, suffer, allow, or permit a structure, road, street, alley, or parking area to be constructed, altered, repaired, or demolished, or land to be cleared without taking at least the following precautions to achieve maximum control of dust emissions to the extent practicable:

(1) use of water or of suitable oil or chemicals for control of dust in the demolition of structures, in construction operations, in work performed on a road, street, alley, or parking area, or in the clearing of land;

(2) use of adequate methods such as wet-sandblasting and enclosure of work areas to prevent airborne particulate matter during sandblasting of structures or other similar operations.

§111.147. Roads, Streets, and Alleys. No person may cause, suffer, allow, or permit any public, industrial, commercial, or private road, street, or alley to be used without taking at least the following precautions to achieve maximum control of dust emissions to the extent practicable:

(1) application of asphalt, water, or suitable oil or chemicals on the following unpaved surfaces:

(A) industrial facility roadways—all major in-plant roads and all truck or other heavy-duty vehicle pathways. Major in-plant roads shall be defined as those which are designed to accommodate two-way traffic and are at least 30 feet wide at least one point, measuring the distance from the edge of the undisturbed earth on either side of the established roadway;

(B) public thoroughfares—all roads and streets to which the public has general access;

(C) commercial roads—all roads which serve as access for more than 50 employees or as access to more than 10 heavy-duty truck parking spaces; and

(D) residential roads—all roads which serve as access for more than 20 residences and/or apartment units.

(2) removal from public thoroughfares, as necessary, of soil or other materials, except for sand applied for the specific purpose of snow or ice control. In the City of El Paso, removal of soil shall be by mechanical sweepers or their equivalent.

§111.149. Parking Lots.

(a) No person may allow any vehicular parking surface having more than five parking spaces to be used unless dust is controlled by the appropriate application of asphalt, water, or suitable oil or chemicals.

(b) In the City of El Paso, parking surfaces with more than five parking spaces shall be paved or uniformly covered with gravel. This provision shall not apply to temporary parking lots defined as lots used for less than one month, after which access is prohibited. Such temporary lots shall be required to apply water or suitable oil or chemical. Lots with more than 100 parking spaces shall be paved or covered by an equivalent method determined by the executive director. An equivalent method shall not include the utilization of waste materials from industrial processes.

(c) Parking surfaces having five spaces or less and parking surfaces at a property designed for and used exclusively as a private residence housing not more than three families are exempt from these requirements.

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 June 26, 1989.

TRD-8905583 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, Ext. 354

Emissions Limits on Nonagricultural Processes

• 31 TAC §§111.151, 111.153, 111.155

The Texas Air Control Board (TACB) adopts new §§111.151, 111.153, and 111.155, without changes to the proposed text as published in the December 27, 1988, issue of the

Texas Register (13 TexReg 6437). In concurrent action, the TACB adopts the repeal of previous §§111.51-111.53, concerning particulate matter.

The new §111.151 enumerates particulate emissions rates for specific flow rates in relation to standard stack heights. The new §111.153 exempts specified oil or gas fuel-fired steam generators from the provisions of §111.151 and establishes separate emissions limits for solid fossil fuel-fired steam generators. The new §111.155 enumerates net ground level particulate standards based on three-hour and one-hour averaging periods.

The new sections are part of a series of substantial revisions to Chapter 111, concerning control of air pollution from visible emissions and particulate matter. Since the changes are extensive, the staff has determined that it would be administratively more efficient to concurrently repeal Chapter 111 in its entirety and add a new Chapter 111.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

Five commenters (the Environmental Protection Agency (EPA), Houston Lighting and Power (HL&P), the Electric Reliability Council of Texas (ERCOT), a private citizen, and the City of Dallas (Dallas) testified against the proposed undesignated head. There were no commenters in favor of the proposal.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

EPA asserted that the proposed stack height formula in §111.151(b) needs to be evaluated to ensure its consistency with EPA regulations and policies. HL&P and ERCOT suggested that a reference stating that steam generators are exempt from meeting ground level concentrations had been mistakenly omitted in §111.153(a). HL&P and ERCOT also recommended that the one-hour and three-hour net ground level standards found in §111.155(1) and (2) be deleted and replaced with federal primary and secondary ambient air standards in order to bring the section "up to date with the latest scientific information." A private citizen maintained that property-line sampling needs to measure specifically for inhalable particulate matter (PM10). Dallas urged that the five-hour ground level standard be retained because the city staff has used the standard for nearly 20 years as an excellent enforcement tool.

The tables and equations contained in §111.151(b) have not been changed since 1972; however, the staff recommends that an evaluation, including consideration of EPA stack height regulations, be conducted and any recommended changes be made the subject of a public hearing at a future date. The staff fully intended to remove the exemption for steam generators. There is no indication that such action would cause undue hardships to affected sources. Since solid

fossil fuel-fired generators also have the potential to produce an unacceptable level of emissions off the property, the ground level standards should apply. HL&P and ERCOT's recommendation that the one and three-hour ground level standards be replaced with federal standards does not appear to be justified. The TACB standards were established to protect public health and as a guard against nuisance conditions. The standards have proven to be effective enforcement tools during the 15 years they have been used. While the total suspended particulate (TSP) standard has been replaced by PM10, removal of the ground level standards would leave no particulate controls in place, which could aggravate nuisance conditions. The TACB's TSP standard was established to eliminate nuisance-level emissions, while the federal PM10 standard was designed to protect public health. The agency has the option of measuring both TSP and PM10. Currently, both kinds of measurements are made as conditions warrant. In no case can either standard be exceeded, and enforcement actions are initiated to remedy violations of either standard. The staff does not believe there is a need to restate or list the PM10 standard in this section. The five-hour ground level standard is resource-intensive and has been used only rarely for enforcement purposes. Retention of the one and three-hour standards appears to be adequate to protect public health and property.

The new sections are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905582 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Emissions Limits on Agricultural Processes

• 31 TAC §§111.171, 111.173, 111.175

The Texas Air Control Board (TACB) adopts new §§111.171, 111.173, and 111.175, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6443). In concurrent action, the TACB adopts the repeal of previous §§111.71-111.76, concerning particulate matter from agricultural processes.

The new §111.171 establishes that all sources affected by the Texas Clean Air Act (TCAA), §3.10(e), shall have allowable particulate emissions levels determined by the process weight method unless requesting an

approved alternate method. The new §111.173 stipulates that a source affected by the TCAA, §3. 10(e), may request to be regulated by an approved alternate method. The new §111.175 enumerates the sections of this title from which agricultural processes are exempt.

The new sections are part of a series of substantial revisions to Chapter 111, concerning control of air pollution from visible emissions and particulate matter. Since the changes are extensive, the staff has determined that it would be administratively more efficient to concurrently repeal Chapter 111 in its entirety and add a new Chapter 111.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

Three commenters (two private citizens and the Environmental Protection Agency (EPA)) testified against the proposed undesignated head. There were no commenters in favor of the proposal.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

Two private citizens protested allowing the exemptions for agricultural processes specified in §§111.171-111.175. Both said that such sources can have adverse impacts on public health and should be regulated. EPA stated that an alternate method as detailed in §111.173 should have EPA, as well as TACB, approval.

The agricultural processes exempted from most sections of Regulation 1 were developed in response to the mandate of the TCAA. A revision to the legislation would be necessary before the exemptions could be deleted. EPA may take action to approve or disapprove any alternate method submitted by the state as a state implementation plan revision. Therefore, no change to the section was made.

The new sections are adopted under Texas Civil Statutes, Article 4477-5, §3. 09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the TCAA and to amend any rule or regulation the TACB makes.

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 June 26, 1989.

TRD-8905561
Allen Eil Bell
Executive Director
Texas Air Control Board

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Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Exemptions for Portable or Transient Operations

• 31 TAC §111.181, §111.183

The Texas Air Control Board (TACB) adopts new §111.181 and §111.183, without changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6445). In concurrent action, the TACB adopts the repeal of previous §§111.81-111.83, concerning exemptions.

The new §111.181 exempts most portable facilities and transient operations, except those in the inhalable particulate matter Group I and Group II areas in Dallas, El Paso, and Harris counties, from the requirements of certain sections of this title. The new §111.183 stipulates conditions which will have to be met in order to meet exemption requirements.

The new sections are part of a series of substantial revisions to Chapter 111, concerning control of air pollution from visible emissions and particulate matter. Since the changes are extensive, the staff has determined that it would be administratively more efficient to concurrently repeal Chapter 111 in its entirety and add a new Chapter 111.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

Two commenters, both private citizens, testified against the proposed undesignated head. There were no commenters in favor of the proposal.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and hearing transcript are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin.

Both private citizens opposed exemptions for transient operations as outlined in §§111.181-111.183. They stated that such sources can become nuisances and cause negative public impacts, and therefore should undergo permit review.

The control methods, location, and length of operation of such facilities are narrowly defined to restrict such exemptions and provide protection for public health. Furthermore, the TACB sections which have been in effect for many years allow the agency to take action against a source which violates the conditions of an exemption or causes a nuisance condition. Therefore, no change was made to the rule.

The new sections are adopted under Texas Civil Statutes, Article 4477-5, §3. 09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agen-

cy's legal authority.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905560
Allen Eil Bell
Executive Director
Texas Air Control Board

Effective date: July 18, 1989

Proposal publication date: December 27, 1988

For further information, please call: (512) 451-5711, ext. 354

Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

Subchapter D. Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

• 31 TAC §305.64

The Texas Water Commission (TWC) adopts an amendment to §305.64, with changes to the proposed text as published in the January 3, 1989, issue of the *Texas Register* (14 TexReg 39).

Section 305.64, is amended to clarify and revise commission procedures for transferring permits.

Under prior transfer rules, it was unclear whether a corporate name change required a transfer application. The amended rules reflect actual agency practice, which is to re-issue the permit under the new name without commission action.

Provisions are added to the rules to allow transfer of the permit to an interim permittee and for involuntary transfer. When financial or other problems lead to abandonment of a facility, the commission may transfer a permit to a temporary operator until a final decision is made. An interim transfer ensures continuity of service and further environmental protection by maintaining the permit requirements.

Involuntary transfer may occur under circumstances similar to those allowing revocation or suspension of a permit as stated in the Texas Water Code, §26. 029. If an existing permittee cannot or will not comply with a permit, the commission may transfer a permit involuntarily after notice and an opportunity for hearing. When a permit holder has failed to comply with a permit's terms, damage to the environment can be minimized or eliminated by transferring the permit to an operator who can meet the permit requirements.

Section 305.64(b), is amended to allow the transferee to fill out a permit application as well as the permittee. The proposed amendment also requires a letter from the permittee consenting to the transfer.

Section 305.64(h), is added to provide for the appointment of an interim permittee. The section delineates the circumstances under which this is allowed, specifically, where it appears that the current permittee is about to

abandon or lose ownership of the facilities, or has abandoned or lost ownership of the facilities, and it is necessary to keep the facilities in operation until the ultimate permittee can apply for and receive a permit.

Section 305.64(i), is added to allow the commission to involuntarily transfer permits. This may be allowed after the commission finds that the permittee no longer owns or controls the permitted facility; if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities; the permittee has failed or is failing to comply with the terms and conditions of the permit; the permitted operations have been or are about to be abandoned; the permittee has violated commission rules or orders; the permittee has operated or is operating the facilities in a manner that creates an imminent and substantial threat of harm to public health or the environment; and foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to adequately perform its responsibilities in operating the facility; the proposed section also allows transfer of the permit to a person who demonstrated a willingness and ability to comply with the permit's terms and all other applicable requirements. Finally, a permit may be transferred if necessary to otherwise effectuate the purposes of the Texas Water Code, Chapter 26, as set forth under the Code, §26.003.

The commission received written comments from the law firms of Armbrust & Brown, P.C. (Austin); Brown Maroney & Oaks Hartline (Austin); Henry, Kelly & Bunch (Austin) representing the Save Eagle Mountain Lake, Inc.; Lloyd, Gosselink, Ryan & Fowler, P.C. (Austin); and Vinson & Elkins (Austin Office).

Armbrust & Brown, P.C., suggests that specific language be provided under proposed §305.64(i) exempting the involuntary transfer process from requiring an affidavit from the applicant indicating consent to the transfer by the permittee, as required under proposed §305.64(b)(5). The commission believes that this suggestion stems from a misreading of the proposed rules. Such affidavit is required, as specifically stated in §305.64(b)(5), only in a voluntary transfer situation where the applicant is the proposed transferee. The rules do not contemplate the submission of such affidavit in an involuntary transfer proceeding. Indeed, such affidavit would be contradictory to the nature of the action.

Brown Maroney & Oaks Hartline (Brown Maroney) first suggests that proposed §305.64(i) be amended to include a reference to a permittee's right to judicial appeal of the involuntary transfer of its permit under the Administrative Procedure and Texas Register Act. Since this is redundant of existing law, the commission feels that this additional language is unnecessary.

Secondly, Brown Maroney suggests that proposed paragraphs(1) and (2) of subsection (i), §305.64, be amended to provide that a permit may only be involuntarily transferred because of significant problems relating to the permitted facility. The commission believes that the additional term is vague and ambiguous and subject to different interpretation and adds little to the meaning of the proposed rule. Additionally, the proposed rule follows, in large measure, the language of the Texas Water Code, §26.029(c) which forms a basis for the rule.

Thirdly, Brown Maroney suggests that in order to provide the commission with authority necessary to fully implement §305.64(h) (relating to transfer of facilities to an interim permittee), that subsection (i) (relating to involuntary transfer) should include at least all of the circumstances referred to in subsection (h). Thus, Brown Maroney suggests the inclusion of a paragraph under subsection (i) providing that a permit may be involuntarily transferred if the permittee no longer owns or controls the facility. The commission recognizes this drafting oversight and agrees with this recommendation and adopts this revision.

Finally, Brown Maroney suggests a revision to §305.64(b) to provide a formal pre-screening process for the commission to examine the appropriateness of a proposed transferee prior to the filing of a transfer application. The commission believes that to make such review and determination twice would be redundant and administratively burdensome.

Henry, Kelly & Bunch, representing Save Eagle Mountain Lake, Inc. ("SEML"), first suggests that proposed §305.64(b) be amended to only allow permit transfer under special circumstances such as dissolution of the permittee. SEML believes this change is necessary to prevent confusion and a possible avenue for the avoidance or complication of enforcement actions by the commission. The commission believes that to impose such limited circumstances under which a permit may be transferred would unnecessarily restrict trade and commerce and the conveyance of real property and prevent the continuation of wastewater treatment services when the facility's ownership is transferred under normal circumstances. Additionally, transfer of a permit in no way inhibits the commission from bringing enforcement action against a previous permittee for prior violations or against the transferee to stop any present violations.

Secondly, SEML suggests that interim transfers be accomplished only by temporary order pursuant to the Texas Water Code, §26.0191. The commission believes that this suggestion overlooks the applicability of that statute to the transfer situation. The statute allows a permittee to temporarily go beyond the permitted limitations because of some pressing extenuated circumstances and has nothing to do with the transfer and continuation of permit provisions.

Thirdly, SEML suggests that §305.64(i) be amended by adding language elaborating on existing statutory and regulatory notice and hearing provisions. Since such additional language provides a restatement of existing law, it is redundant and, thus, unnecessary.

Finally, SEML suggests that proposed §305.64(i)(7) be changed to the commission may transfer the permit . . . to be consistent with the first sentence of §305.64(i). The commission recognizes this drafting error and agrees with the recommendation and adopts this revision.

Lloyd, Gosselink, Ryan & Fowler suggests that the proposed section also provides for the transfer of a permit when the permitted facilities have not been built. This contingency was intended to be provided for by the proposed section. However, the proposed section does not make this clear. The com-

mission recognizes this drafting error and agrees with the recommendation and adopts this revision. The commission believes that such transfer is appropriate only if the new property owner can demonstrate a continued need for the permit based upon present water quality requirements.

In addition to minor editorial changes, Vinson & Elkins suggests that proposed §305.64(i) be expanded to reflect the same grounds for permit transfer as provided in subsection (h). Specifically, Vinson & Elkins suggests that the provision state that a permit may be involuntarily transferred if the permittee no longer owns or controls the facility. As stated above in response to comments by Brown Maroney, the commission agrees to such revision.

Finally, Vinson & Elkins suggests the broadening of the language in proposed paragraphs (5) of subsection (i) to provide that, in addition to foreclosure and bankruptcy, insolvency or other similar proceedings would also be adequate grounds for permit transfer if such circumstances interfered with the permittee's ability to own or operate the facility. The commission agrees with the suggestion and adopts the revision.

The section is adopted pursuant to the Texas Water Code, §§5.103, 5.105, and 26.011 which provide the Texas Water Commission with the authority to promulgate rules necessary to carry out the commission's powers under relevant provisions of the Texas Water Code; and the Texas Water Code §26.027, which allows issuance of permits, and §26.029, which allows revocation of permits.

§305.64. Transfer of Permits.

(a) A permit is issued in person and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1)-(3) (No change.)

(4) a fee of \$100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fees);

(5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

(6) any other information the executive director may reasonably require.

(c)-(g) (No change.)

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

(1) the permittee no longer owns the permitted facilities;

(2) the permittee is about to abandon or cease operation of the facilities;

(3) the permittee has abandoned or ceased operating the facilities; or

(4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) the permittee no longer owns or controls the permitted facilities;

(2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;

(3) the permittee has failed or is failing to comply with the terms and conditions of the permit;

(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

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 June 28, 1989.

TRD-8905888

Jim Haley
Director
Texas Water Commission

Effective date: July 19, 1989

Proposal publication date: January 3, 1989

For further information, please call: (512) 463-9087

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter I. Income

• 40 TAC §3.902

The Texas Department of Human Services (DHS) adopts an amendment to §3.902, with changes to the proposed text as published in the May 26, 1989, issue of the *Texas Register* (14 TexReg 2534).

The amendment specifies that all noneducational loans are exempt from income and specifies that SSI income is exempt from income to the extent allowed by federal regulations. DHS is adopting the changes because of a recent policy interpretation issued by the Department of Health and Human Services.

The section will function by limiting AFDC benefits to those most in need.

No comments were received regarding adoption of the amendment. DHS, however, is adopting the section with an editorial change. Subsection (b)(15), noneducational loans, as proposed, is renumbered subsection (b)(10) to maintain the paragraphs in alphabetical order.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance programs.

§3.902. Types.

(a) Aid to Families with Dependent Children. DHS counts the following as income:

(1)-(13) (No change.)

(14) noneducational grants as stipulated in 45 Code of Federal Regulations, §233.20(a)(3)(iv)(B).

(15)-(30) (No change.)

(b) Aid to Families with Dependent Children. Exclusions from income for AFDC are:

(1)-(9) (No change.)

(10) noneducational loans;

(11) nutrition program assistance. DHS exempts the value of supplemental food assistance under the Child Nutrition Act of 1966 and special food services programs for children under the Na-

tional School Lunch Act. DHS exempts benefits received under the Older Americans Act of 1965, Title VII, Nutrition Program for the Elderly;

(12) relocation assistance benefits. DHS exempts benefits received under the Uniform Relocation Assistance and Real Property Acquisition Act, Title II;

(13) SSI as stipulated in 45 Code of Federal Regulations §233.20 (a)(3)(x);

(14) third-party funds. DHS exempts money received and used for care and maintenance of a third-party beneficiary who is not a household member;

(15) vendor payments. DHS does not count payments made directly to the applicant's creditor or person providing the service if the person or organization making the payments is outside the household.

(c)-(d) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 28, 1989.

TRD-8905882

Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Effective date: July 26, 1989

Proposal publication date: May 26, 1989

For further information, please call: (512) 450-3765.

Chapter 29. Purchased Health Services

Subchapter L. General Administration

• 40 TAC §29.1112

The Texas Department of Human Services (DHS) adopts an amendment to §29.1112, without changes to the proposed text as published in the May 19, 1989, issue of the *Texas Register* (14 TexReg 2457).

The amendment allows the department to provide medically necessary influenza and pneumococcal immunizations, and to determine medical necessity either directly or through a designee.

The section will function by providing immunization of high-risk recipients for influenza and pneumonia, which is expected to lessen the incidence of diseases and their impact on the health of recipients.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which 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 June 28, 1989.

TRD-8905681

Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Effective date: September 1, 1989

Proposal publication date: May 19, 1989

For further information, please call: (512)
450-3785.



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 State Board of Public Accountancy

Friday, June 30, 1989, 8:30 a.m. The Executive Committee held an emergency meeting in Suite 340, 1033 LaPosada, Austin. According to the agenda, the committee considered status or report on staff implementation of the act; review of the board's financial matters; review of the status of computer purchase; AICPA/FTC agreement; discussion of implementation of computerized examination on the rules of professional conduct; review of status of request for reinstatement by Brooks Wilson; assignment of board committees; discussion of status of Sunset report; request to register firm under the name KMPG Peat Marwick comments regarding the May 20, 1989, swearing-in ceremony; review of status of negotiations with building management company (executive session); other matters coming before the committee and personnel matters (executive session). The emergency status was necessary because needed to cover items not handled at last meeting.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: June 28, 1989, 3:33 p.m.

TRD-8905703

State Bar of Texas

Thursday, June 29, 1989, 9 a.m. The Board of Directors submitted an emergency revised agenda for a meeting to be held in Room 107, Convention Center, San Antonio. According to the agenda, the board considered compensation of executive director and general counsel for Bar year 1989-90; executive session Article 6252-17, §2(g). The emergency status was necessary because item unknown at time of original posting.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: June 28, 1989, 1:12 p.m.

TRD-8905691

Texas Department of Corrections

Monday, July 10, 1989, 9 a.m. The regular session will meet in Room 106, the executive session in Room 107, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda summary, the executive session will discuss Ruiz and other litigation, personnel matters, and Internal Affairs investigations; convene Windham School board to consider employment contracts and consulting contracts; convene regular session of board of corrections to consider board member items; consent items, and operating reports; finance division and director's items.

Contact: James A. Lynaugh, P.O. Box 99, Huntsville, Texas 77342-0099, (409) 294-2101.

Filed: June 29, 1989, 9:14 a.m.

TRD-8905731

East Texas State University

Thursday, July 6, 1989, 11:30 a.m. The Board of Regents, Campus Planning & Finance Committee will meet at Hyatt Regency Hotel, DFW Airport, Grapevine. According to the agenda, the committee will discuss recommendation of FY 1990 operating budget for ETSU Commerce and ETSU Texarkana; discuss upcoming board of regents agenda.

Contact: Charles Turner

Filed: June 27, 1989, 1:51 p.m.

TRD-8905591

Texas Education Agency

The Texas Education Agency will meet at William B. Travis Building, 1701 North Congress Avenue, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Thursday, July 6, 1989, 1:30 p.m. The board will meet in Room 1-104, to discuss budget issues; report on public education

legislation of the 71st Texas Legislature; proposed Texas Education Agency organization beginning in 1989-90; state Board of Education operating rules on board travel; officeholder accounts; discussion of pending litigation in accordance with Article 6252-17, §2(e), Texas Civil Statutes.

Contact: W. N. Kirby, 1701 North Congress, Austin, Texas 78701, (512) 463-8985.

Filed: June 28, 1989, 4:24 p.m.

TRD-8905727

Thursday, July 6, 1989, 2 p.m. The Interagency Coordinating Council on Dropout Reduction will meet in Room 6-101, to discuss a presentation on children and youth services by a representative from the Children and Youth Services State Coordinating Committee of the Health and Human Services Coordinating Council; legislative update on legislation on at-risk students and juvenile probation.

Contact: Federico Miller, 1701 North Congress, Austin, Texas 78701, (512) 463-9512.

Filed: June 28, 1989, 4:25 p.m.

TRD-8905724

Friday, July 7, 1989, 8:30 a.m. The Committee on the Permanent School Fund will meet in Room 1-109, to discuss a presentation on bond trading and pricing by Merrill Lynch, Pierce, Fenner & Smith, Incorporated; review permanent school fund securities transactions and the investment portfolio; recommended permanent school fund investment program for July and August and the funds available for the program; proposed contract for master trust custodial services; report on public education legislation of the 71st Texas Legislature.

Contact: W. N. Kirby, 1701 North Congress, Austin, Texas 78701, (512) 463-8985.

Filed: June 29, 1989, 9:21 a.m.

TRD-8905734

Friday, July 7, 1989, 8:30 a.m. The committee on Long-Range Planning will meet in Room 1-104, to discuss report on public

education legislation of the 71st Texas Legislature; continued review of the mission statement, goals, and objectives for the Long-Range Plan for public education; extended use of school facilities through community education; implementation of the technology legislation; preliminary plan to coordinate the studies and reports required by new legislation.

Contact: W. N. Kirby, 1701 North Congress, Austin, Texas 78701, (512) 463-8985.

Filed: June 29, 1989, 9:21 a.m.

TRD-8905735

Friday, July 7, 1989, 11 a.m. The Committee on Personnel will meet in Room 1-111, to discuss provisional vocational certificates; certification for special service positions and special assignment permits; specific requirements; exchange teachers; amendment to 1987 program requirements for preparation of school personnel; master teacher examination; definition for master teacher; application form for level three of the career ladder; commission on standards for teaching profession; trustee for Lackland Independent School District (ISD); public education legislation; alternative teacher certification for Fort Worth ISD and Dallas ISD; assignment of school personnel; leadership/professional development for administrators; alternative certification of administrators; master teacher pilot design; paperwork reduction; accreditation of school districts.

Contact: W. N. Kirby, 1701 North Congress, Austin, Texas 78701, (512) 463-8985.

Filed: June 29, 1989, 9:21 a.m.

TRD-8905733

Friday, July 7, 1989, 11 a.m. The Committee on Students will meet in Room 1-100, to discuss proposed amendments to proclamation 66 of the SBOE, vocational education curriculum; description of a well-balanced elementary curriculum; approval of 1989-90 Texas Educational Assessment of Minimum Skills tests and passing standards; proposed procedure for selection and coordination of responsibilities of the proclamation advisory committees; report on public education legislation of the 71st Texas Legislature; update on TEA responses to dyslexia legislation; discussion of proposed guidelines for reading improvement.

Contact: W. N. Kirby, 1701 North Congress, Austin, Texas 78701, (512) 463-8985.

Filed: June 29, 1989, 9:20 a.m.

TRD-8905737

Friday, July 7, 1989, 11 a.m. The committee on School Finance will meet in Room 1-104, to discuss proclamation 66 of SBOE; vocational education; special education; years of service; proprietary school fees;

minimum standards for operation of proprietary schools; purchase and distribution of textbooks; textbooks for visually handicapped; per capita apportionment for 1989-90 and revised per capita apportionment for 1988-89; public education legislation of 71st Legislature; preliminary 1989-90 TEA operating budget; preliminary 1989-90 program budget for public education; budget issues; amend contract with Texas Department of Commerce; procurement of main-frame computer and associated equipment; procurement of microcomputer equipment; annual audit plan of the Division of Audits for 1989-90; review of annual audit plan of the Division of Internal Audits for 1989-90.

Contact: W. N. Kirby, 1701 North Congress, Austin, Texas 78701, (512) 463-8985.

Filed: June 29, 1989, 9:21 a.m.

TRD-8905736

Saturday, July 8, 1989, 8:30 a.m. The board will meet in Room 1-104, to discuss service awards; SBOE resolutions; budget issues; public education legislation; TEA organization; SBOE travel rules; permanent school fund investments-July-August; master trust custodial services; proclamation 66; vocational education; special education; years of service; proprietary school fees; proprietary schools; textbooks; per capita apportionment 1989-90 and 1988-89 (revised); TEA operating/program budget 1989-90; Texas Department of Commerce contract; computer equipment; curriculum; elementary curriculum; Texas Educational Assessment of Minimum Skills; proclamation committees; vocational certificates; special service positions and special permits; exchange teachers; preparation of school personnel; master teacher examination; career ladder; standards for the teaching profession; Lackland ISD trustee; alternative teacher certification; agency administration.

Contact: W. N. Kirby, 1701 North Congress, Austin, Texas 78701, (512) 463-8985.

Filed: June 29, 1989, 9:22 a.m.

TRD-8905732

Monday-Wednesday, July 10-12, 1989, 8:30 a.m. and 8 a.m. respectively. The State Textbook Committee will meet in Room 1-104, to consider public hearing on textbooks being considered for adoption in 1989 will be held before the Commissioner of Education and the State Textbook Committee. Testimony is limited to residents of Texas who filed written requests to appear on or before the deadline established in Proclamation 65; publishers will be allowed time to respond to testimony presented at the hearings.

Contact: Ira Nell Turman, 1701 North Congress, Austin, Texas 78701, (512) 463-9601.

Filed: June 28, 1989, 4:25 p.m.

TRD-8905723

Monday, July 17, 1989, 8 a.m. The Commissioner's Advisory Council for Regional Services will meet at Radisson Plaza Hotel, 700 San Jacinto, Austin. According to the agenda, the council will discuss evaluation of education service centers; development of a legislative plan for the 1990's.

Contact: J. Robert Scott, 1701 North Congress, Austin, Texas 78701, (512) 463-9371.

Filed: June 28, 1989, 4:24 p.m.

TRD-8905726

Monday, July 18, 1989, 8 a.m. The Commissioner's Advisory Council for Regional Services will meet at Radisson Plaza Hotel, 700 San Jacinto, Austin. According to the agenda, the council committee membership and organization; mentoring; responsibility and role of coordinating committee.

Contact: J. Robert Scott, 1701 North Congress, Austin, Texas 78701, (512) 463-9371.

Filed: June 28, 1989, 4:25 p.m.

TRD-8905725

Texas Employment Commission

Wednesday, July 5, 1989, 2 p.m. The commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; internal procedures of Commission Appeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 27; set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: June 27, 1989, 3 p.m.

TRD-8905888

Office of the Governor, Criminal Justice Division

Thursday, July 13, 1989, 10 a.m. The Juvenile Justice & Delinquency Prevention Advisory Board will meet in Board Room 104, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda summary, the board will consider approval of minutes; reports on compliance with the federal juvenile justice act and on National conference of state Juvenile Justice Advisory Groups; board recommendations regarding fiscal year 1989 state update plan and application for juvenile justice act formula grant funding and board recommendations regarding approval of subgrant applications for fiscal year 1990.

Contact: Jim Kester, 201 East 14th Street,

Austin, Texas 78711, (512) 463-1919.

Filed: June 28, 1989, 3:44 p.m.

TRD-8905710

Texas Department of Human Services

Thursday, July 6, 1989, 7:30 a.m. The board will meet in First Floor, East Tower, 701 West 51st Street, Austin. According to the agenda summary, the board will discuss FY 89 budget changes; FY 90 operating plan; children's trust fund grants; standards for registered family homes; CPS foster care rates; children's discipline in DHS's managing conservatorship; legislation for families and children programs; medicaid income eligibility changes for pregnant women and children; ICF-MR rates; medicaid nursing home beds; income cap for nursing home eligibility and CCAD; spousal impoverishment rules; medical provider's rates; spell-of-illness limitation; inpatient hospital reimbursement; inpatient hospital utilization review; appointments to advisory committees; amendment to policies and procedures; executive session to interview candidates for commissioner; and selection or consideration of further hiring steps.

Contact: Bill Woods, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3047.

Filed: June 28, 1989, 10:56 a.m.

TRD-8905689

State Board of Insurance

Tuesday, July 6, 1989, 10 a.m. The board will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda summary, the board will consider proposed amendment to 28 TAC §§3.3306 & 3.3309; proposed new 28 TAC §§3.3801-3.3838 and 28 TAC §21.122; extension of emergency effectiveness of amendments to 28 TAC §3.3306 & §3.3308 and new 28 TAC §3.3313; board orders on several different matters; persnel matters; pending and contemplated litigation; solvency matters.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: June 28, 1989, 2:57 p.m.

TRD-8905722

Board for Lease of State-owned Lands

Wednesday, July 5, 1989, 11 a.m. The Board for lease of Texas Parks & Wildlife Lands rescheduled a meeting from June 30, 1989 to be held in Room 833, Stephen F. Austin Building, 1700 North Congress Ave-

nue, Austin. According to the agenda, the board will approve minutes of the previous board meeting; consider nominations, terms, conditions and procedures for the October 3, 1989 oil, gas and other minerals lease sale; easement applications.

Contact: Linda K. Fisher, Room 836, 1700 North Congress, Austin, (512) 463-5016.

Filed: June 27, 1989, 4:18 p.m.

TRD-8905626

Texas National Guard Armory Board

Saturday, July 8, 1989, 10 a.m. The board will meet in Conference Room, Building 64, Camp Mabry, Austin. According to the agenda summary, the board will approve minutes of previous meeting; discuss administrative matters; construction/renovation/maintenance update; property/leases; establish date of next meeting.

Contact: Sandra Hille, P.O. Box 5218, Austin, Texas 78763, (512) 451-6394/6143.

Filed: June 28, 1989, 10:44 a.m.

TRD-8905693

State Board of Plumbing Examiners

Monday, July 10, 1989, 9 a.m. The board will meet at 929 East 41st Street, Austin. According to the agenda, the board will recognize visitors; discuss minutes of last meeting; review financial report; discuss fee structure; examination data; hardship cases; report on legislative session; review of examinations; final report of budget for FY 90-91; report of plumbing inspectors annual meeting; discuss open meetings act and open records act; septic tank installation; discussion of associated plumbing, heating, cooling contractors meeting; and any other topics for discussion that may come before the board.

Contact: Lym Brown, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765, (512) 458-2145

Filed: June 28, 1989, 10:39 a.m.

TRD-8905698

Texas Southern University

Thursday, July 6, 1989, 10 a.m. The Finance Committee will meet in Hannah Hall Board Conference Room 117, Texas Southern University, Houston. According to the agenda, the committee will consider budget changes; investments; 1990 annual budget; budget for restricted and/or grants and projects funds; informational items.

Contact: Everett O. Bell, 3100 Celburne

Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: June 28, 1989, 10:45 a.m.

TRD-8905692

Teacher Retirement System of Texas

Tuesday, July 11, 1989, 12 noon The Medical Board will meet in Investment Library, 1001 Trinity, Austin. According to the agenda, the board will discuss the files of members who are currently applying for disability retirement; files of disability retirees who are due a re-examination report.

Contact: Don Cadenhead, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: June 28, 1989, 3:05 p.m.

TRD-8905711

Public Utility Commission

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Thursday, July 6, 1989, 10 a.m. The Hearings Division will consider Docket 8667-Application of GTE Southwest Incorporated for approval of 911 Tariff Amendments, including adoption of customer specific rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 28, 1989, 1:37 p.m.

TRD-8905701

Wednesday, July 12, 1989, 10 a.m. The Hearings Division will consider Docket 8848-Application of San Miguel Electric Cooperative, Inc. for authority to implement a reduction in rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 28, 1989, 1:39 p.m.

TRD-8905700

Wednesday, July 12, 1989, 10 a.m. The Hearings Division will consider Docket 8868-Application of Brazos Electric Power Cooperative, Inc. to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 27, 1989, 2:30 p.m.

TRD-8905587

Wednesday, July 19, 1989, 9 a.m. The Hearings Division will consider Docket 5411-Inquiry into the legality of certain

rates charged by Pedernales Electric Cooperative Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 27, 1989, 2:31 p.m.

TRD-8905586

Thursday, July 20, 1989, 10 a.m. The Hearings Division will consider Docket 8871-Application of GTE Southwest, Inc. to establish centranet rates for certain customers.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 27, 1989, 2:29 p.m.

TRD-8905590

Wednesday, August 30, 1989, 10 a.m. The Hearings Division will consider Docket 8783-complaint of Hill Top Lakes Resort City against Navasota Valley Electric Cooperative, Inc. concerning line extension charges.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 27, 1989, 2:30 p.m.

TRD-8905589

Thursday, September 14, 1989, 10 a.m. The Hearings Division will consider Docket 8848-application of San Miguel Electric Cooperative, Incorporated for authority to implement a reduction in rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 28, 1989, 1:38 p.m.

TRD-8905672

Texas Water Commission

Monday, July 10, 1989, 10 a.m. The commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the Texas Water Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Texas Water Commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161

Filed: June 28, 1989, 10:41 a.m.

TRD-8905694

Thursday, July 13, 1989, 2 p.m. The commission will consider various matters within the regulatory jurisdiction of the Texas Wa-

ter Commission of Texas. In addition, the Texas Water Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Texas Water Commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161

Filed: June 28, 1989, 10:40 a.m.

TRD-8905695

Tuesday, August 8, 1989, 10 a.m. The Office of Hearings Examiner will meet in Classroom No. 4, Laredo Civic Center, 2400 San Bernardo, Laredo. According to the agenda summary, the City of Laredo, has applied to the Texas Water Commission for an amendment to Permit No. 10681-04 to authorize additional golf course land for irrigation and to add an alternate discharge route during periods of wet weather. The proposed amendment would add effluent limitations for minimum dissolved oxygen concentration. The permit currently authorizes a discharge of treated domestic wastewater effluent in phases with the final phase being a volume not to exceed an average flow of 926,000 gallons per day, with provisions for using a portion of the effluent for irrigation. The irrigation area is located on the Laredo Country Club and Casa Blanca County Golf Courses. Application rates for the irrigated land shall not exceed 4.2 acre-feet/acre/year.

Contact: James Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 27, 1989, 3:11 p.m.

TRD-8905633

Wednesday, August 9, 1989, 9 a.m. The Office of Hearings Examiner will meet at Environmental Pollution Control, 7411 Park Place, Houston. According to the agenda summary, Fry Road Municipal Utility District, c/o Young, Bacon & Brooks, 2727 Allen Parkway, Suite 1680, Houston, has applied to the Texas Water Commission for an amendment to Permit No. 11989-01 to obtain a variance to the buffer zone requirement of 150 feet from any treatment unit to the nearest residential property. The permit currently authorizes a discharge of treated domestic wastewater effluent in phases with the final phase being a volume not to exceed an average flow of 800,000 gallons per day, which will remain the same.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 27, 1989, 3:11 p.m.

TRD-8905632

Tuesday, August 22, 1989, 9 a.m. The Office of Hearings Examiner will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to

the agenda summary, the commission will consider City of Bremond, P. O. Box E, Bremond, Texas 76629 has applied to the Texas Water Commission for renewal of Permit No. 10917-01 which authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 120,000 gallons per day. The wastewater treatment facilities are approximately 0.7 mile south of the intersection of State Highway 14 and FM Road 46, in Robertson County. The effluent is discharged into an unnamed tributary of Big Willow Creek; thence to Big Willow Creek; thence to Walnut Creek; thence to the Little Brazos River; thence to the Brazos River in Segment No. 1242 of the Brazos River Basin.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 28, 1989, 3:08 p.m.

TRD-8905705

Regional Meetings

Meetings Filed June 27, 1989

The Blanco County Appraisal District, Board of Directors, will meet at Blanco County Courthouse Annex, Johnson City, on July 11, 1989 at 6 p.m. Information may be obtained from Hollis Pertri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Bell County Tax Appraisal district, Appraisal Review Board, will meet at 411 East Central, Belton, on July 11 & 12, 1989, at 8:30 a.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841 ext. 29.

The Wise County Appraisal District, Board of Directors, will meet at 206 South State Street, Decatur, on July 13, 1989, at 9 a.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3081 ext. 70.

TRD-8905576

Meetings Filed June 28, 1989

The Upshur County Appraisal District, Board of Directors, will meet at Upshur County Appraisal District Office, Warren & Trinity Street, Gilmer, on July 10, 1989, 1 p.m. Information may be obtained from Louise Stracener, P. O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

The Bastrop County Appraisal District, Appraisal Review Board, will meet at 1200 Cedar Street, Bastrop, on July 10, 1989, at 7 p.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas (512) 321-3925.

The Dallas Central Appraisal district, Appraisal Review Board, will meet at 1420 West Mockingbird Lane, Suite 500, Dallas,

on July 7, 1989, at 2 p.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

The Dewitt County Appraisal District, Appraisal Review Board, will meet at 103 Bailey Street, Cuero, on July 7, 1989, at 9 a.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Garza County Appraisal district, Board of Directors, will meet at Appraisal

Office Courthouse, Post, on July 13, 1989 at 9 a.m. Information may be obtained from Jean M. Westfall, P. O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Lavaca County Central Appraisal district, Board of Directors, will meet at 113 North Main, Hallettsville, on July 10, 1989, at 3 and 4 p.m. respectively. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

TRD-8905672

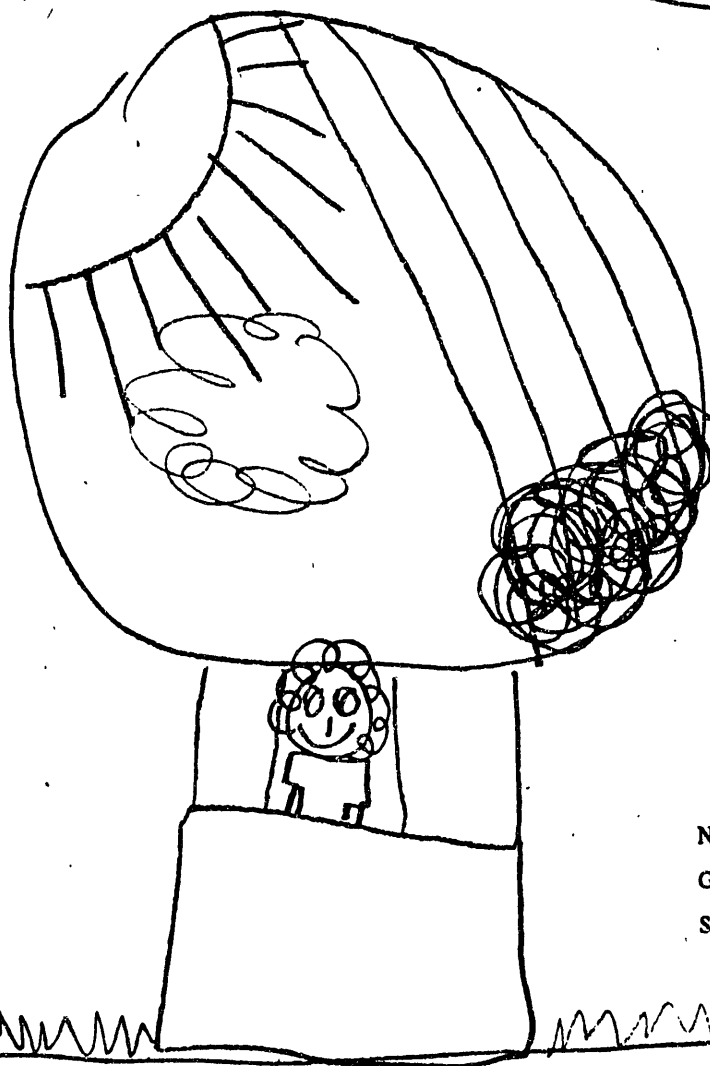
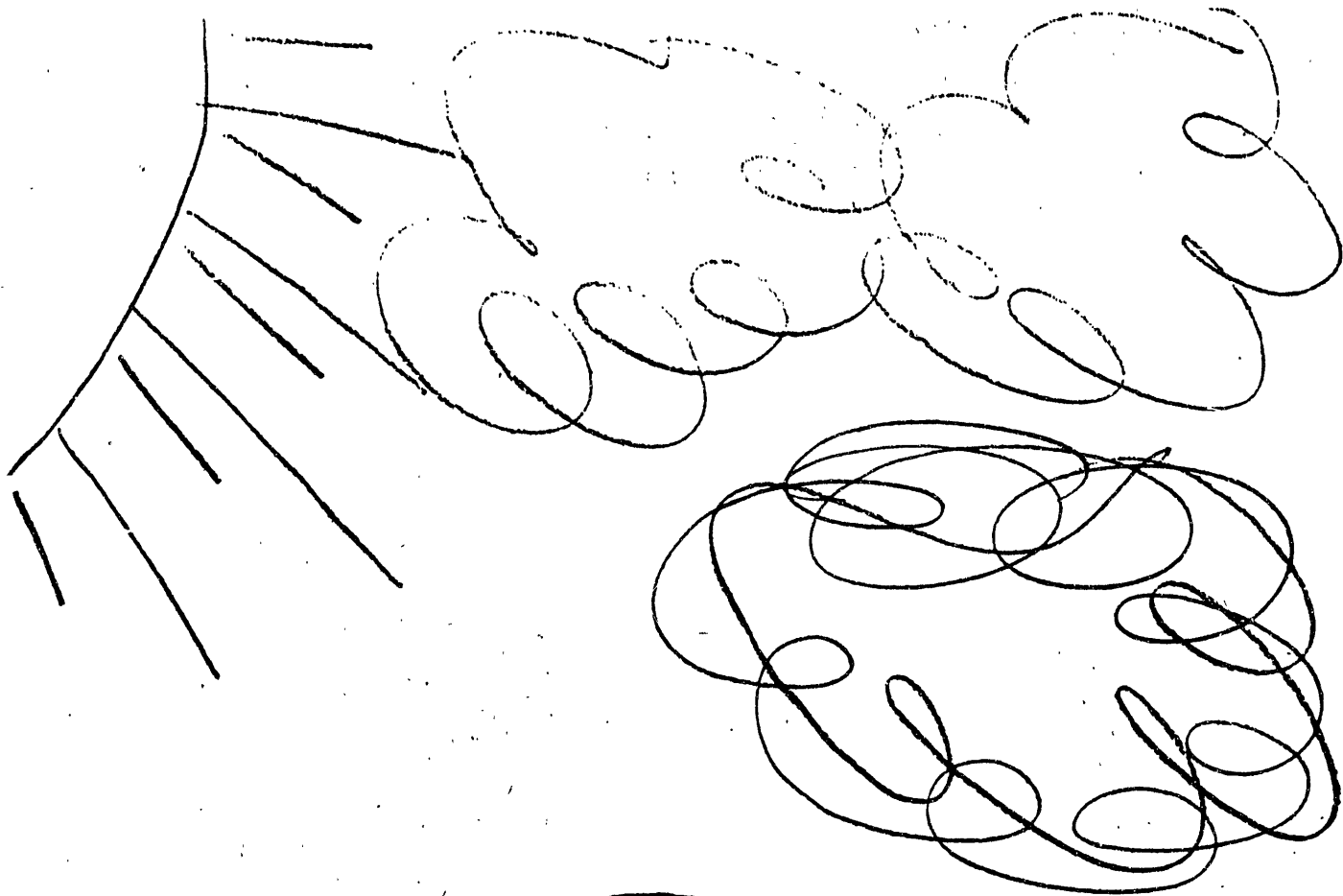
Meetings Filed June 29, 1989

The Tarrant Appraisal District, Appraisal Review Board, will meet at 2309 Gravel Road, Fort Worth, on July 5-7, 10-15, 17-21, 1989, at 8:30 a.m. daily. Information may be obtained from Coordinator, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 284-8884.

The Tyler County Appraisal District, Board of Directors, will meet at 806 West Bluff, Woodville, on July 6, 1989, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-8905730





Name: Kim Collins

Grade: 2

School: Burks Elementary, McKinney

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Advisory Commission on Intergovernmental Relations Notice of Agency Discontinuation

The Texas Advisory Commission on Intergovernmental Relations is discontinuing its operation effective August 31, 1989. The discontinuation is a result of funding decisions by the Texas Legislature during the 1989 session. The agency's records will be closed as of August 31, 1989, and administrative files will be transferred to the State Purchasing and General Services Commission for retention. Any questions concerning the commission's phase-out should be directed to Jay Stanford, Executive Director, or Betty Williams, Fiscal and Personnel Manager, (512) 463-1812, P.O. Box 13206, Austin, Texas 78711.

Issued in Austin, Texas on June 27, 1989.

TRD-8905827 Jay G. Stanford
Executive Director
Texas Advisory Commission on
Intergovernmental Relations

Filed: June 27, 1989

For further information, please call (512) 463-1812.

Texas Education Agency Request for Application

The Texas Education Agency is requesting an application (RFA #701-90-012) from school districts for establishing a family-centered education program that includes activities for parents and students. The grants may be used to provide training of parents to support the educational growth of their children, and to prepare children for success in regular school programs. Eligible applicants for this family involvement grant are individual school districts that have identified a population of at least 25% at-risk students.

This grant includes several components. The first component requires coordination with existing programs in adult basic education, literacy programs, and adult vocational education. The parents of at-risk children must attend a vocational program to develop a specific job skill or an adult basic education and literacy program toward obtaining a General Educational Development Certificate (GED). Second, at least one meeting per week will be dedicated to parent education regarding public assistance programs and community involvement. Information on community services will be presented to meet parents' needs. Third, at least one meeting per week will be held at the elementary school to facilitate the training of parents in order to help their children in the learning process. Parents of children infant to three years old will be involved in a Parents as Teachers type learning program. Fourth, a day care will be available for children infant to four years old while the parents are attending school and meetings. The day care facility will also provide a training site for those adults who desire licensing as day care workers. Fifth,

tutorial services in mathematics and reading will be provided for children five to 12 years old while the parents are attending school. A study session may be provided during parent meeting times.

The audience to be served will be a minimum of 40 at-risk family units and their children ages infant to 12 years old for each site. The projects will be conducted from September 1, 1989-June 30, 1990, for up to \$100,000 each in five separate sites.

To obtain a copy of the request for application, call (512) 463-9304, or write the Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701-1494. Applications may be delivered by mail or in person to the document Control Center, Room 6-108, Texas Education Agency. To be considered for funding, applications must be received no later than 5 p.m. on Wednesday, August 9, 1989.

Issued in Austin, Texas on June 28, 1989.

TRD-8905885 W. M. Kirby
Commissioner of Education
Texas Education Agency

Filed: June 28, 1989

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

Commission on Fire Protection Personnel Standards and Education Notice of Public Hearing

The Commission on Fire Protection Personnel Standards and Education will hold a hearing for public input regarding the revision of training hours accredited for intermediate and/or advanced fire fighter certification.

Time: 1:30 p.m.

Date: July 5, 1989-Wednesday

Howard Johnson South Plaza Hotel

Voyager Room

3401 Interstate Highway 35, South

Austin, Texas

Issued in Austin, Texas on June 29, 1989.

TRD-8905758 Ray L. Goad
Executive Director
Commission on Fire Protection Personnel
Standards and Education

Filed: June 29, 1989

For further information, please call (512) 474-8068

Texas Department of Health Correction of Error

The Texas Department of Health submitted proposed

amendments which contained errors as submitted by the department in the May 5, 1989, issue of the *Texas Register* (14 TexReg 2113).

In §301.12: The last sentence of paragraph (d)(2) should read: "The primary compartment shall hold at least 60% of the total volume required; the secondary compartment shall hold 40% of the required volume."

In §301.13: The last fourth sentence of clause (c)(4)(B)(ii) should read: "All must be repairable in the field. Liners are not required in slowly permeable soils (having permeability of less than ten to the minus four [10] centimeters per second) and should not be used since some of the wastewater may be absorbed into the soil and will help to reduce the overall evapotranspiration load."

The department also submitted a proposed section which contained errors as published in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2600).

In §37.90: Subclause (4)(B)(vii)(I) and subclause (4)(B)(viii) (I) are new language and should therefore appear in bold face print.

Subitems (4)(B)(xi)(I)(a)-(1)-(3-) should read:

"(-1-) a surgeon specializing in plastic surgery, oral surgery, or otolaryngology;

(-2-) an orthodontist or pedodontist; and

(-3-) a speech language pathologist (CCC)."

Subitems (4)(B)(xi)(I)(c)-(1)-(3-) should read: "(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 two C/C teams and must specify the following:

(-1-) the method of communication and consultation; and

(-2-) the arrangements for provision of the diagnostic procedures specified in clause (vii) of this subparagraph."

◆ ◆ ◆ Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled location indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
El Paso	Guillermo A. Pinzon, M.D., P.A.	L04277	El Paso	0	06/09/89
Houston	Associated Piping and Engineering Company	L04298	Houston	0	05/08/89
San Antonio	Bexar Cnty Med. Examiner & Criminal Investigation Lab	L04313	San Antonio	0	05/24/89
San Antonio	Osteotex Inc.	L04308	San Antonio	0	06/01/89
San Antonio	Advanced Medical Imaging	L04305	San Antonio	0	06/13/89
Weimar	Central Texas Nuclear Medicine Services	L04225	LaGrange	0	06/09/89

AMENDMENTS TO EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Austin	Railroad Commission of Texas	L02749	Austin	4	06/06/89
Beaumont	Lamar University	L04047	Beaumont	1	06/05/89
Beaumont	St. Elizabeth Hospital	L00269	Beaumont	45	06/12/89
Burnet	Shepperd Memorial Hospital	L03515	Burnet	8	06/14/89
Channelview	Sunbelt Regional Medical Center East	L02947	Channelview	8	06/05/89
Corpus Christi	Corpus Christi Osteopathic Hospital	L01979	Corpus Christi	12	06/02/89
Dallas	Texas Instruments, Inc.	L00946	Dallas	49	05/24/89
Dallas	Vencor Lakewood Hospital	L03503	Dallas	3	06/05/89
Dallas	North Dallas Diagnostic Center	L03125	Dallas	23	06/08/89
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	50	06/12/89
Deer Park	Occidental Chemical Company	L00155	Deer Park	27	05/24/89
Denton	University of North Texas	L00101	Denton	32	06/06/89
Falls City	Conoco Inc.	L01634	Falls City	31	06/05/89
Fort Worth	Moncrief Radiation Center	L00047	Fort Worth	24	06/02/89
Fort Worth	Twin Oaks Medical Center	L03364	Fort Worth	11	06/08/89
Fort Worth	Harris Methodist Hospital	L01837	Fort Worth	38	06/08/89
Halleville	Southwestern Electric Power Company	L03297	Halleville	5	06/12/89
Harlingen	Valley Eye Center, P.A.	L02639	Harlingen	4	06/09/89
Houston	Cypress Fairbanks Medical Center	L03424	Houston	14	06/02/89
Houston	Rice University	L01772	Houston	10	06/08/89
Houston	Cytology Technology, Inc.	L04269	Houston	1	06/14/89
LaPorte	B.F. Goodrich Company	L02469	LaPorte	7	06/08/89

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

LaPorte	Dow Chemical Company U.S.A.	L00510	LaPorte	43	06/09/89
Lubbock	Diagnostic Radiology Associates	L03948	Lubbock	6	06/12/89
McAllen	Rio Grande Regional Hospital	L03288	McAllen	17	06/15/89

N. Richland Hills	HCA North Hills Medical Center	LO2271	N. Richland Hills	13	06/02/89
New Braunfels	The McKenna Memorial Hospital	LO2429	New Braunfels	14	06/12/89
San Antonio	St. Luke's Lutheran Hospital	LO3309	San Antonio	11	05/25/89
San Antonio	Southwest Texas Methodist Hospital	LO0594	San Antonio	77	06/12/89
San Antonio	Humana Women's Hospital South Texas	LO3656	San Antonio	7	06/12/89
San Antonio	Humana Hospital - Metropolitan	LO2232	San Antonio	18	06/14/89
San Antonio	The U.T. Health Science Center at San Antonio	LO1279	San Antonio	45	06/12/89
Texarkana	Wadley Regional Medical Center	LO1437	Texarkana	14	06/06/89
Texarkana	Wadley Regional Medical Center	LO2486	Texarkana	13	06/06/89
Three Rivers	Intercontinental Energy Corporation	LO2538	Three Rivers	31	06/05/89
Three Rivers	Exxon Corporation	LO1431	Houston	23	06/01/89
Throughout Texas	Southwestern Laboratories	LO1934	Dallas	22	05/19/89
Throughout Texas	Visions Innovations Corporation (VICORP)	LO4050	Odessa	3	05/24/89
Throughout Texas	Pool and Rogers Paving Company, Inc.	LO4237	Buda	1	05/25/89
Throughout Texas	Price Construction, Inc.	LO2273	Big Spring	6	05/24/89
Throughout Texas	Alpha Testing, Inc.	LO3411	Dallas	10	05/24/89
Throughout Texas	Pro-Technics II, Inc.	LO3835	Houston	10	05/22/89
Throughout Texas	DJ Inspection Services, Inc.	LO2067	Houston	18	05/30/89
Throughout Texas	E. I. du Pont de Nemours & Co., Inc.	LO0517	Beaumont	49	05/26/89
Throughout Texas	Strain Brothers, Inc.	LO4163	San Angelo	1	05/26/89
Throughout Texas	Houston Lighting and Power	LO2063	Houston	39	06/02/89
Throughout Texas	Tru-Tag Systems, Inc.	LO3783	Houston	9	05/24/89
Throughout Texas	M and W Wireline Services	LO3824	Colorado City	1	05/23/89
Throughout Texas	Kooney X-Ray, Inc.	LO1074	Barker	44	06/06/89
Throughout Texas	TransAmerican Natural Gas Corporation	LO3956	Laredo	5	06/06/89
Throughout Texas	Princeton Gamma Tech., Inc.	LO3444	Lytle	4	05/25/89
Throughout Texas	Tracer Service, Inc.	LO3526	Kilgore	17	06/08/89
Throughout Texas	Western Atlas International, Inc.	LO0446	Houston	92	06/09/89
Throughout Texas	Texas Nuclear Corporation	LO1105	Austin	24	05/30/89
Throughout Texas	Texas Nuclear Corporation	LO3524	Austin	14	05/30/89
Throughout Texas	E.I. DuPont de Nemours & Company	LO0005	Orange	55	05/16/89
Throughout Texas	Cotton Houston, Inc.	LO3920	Houston	14	06/05/89
Throughout Texas	Trinity Engineering Testing Corporation	LO0645	Odessa	34	06/08/89
Throughout Texas	Trinity Engineering Testing Corporation	LO1351	Corpus Christi	25	06/08/89
Throughout Texas	DJ Inspection Services, Inc.	LO2067	Houston	19	06/09/89
Throughout Texas	Tru-Tec, Inc.	LO3913	LaPorte	21	06/12/89
Throughout Texas	Texas Instruments, Inc.	LO0946	Dallas	50	06/09/89
Tyler	NuTech, Inc.	LO4274	Tyler	1	05/26/89
Wichita Falls	Wichita General Hospital	LO0350	Wichita Falls	37	06/06/89

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Bedford	Harris Methodist - HEB	LO2303	Bedford	13	06/08/89
Fort Worth	Carter Blood Center	LO3676	Fort Worth	3	06/12/89
Houston	University of St. Thomas	LO0460	Houston	13	06/12/89
Mount Pleasant	Titus County Memorial Hospital	LO2921	Mount Pleasant	4	06/06/89
San Antonio	Humana Women's Hospital South Texas	LO3656	San Antonio	8	06/14/89

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Bastrop
Deer Park
Eastland
Wichita Falls

Bastrop Hospital
Rohm and Haas Texas, Inc.
Eastland Memorial Hospital
PPG Industries, Inc.

L03177	Bastrop	5	06/12/89
L00237	Deer Park	30	05/24/89
L03222	Eastland	10	06/08/89
L01868	Wichita Falls	7	06/07/89

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on June 26, 1989.

TRD-8905579 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: June 27, 1989

For further information, please call (512) 835-7000.

Texas Department of Human Services Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) announces this notice of consultant contract award. The invitation for consultant proposals was published in the May 12, 1989, issue of the *Texas Register* (14 TexReg 2391).

Description of Services : The contractor will conduct a pilot test in Texas of a comprehensive child protective services risk assessment system having the characteristics described as follows. These services are to include: an analysis of the compatibility of current child protective services (CPS) policy and practice with the implementation of a comprehensive risk assessment system. The

analysis will examine the Texas Family Code, CPS policy, management and service delivery practices, and service evaluation process, focusing on the specific points of compatibility and conflict these areas have with a risk assessment system of the type described as follows: consultation, training, and materials necessary to prepare for, conduct, and evaluate a pilot test of a comprehensive risk assessment system. The pilot test will extend for six months, and will include staff involved in all areas of child protective services practices.

Name of Consultant : The contract was awarded to ACTION for Child Protection, Inc., 211 East Boulevard, Suite 2, Charlotte, North Carolina 28203.

Term and Amount of the Contract : The contract period is July 1, 1989 through August 31, 1990. Payments under this contract will not exceed \$185,600.

Study Completion Date : The consultant's final report will be due August 1990.

Issued in Austin, Texas, on June 28, 1989.

TRD-8905683 Charles Stevenson
Acting Commissioner
Texas Department of Human Services

Filed: June 28, 1989

For further information, please call (512) 450-3765.

Public Notice

The Texas Department of Human Services (DHS) has published a report outlining its proposed intended use of federal block grant funds during fiscal year 1990 for Title XX social services programs. To obtain free copies of the report, send written requests to Cathy Rossberg, Administrator, Policy Development Services Division, Mail Code 222-E, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. DHS is seeking written comments from representatives of both public and private sectors regarding the proposed use of Title XX block grant funds. Written comments will be accepted through July 31, 1989. Please mail comments to the address listed previously.

Issued in Austin, Texas, on June 28, 1989.

TRD-8905683 Charles Stevenson
Acting Commissioner
Texas Department of Human Services

Filed: June 28, 1989

For further information, please call (512) 450-3765.

Texas Water Commission Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Samson Horrice on June 21, 1989, assessing \$3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen C. Dickman, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin,

Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas on June 26, 1989.

TRD-8905628 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: June 27, 1989

For further information, please call (512) 463-7906

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Henderson County Municipal Water Authority (Permit 11012-01) on June 21, 1989, imposing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Hank Smith, Enforcement Coordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on June 26, 1989

TRD-8905629 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: June 27, 1989

For further information, please call (512) 463-8069.

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Superior Dairies, Inc. on June 21, 1989, assessing \$7,000 in negotiated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Irene Montelongo, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on June 26, 1989.

TRD-8905630 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: June 27, 1989

For further information, please call (512) 463-8069.

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

A revised enforcement order was issued to Matagorda County WCID, Number 5, Permit 10217-01 on June 26, 1989, imposing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Co-

ordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on June 26, 1989

TRD-8905631 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: June 27, 1989

For further information, please call (512) 463-8069.

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Notice of Application for Waste Disposal Permit

Attached are notices of applications for waste disposal permits issued during the period of June 19-June 23, 1989.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Associated Milk Producers, Inc., Stephenville Plant; Arlington; specialty dairy food products manufacturer; north of and adjacent to Smith Springs Road, approximately 2,000 feet northeast of the intersection of Smith Springs Road and U.S. 281, north of the City of Stephenville, Erath County; 03074; new.

Signa Development Corporation; Dallas; wastewater treatment facility; approximately three miles south of Royce City, on FM Road 548 and east of the intersection of Parker Creek and FM Road 548, Rockwall County; 13481-01; new.

City of Clifton; Clifton; wastewater treatment facility; on the west bank of the North Bosque River, immediately south off FM Road 219, on the east side of the city of Clifton, Bosque County; 10043-01; renewal.

City of Coleman; wastewater treatment facility; east of the city of Coleman, on the south side of Hords Creek and approximately 3/4 mile northwest of the intersection of FM Road 568 and U.S. Highway 84, Coleman County; 10150-01; renewal.

City of Glen Rose; wastewater treatment facility; at the crossing of Van Zandt Branch and U.S. Highway 67, at a point approximately 1/2 mile east of the city of Glen Rose, Somervell County; 10177-01; renewal.

Hunter's Glen Municipal Utility District; Houston; wastewater treatment facility; at 19926 Foxchester Lane, approximately 3/4 mile northwest of the intersection of Lee Road and FM Road 1960, Harris County; 11618-01; renewal.

Northwest Harris County Municipal Utility District Num-

ber 16; Houston; wastewater treatment facility; approximately 5,800 feet southwest of the intersection of FM Road 529 and State Highway 6, Harris County; 11935-01; renewal.

Texas Educational Foundation, Inc.; San Marcos; Gary Job Corps Center Wastewater Treatment Plant; approximately five miles east of the City of San Marcos, south of the MKT Railroad near the intersection of Lake Avenue E and Railroad Avenue, at the southeast corner of the Gary Job Center, Caldwell County; 12067-01; renewal.

Thousand Trails, Inc.; Bellevue; wastewater treatment facility; approximately 3.5 miles east of U.S. Highway 377 and approximately 8.3 miles north of U.S. Highway 82, Grayson County; 12860-01; renewal.

City of Woodbranch Village; New Caney; wastewater treatment facility; approximately 8,000 feet east of U.S. Highway 59, at the northwest corner of the intersection of Roman Forest Boulevard and Peach Creek, Montgomery County; 11993-01; renewal.

E.I. DuPont de Nemours and Company; Ingleside; wastewater treatment facility; on the south side of State Highway 361, approximately three miles southeast of the city of Gregory, San Patricio County; 01651; amendment.

Union Carbide Corporation-Seadrift Plant; Port Lavaca; chemical manufacturer; located on both sides of State Highway 185 on a 2,600-acre tract of land approximately one mile south of Highway 35 and six miles north of the town of Seadrift, Calhoun County; HW-50190, EPA Number TXD-041515420; amendment; 45-day notice.

Issued in Austin, Texas on June 23, 1989.

TRD-8905540 Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: June 26, 1989

For further information, please call: (512) 463-7906

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Meeting Notice

A meeting of the Scientific/Technical Advisory Committee of the Galveston Bay National Estuary Program is scheduled for: Thursday, July 6, 1989, 10 a.m., University of Houston-Clear Lake, Bayou Building, Room 3-214, Houston.

Issued in Austin, Texas on June 26, 1989.

TRD-8905581 B. J. Wynne, III
Chairman Policy Committee
Galveston Bay National Estuary Program

Filed: June 27, 1989

For further information, please call (512) 475-2161

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A meeting of the Citizen's Advisory Steering Committee of the Galveston Bay National Estuary Program is scheduled for Tuesday, July 11, 1989, 12 noon, University of Houston-Clear Lake, Bayou Building, Room 3-211, 2700 Bay Area Boulevard, Houston.

Issued in Austin, Texas on June 26, 1989.

TRD-8905580 B. J. Wynne, III
Chairman of Policy Committee
Galveston Bay National Estuary Program

Filed: June 27, 1989

For further information, please call (512) 475-2161
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profiles

A Guide to Texas State Agencies

Texas Antiquities Committee

In 1967, a group of treasure hunters from Indiana began salvaging, without archaeological supervision, one of three Spanish ships lost in a storm off the Texas coast in 1554. Realizing the historical significance of the site, officials obtained a court injunction to halt the operation until ownership of the artifacts was legally determined and returned to the state.

Partly as a result of this controversy, the Antiquities Code of Texas was enacted in 1969, providing for creation of the Texas Antiquities Committee (TAC). The agency's responsibilities, as outlined in the code, include: maintaining an inventory of materials recovered and retained by the state; identifying and designating state archaeological landmarks; issuing permits for discovery and investigation of publicly owned landmarks; disseminating information on TAC programs and policies; and protecting and preserving the archaeological and historical resources of Texas.

During its early years, the Antiquities Committee was under the direction of the State Archaeologist of the Texas Historical Commission. Agency staff conducted scientific underwater excavations, developed a traveling exhibit of artifacts, and produced a documentary about the sunken Spanish ships.

Emphasis on field work was redirected to cultural resource management when the committee became an independent department of the Texas Historical Commission. The TAC oversaw archaeological investigations and reconnaissance surveys of major reservoirs inundating many sites. Archaeological permits were issued for

construction projects on public land.

The late 1970's saw the establishment of the State Archaeological Landmark (SAL) program and the development of rules, regulations, and designation procedures to identify and protect significant properties. Landmark status ensures that a property cannot be removed, altered, damaged, salvaged, or excavated without prior review and permitting by the committee. Under the Texas Heritage Conservation Plan, the TAC began computerizing a reference database of archaeological and shipwreck information.

During the 1980's, the committee has concentrated on protecting and preserving SAL's. Public programs have been developed to educate citizens about the problem of archaeological site destruction. Committee staff, in association with other preservation groups, routinely conduct archaeological field investigations and research projects at selected endangered SAL's. The TAC worked with national archaeological societies and with federal officials to pass the Abandoned Shipwreck Act of 1988. The legislation increases states' control over the management of underwater cultural resources.

The committee has established a set of guidelines for identifying and preserving archaeological landmarks. Approximately 2,109 SAL's have been designated in 145 counties. Of these, 1,092 are archaeological sites, 352 are historic public buildings and other structures, 624 are historic shipwreck sites, and 41 are engineering features. The Texas Antiquities Committee is headquartered in Austin and may be contacted at (512) 463-6098.

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